

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 19 TO  
CROSS EXAMINATION**

**EXHIBIT 19**

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

**July 25, 2018**

Deposition of Robert James taken on 08-30-2017

30(b)(6) Deposition of

**Robert 30(b)(6) Department of Health James**

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

ROBERT E. JAMES

August 30, 2017

Tacoma, Washington

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APPEARANCES

For the Plaintiffs:

Nigel S. Malden  
Nigel Malden Law  
711 Court A  
Suite 114  
Tacoma, WA 98402-5227  
253.627.0393  
253.573.1209 Fax  
nm@nigelmaldenlaw.com

For the Defendants:

Daniel W. Rankin  
Preg O'Donnell & Gillett  
901 Fifth Avenue  
Suite 3400  
Seattle, WA 98164  
206.287.1775  
drankin@pregodonnell.com

For Department of Health:

Sierra McWilliams  
Assistant Attorney General  
7141 Cleanwater Drive SW  
P.O. Box 40109  
Olympia, WA 98504-0109  
360.586.5107  
360.586.3564 Fax  
sierram@atg.wa.gov

Also present:

Anna Lee  
Mike Means

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EXHIBIT NO.	DESCRIPTION	PAGE NO.
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Exhibit No. 3	7-page Memorandum of Understanding dated 1/2008.	45
Exhibit No. 4	3-page e-mail trail beginning with email to Robert James from Virpi Salo-Zieman dated 4/27/17.	58
Exhibit No. 5	1-page e-mail and attachment to Virpi Salo-Zieman, Brian Boye, and Derek Pell from Robert James dated 11/30/16.	62
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1 BE IT REMEMBERED that on Wednesday,  
2 August 30, 2017, at 2208 North 30th Street, Suite 202,  
3 Tacoma, Washington, at 10:53 a.m., before Valerie L.  
4 Torgerson, Certified Court Reporter, RPR, appeared ROBERT  
5 E. JAMES, the witness herein;

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

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

10  
11 ROBERT E. JAMES, 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 **Robert Elmo James.**

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

22 We've asked you to come in today for the deposition  
23 because we believe you may have knowledge of facts or  
24 information that may be relevant to the case. Before I  
25 get into my questions, I'd like to take a minute and

1 review with you the rules of the deposition.

2 Have you ever testified at a deposition before?

3 **A Yes.**

4 **Q About how many times?**

5 **A I would say two or three.**

6 **Q You may recall then that you're testifying under penalty**  
7 **of perjury, just as you would be if you were in court for**  
8 **a judge or a jury.**

9 If I ask a question that you don't hear or you don't  
10 understand, please tell me, and I'll be happy to repeat  
11 or rephrase the question.

12 It's important that we speak loudly and clearly and  
13 maybe a little more slowly than we would in normal  
14 everyday conversation to help the reporter make a  
15 complete transcript of the deposition today.

16 I'd like to begin by asking you a few background  
17 questions. Can you summarize for us your education?

18 **A I graduated from the University of Washington in 1976**  
19 **with a degree -- bachelor of science in civil**  
20 **engineering, went back to grad school and finished three**  
21 **quarters in grad school going for a master's in civil**  
22 **engineering.**

23 **Q At what school?**

24 **A At the University of Washington.**

25 **Q Do you have any other education after college?**



1 **A No.**

2 **Q** Can you summarize for us your work experience over the  
3 last ten years?

4 **A** Last ten years I've been regional manager for the  
5 Department of Health northwest regional office in Kent.

6 **Q** Is this a full-time, 40-hour-a-week job?

7 **A** Yes.

8 **Q** What are your duties as regional manager of the DOH?

9 **A** Well, we work in the regional office to implement the  
10 State's drinking water program in a seven-county region,  
11 so we have a group of about 20 of us that are employed  
12 out of the regional office, and so I either supervise  
13 directly or manage supervisors of those 20 people.

14 We implement everything from document reviews, such  
15 as construction documents, engineering reports,  
16 overseeing the water quality results that we get from our  
17 water utilities. We have a planning program. We also do  
18 sanitary surveys out of the regional office, so we have  
19 staff that do that. We also coordinate some of that  
20 activity with the local health jurisdictions.

21 So basically, it's implement the Safe Drinking Water  
22 Act and the Department of Health drinking water  
23 regulations in that seven-county region with the help of  
24 my staff.

25 **Q** What are the seven counties?

1 A We do Pierce, King, Snohomish, Skagit, Whatcom, San Juan,  
2 and Island counties.

3 Q And do you focus specifically on the quality of the water  
4 provided to the public in those counties?

5 A Well, our program is multifaceted. So it's not only the  
6 water quality, but it's the design to make sure hopefully  
7 that the systems provide safe and reliable drinking  
8 water.

9 Q Under what statutory authority do you operate?

10 A We have -- certainly the Revised Code of Washington  
11 authorizes the secretary of the Department of Health and  
12 the Board of Health to develop rules and regulations  
13 covering safe drinking water.

14 Q Is the state Safe Drinking Water Act modelled after a  
15 federal statute?

16 A There's a federal statute that looks primarily at water  
17 quality and monitoring requirements for drinking water.  
18 State Board of Health rules tend to go beyond that in a  
19 number of areas, such as document review, planning  
20 documents.

21 We also have a Group B program that looks at smaller  
22 systems that are smaller than the federally regulated  
23 systems, but by and large we adopt most of the rules --  
24 all of the rules required for primacy by the EPA and the  
25 federal government.

1 Q Would it be fair to use the word "regulate" in the  
2 context of DOH regulating water purveyors in the state of  
3 Washington?

4 **A I believe so.**

5 Q And can you describe for me the process by which the DOH  
6 regulates water purveyors in the state of Washington?

7 MS. MCWILLIAMS: Objection. Scope. I  
8 believe that this is a question that was going to be  
9 addressed to Mr. Means regarding the general authority of  
10 DOH to regulate.

11 **A So we regulate -- again, looking not only at water  
12 quality, monitoring results, whether or not a utility is  
13 monitored, but we also review designs of water systems.  
14 We review water system plans. We do surveys of systems.**

15 **And I think that pretty much covers the realm of  
16 what we do. Oh, we have an operator certification  
17 program as well.**

18 Q (By Mr. Malden) During the last ten years, in your  
19 capacity as regional manager of the DOH have you had  
20 communications with the Rainier View Water Company?

21 **A Yes.**

22 Q Can you describe -- or strike that.

23 Have you had any kind of working relationship with  
24 Rainier View Water Company?

25 **A In the last ten years, I visited one instance.**

1 Q When was that one instance?

2 A It was, I believe, in November of 2016.

3 Q What did you do in November of 2016?

4 A I received a phone call from a reporter indicating that  
5 he wanted to follow up on a story that he had filed up to  
6 about a year prior and wanted to know about  
7 iron/manganese concerns at the Southwood water system.

8 So our regional engineer, who normally handles that  
9 work, was out of the office, and so I responded to his  
10 phone call and then made arrangements to meet at Rainier  
11 View Water Company to discuss the story with them.

12 I went out to their offices, met with Bob Blackman  
13 and others and their engineer, their operations folks,  
14 and then we proceeded out to the well that was nearest  
15 where this fellow was doing his story, the Fir Meadows  
16 well field. There we took water samples to send in to a  
17 laboratory. We also took some field tests.

18 And then I went to the area in question in the  
19 subject of the story, and I observed in the area that  
20 flushing was occurring. They were allowing water to flow  
21 through hydrants in an attempt to flush and clean up the  
22 system or clear it of sediment. And then I went back to  
23 my office.

24 Q Was it unusual for you to go on a field trip just because  
25 some interest was expressed by a news reporter?

1 **A** Well, I think it had to do more or less with the fact  
2 that he was covering a story that was a year old. Even  
3 though I was -- and I don't think our office was aware of  
4 anything having to do with this story, so it was to do --  
5 not only respond and provide input on -- to answer his  
6 questions, but also to find some information on the  
7 context of the story.

8 **Q** Do you remember the name of the news reporter?

9 **A** Not offhand.

10 **Q** Was it KIRO 7?

11 **A** It was KIRO.

12 **Q** Okay. Before you were contacted by the KIRO news  
13 reporter, had you heard of any complaints regarding the  
14 water provided by Rainier View to its customers?

15 **A** Not in the near term.

16 **Q** What do you mean by "near term"?

17 **A** Not recently. So again, not in the -- several years I  
18 hadn't heard of any complaints.

19 **Q** When you were contacted by KIRO, but before you went out  
20 to the well to inspect, did you ask anyone around the  
21 office or did you do any research to try and figure out  
22 what the history was with Rainier View?

23 **A** I may have looked to see if there was any submittals.  
24 There was question about treatment, so I may have looked  
25 to see if there were submittals on treatment, in all

1       likelihood prompted by the reporter's questions, and then  
2       I may have looked at the complaint log to see if there  
3       were any recent complaints.

4   Q   Do you recall seeing any recent complaints in the  
5       complaint log?

6   A   **No.**

7   Q   When you went out to Fir Meadows, can you describe the  
8       test procedure that you observed? Or actually, strike  
9       that.

10           When you went out to Fir Meadows in November of  
11       2016, did you witness the collection of water samples?

12   A   **Yes.**

13   Q   Who collected the water samples?

14   A   **Jamie. I can't remember his last name, but Jamie, who**  
15       **does most of their water quality reports that they**  
16       **submit. And he had an assistant who was there who was**  
17       **actually running the field tests, and then Bob Blackman**  
18       **was there as well. So there were, I believe, three**  
19       **representatives of Rainier View there.**

20   Q   Does the DOH require Rainier View to submit regular  
21       reports regarding water testing?

22   A   **We require monitoring in accordance with the rules.**  
23       **There are some allowances for waivers as well, but yes,**  
24       **we would require routine monitoring.**

25           **Samples are typically collected by the utility,**

1       **taken to a state certified laboratory, and then we and**  
2       **the utility get copies of those test results.**

3   Q   Does the DOH normally participate in observing the taking  
4       of test samples?

5   A   **No.**

6   Q   Would it be fair to state that the DOH relies 100 percent  
7       on the water company to properly collect samples for  
8       testing?

9   A   **Yes.**

10  Q   In this particular case, why did you want to go out and  
11       personally observe the water sampling?

12  A   **I thought it would help clarify for the reporter what**  
13       **happened.**

14  Q   Did the reporter go out there with you?

15  A   **No.**

16  Q   Did you later communicate with the KIRO reporter?

17  A   **I'm sure I did, yes.**

18  Q   Do you know if you communicated by phone or by letter or  
19       by email?

20  A   **I believe it would have been a phone call.**

21  Q   Do you recall approximately how long after the inspection  
22       you called the KIRO reporter?

23  A   **Not offhand.**

24  Q   Do you remember what you said to the KIRO reporter?

25  A   **I believe I went out and told him, one, that I had been**

1 out to the site. I believe I also called him when I got  
2 the test results submitted to me from Rainier View that  
3 they got back from their laboratory.

4 Q Do you recall anything significant about the test results  
5 that you got back?

6 A One of the test results showed an elevated level of  
7 manganese. It was 11. The standard is 5.

8 THE REPORTER: Say that part again.

9 THE WITNESS: The test result was 11.

10 THE REPORTER: You said something  
11 about 5.

12 THE WITNESS: 5 is what the secondary  
13 standard is.

14 Q (By Mr. Malden) Do you know what a secondary -- or  
15 strike that.

16 What is a secondary standard?

17 A So the regulations can identify a number of contaminants  
18 that are regulated as secondary contaminants, and I think  
19 the best way to describe that would be contaminants  
20 believed to provide aesthetic problems to the water.

21 Q Did you feel that the test result from November 2016 that  
22 showed the elevated level of manganese was cause for  
23 concern?

24 A Well, my understanding was that we -- they were  
25 complaints associated with manganese. While talking with



1 Rainier View, they indicated that they wouldn't be  
2 operating that well until treatment was in place. They  
3 had indicated that treatment -- the design was being  
4 prepared and that we would be seeing the design, the  
5 construction documents, the project report shortly, and  
6 that they wouldn't turn that well back on until they had  
7 constructed the treatment and placed the treatment  
8 online. So I felt the situation was pretty well in hand.

9 Q Do you know whether a level of manganese that exceeds the  
10 secondary contaminant level poses any risk to human  
11 health?

12 A I don't do the research, so I couldn't really draw any  
13 conclusions on what the research says one way or another.  
14 I know research is occurring.

15 The Department of Health hasn't -- or the Board of  
16 Health hasn't taken any action to regulate manganese  
17 differently.

18 Q Has the DOH considered whether it should regulate  
19 manganese differently?

20 A I -- I don't know if that has been done at all.

21 Q If a water purveyor in Washington reports a level of  
22 manganese that's in excess of the contaminant level  
23 specified under state law, are they required to correct  
24 that?

25 A We try to determine what the community's response is to

1 the secondary contaminant and whether or not the  
2 community wants to pay for the treatment.

3 Q How do you go about determining the level of community  
4 concern about the contamination?

5 A Well, we've described the process in our design manual,  
6 and it basically asks for a petition signed by five or  
7 more customers indicating a dissatisfaction with either  
8 the water quality or the pressure or the reliability of  
9 the system to basically send in to us -- communicate to  
10 us that there's -- through, say, a petition that they're  
11 dissatisfied and that they want a utility to look into  
12 it.

13 If we receive that petition, then we'll direct the  
14 utility to develop a project report outlining the  
15 alternatives for solving the problem and what it would  
16 cost, the impact it would have on rates, and then ask  
17 them to convey all of that information to the customers,  
18 the affected customers.

19 And then typically we would go with the majority of  
20 who's willing to pay for that level of treatment or  
21 additional pumping or whatever the problem might be. And  
22 again, if the majority of the affected customers would  
23 say yes, we would then direct the utility to go ahead and  
24 move forward on the selected alternative.

25 Q So it's official DOH policy to -- or strike that.

1           So are you saying that the water purveyor is  
2 required by law to survey the community to find out what  
3 cost they're willing to bear to improve the water  
4 quality?

5 **A** Well, the utility is directed to take follow-up action as  
6 directed by the department. And so again, we would be  
7 taking that petition that we get and asking the utility  
8 to again develop what the alternatives are, what the  
9 costs would be, and share those with the affected  
10 community, and then if there's -- if the community is in  
11 support, to go ahead and proceed to install the  
12 corrective action.

13 **Q** Why is it important to the DOH to involve the community?

14 **A** Well, we have a lot of different types of ownership  
15 groups, and again the willingness to pay the water rate,  
16 to maintain the facilities, to keep things in working  
17 condition, it takes that type of support from the  
18 community to see the necessary rates to be able to  
19 operate and maintain.

20           Our experience would be that some folks feel  
21 comfortable that through their own techniques -- maybe  
22 it's their own Brita filter, something along those  
23 lines -- they're satisfied with what they got and prefer  
24 not to pay more for their drinking water. And so again,  
25 we want a willingness on all parts to operate and

1 maintain the equipment.

2 Q To your knowledge, did Rainier View do any of this  
3 community surveying after the water test in November  
4 2016?

5 A I'm not aware of any surveys they conducted after the  
6 water test. Again, we hadn't received any petition, and  
7 again, they had already, to my knowledge, gone to the UTC  
8 to get the financing for treatment.

9 Q Did Rainier View then have an option of either going to  
10 the community and the DOH and obtaining or doing the  
11 survey and obtaining the community feedback, or could  
12 they just go to the WUTC and ask for a surcharge  
13 increase?

14 A Well, what I'm familiar with is they already had done  
15 that, and they had already committed to the surcharge and  
16 the lockbox and to use those monies to build treatment  
17 facilities. So when I got involved, I think that  
18 decision had already been made, is my understanding.

19 Q Does it bother you that the procedures that the DOH sets  
20 forth in its design manual were not followed?

21 A Well, again, it's basically in the response to the  
22 petition. So the petition has to be generated first by  
23 the community.

24 So again, had we received a petition, we would have  
25 followed through with that. Independently, again the

1 Washington Utilities and Transportation Commission does  
2 have regulatory responsibility over certain aspects of a  
3 utility, and I would expect that the utility is free to  
4 go to the commission independently of us and discuss  
5 issues having to do with the rates and the financing of  
6 improvements of the water system.

7 Q Do you know though that the WUTC, their official position  
8 is that they defer to the DOH on issues like this?

9 A I don't --

10 MS. MCWILLIAMS: Objection.

11 MR. RANKIN: I'm going to --

12 MS. MCWILLIAMS: Sorry.

13 MR. RANKIN: Go ahead.

14 MS. MCWILLIAMS: Just objection.

15 Facts not in evidence. And I don't think that that's  
16 really a question. It's a bit ambiguous.

17 MR. RANKIN: I believe it also  
18 mischaracterizes their position.

19 A So I'm not aware of what happened between the Rainier  
20 View and the Washington Utilities and Transportation  
21 Commission.

22 Q (By Mr. Malden) What does the Department of Health do to  
23 educate the public as to significance of submitting a  
24 petition to the DOH if they have a problem with the  
25 water?

1 A Well, typically if we get a complaint, we will talk it  
2 through with whoever the caller is and explain to them  
3 our thoughts on how to go about getting their concerns  
4 resolved.

5 Q What you've just told me is what happens if someone from  
6 the public contacts you with a complaint.

7 My question is, what does the DOH do, if anything,  
8 to inform the public that they must file a petition with  
9 the DOH if they have a complaint about the quality of  
10 their water?

11 A Well, I don't know if the word is "must," but again, from  
12 my perspective again, it's not uncommon for people who  
13 have concerns about their water quality to investigate  
14 what recourse they have and then to take that action,  
15 so -- whether it's using the internet or whatever to find  
16 out -- if they're concerned about their water quality, to  
17 find out who regulates them and to have that  
18 conversation.

19 Q Would it be fair to state that the DOH does nothing to  
20 inform the public that they have the right to file a  
21 petition with the DOH if they have a complaint about  
22 water quality?

23 A I don't know if any of our outreach publications contain  
24 specifically methods to go about identifying a secondary  
25 contaminant and a complaint and the process. I'm not

1       **sure if they go into that level of detail.**

2   **Q**   Don't you think that's a level of detail that the DOH's  
3       informational materials should get into?

4   **A**   **I think it all depends upon -- typically, we respond to**  
5       **the types of requests and concerns that we receive, and**  
6       **I'm guessing we have -- you know, I don't make all of**  
7       **those decisions on when we develop publications, but I**  
8       **guess they would -- my understanding would be we would**  
9       **respond if we felt there was a real significant need.**

10   **Q**   Would it be fair to state that the primary mission that  
11       you have and everyone working under you and with you is  
12       to protect the quality of the drinking water for the  
13       public?

14   **A**   **Try and ensure and work with others to ensure that people**  
15       **are getting safe and reliable drinking water.**

16   **(Exhibit No. 1 marked for**  
17   **identification.)**

18   **Q**    (By Mr. Malden) You've just been handed a document  
19       that's marked as Exhibit 1. I do want to state for the  
20       record that this is not a complete copy of all 200-plus  
21       pages of the manual. I tried to include enough to help  
22       you identify in general the document through the table of  
23       contents, and then there's some portions in here that I'd  
24       like to ask you about.

25   **A**    **Mm-hm.**

1 Q Okay?

2 **A Okay.**

3 Q Can you tell me, what is this document?

4 **A It's a document that we prepare to help water utilities**  
5 **and the consultants understand what our requirements are**  
6 **in order to secure the design approval of their water**  
7 **system.**

8 Q And this particular manual is dated December 2009.

9 Is that the most current version of the design  
10 manual?

11 **A Yes, the most current published version. I believe it is**  
12 **being reviewed.**

13 Q Is this published by your department or by some other DOH  
14 department?

15 **A It is published by the Office of Drinking Water.**

16 Q And this manual is given to water purveyors in the state  
17 of Washington; is that right?

18 **A It's available to them on the internet.**

19 Q Is the DOH expectation that water purveyors will look at  
20 and study the Water System Design Manual?

21 **A It's mostly for use by their consultants, but our**  
22 **expectation is that if they're looking to design new**  
23 **facilities or create new public water systems that they**  
24 **would be familiar with this document.**

25 Q Okay. If I could direct your attention to -- if you look



1 at the top left-hand corner -- excuse me -- the top  
2 right-hand corner of the page.

3 You know what? Let me find it for you. I'm looking  
4 for a particular section. Well, actually you've already  
5 found it. Okay.

6 This design manual includes a section that's  
7 entitled "Secondary Contaminant Treatment Requirements  
8 and Options"; is that right?

9 **A Mm-hm, yes.**

10 MR. RANKIN: I'm sorry. Where are we  
11 looking so we can follow along?

12 MS. MCWILLIAMS: What page number,  
13 please?

14 THE WITNESS: 203. Page 203.

15 MR. MALDEN: Or if you look at the top  
16 right-hand corner, we actually Bates stamped it 049.

17 Q (By Mr. Malden) This document describes the process of  
18 surveying the community and obtaining community  
19 involvement in the decision of what steps should be taken  
20 to correct secondary contaminant levels; is that right?

21 **A Yes.**

22 Q And you're familiar with the steps set forth in this  
23 document, aren't you?

24 **A I believe so.**

25 Q Would it be fair to state that you know for a fact that

1 Rainier View Water Company did not follow any of these  
2 steps in this particular case with regard to the  
3 complaints about the Southwood water system?

4 **A To my knowledge, we never received a petition to initiate**  
5 **the process.**

6 Q So it -- okay. Is the answer --

7 MR. MALDEN: Can I have you read my  
8 last question back?

9 (Question on Page 23, Line 25,  
10 and Page 24, Lines 1 through  
11 3, read by the reporter.)

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

13 **A I don't believe they followed the steps.**

14 Q And the -- you have no problem with Rainier View having  
15 ignored all of the steps set forth in the design manual,  
16 do you?

17 **A I don't have a problem with a utility determining that**  
18 **they want to install treatment.**

19 Q Do you have a problem with a water purveyor determining  
20 that it will install a treatment, but not going to the  
21 trouble of surveying the community as to what options and  
22 costs they're willing to bear?

23 **A I think a lot of that has to do with, you know -- my own**  
24 **view is on the ownership and how the ownership is**  
25 **expected to make decisions. Whether it's a city council**

1 or a homeowners association or an investor owned utility,  
2 all of them have different mechanisms for making  
3 decisions that will ultimately affect their customers.

4 Q In the case of a privately owned water company, their  
5 decisions are going to be influenced by a profit motive,  
6 aren't they?

7 **A Getting the return on investment.**

8 MR. MALDEN: Can I have you read back  
9 my second to the last question?

10 (Question on Page 24, Lines 19  
11 through 22, read by the  
12 reporter.)

13 Q (By Mr. Malden) Can you answer that question?

14 MS. MCWILLIAMS: Objection. Misstates  
15 evidence.

16 **A Again, I don't have a problem with a utility working**  
17 **through their consultant to identify treatment and moving**  
18 **forward with treatment if they feel it's in the best**  
19 **interests of their utility.**

20 Q (By Mr. Malden) You don't know what Rainier View was  
21 thinking, do you?

22 **A No.**

23 Q You don't know if Rainier View was operating out of a  
24 concern over the best interest of its own profit and  
25 compensation to its owners versus the public, do you?

1 A I don't know their motive.

2           Again, I have reason to believe that a lot of their  
3 decisions are also viewed in terms of return on  
4 investment by the Washington Utilities and Transportation  
5 Commission, and that is more in their purview than ours.

6 Q What's more in whose purview?

7 A More of the return on investment and what's appropriate  
8 in terms of investment. And those types of things, from  
9 a return on investment perspective, is more the purview  
10 of the Washington Utilities and Transportation Commission  
11 than the Department of Health.

12 Q Did I understand you correctly to state that you're not  
13 concerned that Rainier View never surveyed the community  
14 because as far as you know the DOH never received a  
15 petition signed by five customers?

16 A Again, there are different ways to communicate issues  
17 between the consumer and the water utility, and it is  
18 quite possible that they directly received communication  
19 from their customers through a survey or feedback or  
20 phone calls that we wouldn't be aware of of another way  
21 of soliciting and receiving information, but it did not  
22 go through us on this particular instance.

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

25       ////

1 (Question on Page 26, Lines 12  
2 through 15, read by the  
3 reporter.)

4 Q (By Mr. Malden) If you could answer that yes or no.

5 MS. MCWILLIAMS: Objection. Asked and  
6 answered.

7 A Again, you're asking --

8 THE WITNESS: Could you repeat the  
9 question again?

10 (Question on Page 26, Lines 12  
11 through 15, read by the  
12 reporter.)

13 A The answer would be no, I'm not concerned that we didn't  
14 receive a petition, and that the relationship between the  
15 customer and the utility is for the customer and the  
16 utility to straighten out.

17 So it didn't concern me that they may not have --  
18 one way or another whether or not they solicited  
19 immediate feedback from their customers. My own  
20 understanding would have been that at the time I entered  
21 this situation the case would have already gone to the  
22 UTC to get the surcharge and that folks would have had an  
23 opportunity to comment through the UTC process.

24 Q (By Mr. Malden) And to you, the WUTC process, such as it  
25 is, that's a completely acceptable alternative to the

1 procedure set forth in the DOH's own design manual; is  
2 that right?

3 **A I believe it's an alternative.**

4 Q You're familiar with Bob Blackman?

5 **A I know Bob Blackman.**

6 Q Did you know that he testified two days ago that in a  
7 one-year stretch between June 2015 and June 2016 Rainier  
8 View received over 400 complaints from customers that  
9 required work orders?

10 **A No.**

11 Q Would that be of any concern to you?

12 **A I'm -- I hope they're being responsive.**

13 Q DOH's position in this type of situation is in fact to  
14 hope that the water purveyor will do what's right for  
15 their customers; is that fair to say?

16 **A I think it's an expectation that they'll try to do what's  
17 right. I think people want to provide safe and reliable  
18 drinking water.**

19 Q And the DOH trusts that Rainier View will use its own  
20 judgment and do that; is that right?

21 **A Yes, they will use their judgment.**

22 Q You have no criticism at all about Rainier View Water's  
23 actions in regard to its Pierce County customers and  
24 their response to brown water?

25 MS. MCWILLIAMS: Objection. Unclear.

1 **A** Again, my understanding is that we were not getting  
2 routine calls about the condition of the water at the  
3 Southwood water system.

4 **Q** (By Mr. Malden) Do you know what it cost Rainier to  
5 install brown water treatment for the Southwood  
6 customers?

7 **A** Not offhand, no.

8 **Q** Do you know what cost Rainier View passed on to its  
9 customers to pay for that system?

10 **A** It's my understanding that it was being done through a  
11 surcharge.

12 **Q** Okay. Do you know the amount of money that's involved?

13 **A** No.

14 **Q** If we look at your design manual -- I'm looking down  
15 here. It's actually Page 203 of the manual. There's  
16 reference here under Roman numeral I. "If a water system  
17 has a significant problem, it will be required to take  
18 the following actions."

19 Now, how do you define significant problem?

20 **A** Well, on the one hand, I think we look at again how  
21 visible is the issue to us. So if we become aware of a  
22 problem that raises the level of significance, how it  
23 compares to a standard, would it raise the level of  
24 significance.

25 Again, the -- how the concerns are expressed from

1 the multitude of customers. So how many customers are  
2 affected by the situation increases its significance. So  
3 all of those factors would be in play.

4 Q Would it be fair to state that the DOH made zero effort  
5 to determine what customer concerns were with regard to  
6 the water provided by Rainier View?

7 MS. MCWILLIAMS: Objection. Leading.

8 A Again, we rely upon feedback from the customers as well  
9 as the utility to understand what's going on in the  
10 day-to-day operation. And if we don't get that kind of  
11 feedback, we move on and continue to do the rest of our  
12 duties, but it relies on some feedback first and  
13 communication, and if we don't receive that  
14 communication, there isn't a lot left for us to do in  
15 that regard.

16 Q (By Mr. Malden) When you were contacted by the KIRO news  
17 station and told that there's a bunch of people that have  
18 concerns and complaints about brown water, you made no  
19 effort to contact any of those customers to verify  
20 whether they had a complaint or concern or not, did you?

21 A I took the reporter's questions at face value and  
22 presumed that he had heard from customers, and I went and  
23 talked to the water utility.

24 Q And the DOH -- I asked the question in terms of you, but  
25 let me ask it in terms of the DOH.



1           Neither you nor anyone employed by the DOH, after  
2 you received the call from the KIRO news reporter, none  
3 of you made any effort to contact any customer of Rainier  
4 View to verify whether they had a complaint or a concern;  
5 is that right?

6 **A We don't have any real mechanism for dealing or**  
7 **contacting customers directly. We don't keep**  
8 **inventories. We don't have customer lists. We just have**  
9 **names and contacts of water utility personnel.**

10           So knowing who was a customer and who was not a  
11 customer and how to get ahold of those folks is not  
12 something that we readily have access to.

13 **Q** Getting back to Exhibit 1 and this one paragraph that  
14 starts "If a water system has a significant problem,"  
15 would it be fair to state that in November of 2016 -- or  
16 strike that. Let me ask the question.

17           If there's a well that has a level of manganese  
18 twice the maximum contaminant level -- actually, let me  
19 rephrase that question.

20           I believe you said in this case you went out to the  
21 Southwood well in 2016. You observed the taking of water  
22 samples, and you were later informed that one of those  
23 showed a manganese level of twice the secondary  
24 contaminant level set forth in state law.

25           Is that right?

1 **A** Roughly twice, yes.

2 **Q** Okay. Would you agree that having a maximum secondary  
3 contaminant level of twice the standard set forth in  
4 state law is a, quote, significant problem, as that  
5 phrase is used in the design manual?

6 **A** In and of itself -- again, to try to avoid future  
7 problems, we try on new water systems to get the  
8 treatment in place on the front end.

9 There are any one of a number of water systems that  
10 operate routinely at level -- manganese levels similar to  
11 twice the standard that we rarely get calls on. The  
12 community has learned to deal with it either through  
13 flushing or other aspects.

14 So again, I would probably not in and of itself say  
15 that an 11 is significant unless we start to get the  
16 customer input or input from the water utility that  
17 there's some concern that's being expressed.

18 **Q** Now, when you use this word "11," what does that reflect?  
19 What does that mean?

20 **A** Well, again, it's just a measure of how much manganese is  
21 in the water. So again, we would be looking at 11  
22 parts -- let's see -- per billion would be the -- or the  
23 standard is -- actually 50 parts per billion is the  
24 standard for manganese. 11 would be twice that.

25 **Q** So when you heard that the testing in November of 2016

1 showed a manganese level of twice the level referenced in  
2 state law, did you call up Rainier and tell them, "Don't  
3 worry. This is not an issue. We could care less. You  
4 don't need to spend all of this money"?

5 **A No.**

6 **Q** Why didn't you do that?

7 **A** Well, what I did was -- they were already proceeding to  
8 install treatment. And again, I think -- I believe it's  
9 a good idea to provide the best quality water you can  
10 provide, and they were in the act of designing the  
11 treatment facilities, so my view is carry on and do it.

12 **Q** The DOH actually tells the public not to drink discolored  
13 water, doesn't it?

14 **A** Well, I tell anybody who calls me that if it smells bad,  
15 tastes bad, looks bad to not drink it.

16 **Q** Why do you tell people that?

17 **A** Because again, I don't want somebody to sit there and  
18 believe that because they -- because they don't exceed a  
19 primary contaminant that they should go ahead and drink  
20 discolored water or water that tastes poorly or water  
21 that smells bad. I think they should use their senses  
22 and not drink that water if they perceive a problem.

23 **Q** Getting back to the design manual, it says if a water  
24 system has a significant problem -- actually, let me back  
25 up for a moment.

1 I believe that Bob Blackman testified that he told  
2 DOH, "We're shutting down this well until we come up with  
3 a treatment solution."

4 Do you recall being told that by Rainier View?

5 **A I don't know the exact words. The well was not operating**  
6 **when I went out there, and they said they would not be**  
7 **starting it up. They started it up to collect the**  
8 **sample, but they would not be starting it up until**  
9 **treatment was in place.**

10 **Q Wasn't it obvious to you, given that statement, that**  
11 **Rainier View itself knew there was a significant problem**  
12 **with the manganese level in that well?**

13 **A I can't fully interpret what Rainier View was thinking,**  
14 **but the rationale that I had was that between now and the**  
15 **expected time construction would be complete, Rainier**  
16 **View and their Southwood system probably had sufficient**  
17 **source capacity that it wasn't critical to use it.**

18 Although, we did discuss, I believe, that if we got  
19 into a severe water quality problem that they may have to  
20 turn it on. I mean water quantity problem. But again, I  
21 did not expect that to happen.

22 I don't think -- I can't interpret what Bob was  
23 thinking, but I don't believe Rainier View thought it was  
24 critical to operate that well until treatment was in  
25 place.

1 Q Well, wasn't it obvious to you that Mr. Blackman knew  
2 there was a problem with the well such that it needed to  
3 be -- use needed to be stopped?

4 MS. MCWILLIAMS: Objection. Leading.

5 **A Again, he agreed to stop it. He knew that there was**  
6 **manganese present in the well, and that's why his company**  
7 **had hired engineers to design treatment, and they were**  
8 **moving forward to build that treatment.**

9 And the significance Bob Blackman placed on it, I  
10 couldn't tell you.

11 Q (By Mr. Malden) I notice here in Roman numeral I,  
12 Paragraph 1 of Exhibit 1 -- getting back to the document  
13 entitled "Secondary Contaminant Treatment Requirements  
14 and Options" -- it says, "The water supplier must prepare  
15 an engineering report with recommended corrective actions  
16 necessary to bring the water into compliance with the  
17 iron/manganese standards. The report must evaluate all  
18 reasonable alternatives and determine the costs  
19 associated with each alternative. The study must be  
20 prepared by a professional engineer registered in  
21 Washington state."

22 Rainier View Water never did that, did they?

23 **A I believe they -- well, one, my -- from my interaction**  
24 **with the utility, they had already made the decision to**  
25 **install treatment. And so they, with their consultants,**

1 understood the cost and had made a decision. This is not  
2 with us getting involved in that decision process.

3 Q And you saw -- or strike that.

4 You had no interest in that process; is that right?

5 A I would say we're always interested. But again, when  
6 utilities voluntarily take action, we appreciate that,  
7 and we don't have as significant a role to play when the  
8 utilities are voluntarily responding.

9 This is set up and written from the perspective that  
10 the utility is resisting making any investment in that  
11 additional water treatment, and yet the customers are  
12 concerned and complaining to us about it, and so that's  
13 when we have been inserted into that role. But again,  
14 when a water utility is making that decision on its own,  
15 without having to be pressured by us to do so, then again  
16 we're not involved.

17 Q And you're not concerned in that instance whether Rainier  
18 surveyed even one customer before making the decision as  
19 to how they're going to treat the problem; is that right?

20 A Again, I -- Southwood has been in existence for a long  
21 time, you know, 45 years plus. They've had, in my view,  
22 plenty of opportunity to have discourse with their  
23 customers and understand the level of satisfaction folks  
24 have with the water quality they're being provided and  
25 had, from my perspective, made the decision they were

1 going to go ahead and pursue treatment.

2 Q Is it your understanding that the WUTC has the resources  
3 and expertise necessary to evaluate treatment of water  
4 the same way that the DOH can?

5 MS. MCWILLIAMS: Objection. Outside  
6 the scope.

7 A I think we've tried to as best we can divide the  
8 regulatory response. Again, we try to make aware that  
9 we're the primary health agency involved in the  
10 regulation of public water systems and that UTC's role is  
11 primarily from a financial aspect.

12 And again, if asked, we would certainly provide  
13 input to the UTC if they asked us questions about the  
14 water quality at Rainier View or Southwood.

15 Q (By Mr. Malden) Does the W -- or strike that.

16 Does the DOH have the expertise to weigh engineering  
17 alternatives and determine what the best, most  
18 cost-effective way is to treat excess levels of manganese  
19 in drinking water?

20 A I think again we have the ability to review engineering  
21 reports that look at alternatives. Again, there are a  
22 lot of decisions that have to go in in selecting an  
23 alternative, and I think for the most part we rely upon  
24 the utility and their consultants to select what is the  
25 best option for the water utility.

1 Q Is that because you don't have the time or the resources  
2 or for some other reason?

3 A Well, again, our primary focus is to make sure that  
4 whatever solution is selected will not compromise public  
5 health, and so that's our primary mission. And again, we  
6 want it to be reliable, and if we have some concerns  
7 about the reliability of the proposed solution, we may  
8 pose that question.

9 But again, in terms of the day-to-day operations of  
10 a water utility, we don't get involved in a lot of those  
11 financial decisions and what's more cost effective for a  
12 water utility.

13 Q Since November of 2016, have you personally had any  
14 contact with Rainier View Water?

15 A I believe I may very well have talked -- I think Jamie  
16 sent me an email of the test results, and I believe that  
17 I may have talked with them about some chlorination  
18 treatment plant reports in a whole nother area of  
19 involvement that has nothing to do with this particular  
20 episode. That's all that I would recall.

21 Q Have you had any dealings with or communications with  
22 Rainier View, aside from what you've just mentioned,  
23 involving any water systems other than those involving  
24 Pierce County residents?

25 A No. I believe our regional engineer and our planning



1       staff may very well have had conversation. Our water  
2       quality technical folks may have had conversation, but I  
3       don't believe that I've had any conversation with Rainier  
4       View.

5                               (Exhibit No. 2 marked for  
6                               identification.)

7   Q    (By Mr. Malden) You've just been handed a document  
8        marked as Exhibit 2, which is entitled "Rainier View  
9        Water Company Annual Water Quality Report 2016."

10       Have you ever seen this document before?

11   A    **I haven't looked at it, no.**

12   Q    Do you -- or strike that.

13        Have you seen any of the annual reports that Rainier  
14        View sends to its customers?

15   A    **I generally don't look at the consumer confidence reports  
16        that come into our office.**

17   Q    Do you know what the purpose is of the -- excuse me.

18        Do you know what the purpose is of the consumer  
19        confidence report?

20   A    **The purpose is to make consumers aware of the source of  
21        water that results of testing that's been performed and  
22        to primarily keep them aware of any contaminants that may  
23        have been found in their drinking water.**

24   Q    Does the consumer confidence report have to be submitted  
25        to the DOH?

1 **A Yes.**

2 **Q Why, if you know?**

3 **A The Safe Drinking Water Act requires that they submit --**  
4 **I should be careful on that. There's two steps to a**  
5 **consumer confidence report. One is the actual report,**  
6 **and then certification that they have sent it to all of**  
7 **their customers.**

8 **So we ask for a copy of the report, and that's**  
9 **typically due July 1st of the following year, and then by**  
10 **October we expect to get the certificate that they did**  
11 **distribute it to all of their customers. Typically we**  
12 **receive both on or before July 1st.**

13 **Q That certificate is just a statement that essentially**  
14 **Rainier View says, "We did in fact mail this to every**  
15 **single one of our customers"; is that right?**

16 **A Right.**

17 **Q And you assume that to be accurate?**

18 **A Correct.**

19 **Q Who, if anyone, within the DOH reviews these consumer**  
20 **confidence reports?**

21 **A We have our administrator staff log them in. They look**  
22 **for a couple of bullet points, and then if there's**  
23 **anything that looks somewhat questionable, then they**  
24 **refer it to our source monitoring lead in our office.**

25 **Q Do you know if any of Rainier View Water's customer**

1 consumer -- excuse me -- consumer confidence reports over  
2 the last five years have shown any red flags or been  
3 triggered or been questioned by the DOH?

4 **A Nothing that I recall that's been brought to my**  
5 **attention.**

6 Q If I could direct your attention to the first page of the  
7 document. In the second paragraph, the last sentence  
8 reads, quote, "There have been times throughout the year  
9 that the product delivered to you has been aesthetically  
10 displeasing, but I guarantee it has been safe to drink or  
11 cook with," closed quote.

12 MR. MEANS: Where --

13 **A I'm not seeing that yet. Where is that?**

14 MR. MEANS: Is it under the same box?

15 Q (By Mr. Malden) I'm going to highlight it for you.

16 Do you see that?

17 **A I see it.**

18 Q Now, I'm just curious whether you have any concern, given  
19 your position at the DOH, that a water purveyor is  
20 sending a document which guarantees that the water is  
21 safe to drink or cook with.

22 **A Again, it would not be my choice of words.**

23 Q Why would it not be your choice of words?

24 **A Well, again, I don't think anybody should be thinking**  
25 **that -- like I said before -- if it smells bad, tastes**

1 bad, looks bad, that it would -- that you should be  
2 encouraged to drink it.

3 I think people get -- again get confused with what  
4 that means and what they're really trying to say. I  
5 think oftentimes they're trying to say that it meets the  
6 primary standards for drinking water, but -- and I think  
7 that's what they intend to try to assure folks, but in  
8 the end, again, I -- from my perspective, I would suggest  
9 to people if -- again, if it looks bad, smells bad,  
10 tastes bad, if it gets to that, give the utility a call  
11 and inquire about it.

12 Q In your job have you read or seen customer confidence  
13 reports other than this one from other companies?

14 A From time to time, yes.

15 Q Have you -- from the ones you've seen, have you ever seen  
16 a water purveyor issue a statement where they guarantee  
17 the safety of the water to drink or cook with?

18 A Again, I don't know specifically if I've seen anything  
19 that says that. I don't know. I don't recall specific  
20 language in all of the consumer confidence reports.

21 Q If you go down to the third paragraph, the second  
22 sentence of the third paragraph in this box says, quote,  
23 "We are committed to meet every water quality standard on  
24 every system we operate every single day," closed quote.

25 Do you see that?

1 **A Mm-hm.**

2 **Q Is that a yes?**

3 **A Yes, I do.**

4 **Q Now, you know from your own knowledge that Rainier View**  
5 **has not met every water quality standard on every system**  
6 **it operates every single day, don't you?**

7 MS. MCWILLIAMS: Objection. Misquotes  
8 the witness.

9 **A Again, I'm not aware of any recent violations, but again**  
10 **I read that to be a goal.**

11 **Q (By Mr. Malden) The maximum secondary contaminant levels**  
12 **are water quality standards in the state of Washington,**  
13 **aren't they?**

14 **A Yes.**

15 **Q And so if a company like Rainier is supplying water that**  
16 **has an excess amount of secondary contaminant, it's not**  
17 **meeting every water quality standard in the state of**  
18 **Washington, is it?**

19 **A No. If they're producing water that exceeds the**  
20 **secondary contaminant level, they're not meeting the**  
21 **standard.**

22 **Q And that's if the -- if they exceed the -- a standard by**  
23 **even one billionth, that's not in compliance with the**  
24 **standard; right?**

25 **A Well, you've got to look at significant numbers. So**

1 again, those numbers do get rounded off, so it depends  
2 upon what the significant digits are in the sample to  
3 know whether your question about the billionth and what  
4 that truly means, but to the right number of significant  
5 digits.

6 Q Does the State of Washington Department of Health issue  
7 any guarantee or assurance to the public that they can  
8 consume water with excess levels of manganese with  
9 absolutely no effect to health?

10 A I don't know what we -- I don't recall what we say about  
11 manganese in our publications other than describing it as  
12 an aesthetic contaminant.

13 Q Are you prepared to state officially on the record as a  
14 spokesperson for the Department of Health that there is  
15 no risk to human health whatsoever to drinking water that  
16 has manganese levels in it that exceed the secondary  
17 contaminant level set forth in Washington state law?

18 MS. MCWILLIAMS: Objection. Outside  
19 the scope of this witness.

20 A Again, we are regulating manganese as a secondary  
21 contaminant, as an aesthetic problem, and that would be  
22 our response to someone who asked that question.

23 MR. MALDEN: I'd like to take a short  
24 break, if now is a good time.

25 (Recess 12:00 - 12:11 p.m.)

1 (Exhibit No. 3 marked for  
2 identification.)

3 EXAMINATION (Continuing)

4 BY MR. MALDEN:

5 Q You've just been handed a document marked as Exhibit 3.

6 Do you recognize this document?

7 A I believe I've seen it in the past.

8 Q Do you remember when you first saw it?

9 A No.

10 Q Can you estimate when you first saw it?

11 A I probably saw it about the time -- it looks like the  
12 date on this is 2008, so I would guess sometime in that  
13 year I'm guessing I would have seen it.

14 Q What is this document?

15 A It's a Memorandum of Understanding between the Department  
16 of Health and the Washington Utilities and Transportation  
17 Commission.

18 Q What is the purpose of this Memorandum of Understanding?

19 MS. MCWILLIAMS: Objection. Outside  
20 the scope of this witness.

21 A Again, it's to try and identify the roles and  
22 responsibilities of each of the two agencies.

23 Q (By Mr. Malden) Do you know who drafted this document?

24 A No. I can't tell you for sure who drafted it.

25 Q Are there a group of individuals within the DOH who would

1 know more about who drafted this document or how it was  
2 drafted than you?

3 **A I don't know currently if there is with the Department of**  
4 **Health, but again this would have been handled out of our**  
5 **headquarters group in Olympia, not in the regional**  
6 **office, to develop this agreement.**

7 Q Is this a -- strike that.

8 As far as you know, is this Memorandum of  
9 Understanding still valid?

10 **A As far as I know, yes.**

11 Q Does it accurately set forth the working relationship  
12 between the DOH and the WUTC?

13 **A I would believe it would.**

14 Q I'd like to ask you some questions about some of the  
15 terms in the MOU.

16 **A Okay.**

17 MS. MCWILLIAMS: Continuing objection.  
18 Outside the scope of this witness.

19 Q (By Mr. Malden) On Page 1 of the document, in the second  
20 paragraph, the last sentence in the second paragraph  
21 reads, quote, "Both agencies recognize that some issues  
22 fall outside current statutory authorities," closed  
23 quote.

24 Do you know what that refers to?

25 **A Could you point that out to me again? You said --**



1 Q Yes. Right there.

2 **A I see it. All right.**

3 Q Do you see that?

4 **A Yes.**

5 Q Do you know what issues are being referred to that fall  
6 outside current statutory authorities?

7 **A Not specifically. I could envision maybe a water right**  
8 **question or something that's covered by another agency**  
9 **maybe. I don't know. Or maybe it has something to do**  
10 **with taxes. I -- I don't know.**

11 Q If you go to Page 2, the first sentence in the first  
12 paragraph reads, "DOH's Office of Drinking Water assures  
13 all public water systems, including those owned by UTC  
14 regulated companies, meet or exceed federal and state  
15 drinking water regulations."

16 Is that true still as of today?

17 **A I think in a general sense our job is to look at the Safe**  
18 **Drinking Water Act regulations and again enforce them.**

19 Q Have you had any conversations with anybody at the WUTC  
20 regarding the interpretation of this Memorandum of  
21 Understanding?

22 **A I don't believe I've had any discussion with anybody at**  
23 **UTC over this document.**

24 Q Are you aware that there was an earlier Memorandum of  
25 Understanding dated 1995?

1 **A I believe I would be aware that there was one. I don't**  
2 **believe this is the first.**

3 Q But this is the current and most recent?

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

5 Q I'd like you to turn to Page 4 of the document. Under  
6 the heading Roman numeral IV, "General Roles and  
7 Responsibilities," under the Department of Health Office  
8 of Drinking Water -- that's your office; right?

9 **A I'd say yes.**

10 Q If you go down to bullet 5 -- or actually, let's go with  
11 bullet 4. "Provides training and guidance materials to  
12 assist purveyors in their responsibility of providing  
13 safe and reliable drinking water."

14 That's one of the roles and responsibilities of your  
15 office; is that correct?

16 **A The Office of Drinking Water, yes.**

17 Q What training and guidance materials have the DOH  
18 provided to Rainier View Water regarding their  
19 responsibility to provide safe and reliable drinking  
20 water?

21 **A I think we made our publications available on our**  
22 **internet site, and then we also sponsored or worked**  
23 **through contractors to provide seminars, conferences,**  
24 **those types of things.**

25 Q One of the guidance materials that DOH has provided is

1 that design manual that we marked as Exhibit 1; is that  
2 correct?

3 **A Yes.**

4 Q I'd like you to go down to the next bullet point that  
5 says "Notifies purveyors when they violate a regulation  
6 and informs them of the required actions needed to  
7 address it."

8 That's one of the responsibilities of the DOH; is  
9 that right?

10 **A That's -- yes. We identify violations of the primary  
11 drinking water regulations, standards.**

12 Q Would it be fair to state though that the DOH only  
13 notifies a purveyor of a violation of the regulation if  
14 the purveyor gives them a test report showing a  
15 violation?

16 **A It would be fair to say that if we received a report for  
17 a primary contaminant that we will get in touch of --  
18 with the utility and assist them in responding to that  
19 water quality result.**

20 Q The DOH does not go out and independently test water. It  
21 relies on the purveyor to provide test results that  
22 they've obtained; is that right?

23 **A Yes.**

24 Q And again, your assumption is whatever test sample and  
25 test result that Rainier View Water is giving you is

1 accurate; is that right?

2 **A Yes.**

3 Q You don't go out and independently verify the accuracy of  
4 Rainier's test samples or lab test results, do you?

5 **A Not routinely.**

6 Q When you say "not routinely," is there ever a time when  
7 the DOH does that?

8 **A We've worked informally with water utilities in the**  
9 **calibration of instruments, such as turbidimeters and**  
10 **chlorine residual analyzers, pH analyzers.**

11 Q I'd like to direct your attention to bullet point 5.  
12 Quote, "Reviews and approves planning and engineering  
13 documents that identify a system's capacity to achieve  
14 and maintain compliance with applicable regulations."

15 That's identified in this Memorandum of  
16 Understanding as a DOH responsibility, isn't it?

17 **A It is a DOH responsibility, yes.**

18 Q And one of the reasons that it's a DOH responsibility is  
19 because the WUTC does not have the expertise necessary to  
20 review and approve planning and engineering documents;  
21 isn't that right?

22 **A I don't know what -- how it outlines their requirements.**  
23 **Again, they certainly in the past have had engineers on**  
24 **site, but they don't routinely review those documents, so**  
25 **I would say we are -- we routinely review those**

1 **documents, yes.**

2 Q Are you aware of any Memorandum of Understanding or any  
3 other agreement whereby the WUTC has taken on the  
4 responsibility of reviewing and approving planning and  
5 engineering documents that identify a system's capacity  
6 to achieve and maintain compliance with applicable  
7 regulations?

8 **A I believe that we can ask them to take a look at a water**  
9 **system planning document from a financial aspect. Again,**  
10 **as far as routinely asking and their ability to approve**  
11 **documents, I don't believe they -- I'm not aware that**  
12 **they have the ability to approve documents.**

13 Q If you go down to bullet point 7, it says, "Provides  
14 technical assistance in how to provide safe and reliable  
15 water."

16 So is it fair to state that this document is  
17 indicating as between the DOH and the WUTC it's the DOH's  
18 responsibility to provide technical assistance to water  
19 purveyors as to how they can and should provide safe and  
20 reliable water?

21 **A It is a responsibility of the Department of Health to**  
22 **provide technical assistance.**

23 Q The WUTC relies on the DOH to do that, doesn't it?

24 **A They may.**

25 Q When you say "they may," do you have sufficient knowledge

1 of the WUTC to know with greater certainty that they do  
2 rely on DOH since -- or let's leave the question at that.

3 **A I believe the intent is for us to work together and to**  
4 **resolve problems with the water utilities, and I believe**  
5 **that they would have an expectation that we would provide**  
6 **technical assistance on how to provide safe and reliable**  
7 **water.**

8 Q The last bullet point on Page 4 of this document says  
9 that the -- one of the roles and responsibilities of the  
10 DOH is to provide the Utilities and Transportations  
11 Commission with the compliance status and other areas of  
12 concern about water systems owned by UTC regulated water  
13 companies.

14 Would you agree that that is in fact the role and  
15 responsibility of the DOH?

16 **A We certainly make an effort to let UTC know of compliance**  
17 **issues with their regulated water companies. I can't say**  
18 **that every violation we convey that information to UTC.**  
19 **I don't think that occurs.**

20 Q Did the Department of Health, to your knowledge,  
21 participate in Rainier View's -- or strike that.

22 To your knowledge, did the DOH participate in the  
23 hearing on Rainier View's request for a surcharge  
24 increase in December 2016?

25 **A I believe I was aware that Rainier View had gone and**

1       asked for an extension of the surcharge, but I don't  
2       know -- I can't recall whether or not it went any farther  
3       than just being aware.

4   Q   Did you testify at the hearing in Olympia in December of  
5       2016?

6   A   **I can't recall.**

7   Q   You work in Olympia?

8   A   **No. I work in Kent.**

9   Q   I'm referring of course to an event that happened, I  
10       guess, about eight to nine months ago.

11                Would you recall if you drove down to Olympia to  
12       testify at a hearing before the -- or strike that.

13                Do you recall testifying either in person or by  
14       phone in the hearing?

15   A   **I don't specifically -- coming into today, I don't -- I  
16       wasn't thinking about it. I may have. I don't know. I  
17       can't recall specifically. I may have listened, now that  
18       you mention it, but I don't recall the specifics.**

19   Q   I'd like to turn your attention to Page 5 of this  
20       document.

21                As you can see, there's a Roman numeral V heading,  
22       "Procedural Agreements."

23   A   **Mm-hm.**

24   Q   And if you could turn over to Page 6, I'd like to ask you  
25       about Items 4 and 5.

1           It looks like the MOU -- excuse me. It looks like  
2           the WUTC and DOH agreed to develop and implement  
3           processes and procedures which identified action steps  
4           needed for the following functions, including sharing  
5           information when a UTC regulated company requests a rate  
6           increase.

7           Do you know whether you shared information --  
8           actually let me rephrase that.

9           Do you know what information the DOH shared, if any,  
10          with the WUTC in connection with Rainier View's request  
11          for a rate increase in either 2016 or 2017?

12 **A I don't recall.**

13 **Q** If you go one paragraph down, or I guess one point down  
14          to Item 5 in the list on Page 6, it says that one of the  
15          things that you and the WUTC were going to work on was  
16          registering and forwarding customer complaints on rates,  
17          service, water quality, water quantity, or health issues.

18          My question is, what, if anything, did the DOH do  
19          since 2008 to accomplish those goals?

20                               MS. MCWILLIAMS: Objection. Outside  
21          the scope of the witness.

22 **A I don't know if access to our database for complaints was**  
23 **made available. I don't know.**

24          Again, I think it's -- my view would be it's kind of  
25          dependent upon the staff at the time looking at what the



1 issues are to contact the other agency and to see if  
2 there's any input somebody may want to provide.

3 Q (By Mr. Malden) Is there a person or a department at DOH  
4 that fields customer complaints?

5 A Most customer complaints come into the regional office.  
6 There may be complaints that are associated with operator  
7 certification or others that may be fielded by our  
8 headquarters office.

9 And again, people generally call the number that is  
10 most convenient, and that may be headquarters. Typically  
11 if they do about a water utility and the service they  
12 provide, the water quality issue, typically it's referred  
13 to the regional office.

14 Q Is there any policy or rule or procedure within DOH  
15 regarding documentation and safekeeping of complaints  
16 that come in from the public regarding water quality?

17 A We have a database, and we make an effort to put  
18 complaints into that database.

19 Q Are you familiar -- or strike that.

20 Do you have firsthand knowledge of the database?

21 A I know how to access it, and I have from time to time put  
22 complaints into the database.

23 Q What kind of complaints have you entered into the  
24 database?

25 A They might be complaints of low pressure. They might be

1       **complaints of water outages, lack of power.**

2   Q   If someone -- if some member of the public calls by  
3       telephone and makes a complaint about water quality, is  
4       every such phone call supposed to be inputted into that  
5       database?

6   A   **That's our goal.**

7   Q   And so if we wanted to verify how many complaints, if  
8       any, the DOH received from the public regarding the  
9       quality of water supplied by Rainier View, how would we  
10      do that? How would we make that search in this database?

11  A   **I don't believe that it's accessible except through a  
12      public disclosure.**

13  Q   Okay. Assuming that we make a -- actually, let me  
14      rephrase the question. I think what I'm trying to do is  
15      just make sure I know technically how DOH would respond  
16      to a public disclosure request and whether we're  
17      relatively certain that everything in that database would  
18      be provided, so let me just ask the question a different  
19      way.

20           So as far as you know, logistically it is possible  
21      to go into the DOH database, if one has authority or  
22      pursuant to a public disclosure request, and verify how  
23      many complaints from the public have been lodged, whether  
24      by telephone or letter or email, to the DOH regarding  
25      water quality; is that right?

1 **A** I think you access -- you can access and find out all of  
2 the ones that have been entered into the database, and  
3 the goal is to enter them all.

4 **Q** And did you recently review the database regarding  
5 Rainier View?

6 **A** I took a look at it, yes.

7 **Q** When did you do that?

8 **A** I took a look at it before coming here today. I took a  
9 look at the complaint log to see -- to try to familiarize  
10 myself with the complaints.

11 **Q** What did you find out?

12 **A** By and large there haven't been that many complaints over  
13 the last, let's say, five to ten years. A number --  
14 several in their Artondale system over on the peninsula  
15 and several with their Southwood system.

16 **Q** When you say several with the Southwood system,  
17 approximately how many are you talking about?

18 **A** I can't recall a number, but five or six maybe.

19 **Q** Do you remember the substance of those five or six  
20 complaints that came in to DOH about the Southwood  
21 system?

22 **A** Some may be sediment. Some may have been an outage.

23 **Q** Do you remember the time frame of these particular  
24 complaints?

25 **A** I just -- specifically just went back the last ten years.

1 Q So it's -- or strike that.

2 It's your testimony that based on your review of the  
3 complaint database that there have been approximately  
4 five or six complaints submitted to the DOH regarding the  
5 quality of the Southwood system water over the last ten  
6 years; is that right?

7 **A Or service levels. Those are the main -- it may not all**  
8 **be water quality related.**

9 **And again, five or six is an approximate.**

10 **(Exhibit No. 4 marked for**  
11 **identification.)**

12 Q (By Mr. Malden) You've just been handed a couple of  
13 emails that have been stapled together and marked as  
14 Exhibit 4. I'd like to direct your attention to Page 3  
15 of this exhibit, and you can see that at the bottom of  
16 the page there appears to be an email dated April 21,  
17 2017, from TC to Corina Hayes.

18 Do you know who Corina Hayes is?

19 **A She works in our headquarters office, source protection.**

20 Q Now, if you look at this email, you can see that this TC  
21 is complaining about brownish colored water that they've  
22 experienced since 2015.

23 I'm curious. Did you see this complaint when you  
24 just recently reviewed the complaint database at DOH?

25 **A I don't recall. I didn't look specifically.**

1           And again, whether or not -- again, I don't know  
2           that I saw this one.

3 Q   Do you think that in all likelihood not every complaint  
4       that's come into the DOH has been logged into the  
5       database?

6 A   There certainly -- again, it's a goal to log them all in,  
7       but I would not say that every complaint has made its way  
8       into our database.

9 Q   Would it be fair to say that there's probably been a lot  
10      of complaints that haven't made it into the DOH database?

11 A   I probably would not characterize it as a lot.

12 Q   You know, I'm sorry, but can you tell me again Corina M's  
13      job title?

14 A   She's in our source protection group in our headquarters  
15      office trying to look at well head protection and ways to  
16      encourage water utilities to protect their sources of  
17      supply from contamination.

18 Q   Do you know why a complaint from a resident of Graham  
19      would be sent to Corina?

20 A   My -- I don't know why she selected Corina, but that may  
21      have been the name that came up through the internet or  
22      however she approached our agency.

23 Q   Is it possible that Corina Hayes, given her job title and  
24      her job duties, is not familiar with the procedure of  
25      logging every complaint into the DOH database?

1 **A** I don't know how familiar she is with our database. She  
2 wouldn't routinely get these types of complaints in her  
3 current role.

4 **Q** I'd like to direct your attention to Page 2 of the  
5 document.

6 As you can see, this appears to be an email from  
7 Virpi Salo-Zieman to Bob Blackman --

8 **A** Mm-hm.

9 **Q** -- and it references the Tina Case complaint.

10 Who is Ms. Salo-Zieman?

11 **A** She's our current regional engineer for handling Rainier  
12 View Water systems.

13 **Q** Can you explain that to me? The DOH assigns an engineer  
14 to -- or strike that.

15 Does the DOH assign an engineer to every water  
16 purveyor in the state of Washington?

17 **A** No, not generally. We typically assign it by  
18 geographical area.

19 Pierce County is a very large -- well, it's a county  
20 with a large number of systems, so typically in order to  
21 reduce the workload for the Pierce County engineer, who  
22 is John Ryding, we've separated out Rainier View and  
23 given those specific systems to Virpi in order to manage  
24 the workload.

25 **Q** And what is Virpi's responsibilities with regard to

1 Rainier View?

2 **A** She would review the engineering designs, project  
3 reports, water system plans. She would do sanitary  
4 surveys of Rainier View Water systems.

5 **Q** Is part of the job of an engineer like Virpi to respond  
6 to customer complaints?

7 **A** She would -- that could very well be one aspect of her  
8 job. Typically if somebody were to call our office and  
9 said they had an issue with Rainier View, she in all  
10 likelihood would receive that call, but there's another  
11 individual in our office who has the primary  
12 responsibility for those complaints. His name is Brian  
13 Boye.

14 **Q** How do you spell the last name?

15 **A** B-o-y-e.

16 **Q** And when you say that his primary responsibility is  
17 customer complaints, what do you mean by that?

18 **A** That typically if our front desk gets a complaint -- and  
19 generally the way it works would be "What county are you  
20 calling from?" to try to get it down, and then if Brian  
21 is in the office, in all likelihood if it's -- it would  
22 get transferred to him. If not, if the regional engineer  
23 happens to be in, it would be transferred to the regional  
24 engineer. If the regional engineer isn't in, then it  
25 might be transferred to me or to Derek Pell, our

1       assistant manager, or possibly one of our water quality  
2       technical people.

3                               (Exhibit No. 5 marked for  
4                               identification.)

5   Q    (By Mr. Malden) You've just been handed a document  
6        marked as Exhibit 5. Again, this is a set of documents,  
7        four pages in total, stapled together.

8                Do you recognize this document?

9   A    **I believe so.**

10   Q    Is it an email that you sent to Virpi Salo-Zieman?

11   A    **Yes.**

12   Q    And this references your inspection of the Fir Meadows  
13        well in November of 2016?

14   A    **Yes.**

15   Q    One of the things -- or strike that.

16                This is an email that you wrote, right, on Page 1?

17   A    **Yeah, forwarding the email from -- that I got from Jim  
18        Jensen.**

19   Q    Okay. In this email it says, quote, "Quite a difference  
20        between the handheld results and the lab results on wells  
21        1 & 2."

22                What's the difference between a handheld and a lab  
23        result?

24   A    **Well, the laboratory is certified, so there's a program  
25        in the state of Washington that is primarily handled by**



1 the Department of Ecology to go out and do accreditation  
2 of laboratories to do analysis.

3 And so again, a lab result in this context would be  
4 from a certified laboratory that's gone through the  
5 accreditation process as opposed to using a little field  
6 handheld meter, if you will, that would analyze the same  
7 parameters, iron and manganese. And this would indicate  
8 that there was a difference.

9 Q How can you tell if the results are obtained by a  
10 handheld -- or strike that.

11 You're referring to a handheld device; right?

12 A Right.

13 Q And what's that device called?

14 A Well, it's -- it probably uses some sort of a probe and  
15 reagents in the water and to look at the way the light  
16 passes through it. I'm guessing there's a photochemical  
17 type apparatus within the device, and depending upon how  
18 that light passes through there, you can determine how  
19 much concentration of iron or manganese or whatever the  
20 meter is equipped to do, but in all likelihood, maybe not  
21 as precise as what you would take into the laboratory.

22 Q When you say it's not as precise, do you mean by that  
23 that it might understate or overstate a level of a  
24 particular contaminant?

25 A It could.

1 Q Do you know what the margin of error is on a handheld  
2 device?

3 **A No.**

4 Q Rainier View has been submitting water sampling -- or  
5 excuse me. Rainier View has to submit to the DOH test  
6 results of its water on a regular basis, doesn't it?

7 **A Right.**

8 Q And do you know if all of those results -- or if any of  
9 the results are obtained using the handheld device versus  
10 lab?

11 **A Well, for the chemistries like iron and manganese, the**  
12 **requirement would be through a certified laboratory.**  
13 **Typically out in the field you might measure chlorine**  
14 **residual concentrations. That's typically done with a**  
15 **handheld device. pH has to be done out in the field, so**  
16 **that would be through the field test kit device.**

17 **Again, those would be the common ones, and it can**  
18 **give the operator -- specifically if you're treating for**  
19 **iron and manganese removal, it would give the operator a**  
20 **more instantaneous view of how well the treatment is**  
21 **working. So that's typically the context of an iron and**  
22 **manganese field test kit more than anything, would be to**  
23 **hopefully confirm that the treatment appears to be**  
24 **operating correctly, but then you would want to take**  
25 **something to a certified laboratory to get the more**

1       **specific test results.**

2   Q   Can you just explain to me what was the big difference  
3       between the handheld and lab results on wells one and  
4       two?

5   A   **I believe in my email note I indicated what the handheld  
6       concentrations were --**

7   Q   Okay.

8   A   **-- as opposed to what they were here.**

9   Q   Okay. So the set of documents that we've marked as  
10       Exhibit 5, the last three pages look like they're test  
11       reports from Water Management Laboratories, Inc.; is that  
12       right?

13   A   **Yes.**

14   Q   And are those all lab test results?

15   A   **These are test results for iron and manganese, yes.**

16   Q   But this is what you meant when you referred to lab  
17       results?

18   A   **Right.**

19   **(Exhibit No. 6 marked for  
20   identification.)**

21   Q   (By Mr. Malden) You've just been handed a document  
22       marked as Exhibit 6.

23       Do you recognize this document?

24   A   **Yes.**

25   Q   Is this the email that you referred to just a minute ago?

1 **A Yes.**

2 Q This is an email that you sent to Kelly Cooper on  
3 November 18, 2016?

4 **A Correct.**

5 Q And what was the purpose of the email?

6 **A Well, she had gotten a call from, again, I believe a**  
7 **legislative staff person -- I think that's who -- or I**  
8 **did. Alec Osenbach I believe is with the legislature --**  
9 **inquiring about the news article, the news story that was**  
10 **circulating. And I wanted to let her know what the**  
11 **results were of my trip out to Southwood.**

12 Q In the first sentence of your email, you reference that  
13 you let Alec Osenbach know, quote, "that the Rainier View  
14 Water Company is regulated by the Washington Utilities  
15 and Transportation Commission and the Department of  
16 Health," closed quote.

17 My question is, how do you and -- well, let me  
18 rephrase that.

19 How does the DOH and the Washington Utilities  
20 Transportation Commission divide up their  
21 responsibilities to regulate Rainier View Water Company?

22 **A Well, again, I think primarily it's looking at the health**  
23 **aspects of a drinking water system versus the financial**  
24 **aspects of an investor owned water utility.**

25 Q And so what you're saying is as far as the health

1 aspects, that's the business and the province of the DOH;  
2 is that right?

3 **A Primarily.**

4 Q And that would also apply to secondary contaminants?  
5 Those would also be the province and the business of the  
6 DOH, not the WUTC; is that right?

7 **A Well, in terms of trying to interpret the meaning from a**  
8 **health perspective, but again, the financial aspects of**  
9 **it involve UTC.**

10 Q In the second sentence of your email, you wrote, quote,  
11 "I explained how we generally deal with aesthetic and  
12 reliability complaints to ensure that the majority is on  
13 board with a specific course of action prior to the  
14 department embarking upon an enforcement action," closed  
15 quote.

16 How -- or strike that.

17 Can you explain how the DOH generally deals with  
18 aesthetic and liability complaints to ensure that the  
19 majority is on board with a specific course of action?

20 **A Well, I think I've alluded to what's outlined in our**  
21 **design manual.**

22 Q Okay. So we're back to the steps set forth in the design  
23 manual, which include surveying the community, presenting  
24 options to the community, and determining what the  
25 majority wants to do; is that right?

1 A And the affected individuals, yes.

2 Q The affected individuals, meaning the customers?

3 A Well, again, you know, this system is quite large. It  
4 has a number of wells. Some portions of Southwood water  
5 system may be affected. Some may not. So we want to try  
6 to make sure that we're talking to those that are most  
7 impacted by the issue.

8 Q This email does reference -- if you look about halfway  
9 down Page 1, the paragraph reads, "Rainier View did  
10 analyze the water for iron and manganese using a  
11 photoelectric field test kit while we were there with the  
12 following results."

13 And can you just summarize for us the difference  
14 between the handheld and the lab test results?

15 A Well, the field test kit found 0.04 milligrams per liter  
16 manganese in wells one and two, whereas -- take a look at  
17 the test results here -- from well number one, the  
18 manganese content was less than .01 for well one and less  
19 than .01 for well number two.

20 So both were quite a bit -- it's all relative, but  
21 less than what was found by the field test kit. And the  
22 well D, the fourth -- well, the third well that's  
23 actually out there at the site, the handheld had 16 --  
24 .16 milligrams per liter as opposed to the actual test  
25 result was .11 milligrams per liter.

1           So in all cases the field test kit read higher than  
2           the laboratory result.

3   Q   Do you know why that is?

4   A   The only thing I can anticipate is -- again to what  
5           degree of accuracy the handheld kits have is the only  
6           explanation I have.

7   Q   Are you familiar with this particular device, this  
8           photoelectric field test kit?

9   A   I don't typically take field test measurements, so I  
10           can't say that I'm familiar with it. I saw it in use out  
11           there at the site.

12   Q   Do you know if and how it's calibrated?

13   A   Well, I know there's a zero scale. And again, my  
14           recollection is the individual who ran the test out there  
15           I believe used to work for water management, I believe,  
16           and it looked like there was a zeroing of the field test  
17           kit and then one with the actual sample put in after it  
18           had sat the required amount of time prior to insertion  
19           into the meter.

20   Q   If I could for a moment go back to Exhibit 5. I'd like  
21           to ask you a question about the test reports that are  
22           attached to Exhibit 5.

23           You'll notice one of the columns has the word  
24           "trigger." Do you know what that word "trigger" means in  
25           the context of this test report?

1 A I believe that, for example, nitrate, the standard is 10,  
2 but if you were to submit a test result, and the test  
3 result was greater than 5, you would have to go from  
4 annual monitoring to quarterly monitoring of nitrate.

5 So in that context, the word "trigger" would mean it  
6 would increase the frequency of the monitoring for  
7 nitrate. Many of these others, the trigger appears to be  
8 the same as the MCL, so therefore, additional monitoring  
9 wouldn't be required until you actually exceeded the MCL  
10 for those.

11 With fluoride, the two values that are stated here,  
12 4 is the primary MCL for fluoride, and 2 is the secondary  
13 standard for fluoride. And so again, I don't know if  
14 that necessarily says an increase in monitoring for  
15 fluoride, but it clearly suggests that anything greater  
16 than 2 would be above the aesthetic secondary contaminant  
17 level for fluoride.

18 Q Okay. So I think what you're saying is that the word  
19 "trigger" in this context likely means the point at which  
20 additional monitoring in the future will be required?

21 A More frequent monitoring might be the way I might state  
22 it.

23 I'm not sure about the fluoride. Again, that's --  
24 that -- fluoride has a primary standard and a secondary  
25 standard, so that might -- the connotation might be a



1 little bit different there. I'm not sure.

2 MS. MCWILLIAMS: And, Mr. Malden,  
3 sorry to interrupt. It is one o'clock, just to let you  
4 know.

5 MR. MALDEN: Okay. Let's go off the  
6 record a moment then.

7 (Recess 1:00 - 1:54 p.m.)

8 (Exhibit No. 7 marked for  
9 identification.)

10 EXAMINATION (Continuing)

11 BY MR. MALDEN:

12 Q You've just been handed a document marked as Exhibit 7.

13 Do you recognize this document?

14 A It appears to be a publication from the Department of  
15 Health Office of Drinking Water.

16 Q Have you ever seen this before?

17 A I probably have. This particular document is identified  
18 as a, quote, "Fact Sheet," closed quote.

19 Q Does that have some particular meaning within the DOH?

20 A I think our publications folks have attempted to  
21 categorize various documents. Some may be question and  
22 answers in the format. Some may be fact sheets. Some  
23 may be a guidance document of some sort, but I think  
24 they've tried to characterize as best they can the type  
25 of document that they're -- that someone is looking at.

1 Q I'd like to direct your attention to the second bullet,  
2 or I should say the paragraph marked with the second  
3 bullet on the first page that starts "Black or dark brown  
4 water..."

5 **A Mm-hm.**

6 Q This particular document -- or, excuse me, this  
7 particular sentence reads: "Black or dark brown water:  
8 Often caused by manganese in the water or pipe sediment.  
9 Manganese does not pose a threat to human health," closed  
10 quote.

11 As far as you know, is this still the official  
12 position of the State of Washington Department of Health,  
13 that manganese poses no threat to human health  
14 whatsoever?

15 MS. MCWILLIAMS: Objection. Outside  
16 of the scope of this witness.

17 **A Again, we currently regulate manganese as a secondary  
18 contaminant, an aesthetic contaminant.**

19 Q (By Mr. Malden) I do understand that, but I'm wondering  
20 if you could answer my question the way that I phrased  
21 it.

22 MR. MALDEN: Could you read back my  
23 last question?

24 ////

25 ////

1 (Question on Page 72, Lines 6  
2 through 14, read by the  
3 reporter.)

4 **A Well, I would say that this would be -- this would**  
5 **represent what our position is currently.**

6 Q (By Mr. Malden) And I notice that in this sentence  
7 there's no indication of what level or concentration of  
8 manganese, is there?

9 **A No, there isn't.**

10 Q So a member of the public reading this, would it be  
11 reasonable for the average person to get the impression  
12 that no matter what the concentration of manganese in the  
13 water is, it's never going to hurt you to drink it?

14 **A Somebody may infer that.**

15 Q That would be a reasonable inference, wouldn't it?

16 **A I suppose.**

17 Q There's no indication on here whether there's a  
18 difference in risk posed to an infant or the elderly, is  
19 there?

20 **A No.**

21 Q Do you know if the DOH has a department or a division or  
22 a person or a group of people that are involved in  
23 studying the effects of consumption of manganese on human  
24 health?

25 **A I don't know that there's anybody who's focusing on**

1        **manganese.**

2        Q    Do you know where the -- or strike that.

3                Do you know what the DOH relies on in making the  
4        statement that manganese does not pose a threat to human  
5        health?

6        **A    I think they're relying on the fact that it's been**  
7        **regulated currently as a secondary contaminant and that**  
8        **EPA has yet to adopt a primary MCL or maximum contaminant**  
9        **level for manganese.**

10        Q    Do you know how many years ago the Environmental  
11        Protection Agency drew up its list of primary and  
12        secondary contaminants?

13        **A    Safe Drinking Water Act, my recollection it was adopted**  
14        **in 1974, and they basically referred to a number of**  
15        **standards that were adopted by the U.S. Public Health**  
16        **Service, I think in 1962, as, I'll say, interim**  
17        **standards, and then from that point on they've reviewed**  
18        **those and formally adopted a number of them as primary**  
19        **MCL standards.**

20        Q    When you say "they," who do you mean?

21        **A    EPA.**

22        Q    Would it be fair to state that the Department of Health  
23        is enforcing primary and secondary contaminant levels  
24        that were first devised over 40 years ago?

25        **A    Well, they are continuing to come up with new drinking**

1 water standards. So the Safe Drinking Water Act does  
2 require that the various standards be reviewed every six  
3 years and revised if necessary, so that's an ongoing  
4 effort by EPA to continue to review its standards.

5 We are -- we have adopted by reference all of the  
6 EPA standards, whether they're primary or secondary.

7 Q Would it be fair to state that the position of the State  
8 of Washington Department of Health is to defer completely  
9 to the federal government, specifically the EPA, to  
10 determine what primary and secondary contaminants should  
11 be regulated?

12 A For the most part, yes, the State does look to EPA to  
13 establish those standards, but there is the ability of  
14 the State Board of Health to independently set a standard  
15 if they feel it's necessary.

16 Q What would be the procedure involved in the DOH reviewing  
17 whether it's prudent to have standards more stringent  
18 than those set by the federal government in regard to  
19 drinking water?

20 A Well, again, it may be that sections of the agency gain  
21 an interest. And I don't know what might brought --  
22 bring that to their attention, but something may bring an  
23 issue to their attention. They also have to react, if I  
24 understand it correctly, to petitions for rule making,  
25 and so there may be a petition requesting the State Board

1 of Health to look at adopting a rule over a certain  
2 topic.

3 It may stem from a sampling that's done out in an  
4 environment for any one of a number of contaminants that  
5 then may prompt faster action by the State Board of  
6 Health in waiting for EPA to adopt the rule.

7 Q With regard to Exhibit 7, do you know if there's any  
8 other fact sheets regarding color, taste, and odor  
9 problems in drinking water that were more recently  
10 published by the DOH than 2011?

11 A I don't recall that there's anything newer.

12 Q Do you know what Exhibit 7 -- or strike that.

13 Do you know how Exhibit 7 has been distributed to  
14 the public?

15 A I believe it's available on our internet site.

16 (Exhibit No. 8 marked for  
17 identification.)

18 Q (By Mr. Malden) You've just been handed a document  
19 marked as Exhibit 8.

20 Do you recognize this document?

21 A I see it as a -- a policy that was produced by the  
22 division of drinking water in 1996.

23 Q Is this something though that you've seen before today?

24 A I believe I've seen it in -- I've seen it before, yes.

25 Q Do you know what the purpose of this document is?

1 **A** Well, at the time it was to, again, create policy on how  
2 to handle complaints that the department received.

3 **Q** From the public?

4 **A** Yes.

5 **Q** Regarding the quality of drinking water?

6 **A** Correct.

7 **Q** The effective date of this document says October 25,  
8 1996.

9 Are you aware of there being any more recent  
10 statement of policy or procedure that covers customer  
11 complaints?

12 **A** My own belief is that this has been rescinded, and I  
13 believe that people have been asked to refer to the  
14 design manual, but that's my current understanding of it.

15 **Q** Do you --

16 **A** I don't know if it's still in effect.

17 **Q** So it may have been rescinded? You're not sure?

18 **A** I'm not sure.

19 **Q** What would be the best way for us to verify whether it's  
20 been rescinded?

21 **A** I believe that that information may very well be  
22 available on our web page.

23 (Exhibit No. 9 marked for  
24 identification.)

25 **Q** (By Mr. Malden) You've just been handed a document

1 marked as Exhibit 9.

2 Do you know what this document is?

3 **A It appears to be an exported file from our database, our**  
4 **Sentry database.**

5 Q What's the Sentry database?

6 **A So most of the lab results that we get from certified**  
7 **laboratories among other things go into our database.**  
8 **Water system facility information is in that same**  
9 **database. We attempt to track compliance issues and**  
10 **violations through that database.**

11 And this appears to be a data request from a number  
12 of wells, sources, and I'm believing it to be manganese.

13 Q Do you know who created Exhibit 9?

14 **A I don't know who created it.**

15 Q Do you know when it was created?

16 **A No, I don't think so.**

17 Q Do you know what data was used to create Exhibit 9?

18 **A I can only believe that somebody asked for the manganese**  
19 **results from the database, and I don't know how**  
20 **thorough -- it's got a number of sources, so I don't know**  
21 **how far back the request went. I don't know all the**  
22 **parameters of the query into the database.**

23 Q What is the name of the database?

24 **A Sentry.**

25 Q Okay. Is that S-e-n-t-r-y?



1 **A Yes.**

2 Q I'd like to ask you just a couple questions about some of  
3 the columns, some of the titles in the columns.

4 There's one heading that says "ANALYTEGROUPCODE."

5 **A Mm-hm.**

6 Q And every column says "IOC."

7 Do you know what that is?

8 **A That generally stands for inorganic chemical or  
9 chemistry.**

10 Q Next to that is a column that looks like  
11 "SUSPSAMTESTPANELCODE."

12 "SUSPSAMTESTPANELCODE," do you know what that is?

13 **A No. I don't know if that -- that could mean suspended  
14 samples, but I'm not a -- I don't run this all the time.  
15 But again, test panel code would still refer to IOC, and  
16 IOC is short -- there might be an abbreviated panel of  
17 contaminants one tests for, is why it would be short, but  
18 if I was to hazard a guess, I would say those are  
19 suspended samples, suggesting to me maybe that all the  
20 information entered into Sentry, per se, may -- some of  
21 them may not be there, but I'm not -- that's my guess.**

22 Q The next heading is "WSGROUPCODE," and then the letter A  
23 in all columns.

24 Do you know what that is?

25 **A Yeah. Group A means it's a federally regulated water**

1 system. It's under -- it comes under the definition --  
2 it applies to the Safe Drinking Water Act.

3 Q And that is tied to the number of consumers served?

4 A The number of connections, number of population, the  
5 number of days the population is served.

6 Q Okay. The next column has the acronym "SAMNUM,"  
7 S-A-M-N-U-M.

8 Do you know what that is?

9 A I believe that might be a number assigned by a  
10 laboratory.

11 Q The next column says "SAMCMT."

12 There's nothing underneath that, but do you know  
13 what that means?

14 A I don't know that I know what that means. Mike may know.

15 Q There was a couple of other titles here under the columns  
16 "SANPURPOSECODE."

17 Do you know that what the?

18 A Well, I can only infer a couple of things. One, treated  
19 means the sample was collected after something passed  
20 through the treatment plant typically. Untreated means  
21 it more than likely was the water quality before it went  
22 into the treatment plant, is what I would interpret that  
23 to mean.

24 I don't know why "Fir Meadows" or "Design Approved"  
25 or that flows out in a sample purpose code. I don't

1       **know.**

2       **Q**    There's also columns that read "RESULTEQ" and "RESULTLT"  
3       and "RESULTNA."

4               Do you know what those three labels refer to?

5       **A**    Well, typically I'd say result -- if it's EQ, the result  
6       equals, meaning they came up with a number. Result less  
7       than, I'd say it's less than a certain value. And  
8       "RESULTNA," I'm not sure what that would mean.

9               And -- yeah, so I don't know what that means.

10       **Q**    Have you looked into any of the testing of samples from  
11       the Southwood well since Rainier installed a filtration  
12       system?

13       **A**    I have not.

14       **Q**    You are aware that after your visit and testing in  
15       November of 2016 that Rainier installed a filtration  
16       system on the Southwood wells?

17       **A**    They had a number installed, and they installed -- were  
18       getting design approval and were under construction after  
19       my visit at a number of sites.

20       **Q**    Do you know whether the DOH has monitored the test  
21       results of water samples since the construction of the  
22       filtration system?

23       **A**    I believe that Virpi was asking for some test results at  
24       the time she would receive the construction completion  
25       report indicating that the plant had been constructed.

1 Q If Rainier installed the filtration system and still the  
2 level of secondary contaminant, specifically manganese,  
3 is in excess of the level set by state law, what, if  
4 anything, would Rainier be required to do?

5 A Well, again, I think it depends upon whether or not we  
6 would get a response from the customer base that would  
7 bring us into the mix.

8 Q Okay. So if we had a situation where Rainier has put in  
9 this filtration system and still the water is testing --  
10 excuse me -- and still there is a level of manganese in  
11 excess of the secondary contaminant level set forth in  
12 state law, there's nothing that the DOH would do unless  
13 or until there's complaints from customers specifically  
14 submitted to DOH; is that right?

15 A Well, I want to be a little clear. If this was under a  
16 compliance action for us, we would probably not close out  
17 the compliance action until we knew that it, at that  
18 point in time, was working, but then in terms of ongoing,  
19 we would expect to see or hear customer complaints if it  
20 failed to work.

21 In this case, there was no compliance action, so we  
22 would be expecting them -- at the time of construction  
23 completion, it would make sense for all parties to make  
24 sure it works, and I believe Virpi was asking for those  
25 test results at the time of construction completion, but

1       **it wasn't in total regulatory framework.**

2   Q   Do you know what Rainier View Water tells its customers  
3       about how to file complaints regarding water quality?

4   A   **I don't know specifically what they say.**

5   Q   Would you expect Rainier View Water Company to advise the  
6       public that if they have a concern or a complaint about  
7       water quality they should submit that to the Washington  
8       State Department of Health?

9   A   **I think they would indicate again in their consumer  
10       confidence reports who regulates them from a health  
11       standpoint. I think they probably include our agency  
12       name and number, and they probably also refer to EPA.**

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

15                                   (Question on Page 83, Lines 5  
16                                   through 8, read by the  
17                                   reporter.)

18                   MR. MALDEN: And can you read back the  
19       answer?

20                                   (Answer on Page 83, Lines 9  
21                                   through 12, read by the  
22                                   reporter.)

23   Q   (By Mr. Malden) Okay. So if I understand your answer,  
24       it's -- your expectation would be in the annual report  
25       that Rainier View is supposed to send to customers, that

1 should advise the customers that if they have a complaint  
2 as to water quality it should be directed to the  
3 Department of Health?

4 **A And it's probably more along the lines of if they have**  
5 **questions about their water quality they could contact us**  
6 **or EPA.**

7 **Q** As I understand it though, the DOH is not going to take  
8 any enforcement action against a water purveyor like  
9 Rainier unless a certain number of people have come  
10 forward and submitted complaints to the DOH; is that  
11 right?

12 **A We try to follow what's in our design manual, which**  
13 **asking for the petition to make sure that others are**  
14 **having similar concerns.**

15 **Q** How does the DOH advise the public that if there's a  
16 concern about the water quality and Rainier is not  
17 addressing it to the satisfaction of the customer, they  
18 should request action by the DOH?

19 **A I think the expectation would be that they identify**  
20 **either, you know, through again contact with the water**  
21 **utility or through the internet or by calling a state**  
22 **agency or a county agency that they feel might be helpful**  
23 **and asking questions about "Who should I call if I have a**  
24 **complaint?"**

25 **And then once they have that number, they would call**

1 us. But again, you know, a lot of this depends somewhat  
2 on ownership. If it's a city owned water utility, one  
3 would expect somebody to call their city council person  
4 or their water district commissioner, if it's a district,  
5 or whomever and -- again to get a line on which agency  
6 regulates, who makes decisions, and who to call if they  
7 have a concern.

8 Q There are in fact cities and political subdivisions  
9 within -- or actually strike that.

10 There are in fact cities that provide water to the  
11 citizens; is that right?

12 **A Yes.**

13 Q It's a municipal service?

14 **A Right.**

15 Q And in that scenario, a municipal utility company that  
16 provides water, that is not a for profit enterprise, is  
17 it?

18 **A No.**

19 Q Rainier View Water Company is a for profit enterprise  
20 though, isn't it?

21 **A They expect a return on their investment.**

22 Q Would you also expect Rainier View to make decisions as  
23 to how to respond to customers based on what is in its  
24 own best financial interest?

25 **A I would hope that they are taking many factors into**





1 utilities so they can be more aware of the monitoring  
2 requirements that they have in the coming year.

3 Q Okay. If we could go to the second page. I'd like to  
4 ask you some questions about some of the notations here.

5 Over on the left side of the page, you can see a  
6 column that says "asbestos."

7 A Mm-hm.

8 Q And it says samples required zero, and then it has a  
9 compliance period and a frequency and so forth, that last  
10 sample date of August 5, 1999.

11 Now, can you tell me --

12 A Point that out to me again.

13 Q Okay.

14 A Okay. Okay.

15 Q When it says number of samples required, it says zero.

16 Do you know why that is?

17 A Well, again the asbestos monitoring requirement is from  
18 the distribution system, and it's dependent upon the  
19 amount of -- and the percentage of asbestos pipe that you  
20 have in your distribution system. So it may very well be  
21 that at Southwood there's very little asbestos in the  
22 actual distribution system. It may be primarily PVC  
23 pipe. So therefore, they would qualify for a waiver, and  
24 they may not have to monitor for asbestos.

25 Q Do you know when the last time was that Rainier View

1 Water Company tested for asbestos?

2 **A No. Well, it says here last sample date 8/5/1999, so...**

3 **Q** Okay. So if we're reading this correctly, the only --  
4 excuse me.

5 Does this mean that Rainier View Water Company last  
6 tested the Southwood water for asbestos in 1999?

7 **A That's how I would interpret this.**

8 **Q** And was Southwood required to test for asbestos at any  
9 time since 1999?

10 **A It looks to me like they received a nine-year waiver, so**  
11 **again -- but I don't know specifically the conditions of**  
12 **the waiver and again how much distribution pipe is**  
13 **asbestos and whether or not they're required to monitor**  
14 **for asbestos. I don't see a percentage on this sheet.**

15 **Q** The nine-year waiver, would that go back to 1999?

16 **A I would say they're talking about the compliance period**  
17 **from January 2011 to December 2019.**

18 **Q** What about the time period of 1999 to 2011?

19 **A Well, this water quality monitoring schedule is intended**  
20 **to be for the current year, and it doesn't provide really**  
21 **the historical perspective on what sampling was done**  
22 **prior to January 2011 other than it indicates what our**  
23 **database says with the last sample, which would be August**  
24 **1999.**

25 **Q** Would it be fair to state that according to this document

1 Rainier View has not been and will not be required to  
2 test the water for asbestos between August 5, 1999, and  
3 December of 2019?

4 **A I think I would probably -- again, understand that this**  
5 **is primarily for this calendar year, 2017, is the purpose**  
6 **of this water quality monitoring schedule. I don't know**  
7 **that it conveys what the requirements were prior to**  
8 **January 2011.**

9 Q If I could have you go to Page 3. Down near the bottom  
10 of the page, you can see under the heading "Bethel Ridge  
11 Well #1" there's reference to manganese and one sample  
12 required between January 2017 and December of 2019.

13 Now, do you see this column that I'm working with?

14 **A I believe so.**

15 Q Okay. Now, this says the last sample was March 7, 2013;  
16 is that correct?

17 **A Yes.**

18 Q So if the last sample was taken on March 7, 2013, when  
19 was Rainier View supposed to retest for manganese?

20 **A Again, this doesn't reflect what the monitoring**  
21 **requirements were for the prior compliance period, so**  
22 **it's -- it would be hard for me to say this is what the**  
23 **requirement were -- is, but generally speaking, it's**  
24 **every three years, but there may be waivers attached to**  
25 **some of those as well.**

1 Q It would appear from this document, wouldn't it, that  
2 Rainier View has not been required to test manganese in  
3 the Bethel Ridge well from March 7, 2013, to December of  
4 2019?

5 A I think the purpose is to tell and convey through this  
6 document what the monitoring requirements are for anyone  
7 of a number of constituents. So again, the requirement  
8 was there for them to sample in accordance with the water  
9 quality monitoring schedule for the year in which the  
10 monitoring schedule is prepared.

11 So clearly there is a requirement listed here that  
12 prior to June 2019, this well should be sampled for  
13 manganese.

14 Q Wouldn't it be fair to interpret the document as also  
15 indicating that there should have been another sample  
16 taken between March 7, 2013, and March 7, 2016, since  
17 that would be a standard three-year frequency?

18 A Unless there was a waiver that had been granted.

19 Q What would Rainier View have to do to obtain a waiver  
20 from manganese testing?

21 A I believe it would be a combination primarily of what  
22 prior results indicate and whether or not the contaminant  
23 was present was probably the biggest question that goes  
24 into waivers. Mike may be in a better position to  
25 explain the waiver process than I am.

1 Q If you discovered that Rainier View Water Company did not  
2 test for a primary or secondary contaminant every three  
3 years as required, is that something you would care  
4 about?

5 A Our program focuses on the primary contaminants, and we  
6 would -- if we became aware of a monitoring violation, we  
7 would write a violation letter to Rainier View explaining  
8 that they had a monitoring violation and that there would  
9 be with it a requirement to provide public notice to  
10 folks that they failed to monitor within a given  
11 compliance period.

12 Q And there would be a duty -- excuse me. Rainier View  
13 would have a duty to report that to the public even in  
14 the case of a secondary contaminant level if they didn't  
15 follow the testing frequency; is that right?

16 A I think for the most part. We would combine an IOC test,  
17 standard IOC test, and if they failed to monitor for this  
18 inorganic chemical test, that we would say they have a  
19 monitoring violation, and that they would have to  
20 indicate to folks that they failed to monitor for  
21 inorganic chemicals during the compliance period.

22 I don't know that we would expect them to list  
23 individual contaminants separately.

24 Q If I could have you go to Page 4. If you look partway  
25 down the page on the left, you can see the test panel

1 substance iron.

2 **A Mm-hm.**

3 Q Do you see that?

4 **A Yes.**

5 Q It looks like this is supposed to be on a standard  
6 three-year test program; is that right?

7 **A Yes.**

8 Q And it looks as though according to the DOH the last time  
9 that Rainier View tested for iron was April 17, 2014 --

10 **A Uh-huh.**

11 Q -- is that right?

12 **A That's what it says, yes.**

13 Q And Rainier View doesn't have to test for iron until June  
14 2019; is that right?

15 **A Correct.**

16 Q And so that would suggest, wouldn't it, that five years  
17 are going to go by between Rainier's performance of iron  
18 tests; isn't that right?

19 **A Five years may go by. I want to point out that the rules  
20 look at a compliance period of three years, and so it is  
21 conceivable that you could test in the first year of a  
22 compliance period and then in the last year of the next  
23 compliance period and still meet the monitoring  
24 requirements of the rule.**

25 Q Is that set forth in a rule book or instruction sheet

1       somewhere?

2   **A**   **I would think in the Safe Drinking Water Act regulations**  
3       **for inorganic chemical monitoring it would indicate the**  
4       **frequency of sampling.**

5   **Q**    Do you know who put together this water quality  
6       monitoring schedule?

7   **A**    **A large number of people would be involved in trying to**  
8       **pull this data from our database.**

9            So again, we have primarily -- each regional office  
10       has a source monitoring water quality specialist, and  
11       then there are two or three water quality specialists who  
12       oversee source monitoring in our headquarters office, and  
13       then it would require a large amount of time from our IT  
14       folks to develop the program and to develop this type of  
15       a report.

16   **Q**    Does that mean then that this particular document we've  
17       marked as an exhibit, this is not something that you keep  
18       in the ordinary course of business?

19   **A**    **It's available on our website, our Sentry internet is**  
20       **what we call it, our database, but it's a public version**  
21       **of our database, and it's intended for water utilities to**  
22       **be able to go access that site through the internet and**  
23       **to be able to take a look and see what sampling is due,**  
24       **primarily in the coming year.  Although, it would address**  
25       **the compliance period.**

1 Q Are you saying that Rainier View would have access via  
2 computer to this document, but the general public would  
3 not?

4 A I believe the general public can access it as well.

5 Q I notice at the top left-hand corner of the page there's  
6 the writing "generated on 8/27/2017."

7 A Mm-hm.

8 Q Do you know what that means?

9 A Well, I believe that it's intended to be current. That's  
10 been the goal. In the past water quality monitoring  
11 reports, it's been pretty hard and fast that we try to  
12 produce it at the beginning of the year, as close as  
13 possible to the beginning of the year, so people can  
14 budget and understand what sampling they have to do  
15 during the year and hopefully not miss a compliance  
16 period.

17 We've tried to make it realtime, and so it attempts  
18 to account for samples that have already been collected  
19 and to give people a realtime indication of what sampling  
20 remains. So this would be as of 8/27/2017. My  
21 understanding is sampling has yet to be done and would  
22 refer to sampling that maybe has been done.

23 So you can see just on this Page 4, 3/29/2017, it's  
24 clear for the Southwood 4 well that they took a nitrate  
25 sample.





1 the top of the page. It's actually highlighted in  
2 yellow. Paragraph 1, I guess you'd say paren C. "When a  
3 secondary violation occurs, the purveyor shall notify the  
4 department and take action as directed by the  
5 department."

6 Does that mean that in the state of Washington  
7 Rainier View Water Company has an affirmative legal  
8 obligation to notify the DOH if and when any of its  
9 testing shows a secondary contaminant level in excess of  
10 the Washington state trigger?

11 **A It would indicate to me that, yes, once the water system,**  
12 **water company, realizes it has a secondary contaminant**  
13 **violation it should call the department.**

14 **Q To your knowledge, has Rainier View Water Company called**  
15 **the DOH and reported secondary contaminant level results?**

16 **A I'm not aware that they have specifically called us.**  
17 **Typically we get results from the laboratories. So**  
18 **oftentimes, for most contaminants, we typically get**  
19 **notified through the lab result that comes in, and it may**  
20 **very well trigger something to say action may be**  
21 **required.**

22 So with many of our contaminants, that's how we  
23 become aware. Often there is confusion between the water  
24 utility and what its responsibility is and what the  
25 laboratory's responsibility is, and many of them rely on

1 the laboratory to submit the results to us, and sometimes  
2 that's inferred as being notification.

3 Q That would shift all of the responsibility onto you at  
4 the DOH to carefully study each test result and determine  
5 whether there's been an exceedance; is that right?

6 A Well, we accept the responsibility, and we focus our  
7 attention primarily on the primary standards. And so  
8 again, if we get a notice that arsenic is present, we  
9 usually do the outreach to the utility to indicate that  
10 we've seen the lab results and that if it's in excess of  
11 the MCL written response would be required.

12 Q Would it be fair to state then that as far as the DOH is  
13 concerned, you actually don't require the purveyor of  
14 water systems to provide you notice other than the  
15 submission of a test report if and when the submission of  
16 a test report is required?

17 A I think, in terms of efficiency, that is the way that it  
18 has worked itself out. It has been -- for the most part,  
19 we get notified through the lab of issues.

20 Q If I could direct your -- or strike that.

21 Well, who at the DOH sits there and looks at each  
22 test report when it comes in to see if there's been an  
23 exceedance?

24 A I believe that our database flags exceedances for clearly  
25 primary contaminants, and so our source monitoring person

1 would be flagged, for instance, if an arsenic sample was  
2 submitted that exceeded the standard.

3 Q Does your system flag for secondary contaminants?

4 A I don't know. I can't tell you.

5 Q If I could direct your attention to the bottom of Page 2  
6 of the exhibit. You can see that I've highlighted in  
7 yellow another section.

8 And at the bottom of the page, under "(3)(d)," it  
9 says "The purveyor of any public water system providing  
10 service that has secondary inorganic MCL exceedances  
11 shall take follow-up action as required by the  
12 department."

13 Is that official DOH policy still?

14 A I believe it's in the regulation.

15 Q Okay. So actually it's not policy. It's an affirmative  
16 duty on the part of both the DOH and Rainier View; is  
17 that right?

18 A To again take follow-up action as required by the  
19 department.

20 Q If you don't know whether your own system flags excess  
21 secondary contaminant levels, you would have no way to  
22 know whether you're taking follow-up action, would you?

23 A Well, we defer to the procedure that's outlined in our  
24 design manual to sit there and determine whether or not  
25 it is a problem for the community and to resolve whether

1 or not action needs to be taken.

2 MR. MALDEN: Can I have you read back  
3 my last question?

4 (Question on Page 98, Lines 20  
5 through 22, read by the  
6 reporter.)

7 Q (By Mr. Malden) Did you understand that question the way  
8 I phrased it?

9 A Well, I think I would -- we would know if we were taking  
10 follow-up action, if that's what your question was,  
11 because we would take and initiate the follow-up action.

12 Again, what prompts us to do the follow-up action is  
13 based upon the community's response to secondary  
14 contaminants in the drinking water.

15 Q Did I understand you correctly to say that when you get  
16 the test reports in, if there's an exceedance of a  
17 primary contaminant level, it's red flagged for you? Is  
18 that right?

19 A That's right. I believe it pulls out.

20 Q And that prevents the necessity of having an individual  
21 at DOH personally look at every individual test report  
22 and check it; right?

23 A Correct.

24 Q But as you sit here today, you don't know whether your  
25 system red flags a secondary contaminant exceedance;

1 right?

2 **A I do not.**

3 Q Can we fairly infer from that then the DOH -- or  
4 actually, strike that.

5 If we go back to the same section of the WAC -- I'm  
6 looking at -- on Page 2, (3)(d). I just read part of the  
7 section that talks about follow-up action.

8 The second sentence in that paragraph reads:  
9 "Follow-up action shall be commensurate with the degree  
10 of consumer acceptance of the water quality and their  
11 willingness to bear the costs of meeting the secondary  
12 standard."

13 That's essentially the same thought that is in the  
14 design manual, isn't it?

15 **A Yes.**

16 Q And that's the law in the state of Washington, isn't it?

17 **A It's regulation.**

18 Q And did Rainier View ever submit to you any data or any  
19 information relevant to consumer acceptance of the water  
20 quality and their willingness to bear the costs of  
21 meeting the secondary standard?

22 **A No, I don't believe so.**

23 MR. MALDEN: Okay. Thank you very  
24 much for your time. I don't have any further questions.

25 ////

EXAMINATION

BY MR. RANKIN:

Q Good afternoon, Mr. James. We met -- we were introduced earlier, but again, my name is Dan Rankin. I'm an attorney representing Rainier View Water Company in this action.

My questions for you are going to be a little more pointed to my client's concerns, and I'll have a couple of other follow-ups from Mr. Malden's questions, but we'll try to get you out of here as soon as we can.

So starting with complaints specific to Rainier View Water Company's Southwood Sound water system, do you know how many complaints there were about water quality since 2015?

**A Generally speaking, yes.**

Q And how many were there related to manganese?

**A I'm going to guess there might be two or three maybe, or sediment. I don't know.**

Q So sediment, not specifically manganese? It could have been other --

**A Possibly.**

Q Okay. But in any event, it did not hit the five complaint threshold to trigger --

**A Correct.**

Q Okay. Thank you.

1           And for my clarification, is the Chateau Woods water  
2           system different than the Southwood Sound water system?

3     **A   We have it listed as a separate water system.**

4     Q   So a complaint specific to Chateau Woods would not be  
5           considered one of the five that would trigger action for  
6           Southwood Sound; is that right?

7     **A   We would treat them as independent systems.**

8     Q   So I'm going to refer you to Exhibit 4, which was the  
9           series of emails amongst several folks.

10           But that complaint appears to be -- if you look at  
11           the middle -- the second paragraph in the email from Bob  
12           Blackman, it states that the complaining person lives in  
13           the Chateau Woods water system.

14     **A   Mm-hm.**

15     Q   Is that correct?

16           So that would be a separate system and would not be  
17           the same problem as the Southwood's water system;  
18           correct?

19     **A   Maybe a similar problem, but not associated with  
20           Southwood.**

21     Q   Okay. And so that would not be factored into the five  
22           complaint threshold for Southwood Sound?

23     **A   Correct.**

24     Q   Looking back to Exhibit 1, the Water Design Manual --  
25           we're going to stay on that same page that we were at



1 earlier Bates numbered 49 -- and right above where it's  
2 Roman numeral I, "Iron and Manganese," that paragraph  
3 talks about the five or more specific complaints  
4 associated with the secondary contaminant from different  
5 customers in a 12-month period.

6 Do you see where I'm at?

7 **A Yes.**

8 Q And so the end of that paragraph goes on to say, "When a  
9 problem is determined to be significant, the requirements  
10 below apply."

11 And the requirements below are where the Department  
12 of Health talks about a customer survey process; is that  
13 right?

14 **A Mm-hm.**

15 Q And so am I correct in understanding this that unless  
16 there is a five-complaint threshold exceeded and the  
17 department recognizes what they call a significant  
18 problem and directs some action, that survey is not  
19 required, is it?

20 **A Not until we get the -- can document that there were five  
21 or more customers.**

22 Q And so if a water company on their own decision decides  
23 to go forward with treatment, do they need to do that  
24 survey to comply with the Water Design Manual --

25 **A No.**

1 Q -- or other department regulations?

2 **A No, they would not.**

3 Q And generally speaking, the department encourages water  
4 companies to provide better quality water when it's  
5 possible, is that right, just as a general policy?

6 **A Yes.**

7 Q And would you agree that when Rainier View Water Company  
8 took it upon themselves to recognize that this one  
9 particular well was high in manganese and went through  
10 the process of obtaining an engineer and designing a  
11 system and then bringing it to your attention for  
12 approval, that was voluntary on their part?

13 **A Yes, it was voluntary.**

14 Q And it was something that the department would generally  
15 encourage; correct?

16 **A Correct.**

17 Q So thinking back to that November 2016 testing that you  
18 did on site with Rainier View Water Company and you found  
19 that the same day tests were high for manganese and the  
20 lab tests were high although slightly less high for  
21 manganese, did you issue an order to Rainier View Water  
22 Company to do anything?

23 **A Well, one, I didn't do the testing. So again, I observed**  
24 **the sample collection and the field test that was done.**  
25 **We did not issue an order requiring treatment for a**

1       specific action. We agreed that the well would not --  
2       well high in manganese would not be operated until  
3       treatment was provided.

4   Q   Are you aware of any other order issued to Rainier View  
5       Water Company regarding the Southwood Sound water system  
6       in the last five years?

7   A   **No.**

8   Q   Are you aware of any follow-up action that the department  
9       directed Rainier View Water Company to take regarding the  
10      Southwood Sound water system in the last five years?

11   A   **I didn't review thoroughly the sanitary survey that was  
12      done just prior to November and whether or not it had any  
13      specific requests of Southwood Sound. So that would have  
14      been in the sanitary survey, and something may have been  
15      identified in the survey, but I don't recall what it was.**

16   Q   Are you aware of any monitoring violations by Rainier  
17      View Company -- Rainier View Water Company specific to  
18      the Southwood Sound water system in the last five years?

19   A   **I don't recall if there was one.**

20   Q   I'd like to have you take a look at Exhibit No. 10, and  
21      I've got just a couple of questions about how this report  
22      works.

23               So you mentioned earlier that this report shows --  
24      based on the well, it breaks it down by test panels,  
25      required samples, what the compliance period is, the

1 frequency, the last sample date, and the next sample due.

2 Is there a way that you could tell from this report  
3 whether a sample is overdue?

4 **A I don't believe that, without understanding what the**  
5 **monitoring requirements were during the prior compliance**  
6 **period, that you can clearly state from this document**  
7 **what the requirements were. It is intended to be in the**  
8 **moment for the compliance period that we're talking**  
9 **about, and more specifically for the calendar year in**  
10 **which it was introduced.**

11 We make an attempt at the first of the year, as soon  
12 as we can, to get this online so people can understand  
13 what's expected of them in the coming year.

14 **Q But as we look at -- you know, let's look at Page 3. The**  
15 **top next sample due is May of 2019.**

16 **A Mm-hm.**

17 **Q If June 2019 comes and goes, and that sample hasn't been**  
18 **done, would that report still show May 2019?**

19 **A I don't know if that would change. There is a purpose on**  
20 **there to include the month in hopes that these samples**  
21 **from all 4,000 systems in the state are not collected in**  
22 **December. It would overwhelm the laboratory capacity.**  
23 **So there is an attempt made by our source monitoring**  
24 **people to spread these samples throughout the 12-month**  
25 **period if at all possible so -- again so laboratories**

1 aren't overwhelmed.

2 So if one is not submitted in May, I don't know that  
3 it would change to the next month and say June. Again,  
4 it's intended though that prior to December 2019 that  
5 that sample get collected, but this is not a regulatory  
6 requirement for May on the next sample due date. It's a  
7 recommendation to avoid overwhelming the laboratories.

8 Q Would it be fair to infer from this document that if all  
9 of the next samples due are sometime in the future, and  
10 there are no dates from, you know, say, earlier this year  
11 or from 2016 showing as a next sample due, would it be  
12 fair to infer that all of the testing is up-to-date and  
13 current as of the generation of this report?

14 A Again, just taking a look again at this Page 3, for  
15 instance, on volatile organics they have a six-year  
16 waiver. The last sample was in 2015, and so within this  
17 compliance period of December 2019, there is not a sample  
18 due date listed. So that would appear to me that it's  
19 been satisfied for the compliance period because there's  
20 no next sample due listed.

21 Q But if there's no -- if the next sample due is either  
22 blank or sometime in the future, would it be fair to  
23 infer that for that particular test they are current?

24 A The sample requirement for the compliance period is  
25 current is how I would interpret that.

1 Q So as I look through all 14 pages of this report and I  
2 see a lot of 2019, 2018, 2020, but I see nothing from a  
3 past date, and for that matter, nothing from 2017, would  
4 it be fair to infer that as of the date generated,  
5 8/27/2017, the testing is current for all of the tests  
6 listed on this report?

7 **A Well, again, I think this is to highlight and provide the**  
8 **utility with an understanding of the samples that need to**  
9 **be collected. And so that is the attempt that's been**  
10 **made here, is to identify if there's a next sample due**  
11 **date within the compliance period.**

12 This is recommending to you -- or telling you or  
13 informing the utility what the sampling requirement is.  
14 I don't think it's an inference to say this is what we  
15 use to determine whether or not they've complied with the  
16 regulation.

17 Q Okay. But going back to my earlier question, you're not  
18 aware of any monitoring violations?

19 **A I'm not aware of any.**

20 Q When a water company tests for secondary contaminants and  
21 they find that one of their wells tests in exceedance of  
22 a secondary maximum contaminant level, is there a  
23 standard course of action? Is that where you go into the  
24 way the needs of the customers versus the costs involved,  
25 or is there an intermediate step of saying more testing,

1 more frequent testing, anything like that?

2 **A There's not a --**

3 MS. MCWILLIAMS: Objection. It's  
4 compound.

5 **A There's not a requirement for more testing. Again, I**  
6 **think one thing that needs to be identified is the**  
7 **historical perspective on many of these wells that are**  
8 **tested have been in existence for a number of years,**  
9 **decades even, and so the history of many of these wells**  
10 **has been long established as to whether or not any of**  
11 **these contaminants in the inorganic chemical phase are**  
12 **present.**

13 So again, it's challenging to think of reacting to  
14 one because of the latest test when a sampling history  
15 has been fairly well established for many of these wells  
16 over a long period of time.

17 **Q** (By Mr. Rankin) You mentioned earlier, towards the very  
18 beginning of our day, that when you saw that the test  
19 that you observed at the well in question came back at a  
20 .11, I believe you mentioned that it's not uncommon, or  
21 at least I should say, there are other water systems out  
22 there in the state that routinely test at a .11.

23 Did I understand that correctly?

24 **A I think without having any numbers, there are a number of**  
25 **utilities that provide water that exceed the secondary**

1       contaminant level for iron and/or manganese.

2   Q   Is there -- can you ballpark how many that would be?

3   A   I don't think I could begin to ballpark how many.

4   Q   Okay.

5   A   That would be challenging.

6   Q   I'd like to have you take a look at Exhibit 11. In  
7       looking at the highlighted portion on Page 1, it says,  
8       "When a secondary standard violation occurs, the purveyor  
9       shall notify the department and take action as directed."

10       Can you clarify for me what constitutes a secondary  
11       standard violation?

12   A   Well, in our list of maximum contaminant levels I believe  
13       there's a separate category that points out which ones  
14       are secondary and physical contaminants. So there's a  
15       fairly good list of system -- or of contaminants,  
16       including iron and manganese, that would be identified in  
17       that list, and I believe that's in the Section 310.

18   Q   And so would a violation occur if a water company is  
19       doing a special purpose testing on some particular well  
20       and notices a test above the secondary maximum  
21       contaminant level?

22   A   We allow investigative samples to be collected.  
23       Typically at the time a sample is submitted to the  
24       laboratory, we have an expectation that it will be marked  
25       either for investigation or for compliance, and on our



1 forms it will be marked. There's an opportunity to check  
2 the box on the purpose of the sample.

3 Q So does the department only consider compliance tests  
4 when it looks at secondary standard violations under  
5 Section 320?

6 A Our expectation is that labs will submit to us any sample  
7 results when the samples are marked for compliance.

8 Q And the last exhibit I'm going to have you take a look at  
9 is Exhibit No. 3, the 2008 Memorandum of Understanding.  
10 We're going to look at Page 4.

11 The very bottom bullet point on Page 4 states that  
12 "One of the general roles and responsibilities of the  
13 Department of Health Office of Drinking Water is to  
14 provide the UTC with the compliance status of water  
15 systems owned by UTC regulated water companies"; is that  
16 correct?

17 A Yes.

18 Q Is Rainier View Water Company currently considered  
19 compliant?

20 A We tend to use the word "significantly in compliance" or  
21 "significant noncompliance," and I would say we would  
22 recognize them to be generally in compliance.

23 Q Was that the case in 2016? Are you aware?

24 A It hadn't risen to any level to where we were considering  
25 taking what I would call a compliance action against

1       **Rainier View.**

2       Q    Is that the same for 2015?

3       A    **I believe so.**

4       Q    So at no time since 2015 has the department been  
5       considering taking compliance actions against Rainier  
6       View Water Company?

7       A    **I'm not aware of any.**

8                               MR. RANKIN:  Thank you, Mr. James.  
9       That's all I've got for you.

10                              FURTHER EXAMINATION

11       BY MR. MALDEN:

12       Q    I have a few follow-up questions --

13       A    **Uh-huh.**

14       Q    -- based on that.

15               Throughout the deposition today we've been using  
16       this word "complaint," and we pointed out that it's an  
17       important term to the DOH and to others.  I realize that  
18       I hadn't asked you to define a complaint.

19               So when you were answering questions and you  
20       indicated that, well, the threshold is we have to have  
21       five complaints from consumers, can you explain to me  
22       what constitutes a complaint for purposes of counting  
23       those five?

24       A    **Well, it may be -- for instance, on an extremely hot day,**  
25       **it may be that I've run out of water or I have low**

1 pressure. And so again, they may call up -- somebody may  
2 call us up and say, "I've got low pressure."

3 And then the typical questions are in response,  
4 "Have you checked with any of your neighbors?" trying to  
5 determine whether it's a pressure problem in the house,  
6 their own plumbing, or is it common throughout the  
7 neighborhood. "Have you checked with other people?" to  
8 kind of say this is a problem that goes beyond maybe just  
9 the owner's plumbing, that it is more of a system  
10 problem.

11 So trying to ascertain does your neighbor have  
12 cloudy water too, does your neighbor notice a weird  
13 smell. All of those things are trying to understand the  
14 extent of the concern that's being expressed by the  
15 customer.

16 So we can have complaints about appearance. We can  
17 have complaints about the taste. We can have complaints  
18 about, you know, "They shut off my water." "I've got a  
19 water main that's leaking out in front of my house, and  
20 it's eroding away the street. I need to have it fixed."

21 A complaint can be just any kind of elevated concern  
22 over either the quality, the quantity, or the reliability  
23 of service or just the level of service that a water  
24 utility is providing the customer at a moment in time.

25 Q And it's fair to state that that complaint may come in

1 the form of a phone call?

2 **A Correct.**

3 Q It may come in the form of a written letter or an email?

4 **A Right.**

5 Q But if someone were to call and say that "I'm served by  
6 Rainier View Water, and this water has a brown  
7 discoloration to it," that alone would qualify as a  
8 complaint, wouldn't it?

9 **A Yes.**

10 Q And what about a complaint that's registered on Rainier  
11 View Water's own website, would that be a complaint that  
12 would have any significance to the DOH, or because it  
13 wasn't directed to you, it's not one you'd consider?

14 **A Well, we don't peruse a utility's website as a common  
15 practice, so we would -- whether it's there, we would  
16 have no way of being aware that there was that complaint.**

17 Q You may recall earlier in the deposition I told you that  
18 I just took the deposition of Bob Blackman, and he  
19 testified under oath that between June 2015 and June 2016  
20 they received 400 complaints that required them to do a  
21 service order where they physically go out and meet with  
22 the customer.

23 You had no idea of that, did you?

24 **A I wasn't aware of 400 complaints, no.**

25 Q Would 400 complaints be a significant volume of

1 complaints from your perspective?

2 **A** It depends a lot on the -- I suppose the relative size of  
3 the system and what we know of the issue in and of  
4 itself.

5 You know, we've -- we have complaints over water  
6 main breaks. It can affect a large number of customers,  
7 depending upon the size of the utility. So what's the  
8 nature of the complaint?

9 But by and large, if we were to receive 400  
10 complaints on a system the size of Southwood, we would be  
11 overwhelmed, and I would say that's significant.

12 **Q** What --

13 **A** Now, is it one issue or multiple issues is something we'd  
14 have to go in and take a look at, the nature of the  
15 complaints, to totally appreciate what was being  
16 communicated to us.

17 **Q** Given our review of the applicable WAC regulations, do  
18 you feel that Rainier View Water Company had an  
19 affirmative legal obligation to report those 400  
20 complaints to you?

21 MR. RANKIN: Objection. That's a  
22 legal conclusion.

23 **A** I'm --

24 **Q** (By Mr. Malden) Let me rephrase the question.

25 MS. MCWILLIAMS: Join.

1 Q (By Mr. Malden) Wouldn't you expect, given the language  
2 of Washington Administrative Code 246-290-320 that if  
3 Rainier View Water had 400 complaints in a one-year  
4 period regarding the appearance and coloration of the  
5 water that they would have an affirmative duty to report  
6 that to you?

7 MR. RANKIN: Same objection.

8 A Again, I don't believe there's anything that requires  
9 somebody to report complaints that they receive to us. I  
10 think our expectation is that they will respond to those  
11 complaints and that that's what the expectation is, but  
12 we do not in general have dialogue with utilities to  
13 determine how many customer complaints they receive in a  
14 year and judge the utilities by the number of complaints.

15 Q (By Mr. Malden) Would it be fair to state that the DOH  
16 could care less how many customers complain to the water  
17 company if it's not directed to the DOH?

18 A I don't -- I think we are concerned with the quality of  
19 service that all of the customers of public water systems  
20 receive, and we do want to be made aware of it. It's  
21 just a question of our ability to have sufficient  
22 resources to do that type of investigation and get an  
23 understanding.

24 We don't have that kind of resource available, and  
25 so it's -- it may be unfortunate. People have to let us

1 know of when they're having issues with their water  
2 utility.

3 Q You were asked a few questions about compliance actions.

4 How many compliance actions, if any, has the  
5 Washington State DOH taken against water purveyors in the  
6 last five years?

7 MS. MCWILLIAMS: Objection. Outside  
8 the scope of this witness.

9 A I don't have an answer for you on that. Again, we try to  
10 look at violations, and then we try to look at consistent  
11 violations over a period of time. And if the number of  
12 violations rise to a certain number, then we go and we  
13 follow up with a compliance effort to try to again get  
14 corrective measures, if necessary, by the water utility  
15 to correct and prevent more violations from occurring.

16 Q (By Mr. Malden) How long have you worked at the DOH?

17 A I've worked with the drinking water program for thirty --  
18 a little over 38 years.

19 Q In the 38 years that you've been employed by DOH, are you  
20 aware of a single compliance action that the Washington  
21 DOH has taken against a water purveyor?

22 A A compliance action against a water purveyor?

23 Q Yes.

24 A Yes.

25 Q Approximately how many?

1 **A** Boy. I'm reviewing 38 years of history. And again to  
2 what extent we're talking about, probably 20 or -- from  
3 our region, probably 20 or 30 compliance actions. We  
4 currently have on our list about 70 or so active  
5 compliance issues that we're looking to resolve.

6 **Q** When you say you have 70 compliance issues that you're  
7 looking to resolve, are those actually compliance actions  
8 that have been taken?

9 **A** Depending upon your definition of what one is, but it's a  
10 notice of violation followed up by a compliance agreement  
11 or a notice of a correction or an agreed notice of  
12 correction to try to resolve issues.

13 **Q** In the 38 years that you've been at DOH, has the DOH, to  
14 your knowledge, ever initiated a compliance action over a  
15 secondary contaminant level exceedance?

16 **A** I believe we probably have, but I can't point to a case.

17 **Q** Would it be fair to state that the Washington State  
18 Department of Health is not interested in pursuing  
19 compliance actions against water purveyors over excess  
20 secondary contaminant levels?

21 **A** I think we're interested in partnering with the water  
22 utility and consumers to resolve problems and to get the  
23 commitment that all sides will work to solve problems and  
24 provide safe and reliable drinking water. And whether  
25 that's through a compliance action or through negotiation



1 or education, we would be working to satisfy all parties.

2 MR. MALDEN: Okay. Thank you very  
3 much for your time. I appreciate it. I don't have any  
4 further questions.

5 THE WITNESS: All right. Thank you.

6 MR. RANKIN: I've got nothing further.

7 (Signature reserved.)

8 (Deposition concluded at

9 3:21 p.m.)

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STATE OF WASHINGTON ) I, Valerie L. Torgerson, CCR, RPR,  
 ) ss a certified court reporter  
County of Pierce ) in the State of Washington, do  
hereby certify:

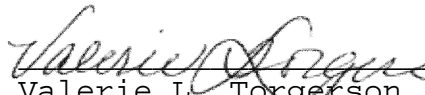
That the foregoing deposition of ROBERT E. JAMES was taken before me and completed on August 30, 2017, and thereafter was transcribed under my direction; that the deposition is a full, true and complete transcript of the testimony of said witness, including all questions, answers, objections, motions 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 22nd day of September, 2017.

  
Valerie L. Torgerson, CCR, RPR  
Certified Court Reporter No. 2036  
(Certification expires 09/03/17.)



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