

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

SARAH HAND AND GRETCHEN HAND,  
a married couple

Complainant,

v.

RAINIER VIEW WATER COMPANY, INC.,

Respondent.

DOCKET UW 170924

**SARAH HAND'S EXHIBIT 18 TO  
CROSS EXAMINATION**

**EXHIBIT 18**

**TO CROSS EXAMINATION OF BOB BLACKMAN AND RACHEL STARK**

**July 25, 2018**

Deposition of Michael Means taken on 08-30-2017

30(b)(6) Deposition of

**Michael J. 30(b)(6) Department of Health Means**

August 30, 2017

**Hand v. Rainier View Water Company**

No. 17-2-05538-2



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

SARAH HAND and GRETCHEN SMITH, a )  
married couple, )  
 )  
 ) Plaintiffs, )  
 ) No. 17-2-05538-2  
vs. )  
 )  
 )  
RAINIER VIEW WATER COMPANY, INC., )  
 )  
 )  
 ) Defendant. )  
 )

30(b)(6) DEPOSITION OF DEPARTMENT OF HEALTH

MICHAEL J. MEANS

August 30, 2017

Tacoma, Washington

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Exhibit No. 12	6-page Memorandum of Understanding dated 11/22/95.	42

1 BE IT REMEMBERED that on Wednesday,  
2 August 30, 2017, at 2208 North 30th Street, Suite 202,  
3 Tacoma, Washington, at 3:33 p.m., before Valerie L.  
4 Torgerson, Certified Court Reporter, RPR, appeared  
5 MICHAEL J. MEANS, the witness herein;

6 WHEREUPON, the following proceedings  
7 were had, to wit:

8  
9 <<<<<< >>>>>>

10  
11 MICHAEL J. MEANS, having been first duly sworn  
12 by the Certified Court Reporter,  
13 testified as follows:

14  
15 EXAMINATION

16 BY MR. MALDEN:

17 Q Can you please state your complete name?

18 A **My name is Michael Joseph Means.**

19 Q Mr. Means, my name is Nigel Malden, and I'm an attorney  
20 that's representing Sarah and Gretchen Hand in a legal  
21 case against Rainier View Water.

22 Thank you for coming in today for your deposition.

23 A **Yep.**

24 Q I'd like to start by just giving you a basic overview of  
25 the rules of the deposition.

1           Have you ever had your deposition taken before?

2   **A   Yes, I have.**

3   Q   How many times?

4   **A   At least twice.**

5   Q   As you may be already aware then, you are testifying  
6       under penalty of perjury just as you would be if you were  
7       in court.  If I ask you a question that you don't hear or  
8       you don't understand, please tell me, and I'll be happy  
9       to repeat or rephrase the question.

10           It's very important that only one of us speak at a  
11          time because the reporter is taking down everything  
12          that's said.  So I'm going to try and wait until your  
13          entire answer is given before I move on to my next  
14          question, and I'd like to ask you to wait until my entire  
15          question is out before you begin to answer.

16           Okay?

17   **A   Sounds good.**

18   Q   I'd like to start by just asking you some background  
19        questions.

20           Can you summarize for us your educational  
21        background?

22   **A   So I have a bachelor of science degree in geology with an  
23        emphasis on hydrogeology.**

24   Q   And when did you get that degree?

25   **A   I received that degree in 1994.  Yes.**

1 Q From --

2 **A I went back to school.**

3 Q From which school?

4 **A University of California at Santa Barbara.**

5 Q Is that a BA degree or a master's degree?

6 **A It's a bachelor's of science.**

7 Q Did you go on for any further formal education beyond  
8 that?

9 **A I did not for formal education, no.**

10 Q You currently work for the Department of Health?

11 **A That's correct.**

12 Q And what is your job title?

13 **A I am the deputy director of operations for the Office of  
14 Drinking Water.**

15 Q Can you describe for us in general terms what the mission  
16 is of the division of drinking water?

17 **A So our mission for the Office of Drinking Water is to  
18 provide safe and reliable water for the residents of  
19 Washington state, to improve public health for the  
20 residents of Washington state by providing safe and  
21 reliable drinking water.**

22 Q And what specifically are your job duties as deputy  
23 director of operations?

24 **A So I am in charge of our three regional offices, as well  
25 as I have a section for engineering technical services**



1 and a section for operator certification that all report  
2 to me.

3 Q Do you -- or strike that.

4 Which of the three regional offices are within your  
5 jurisdiction?

6 A All three regional offices. We have a northwest office  
7 that's based out of our Kent office, an eastern regional  
8 office based out of Spokane, and then our southwest  
9 regional office is based out of Tumwater.

10 Q Now, you have been present throughout the deposition  
11 taken earlier today?

12 A Yes.

13 Q And you listened to the questions and the testimony?

14 A Yes.

15 Q Did you hear any testimony from the witness that you  
16 thought was factually inaccurate?

17 A The only piece of information that was factually  
18 inaccurate is that the witness did not have knowledge of  
19 our current stance on manganese as is being developed  
20 right now.

21 Q Okay. Can you explain that to us? What is your current  
22 status -- or, excuse me, stance on manganese that is  
23 being developed?

24 A So just in preparation for the deposition, I was able to  
25 debrief with our toxicologist, who is in the process of

1 reviewing the existing studies that are out on manganese,  
2 as well as updating a very old historic fact sheet that  
3 is no longer current on iron and manganese in water  
4 systems, public and private, and specifically also in  
5 review to what the EPA has put out as lifetime health  
6 advisory for manganese and how that might impact whether  
7 we would change how we view manganese as a contaminant.

8 And in summary, we support the EPA's lifetime health  
9 advisory for manganese, which is at 300. For the scale  
10 of things, 50 is the secondary maximum contaminant level.  
11 That is still a safe level for aesthetic -- it's an  
12 aesthetic impact at that point. Above 300 is where  
13 there's a potential health concern.

14 Manganese is a required nutrient for our bodies. We  
15 have to have it. Most of the manganese we consume is in  
16 our food, but when you combine that food and that  
17 specific piece, the specific focus is on infants and  
18 formula, if you exceed that 300 level, you might have a  
19 potential impact to infants. So that's the level at  
20 which we're saying you need to be aware of it and have  
21 some concern.

22 Q Are you anticipating publishing this finding at some  
23 point?

24 A Oh, yeah.

25 Q What's the timetable on that?

1 **A** Hopefully by the end of this year, if not sooner.

2 **Q** When did you undertake this study of manganese?

3 **A** The toxicologist -- I asked the toxicologist to come  
4 start that study about eight months ago.

5 **Q** Was there some event or incident that caused you to ask  
6 the toxicologist to start that work about eight months  
7 ago?

8 **A** It was an event that I just happened to see a posting for  
9 the EPA lifetime health advisories as a result of what we  
10 were looking at for addressing actually at the time lead  
11 and fluorinated compounds.

12 **Q** Do you have any concern at the DOH about the aesthetic  
13 quality of water?

14 **A** We have concerns for the aesthetic quality of water as  
15 far as people's acceptance, and also in the challenges  
16 that exist for, you know, determining what's safe and as  
17 well as what's acceptable. And so, you know, aesthetic  
18 quality can be an indicator of some circumstances, where  
19 there might have been a change in what's going on with a  
20 utility, so that's our primary concern, where it's a  
21 change in that aesthetic quality.

22 **Q** If I could go back for a moment.

23 You mentioned this number 300. Are you referring to  
24 a ratio of 300 parts per billion?

25 **A** Yes.

1 Q Are you saying that the State of Washington Department of  
2 Health could care less if water purveyors are providing  
3 water with manganese levels below 300 parts per billion?

4 A The determination of care is an interesting term to use.  
5 I would say our legal authority is that we do have legal  
6 authority on acting. We do care about customer  
7 acceptance of water, which is what our policy is  
8 originally based on.

9 Q Can you explain what you meant by "legal authority"?

10 A So we're -- you know, our legal authority is associated  
11 with, you know, a secondary contaminant level, which is  
12 not at that concentration a health concern. It is an  
13 aesthetic concern.

14 And so for existing systems, we look to both the  
15 utility and the customer, depending upon their  
16 authorizing environment, to address concerns, and where  
17 we have complaints we would actually go to look to  
18 address them in accordance with the Water System Design  
19 Manual previously referenced.

20 Q And is the position of the Department of Health that  
21 unless at least five customers contact the DOH directly  
22 you have no interest or concern in acceptance of water  
23 discolored by manganese?

24 A I would say that we don't pursue it within our limited  
25 resources.

1 Q And would it be fair to state that it doesn't matter how  
2 many people complain directly to the water company;  
3 unless they complain to the DOH, you're not going to take  
4 action?

5 **A If they complain to the water company, we do not**  
6 **necessarily have knowledge of those complaints. We have**  
7 **complaints go to water companies for many reasons, and**  
8 **sometimes in large volumes, especially for our large**  
9 **utilities, particularly around main breaks and things**  
10 **like that. We don't have the resources to receive every**  
11 **complaint that every water purveyor receives. That's not**  
12 **something -- that's what the utility's primary**  
13 **responsibility is for.**

14 MR. MALDEN: Can I have you read back  
15 my last question?

16 (Question on Page 11, Lines 1  
17 through 4, read by the  
18 reporter.)

19 Q (By Mr. Malden) Can you answer that yes or no?

20 **A I can answer that we are not going to take action unless**  
21 **we receive complaints. We would not know about an issue.**

22 Q And what efforts does the Department of Health make to  
23 advise and inform the public that they must lodge their  
24 complaints regarding water quality directly with the  
25 Department of Health?

1 **A** So we do not make specific efforts as an outreach to the  
2 public. We do have documents that we provide online that  
3 have information about concerns. Most individuals that  
4 have called to complain have done a little bit of  
5 investigation as to who to complain to, and they come to  
6 us pretty quickly.

7 **Q** Do you know who Rainier View Water tells its customers to  
8 report their complaints to?

9 **A** I do not.

10 **Q** Do you know if Rainier View Water has ever instructed its  
11 customers to contact the DOH with complaints?

12 **A** I do not specifically, no.

13 **Q** Does Rainier View Water not have an affirmative legal  
14 duty to report to you complaints over water quality?

15 **A** I do not believe that that is the legal duty.

16 **Q** Does Rainier View Water, to your knowledge, have any  
17 legal duty with regard to documenting and maintaining  
18 records of customer complaints?

19 MR. RANKIN: Objection. Legal  
20 conclusion.

21 **A** I don't know that that's actually in our -- as a  
22 requirement of what the recordkeeping requirements are  
23 for utilities. That would probably be in the code of  
24 federal regulations as a reference document, and I just  
25 can't remember off the top of my head.

1 Q (By Mr. Malden) You indicated that you have asked a  
2 toxicologist to do some research for you into manganese;  
3 is that right?

4 A **That's correct.**

5 Q And who employs this toxicologist?

6 A **The Department of Health.**

7 Q And what is the toxicologist's name?

8 A **His name is -- I knew you were going to ask that --**  
9 **Koenraad. I think it's K-o-e-n-r-a-a-d. I can't**  
10 **remember his last name. I can get back to you with that.**

11 Q You mentioned a fact sheet.

12 A **It's not one of your current --**

13 MS. LEE: Yeah.

14 A **That's not the fact sheet. That's being updated.**

15 Q (By Mr. Malden) Okay. Let me ask you that on the  
16 record.

17 I'm showing you what's been marked previously as  
18 Exhibit 7.

19 A **Mm-hm.**

20 Q Do you recognize that document?

21 A **Yes, I do.**

22 Q Do you know what it is?

23 A **This is a fact sheet that we have provided in the past**  
24 **for -- particularly focusing on private wells. You know,**  
25 **our Department of Health addresses concerns for health**

1       for private as well as public wells around aesthetic  
2       qualities for concern.

3   Q   Is this particular fact sheet still in effect?

4   A   **I do not know that this one is still a published fact  
5       sheet, but I think it is.**

6   Q   The fact sheet that you were referring to, is this going  
7       to be a new one?

8   A   **This would be a new fact sheet, yes.**

9   Q   And what is that one going to be entitled?

10  A   **I believe the title would be "Frequently asked questions  
11       about iron and manganese."**

12  Q   And do you anticipate a date, a publication of when?

13  A   **I'm hoping to have it resolved by the end of this year,  
14       if not sooner.**

15  Q   If you look at the document marked as Exhibit 7, under  
16       the second bullet point it reads, "Black or dark brown  
17       water: Often caused by manganese in the water or pipe  
18       sediment. Manganese does not pose a threat to human  
19       health," closed quote.

20           I take it that the new fact sheet is going to amend  
21       that statement; is that right?

22  A   **That would be correct.**

23  Q   And would the DOH concede that the statement that  
24       manganese does not pose a threat to human health is  
25       inaccurate?



1 **A The statement that manganese does not pose a threat to**  
2 **human health, as a bare statement, would be inaccurate**  
3 **now, yes, with the current understanding.**

4 Q Nonetheless, that has been the official position of the  
5 State of Washington Department of Health from at least  
6 January 2011 up to the present; isn't that right?

7 **A That's correct.**

8 Q That's the official information that the DOH has given  
9 the public in the state of Washington?

10 **A That is correct.**

11 Q And the only reason that that statement is going to be  
12 revised is because you happened to see an article eight  
13 months ago referencing manganese?

14 MS. MCWILLIAMS: Objection.  
15 Misstatement of witness testimony.

16 **A Yes. I did see a posting in the result of looking at**  
17 **other contaminants, you know. As a state, as a nation,**  
18 **we look to continually review and update our contaminant**  
19 **list and our understanding, and so I happened to come**  
20 **across a notification where some of the studies that had**  
21 **recently been published had become public, and I was able**  
22 **to look at that and ask our toxicologist to take a look.**

23 Q (By Mr. Malden) Given the fact that the DOH is going to  
24 revise this statement from the fact sheet, I'm curious.  
25 Has the DOH contacted Rainier View and told them that

1 they must also stop telling the public that manganese  
2 poses no threat to human health?

3 **A No, we have not.**

4 **Q** Is that something that would be within the purview or the  
5 responsibility of the DOH, given its mission to protect  
6 the public?

7 **A That will be, and the statement that I would provide at**  
8 **that point is even at the concentration of exceedance**  
9 **that Rainier has for that particular system, it is not a**  
10 **threat to public health.**

11 **Q** Would you yourself then -- if you were advising the  
12 people that live in Pierce County that are served by  
13 Rainier View Water, is it your position that if they  
14 don't like the coloration of the water they need to drink  
15 it anyway because it's not a threat to their human  
16 health?

17 **A My position would be that if there are concerns ongoing**  
18 **with the public -- with the water that I understand is**  
19 **now being treated, that if I have -- if I ever receive a**  
20 **complaint like that, I actually do inform them at that**  
21 **point of what our policy is, and that they should be**  
22 **talking with their neighbors and seeing if they could**  
23 **submit a petition to the department, and we would take**  
24 **action.**

25 **Q** Are you aware of any effort taken by the Department of

1 Health to advise the public that one of their remedies is  
2 to file a petition with the DOH?

3 **A I'm not -- for this case, no.**

4 **Q** It would be the DOH's expectation then that the  
5 individual customer, assuming that they have a computer  
6 at home, they would have to get on the computer and do  
7 internet research and figure it out?

8 **A** It would be my understanding that I have a number of  
9 complaints come in from many different avenues whether  
10 there's a computer or not. People make a phone call and  
11 find out, and we address complaints as we receive them.

12 **Q** I'd like to hand you what's been marked as Exhibit 1.

13 Are you familiar with this document?

14 **A** I am.

15 **Q** How are you familiar with it?

16 **A** One of my staff is the primary responsible party for  
17 updating and addressing this document as -- you know, as  
18 time has gone by.

19 **Q** What is the purpose of this Water System Design Manual?

20 **A** The purpose for the Water System Design Manual is  
21 primarily to provide guidance to utilities -- primarily  
22 also utility engineers -- on the proper methods and  
23 design and treatment associated with utilities to look to  
24 achieve what we look for as managerial and financial  
25 capacity of utilities. This in this case is the

1       **technical capacity of utilities is what the document**  
2       **focuses on.**

3   Q   Okay.  If I could -- or strike that.

4       This particular document is dated December 2009.

5       To your knowledge, is this the most recent edition  
6       or version of the manual?

7   A   **This is the most recent published edition, yes.**

8   Q   If I could direct your --

9   A   **I thought we had done an update actually in 2011, but**  
10   **I'll have to check on that.**

11  Q   Okay.  If I could direct your attention to Page 203.

12  A   **Okay.**

13  Q   This appears to be a section entitled "Secondary  
14       Contaminant Treatment Requirements and Options."

15       Have you reviewed this section before?

16  A   **Yes.**

17  Q   You're familiar with its terms?

18  A   **Yes.**

19  Q   What is the purpose of this section?

20  A   **The purpose of this section is to help address the -- and**  
21   **define the policy for how we address secondary**  
22   **contaminants for existing water utilities.**

23  Q   If you go down -- partway down the first page of this  
24       section, under the heading "Iron and Manganese" --

25  A   **Mm-hm.**

1 Q -- it indicates that "Compliance with the secondary  
2 standards for iron and manganese is not required for  
3 water systems in existence prior to January 15, 1992,  
4 unless the iron or manganese is creating a 'significant'  
5 problem as defined previously."

6 Do you know what the definition of significant  
7 problem is in this design manual?

8 **A A significant problem is, as I mentioned earlier, when we**  
9 **receive a petition from five or more customers of a**  
10 **utility.**

11 Q And those complaints could be as simple in form as one  
12 phone call -- or strike that.

13 When you reference five complaints, can those  
14 complaints be as simple as a phone call from a customer  
15 saying "My water is discolored, and I don't like it"?

16 **A Yes.**

17 Q And if you had five people contact the DOH and say "My  
18 water is discolored, and I don't like it," that would  
19 trigger the responsibility to follow the actions set  
20 forth in this design manual; is that right?

21 **A Within a five -- within a 12-month period, yes.**

22 Q And the actions include the water supplier would have to  
23 prepare an engineering report with recommended corrective  
24 actions necessary; is that right?

25 **A That's correct.**

1 Q And the report would have to evaluate all reasonable  
2 alternatives and determine the costs associated with  
3 each; is that right?

4 **A Yes.**

5 Q Do you know what that typically would cost a water  
6 company to do?

7 **A That cost is extremely variable depending upon a number**  
8 **of parameters that are within the -- what's in the water**  
9 **quality itself, what's the volume of water that's being**  
10 **treated, and so there's a whole range of parameters to**  
11 **the cost. I couldn't even guess at the different range**  
12 **of costs associated with that.**

13 Q Would it likely be thousands of dollars?

14 **A Yes.**

15 Q Would it likely be tens of thousands of dollars?

16 **A That's where it depends upon the scale of the size of the**  
17 **system and what the contaminants are. It could be**  
18 **thousands, tens of thousands.**

19 Q And so if the DOH received just five telephone  
20 complaints, that could trigger a duty, an affirmative  
21 duty on the part of Rainier, to spend thousands or even  
22 tens of thousands of dollars to create an engineering  
23 report to meet your requirements; is that right?

24 **A Sorry. Clarification on my statement. It would be**  
25 **thousands, tens of thousands to install the treatment.**

1       **The engineering report would typically be -- across the**  
2       **board would typically be in the thousands of dollars**  
3       **range.**

4   Q   Okay. Okay. So again, just to summarize, if you  
5       received just five phone calls from people saying "Our  
6       water is discolored, and we don't like it," you would  
7       then require Rainier View Water to hire an engineer and  
8       to perform studies that meet the criteria in your design  
9       manual; is that right?

10   **A   Provided that those five phone calls are from individual**  
11       **customers, yes. Five phone calls from a single customer**  
12       **would not generate that same complaint.**

13   Q   And the five complaints -- it doesn't matter how many  
14       customers are served by a particular water system. All  
15       the DOH needs is five complaints?

16   **A   That is the policy under how we have operated, yes.**

17   Q   But there's no obligation to do anything in the design  
18       manual if those five complaints aren't specifically  
19       submitted to the DOH; is that right?

20   **A   If you're asking associated with secondary contaminants,**  
21       **yes.**

22   Q   Okay. So in this particular case, are you comfortable  
23       with the way Rainier View handled this, which is to -- or  
24       actually, strike that. Let me ask you a different  
25       question relating to the requirements under the design

1 manual.

2 I notice here in Roman numeral I, Section 2, it  
3 says, "The results of the study conducted by the water  
4 supplier should be made available to the customer at an  
5 appropriately noticed public meeting or by document  
6 distribution."

7 Does that mean that the water purveyor is supposed  
8 to send a copy of the engineering report or to conduct a  
9 public meeting where the engineering report is discussed  
10 with all of its customers?

11 **A If it is acting under the scenario of our addressing a**  
12 **complaint consideration by that process, yes.**

13 **Q** In this particular case, it appears that Rainier View  
14 sidestepped the process by submitting to the DOH its  
15 engineering plan to remedy the manganese.

16 Are you fine with that?

17 **A Yes. It's not -- since we had not received the**  
18 **complaints, and I was certainly not aware of the extent**  
19 **of concern or complaints by the customers, if indeed all**  
20 **of those complaints are associated with that, we**  
21 **encourage utilities to provide the best quality water**  
22 **that they can provide within the context of their**  
23 **authorizing environments. So we receive --**

24 **Q** If --

25 **A We receive treatment designs for secondary contaminants**



1       **from hundreds of utilities without going through this**  
2       **process.**

3   Q   Do you know how much Rainier View claims this filtration  
4       system cost to put in --

5   **A   No.**

6   Q   -- to fix the Southwood well?

7                   MS. MCWILLIAMS:  Objection.

8           Mr. Malden, if you could please keep to the topics  
9       associated with this witness, I'd really appreciate it.  
10       The Rainier View specific topics were delegated to  
11       Mr. James, and he prepared for those, and Mr. Means  
12       prepared for the Topics 6 through 15.

13                   MR. MALDEN:  Like I explained to you  
14       off the record, under CR 30(b)(6), you are required to  
15       present a witness that's capable of discussing the items  
16       I set forth, but that doesn't prevent me from asking  
17       other questions.

18   Q   (By Mr. Malden)  So I'm going to try and be as efficient  
19       as I can in recognition of your expertise and the time  
20       and everything, but I'm not going to agree to limit  
21       myself solely to the topics in that subpoena.

22                   MR. MALDEN:  Could I have you read  
23       back my last question, please?

24       ////

25       ////

1 (Question on Page 23, Lines 3,  
2 4, and 6, read by the  
3 reporter.)

4 Q (By Mr. Malden) And your answer was no, you don't?

5 A **That's correct.**

6 Q Okay. If you had received notice of five complaints  
7 though, you would have been directly involved in  
8 analyzing whether or not the cost of the system was  
9 appropriate and acceptable to the customers; is that  
10 right?

11 A **We would have been involved with ensuring that the public  
12 utility followed the process associated with ensuring  
13 customer acceptance of their alternative.**

14 Q And what would Rainier have been required to do to ensure  
15 customer acceptance?

16 A **Well, as we have stated in the policy, they have to do a  
17 public meeting and/or provide the document distribution  
18 to the customers. They have to prepare a survey of the  
19 regularly billed customers that they have, which provides  
20 for that questionnaire to be sent to each service  
21 connection. The questionnaire has to be as objective as  
22 possible based on the engineering alternatives, including  
23 cost, and then they have to submit the questionnaire and  
24 the engineering report for our review and approval prior  
25 to its distribution.**

1           When that's gone out, upon approval of the survey  
2 questionnaire that they have distributed, those  
3 questions -- those customer responses need to be  
4 tabulated and submitted to us, and then we look to make  
5 decisions at that point.

6 Q Have you gone through the process set forth in this  
7 design manual with any other water purveyors?

8 A So I have not personally. The Department of Health, as  
9 best I was able to find out, appears to have gone through  
10 this process for at least two utilities in the past, one  
11 in our southwest region and one in the northwest region.  
12 I'm still trying to find out if there was any in the  
13 eastern region.

14 Q Over what period of time?

15 A The last 28 years or so.

16 Q Okay. So let me see if I can summarize this correctly.

17           So in the last 28 years, only two water purveyors in  
18 the state of Washington had been required to go through  
19 the process set forth in the design manual as it relates  
20 to secondary contaminant treatment requirements and  
21 options; is that right?

22 A Only two that I was able to identify at this point, yes.

23 Q And do you think that's because in 28 years there's only  
24 been two cases where a water supplier had five customers  
25 who were -- who complained?

1 **A** I think that's because in 28 years most of our utilities  
2 looked to achieve customer satisfaction without the  
3 involvement of the Department of Health -- that is what  
4 we look for in our utilities and we hope to achieve --  
5 and that our utilities are responsive to customer  
6 concerns and complaints and that therefore it does not  
7 actually come to us.

8 They develop solutions and work within their  
9 authorizing environments in order to find solutions. We  
10 review the designs and ensure that the designs are  
11 appropriate for -- that they will accomplish the goal of  
12 the treatment that's being -- looking to be achieved and  
13 that will be effective both now and in the long term.

14 **Q** Do you have a position in this case as to whether Rainier  
15 View Water has been appropriately responsive to the  
16 complaints and concerns of its customers?

17 **A** I do not have a position on that.

18 **Q** The DOH has never been asked to analyze that, has it?

19 **A** Not for this circumstance, and I'm not aware -- that's  
20 not something I looked into prior to this meeting.

21 **Q** As I understand it, one of the topics that you're  
22 knowledgeable about is the scope of responsibilities  
23 between the DOH and the WUTC, Utility Transportation  
24 Commission; is that right?

25 **A** I have done some research into that, yes.

1 Q Okay. So what is your understanding as to how the WUTC  
2 and the DOH, either working separately or together, are  
3 supposed to handle customer complaints regarding brown  
4 water or water discolored by manganese?

5 A So my understanding of -- you know, for the very few UTC  
6 regulated systems that we are involved with, we as a  
7 Department of Health would be responsible for concerns  
8 associated with customer complaints about water quality,  
9 of which color and taste fall into that realm, and that  
10 if you -- that UTC has an avenue with which to receive  
11 those complaints, my understanding is they would forward  
12 those complaints to us.

13 UTC, on the other hand, is responsible for  
14 addressing the physical elements of different design  
15 elements associated with what a utility wants to do. And  
16 so if a utility would want to do treatment, that the UTC  
17 is the one who is responsible for protecting the  
18 customers against reasonable rates, providing reasonable  
19 rates.

20 Q How does that jive with your responsibility under the  
21 design manual to ensure customer acceptance of a proposed  
22 remedy?

23 A So under the design manual, if we had received  
24 complaints, we would have followed up on those  
25 complaints. We would have called the UTC upon a selected

1       remedy, and I presume that the utility would be in direct  
2       communication with that -- with the UTC because they have  
3       to go to the UTC in order to get approval for moving  
4       forward with many of those types of alternatives.

5   Q   Is it your position that the State of Washington  
6       Department of Health does not have any jurisdiction over  
7       a customer dispute with a water company that involves  
8       secondary contaminant level unless the DOH receives five  
9       complaints?

10  A   Our policy is that if we receive five complaints we would  
11       do that.  If we had not received a complaint from a  
12       customer associated with the dispute with its utility, we  
13       wouldn't even know about it to respond.

14  Q   And the fact that Rainier View Water company itself has  
15       testified under oath that it received 400 customer  
16       complaints that required house visits in a one-year  
17       period between June 2015 and June 2016, that's not your  
18       concern, is it?

19  A   I am certainly concerned that a utility is receiving that  
20       many complaints.  That is something that we look to, you  
21       know, see that our utilities are hopefully being  
22       responsive to complaints that they receive.  I don't know  
23       exactly what those complaints were, the nature of those  
24       complaints or the involvement with them.  They weren't  
25       provided to this department, so we have no avenue of

1       **which to act.**

2   **Q**    Would that be unusual for a customer base of about 15,000  
3       to have 400 complaints generated specifically over the  
4       color of the water in a one-year period?

5   **A**    **That depends upon a number of specific scenarios. So we**  
6       **have a number of utilities that have had those**  
7       **complaints, and those complaints have come in to the**  
8       **Department of Health where there was a significant change**  
9       **of source of supply that then caused that to happen.**

10           In most of those types of circumstances, we don't  
11       have to go through the process because the utility is  
12       already involved within their authorizing environment.  
13       Most of the ones we deal with are already public domain.  
14       They aren't in the realm of the UTC, and there's no  
15       relationship associated with those kind of complaints.

16   **Q**    You mentioned a few moments ago -- I believe you said  
17       that there's few UTC regulated systems that you're  
18       involved with.

19           Did I understand that correctly?

20   **A**    **My understanding is we don't have very many -- and I'd**  
21       **have to query the database, but we don't have very many**  
22       **UTC -- systems that are also overseen by UTC. So we**  
23       **oversee 4,000 Group A public water systems.**

24   **Q**    Okay. So the WUTC -- what's the difference between a UTC  
25       regulated system and a water system that's not regulated

1 by the UTC?

2 **A Well, the difference is primarily that authorizing**  
3 **environment where the UTC regulates systems that are**  
4 **investor owned, that are not owned as a public health --**  
5 **as a public community, you know, community association.**  
6 **Water utility districts, municipalities, and others, none**  
7 **of those fall under the regulation of UTC.**

8 **And so of the 4,000-some-odd water systems that we**  
9 **oversee, my understanding is we have somewhere in the**  
10 **neighborhood of 100 plus, give or take -- I don't know**  
11 **the exact number -- of ones that are actually overseen by**  
12 **the UTC.**

13 **Q So does that mean then that out of the 4,000 water**  
14 **purveyors, there's approximately 100 that are investor**  
15 **owned?**

16 **A That are investor owned in the fashion that falls under**  
17 **the regulation of UTC, yes. UTC makes that final**  
18 **determination of who applies and who does not.**

19 **Q And when we say "investor owned," does that mean that**  
20 **it's a company that is -- it's a for profit company?**

21 **A Yes, typically. I don't know -- I am not aware of all of**  
22 **the details of those pieces of oversight for the UTC.**

23 **Q I'm handing you a document that's been marked as**  
24 **Exhibit 2.**

25 **Have you ever seen that document before?**



1 **A I have not seen this specific document until earlier**  
2 **today.**

3 Q Do you have occasion, given your job responsibilities, to  
4 review annual reports given by water companies?

5 **A Yes.**

6 Q I think this is called a Consumer Confidence Report; is  
7 that right?

8 **A Correct.**

9 Q Okay. This particular Consumer Confidence Report  
10 includes the language that Rainier View guarantees that  
11 its water is safe to drink.

12 Have you ever seen that kind of assertion made in  
13 one of these Consumer Confidence Reports before?

14 **A I believe I have seen similar ones. I don't know about**  
15 **the specific language associated with those.**

16 Q In this particular case -- well, strike that.

17 I think you already indicated to us that the blanket  
18 statement made by the DOH in its January 2011 fact sheet  
19 that manganese does not pose a threat to human health is  
20 misleading.

21 Is that fair to say?

22 **A The statement that is made in that existing document that**  
23 **is out there is going to be updated based upon new**  
24 **information we have learned about that particular**  
25 **contaminant and that there is an upper boundary upon**

1       **which that statement should be held.**

2   Q   And the blanket statement that manganese does not pose a  
3       threat to human health, that's actually not in your view  
4       a complete accurate statement that the public should rely  
5       on, is it?

6   A   **That -- it's correct. That's why we're looking to update**  
7       **those documents.**

8   Q   We have talked about the effect of manganese and the  
9       appearance of drinking water. I'm curious whether the  
10      presence of manganese in excess of the secondary  
11      contaminant level poses any risk to plumbing or  
12      appliances or fixtures in the home.

13           Do you know?

14   A   **So as far as risk, if it will impact them as far as**  
15      **providing some staining, that's part of the purpose of**  
16      **the secondary contaminant level is primarily**  
17      **aesthetically based on kind of color and staining of**  
18      **apertures and clothes.**

19   Q   What do you mean by "staining of apertures"?

20   A   **Black ring around your toilet bowl, you know, that kind**  
21      **of a thing.**

22   Q   Are you also saying that levels of manganese in excess of  
23      the secondary contaminant level can stain clothing?

24   A   **My understanding is that that is the case at higher**  
25      **concentrations, yes.**

1 Q And when you say "at higher concentration," what do you  
2 mean by that?

3 A I'd have to go back and look at the literature associated  
4 with that. My understanding is that that is actually  
5 fairly significantly above, say an order of magnitude  
6 above, so -- the contaminant level. So instead of 50,  
7 you'd be looking at a couple of hundred before you'd  
8 start seeing that kind of issue associated with --

9 Q Are you basing that on particular research or special  
10 knowledge?

11 A I'm basing that upon the history that I have been told  
12 associated with some of the research that had been done  
13 in the past. I have -- I would have to go back and  
14 examine that research myself to see the specifics, but  
15 that is the generally broad-based understanding of  
16 concern for manganese.

17 Q At this point in time, is there any plan or expectation  
18 on the part of the DOH to change the secondary  
19 contaminant level for manganese?

20 A No.

21 Q Does the DOH have the legal right to do that if it wants?

22 A We have the legal right to create a different level than  
23 the federal level, yes. To clarify that, the Department  
24 of Health does not; the Board of Health does.

25 So our authorizing environment is -- the Board of

1       **Health is the authorizing environment for the rules which**  
2       **we implement.**

3   Q    I'd like to show you a document that's been marked as  
4       Exhibit 3.

5            Have you ever seen this document before?

6   A    **Yes, I have.**

7   Q    When was the first time you saw it?

8   A    **The first time I saw this particular document was about**  
9       **just a few weeks ago, when we received a copy of this**  
10       **from our contracts office asking if it was time to be**  
11       **updating it.**

12   Q    Does the DOH have a contracts office?

13   A    **Yes, we do.**

14   Q    And you're saying that a few weeks ago the contracts  
15       office contacted you and asked whether this needed to be  
16       updated?

17   A    **Yeah. They are going through a process of evaluating**  
18       **everything. This is considered a contract. If you'd see**  
19       **the bottom corner of that, that is a specific contract**  
20       **number, and they go through these things on a somewhat**  
21       **periodic basis to ensure their accuracy and whether they**  
22       **need to be updated.**

23   Q    Before the contracts office contacted you a few weeks  
24       ago, when was the last time you'd seen the MOU?

25   A    **So I had not personally reviewed the MOU. That was not**

1 part of my role where I previously worked within the  
2 Department of Health Office of Drinking Water. I have  
3 been in this role now for three years, and so this was  
4 something that was all completed and negotiated when I  
5 was in a previous role, so I had not seen it until three  
6 weeks ago, give or take.

7 Q Even though you hadn't seen the MOU until three weeks  
8 ago, did you have your understanding as to -- excuse  
9 me -- did you have an understanding as to how the  
10 Washington Department of Health and the WUTC were  
11 supposed to work together to achieve protection of the  
12 drinking water?

13 A In a general basis, yes.

14 Q And what was your general understanding of that  
15 relationship?

16 A My general understanding of the relationship was -- is  
17 that as sister agencies, we work together to address the  
18 utilities for which they provide different portions.  
19 Their focus is on the financial aspect associated with  
20 the utilities and the rates and the effects associated  
21 with those, and our focus was on the same focus we apply  
22 toward every other water utility, which includes  
23 engineering, design, operations, field inspections, which  
24 are called sanitary surveys, and water system planning.

25 Q In this particular case, Sarah Hand contacted the WUTC

1 and complained about the quality of the water she was  
2 receiving, and the WUTC told Ms. Hand that "We don't have  
3 any jurisdiction over a water quality complaint. That's  
4 under the purview of the DOH."

5 Assuming that's in fact what Sarah Hand was told by  
6 the WUTC, do you believe she was told accurate or  
7 inaccurate information?

8 **A I believe that was reasonably accurate information that**  
9 **that complaint should come to the Department of Health.**

10 **Q And why should it go to the Department of Health?**

11 **A Because the regulatory oversight associated with the**  
12 **water quality parameters are the Department of Health's.**  
13 **The UTC is only in charge of the physical elements as**  
14 **associated with rates.**

15 **Q Were you aware that the WUTC had a hearing in December of**  
16 **2016 to pass on Rainier View's request for a surcharge?**

17 **A Only after the fact, associated with a reminder from**  
18 **this. I think I did hear about it in my previous role at**  
19 **that time. I was acting as the director, and so I think**  
20 **I heard that something was happening from Bob or one of**  
21 **his regional office staff, but I was involved with the**  
22 **lead issues at the time and standing in front of the**  
23 **television, and I didn't pay a lot of attention to it.**

24 **Q Do you know if the DOH participated in that WUTC hearing?**

25 **A I do not know.**

1 Q Would the DOH typically participate in a WUTC surcharge  
2 hearing involving a water purveyor?

3 A I don't know that we typically do that. I believe that  
4 we've been asked to a number of times. We typically work  
5 with the UTC around systems that are failing or we are  
6 trying to get back into compliance in addressing how we  
7 can find value in a utility that somebody else would be  
8 willing to take them over so that we can achieve  
9 compliance.

10 Q All right. If I could direct your attention to  
11 Exhibit 3. I'm looking down at the bottom of the first  
12 page -- excuse me -- the second paragraph on Page 1 of  
13 the document.

14 A Mm-hm.

15 Q The final sentence in that paragraph reads, quote, "Both  
16 agencies recognize that some issues fall outside current  
17 statutory authorities," closed quote.

18 Do you know what that means or that refers to?

19 A I can only guess.

20 Q What's your best guess?

21 A My best guess is that this is something around where, as  
22 I mentioned earlier, our coordination with the UTC is  
23 looking to solve really difficult problems with failing  
24 systems. That's where most of our coordination with UTC  
25 lies.

1           And where we're addressing systems that are going to  
2           receivership or have, you know, just completely gone  
3           bankrupt or other pieces, that -- we're looking to have  
4           those customers protected by getting them to a different  
5           environment whether they develop something. And so some  
6           of those pieces aren't anywhere clearly identified as far  
7           as a pathway to help these utilities achieve technical,  
8           managerial, and financial capacity.

9           That's my guess, and I couldn't even be more  
10          specific than that because I don't know the specifics of  
11          any scenario that that might involve around.

12   Q    If the issue is whether a proposed filtration system is  
13          the best and most efficient and most economic way to  
14          treat excess levels of secondary contaminants, is that  
15          something that would fall within the expertise of the  
16          DOH?

17   A    So typically from the Department of Health, we don't --  
18          if we're receiving an individual design, we look at that  
19          individual design for its ability to be effective and  
20          that it will have long term success in the treatment of a  
21          given contaminant.

22          We don't very often get involved with alternatives  
23          analysis for differing alternatives, with the exception  
24          of surface water treatment where those surface water  
25          treatment designs are required to have that.



1 Q What about the issue of whether the proposed cost of a  
2 treatment system is reasonable and should be borne by the  
3 customers, is that within your expertise?

4 **A That is not my expertise, and I believe that is indeed**  
5 **where we do rely on the UTC associated with how that cost**  
6 **and impact associated with their rates and their rate**  
7 **structure works.**

8 Q Do you have associates or friends or colleagues at the  
9 WUTC that you speak to on a regular basis?

10 **A No, I do not. Our regional engineer -- or regional**  
11 **offices typically have the communication with UTC.**

12 Q I'd like to direct your attention down to the bottom of  
13 Page 3 of Exhibit 3. In the final paragraph and sentence  
14 at Page 3, it reads, quote, "The UTC currently regulates  
15 64 water companies that operate 470 water systems, serve  
16 approximately 50,000 customers, and generate  
17 approximately 19.7 million in annual revenues."

18 Do you know if those numbers or the statistics have  
19 significantly changed since January 2008?

20 **A I don't believe they've significantly changed, no. We**  
21 **can generate new numbers.**

22 Q You say you can generate new numbers?

23 **A Well, we can ask the UTC for what they currently operate.**  
24 **We also have within our own database those things that --**  
25 **we don't specifically identify UTC regulated systems.**

1       **It's actually something we're looking to update in our**  
2       **database, but --**

3   Q   Okay.

4   **A   -- but yes, we can --**

5   Q   If I can direct your attention to Page 4. About halfway  
6       down the page, under the heading "Facilities," the second  
7       sentence reads, quote, "The UTC lacks staff expertise in  
8       the following subject areas and defers to ODW if  
9       technical questions arise." Bullet one: "Water system  
10      design, construction, operation, or maintenance." Bullet  
11      two: "Water quality, including, but not limited to  
12      testing, filtration and treatment."

13           Do you believe that's still accurate and the case as  
14      of today?

15   **A   I believe that is still accurate, yes.**

16   Q   I'm curious if the DOH acknowledges that the UTC lacks  
17      the staff and expertise in regard to water system design,  
18      construction, operation, or maintenance, as well as  
19      water -- well, actually strike that. Let me start the  
20      question over.

21           If the issue in this case is what, if anything,  
22      should Rainier View do to reduce or eliminate these  
23      excess levels of manganese, doesn't this MOU tell us that  
24      this is for the DOH that has the staff and the resources  
25      and the expertise; it's not for the WUTC?

1 **A** So it is actually for the utility's engineer to provide a  
2 recommended alternative, and that engineering design  
3 comes to the State Department of Health for review and  
4 approval.

5 So the State Department of Health does not do  
6 designs, nor typically provide recommendations to  
7 utilities on those alternatives. We don't very often get  
8 alternatives analysis requests.

9 **Q** So the WUTC employs engineers that have that expertise?

10 **A** I believe the UTC typically works in coordination with us  
11 to understand if a particular remedy alternative is  
12 effective. I'm not aware that -- how the UTC goes about  
13 their business associated with defining rates and rate  
14 structures. I have no idea.

15 **Q** In this particular case, are you aware of the filtration  
16 system that Rainier View has installed to try and remedy  
17 the excess levels of manganese?

18 **A** No.

19 **Q** If I could direct your attention to a little further down  
20 the bottom of Page 4. There's a few bullet points here  
21 that reference the Department of Health Office of  
22 Drinking Water, and I just want to ask you whether you  
23 believe that these bullet points are going to remain in  
24 effect when the new document is drafted.

25 And I'm looking specifically at bullet points five,

1 six, and seven.

2 MR. RANKIN: I'm just going to object  
3 as speculative, as we're talking about a contract that  
4 hasn't been negotiated yet.

5 But go ahead.

6 **A I don't have any reason to believe that we would change**  
7 **that.**

8 Q (By Mr. Malden) I want to go back for a moment to this  
9 term "contract." The document says at the top of it  
10 "Memorandum of Understanding," but you say it's a binding  
11 legal contract; is that right?

12 **A That's my understanding of how these are approached, yes.**

13 Q In other words, what the DOH and the WUTC agreed to do in  
14 this January 2008 document is a binding legal obligation  
15 on them; is that right?

16 MS. MCWILLIAMS: Objection. Calls for  
17 a legal conclusion.

18 **A I don't know the scope of that response, so I don't know.**  
19 **We certainly work to achieve what is stated in here.**

20 (Exhibit No. 12 marked for  
21 identification.)

22 Q (By Mr. Malden) You've just been handed a document  
23 that's marked as Exhibit 12.

24 Have you ever seen this document before?

25 **A No, I have not.**

1 Q I'd like to direct your attention to Page 5. Under Roman  
2 numeral V, heading "MOU Oversight, Review, and Update,"  
3 as you can see, this particular document says that the  
4 DOH and UTC supervisors will discuss development of  
5 processes and procedures monthly until completed.

6 Do you know if that was ever done?

7 **A At that time frame, I have no idea.**

8 Q Are you aware of there being any regular meetings between  
9 the DOH and the WUTC regarding how to best work together  
10 to accomplish the objectives of the current MOU?

11 **A My understanding is at the time of the current MOU there**  
12 **were regular meetings both in the drafting of that MOU**  
13 **and of some of the details of how we would address them.**

14 Q How do you know that happened?

15 **A That was when I was in my previous position, and I was on**  
16 **one of the management teams that I was updated that this**  
17 **was happening.**

18 Q This document also indicates that the DOH and UTC agree  
19 to discuss MOU development, implementation, and  
20 effectiveness every six months, and to review the MOU on  
21 an annual basis and update as necessary.

22 Do you know if that was done?

23 **A I do not know.**

24 Q Has this MOU, to your knowledge, been reviewed on an  
25 annual basis?

1 **A To my knowledge, this MOU has not been directly reviewed**  
2 **on an annual basis.**

3 Q To your knowledge, has anyone at DOH even discussed the  
4 content of the MOU since 2008, when it was signed, the  
5 most recent one?

6 **A To my knowledge, yes. There has been some discussion**  
7 **that that was happening associated with the MOU, as**  
8 **happened with the previous director and some of the UTC**  
9 **members.**

10 Q Are there documents that would exist to -- or strike  
11 that.

12 Would there be any writings, to your knowledge, that  
13 would document the communications that took place between  
14 the WUTC and the DOH?

15 **A There may be. I have --**

16 Q Do you know where those would be kept or who would keep  
17 them?

18 **A My guess is most likely it would be emails, and that**  
19 **would be kept in archives associated with our email**  
20 **system that we'd have to pull out as a public disclosure**  
21 **request. It's a normal process by which we do sort of**  
22 **large scale review of historical archival information.**

23 Q If you go up -- a little bit up the page, under the  
24 heading "UTC Role," under the second bullet point,  
25 "Complaints concerning water quality, water quantity, or

1 health issues will be forwarded to DOH for processing,"  
2 to your knowledge, was that followed?

3 **A As far as I know.**

4 **Q** Your expectation --

5 **A My expectation would be that UTC would forward that**  
6 **information to us, or at the very least provide the**  
7 **contact information to any complainant of how to get**  
8 **ahold of us.**

9 MR. MALDEN: Okay. Let's pause for a  
10 moment and go off the record.

11 (Recess 4:39 - 4:46 p.m.)

12 EXAMINATION (Continuing)

13 BY MR. MALDEN:

14 **Q** Okay. I think I had just a couple more questions for  
15 you.

16 **A Okay.**

17 **Q** I want to get back for a moment to the 1995 MOU.

18 MR. RANKIN: Is there a reason we're  
19 talking about an MOU that's been outdated for nine years?  
20 Is that relevant at all?

21 MR. MALDEN: Well, just so that you  
22 know, if you look at the WUTC internal emails, you'll see  
23 that the WUTC thought that the 1995 MOU is what they were  
24 working under. The WUTC was not even aware that there  
25 was a 2008 MOU. And so I actually do think it's relevant

1 in terms of showing the extent to which the DOH and the  
2 WUTC have either worked together or not worked together  
3 as envisioned by the MOU.

4 There's also reference to meetings that are supposed  
5 to take place between the MOU -- excuse me -- between the  
6 DOH and the WUTC, and I am curious to know whether those  
7 meetings ever took place, whether there's any  
8 communications that were ever recorded. I'm not so sure  
9 that he's going to know those things, but that's kind of  
10 where I'm coming from. I probably just have a couple  
11 questions.

12 MR. RANKIN: All right.

13 Q (By Mr. Malden) Okay. So I had actually asked you  
14 before the break questions about whether or not there  
15 were communications or meetings between the WUTC and the  
16 DOH, and I guess my additional question there would be,  
17 if we wanted to find out whether there were any minutes  
18 or notes taken at any meeting between the DOH and the  
19 WUTC since 1995 that was in regard to the contents of the  
20 MOU, any idea how we would do that?

21 A The only ways I can think where we might have records of  
22 that may be with the contracts office or their -- I don't  
23 know exactly what they keep for the files associated with  
24 the contracts office. And otherwise, most likely an  
25 email correspondence that would have happened between,



1 say, our former director in the UTC or others in the UTC.  
2 We would have to just do a carte blanche sort of look for  
3 that name and see what comes up.

4 Q Okay. A couple of questions about what you did before  
5 the deposition.

6 Did you review any documents in the last few days to  
7 prepare for the deposition?

8 A I did.

9 Q What documents did you review?

10 A So I reviewed the current Memorandum of Understanding. I  
11 also -- well, I didn't review the document, but I got the  
12 briefing about the draft document associated with  
13 manganese to see what the current pieces of that  
14 associated with manganese were.

15 I'm trying to think if there were any documents that  
16 I pulled. I, of course, reviewed the depositions as  
17 submitted to understand if I could understand the scope  
18 of what those questions were going to be about, you know,  
19 with that focus on what's the agency position associated  
20 with manganese and associated with our coordination with  
21 UTC. So that's primarily --

22 Q Okay.

23 A -- it for document review.

24 Q Did you talk to anyone to prepare for the deposition  
25 other than your attorney?

1 A So I did have a conversation with Bob James associated  
2 with the deposition to understand who was going to be  
3 speaking. I had conversations with my source monitoring  
4 team in the northwest and southwest regional office -- I  
5 was unable to reach the eastern regional office -- to  
6 understand their knowledge of history of any activity or  
7 enforcement we may have done around secondary  
8 contaminants.

9 And I also communicated with the compliance team to  
10 look for any history of work we may have done because  
11 that was part of the question you had, was what's the  
12 rate associated with their compliance around secondary  
13 contaminants.

14 Q Do you recall specifically who you spoke with?

15 A Yeah. Yeah.

16 Q Who?

17 A So I spoke with Steve Hulsman. He is our northwest  
18 regional office compliance manager. I spoke with Sophia  
19 Petro. She's our southwest regional office manager. And  
20 I spoke with George Simon, who is our eastern regional  
21 office compliance manager, to understand. He was looking  
22 in the database for the compliance for me, and Sophie and  
23 Steve were going on their history associated with what  
24 they knew.

25 Q Do you know any of the owners or employees of Rainier

1 View?

2 **A I do not.**

3 Q Have you had any direct communication yourself with any  
4 employee or owner of Rainier View?

5 **A I do not.**

6 MR. MALDEN: Thank you very much for  
7 your time today. I don't have any further questions.

8 EXAMINATION

9 BY MR. RANKIN:

10 Q Good afternoon, Mr. Means. Again, my name is Dan Rankin.  
11 I'm an attorney representing Rainier View Water Company  
12 in this matter. Thank you for taking your entire day to  
13 speak with us.

14 I'd like to mostly just get some clarification on  
15 some things you've already spoken about, and then I've  
16 got a couple of questions on a few points from the  
17 subpoena that was issued to your office earlier.

18 So I'd like to start with your original statements,  
19 your earliest statements about the changing position on  
20 manganese. And you referenced an EPA lifetime health  
21 advisory.

22 What is that?

23 **A So EPA works to produce for a wide array of chemicals and**  
24 **contaminants information that's provided that's available**  
25 **on -- you know, national availability of information**

1 associated with what a lifetime health advisory is, and  
2 that's typically based around a presumption of  
3 consumption of a certain concentration, two liters a day  
4 for -- depending upon which way they do the  
5 calculation -- 65 or 70 years will have a potential  
6 impact to public health.

7 And then there are other elements associated with  
8 that that happen for other categories, where there's also  
9 for infants and children and is that protective of all of  
10 the above, and so they have all of these different ranges  
11 of health advisories that they produce.

12 Q So the EPA's new or upcoming advisory is, you said, 300,  
13 which would be, I believe, .30 milligrams per liter --

14 A Correct.

15 Q -- of manganese?

16 And that means that at a sustained level of 300,  
17 that would be harmful to health?

18 A That would have the potential to be harmful to health.

19 Remember, there's a public health basis for how these are  
20 determined. They look for precautionary numbers that are  
21 typically very conservative because remember we consume a  
22 lot of manganese in our food, and it's an essential  
23 nutrient for our bodies.

24 So, I mean, if that was your only source of  
25 manganese, it wouldn't be enough, but when you pile it on

1 on top of what your other exposures may be, it might be  
2 too much, and so that's where they try to balance out  
3 those pieces of what that risk is.

4 Q And the current secondary maximum contaminant level for  
5 manganese is 50. So doing the math, the new thinking is  
6 that six times the current secondary maximum contaminant  
7 level is the threshold for potential health risks?

8 A Yes.

9 Q I'd like to move on to talking about what we've been  
10 calling petitions. As far as the Water System Design  
11 Manual is concerned, we've been talking about the series  
12 of five complaints or a five-complaint petition.

13 Have you received a petition related to the  
14 Southwood water system from Sarah Hand?

15 A Not to my knowledge.

16 Q Have you received a petition related to the Southwood  
17 water system from Gretchen Hand?

18 A Not to my knowledge.

19 Q Would you have knowledge if one were submitted to the  
20 department?

21 A My regional office would have knowledge specifically, and  
22 I would have been informed of that as part of this  
23 deposition.

24 Q So yes?

25 A If it was associated with the deposition, yes, I would

1       **have known.**

2   Q   Thank you.

3           Have you received any petition regarding the  
4   Southwood Sound water system?

5   **A   Not to my knowledge.**

6   Q   If after this treatment that's been put in place by my  
7   client the high manganese water continues to be a problem  
8   affecting customers, could a consumer still file such a  
9   petition?

10   **A   Yes.**

11   Q   All right. Changing topics a little bit to talking about  
12   the surveys that are undertaken after a petition is  
13   received.

14           Generally speaking, the purpose of that is to do a  
15   cost benefit analysis; is that right?

16   **A   The purpose of the survey is to ensure that the utility  
17   actually has done essentially a cost benefit analysis and  
18   provided that information so that the consumers are all  
19   aware of all of the alternatives and then have the  
20   opportunity to provide input into that.**

21   Q   And so the purpose is that there's a public forum to  
22   understand and to provide it?

23   **A   Yes.**

24   Q   Are you familiar with the UTC's operations as far as  
25   hearings regarding surcharges and rate increases?

1 **A I am not. Other than that they have them, no.**

2 Q If I were to tell you that when a water provider requests  
3 to either implement or extend a surcharge, the UTC holds  
4 a hearing with an open public forum and a request for  
5 public comments --

6 **A That's my understanding.**

7 Q And you think that that would achieve the same end goal  
8 of getting the public's input as this survey?

9 **A I don't know that it would achieve the exact same piece  
10 because I don't know what UTC actually provides toward  
11 their public forum.**

12 Q We talked briefly -- looking at Exhibit 2, on Page 2  
13 about the statement in the Consumer Confidence Report  
14 that was made that says "There have been times throughout  
15 the year that product delivered to you has been  
16 aesthetically displeasing, but I guarantee it has been  
17 safe to drink or cook with," so long as the manganese  
18 level in the water provided to these customers has been  
19 below 300, do you believe that to be a true statement?

20 **A I do -- I have not researched the entire water quality  
21 history for this particular system. You know, this is a  
22 statement from their manager who is making that claim. I  
23 have not had any reason to -- we don't have any  
24 compliance action associated with that, so I would --  
25 within the context of what I understand, that was**

1       **probably a reasonably true statement.**

2   Q    You're not aware of any difference in effect of drinking  
3        water versus, say, cooking with water or bathing in  
4        water, are you?

5                    MS. MCWILLIAMS:  Objection.  Unclear.

6                    MR. RANKIN:  Sure.  I'll rephrase  
7        that.

8   Q    (By Mr. Malden)  The point with which manganese affects  
9        the health of somebody is on ingestion; is that right?

10  **A    That's my understanding, yes.**

11  Q    So it doesn't matter if the water has been boiled or  
12        cooked or anything like that, as long as it's consumed?

13  **A    So if you are using water in cooking, then the manganese**  
14        **concentration of whatever you started with will be**  
15        **included in whatever you consume on that piece.**

16                    Some of that -- if you were, say, boiling something,  
17        and then you had to cook vegetables, there may be some  
18        element of manganese that's contributed then to whatever  
19        the vegetable already has.  Most vegetables already have  
20        manganese in them, so there might be some level of  
21        increase, but, you know, as far as, you know, bathing or  
22        other piece, dermal contact is not a contributing factor  
23        to --

24  Q    And the practical impact of cooking with it versus  
25        drinking with it is the same; right?



1 **A** Depending upon what the cooking purpose is.

2 Q All right. Moving on to the relationship between the  
3 Department of Health and the UTC -- I don't have these as  
4 exhibits, and I don't think that they need to be, but  
5 I've got a couple statutes and administrative codes I  
6 just want to read a short excerpt out of and get your  
7 opinion on.

8 RCW 80.04.110, Subsection 5 basically states that --  
9 it does state "Any customer or purchaser of service from  
10 a water system or company that is subject to commission  
11 regulation may file a complaint with the commission if he  
12 or she has reason to believe that the water delivered by  
13 the system to the customer does not meet state drinking  
14 water standards under Chapter 43.20 or 70.116 RCW. The  
15 commission shall investigate such a complaint, and shall  
16 request that the State Department of Health or a local  
17 health department of the county in which the system is  
18 located test the water for compliance with state drinking  
19 water standards, and provide the results of such testing  
20 to the commission."

21 Is that the sort of working relationship you  
22 understand the Department of Health to have with the UTC.

23 **A** So the working relationship with the UTC is, as I stated  
24 earlier, that typically if the UTC receives such a  
25 complaint they would just immediately refer that

1 complaint to the Department of Health.

2 I am not aware of how the UTC would otherwise follow  
3 up or act in that circumstance.

4 Q Have you ever been involved in assisting the UTC with a  
5 formal adjudication of a complaint?

6 A I have not.

7 Q Can you imagine a scenario where the UTC calls you up and  
8 says, "We've got this complaint. Can you look into that  
9 and verify the validity of whether or not this water  
10 meets or does not meet drinking water standards?"

11 A Yes.

12 Q And is there a situation where the department would say,  
13 "No. We're not going to do that"?

14 A Not that I can think of.

15 Q You mentioned earlier that one of the department's roles  
16 is the operator certificate program; is that right?

17 A Of certification, yes.

18 Q And one of the things that can happen under RCW 70.119 is  
19 that an operator certificate could be revoked; is that  
20 correct?

21 A Yes.

22 Q And that requires a finding of gross negligence; is that  
23 correct?

24 A There are a number of ways under -- gross negligence is  
25 one of those things that would lead to a decision of

1           **revocation. There are other avenues associated with what**  
2           **that might ultimately lead up to.**

3   **Q**   Are you aware of any revocations based on a finding of  
4           gross negligence?

5   **A**   **I think we've had one or two.**

6   **Q**   Do you recall the facts that contributed -- that  
7           consisted -- I'm sorry. Strike that.

8           Do you recall the facts that consisted of gross  
9           negligence?

10   **A**   **There were a failure to monitor for acute contaminates.**  
11           **So primarily bacteriological and nitrate sampling and a**  
12           **consistent failure to do so despite repeated compliance**  
13           **actions.**

14   **Q**   So before you would find a gross negligence, there would  
15           be a compliance action leading up to that; is that  
16           correct?

17   **A**   **Yes. In most circumstances, yes.**

18   **Q**   Are you aware of any department investigations of any  
19           water utility provider related to manganese that's been  
20           underway in, say, the last five years?

21   **A**   **As far as investigation? Depends on how you define**  
22           **investigation. We receive information from utilities all**  
23           **the time on water quality results that are submitted to**  
24           **the department. We will have communication with those if**  
25           **we see exceedances of various contaminates, including**

1 manganese.

2 New utilities are required to comply with the  
3 secondary contaminant up front as they're being  
4 developed, and so that's one of those elements associated  
5 with where we might be following up more directly.

6 Q Are you aware of orders issued to any existing water  
7 utility provider related to manganese within the last  
8 five years?

9 A No.

10 Q So in most cases, just communicating with the water  
11 utility provider you were able to resolve it generally  
12 voluntarily on the provider's part?

13 A We're able to resolve 98 percent of our compliance  
14 concerns associated with communication with purveyors,  
15 yes.

16 MR. RANKIN: You know, I think I am  
17 good.

18 Nigel, you covered a good chunk of my list.

19 Again, thank you.

20 MR. MALDEN: I did?

21 MR. RANKIN: Yeah.

22 MR. MALDEN: Did I get the right  
23 answers?

24 MR. RANKIN: For me.

25 Mr. Means, thank you for your time.

FURTHER EXAMINATION

BY MR. MALDEN:

Q Okay. I do have a couple of follow-up questions.

You've indicated that the State is in the process of reviewing the exceedance level for manganese; is that right?

**A We're in the process of reviewing what the health risks are on manganese.**

Q Okay. Is the State concerned solely with the health risks to humans, or is there any concern for the health risks associated with domesticated animals, like cats or dogs, that may live with humans?

**A So our primary focus is on humans. The State does actually have state veterinary as well. I do not know that drinking water standards are -- take that into account. I don't know the answer to that.**

Q Do you know from your own research or knowledge whether anyone has undertaken to determine risk levels to pets from consumption of manganese in drinking water?

**A I am not certain about that.**

Q Would the health and safety of pets, is that something that would be outside the purview or jurisdiction of the DOH?

**A It's outside the purview and jurisdiction of the Office of Drinking Water. It may be within the purview of DOH**

1 to provide recommendations and guidance, but I would have  
2 to check within the Department of Health. It's a big  
3 entity, and I wouldn't know who to contact to find out.

4 Q You were asked a question about actions involving gross  
5 negligence.

6 Are you familiar with that phrase, "gross  
7 negligence"?

8 A I am familiar with the phrase, but I would not be able to  
9 cite you the legal definition of what gross negligence  
10 is.

11 MR. MALDEN: Okay. Thank you very  
12 much. I don't have any further questions.

13 THE WITNESS: Okay.

14 (Signature reserved.)

15 (Deposition concluded at

16 5:13 p.m.)

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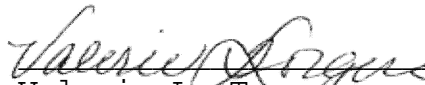
That the foregoing deposition of MICHAEL J. MEANS was taken before me and completed on August 30, 2017, and thereafter was transcribed under my direction; that the deposition is a full, true and complete transcript of the testimony of said witness, including all questions, answers, objections, motions and exceptions;


That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved the right of signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the said deposition and promptly delivering the same to Daniel W. Rankin.

IN WITNESS WHEREOF, I have hereunto set my signature on the 24th day of September, 2017.

  
Valerie L. Torgerson, CCR, RPR  
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