

Exhibit T-__ (DL-1T)
Docket Nos. UW-031284/010961/
031596 (consolidated)
Witness: Denise Lahmann

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

AMERICAN WATER RESOURCES,
INC.,

Respondent.

DOCKET NO. UW-031284 &
DOCKET NO. UW-010961
DOCKET NO. UW--31506
(consolidated)

TESTIMONY OF

Denise Lahmann

STAFF OF
WASHINGTON DEPARTMENT OF HEALTH

April 1, 2004

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Denise Lahmann. My business address is 2411 Pacific Avenue, Olympia, Washington.

Q. By whom are you employed and in what capacity?

A. I am employed by the Washington Department of Health (DOH) as Regional Manager for Southwest Drinking Water Operations. I have held this position for 4 months.

Q. How long have you been employed by DOH?

A. I have been employed with DOH for 7 1/2 years, holding various positions including Assistant Regional Manager and Regional Engineer.

Q. Please describe your current job duties.

A. As Regional Manager, I am responsible for the regulation of public water systems in the 12 counties of the Southwest Region of the state, helping to ensure they provide safe and reliable drinking water to their customers.

1 To accomplish this, I supervise 20 state employees in the regional office
2 who have the same mission.

3

4 **Q. Are you familiar with American Water Resources, Inc. (AWR)?**

5 A. Yes. While I did not have direct involvement with the Company through
6 my earlier county assignments (AWR owned few systems in Kitsap
7 County; none in my other assigned counties), I have worked with AWR
8 minimally when I was the Assistant Regional Manager, as planning and
9 compliance issues have come up. I also had contact with citizens
10 interested in the detail of AWR's chlorination reports on various systems
11 when there was a lawsuit related to the Crowder Road system. As
12 Regional Manager, becoming more familiar with the situation, particularly
13 with regards to satellite management, planning and compliance issues,
14 has been an objective. The situation has appeared to not be moving to
15 resolution. I have also spoken to Mr. Fox a couple of times in recent
16 weeks over his request to perform satellite management services for
17 additional systems.

18

1 Q. Have you reviewed the testimony and exhibits filed by Virgil Fox
2 before the Washington Utilities and Transportation Commission
3 (WUTC) in Docket No. UW-031284/UW-010961/UW-031596
4 (Consolidated) on February 19, 2004?

5 A. Yes, I have.

6
7 Q. What is the scope of your testimony?

8 A. I will discuss AWR's business plan, United Utilities' Satellite Management
9 Agency (SMA) application, and DOH's relationship with American Water
10 Resources, Inc. (AWR). I will also discuss the list of about 90 capital
11 improvement projects identified by AWR in 1999 (updated to 61 in 2001),
12 as part of its capital improvement budget, and as referenced in the
13 settlement agreement negotiated between AWR and DOH in 1999, and
14 signed on January 10, 2000. I will discuss DOH's Group B Project, which
15 includes local health staff conducting site assessments of Group B public
16 water systems with three or four connections. Also, I will discuss the
17 Birchfield Water System in Lewis County.

18

1 Q. Do you sponsor any exhibits in this proceeding?

2 A. Yes, I am submitting the following documents:

3 Exhibit No. ___ (DL-2), DOH Letter to AWR dated 8/9/02

4 Exhibit No. ___ (DL-3), DOH Letter to AWR dated 9/18/02

5 Exhibit No. ___ (DL-4), DOH Letter to UTC dated 6/30/98

6 Exhibit No. ___ (DL-5), DOH Letter to AWR dated 6/30/98

7 Exhibit No. ___ (DL-6), Settlement Agreement, DOH-AWR, Docket No.

8 99-04-C-1046DW

9 Exhibit No. ___ (DL-7), AWR Water System Plan Capital Improvement

10 Program dated 5/18/01

11 Exhibit No. ___ (DL-8), DOH Letter to AWR dated 3/15/99

12 Exhibit No. ___ (DL-9), DOH Letter to AWR dated 4/1/99

13 Exhibit No. ___ (DL-10), DOH Letter to AWR dated 10/19/99

14 Exhibit No. ___ (DL-11), Notice of Imposition of Penalties, DOH-AWR,

15 Docket No. 99-034

16 Exhibit No. ___ (DL-12), DOH Compliance Order, Docket No. 99-007

17 Exhibit No. ___ (DL-13), Group B Project Report, DOH Publication 331-243

18 Exhibit No. ___ (DL-14), Initial Birchfield WFI

19 Exhibit No. ___ (DL-15), Birchfield WFI dated 9/2002

- 1 Exhibit No. ___ (DL-16), WFI dated 6/19/03, Birchfield
- 2 Exhibit No. ___ (DL-17), Expansion Request, Excerpt, Birchfield
- 3 Exhibit No. ___ (DL-18), DOH Letter to AWR dated 11/25/02
- 4 Exhibit No. ___ (DL-19), DOH Letter to United Utilities dated 7/31/00
- 5 Exhibit No. ___ (DL-20), AWR Letter to DOH dated 5/27/98
- 6 Exhibit No. ___ (DL-21), AWR letter to DOH dated 8/6/98
- 7 Exhibit No. ___ (DL-22), Howard Godat, Pantier and Associates Letter to
- 8 UTC dated 2/22/99
- 9 Exhibit No. ___ (DL-23), AWR letter to DOH dated 12/3/99
- 10 Exhibit No. ___ (DL-24), AWR letter to DOH dated 9/3/99

11

12 **II. AWR'S BUSINESS PLAN AND RAPID GROWTH OF COMPANY**

13 **Q. Are you familiar with AWR's corporate goals, as described in AWR's**

14 **1996 Water System Plan on file with DOH?**

15 **A.** Yes. They are very similar to those expressed in the 2001 update. They

16 expect to run a successful (financial sound) water utility business that

17 buys and/or manages water systems to meet reliability and water quality

18 standards, per the Safe Drinking Water Act, and applicable state

19 regulations. Their business plan expects that increasing the number of

1 customers they serve will give them economy of scale and allow hiring of
2 competent employees.

3

4 **Q. Does AWR have a business plan that would benefit water customers?**

5 A. Yes, I believe the concept of a larger entity with greater resources
6 (managerial and financial) is of benefit to water customers on multiple
7 small water systems. This is the satellite management agency approach
8 DOH has formalized in regulation. Public utility districts also do this.
9 Having competent management, i.e. people in the business of providing
10 drinking water, is preferable to having the responsibility fall on one of the
11 neighbors or someone in the community for whom drinking water is a
12 secondary job.

13

14 **Q. Has AWR been successful in implementing its corporate goals?**

15 A. AWR has been successful in acquiring a large number of small water
16 systems and negotiating contracts to manage others. Their 2001 Water
17 System Plan (WSP) submittal says they acquired ownership of 157
18 systems in their first four years, and managed an additional 33 systems.
19 In the 1997-1999 time period, when 5 systems had public health problems

1 and DOH had to issue orders and penalties to get the necessary
2 improvements made, we would not have considered AWR to be
3 successful. Since that time, customer complaints have dropped off, and
4 we have had no further water quality-related issues with AWR systems.
5 However, DOH is still awaiting capital improvement and financial
6 viability information that will assure us that they can be successful in the
7 long run.

8

9 **Q. Once a company submits a water system plan, what does DOH require**
10 **of the company?**

11 A. Once a water system plan (WSP) is submitted to DOH, a review process
12 takes place. The water system and/or satellite management agency (SMA)
13 is expected to adequately respond to DOH comments. Once this dialog
14 process is concluded, DOH issues approval of the WSP. Because the plan
15 shows detail for a six year period, and generalities for a 20 year period,
16 DOH requires a WSP update to be submitted every six years, to continue
17 to demonstrate physical, management and financial capacity to provide
18 safe and reliable drinking water. SMA plans are due for update, by
19 regulation, every five years. The WSP for organizations that own many

1 public water systems is usually broken up into an “umbrella” plan (also
2 known as “part A”), which gives overall policies, procedures, and
3 financial information, and into the “part B” elements, which are the
4 individual specific engineering, water quality and capital improvement
5 plans for a single public water system. AWR became an approved SMA
6 for certain counties in May 1996, although it was known as Lewis County
7 Utility Corporation at that time. It gained approval for the umbrella
8 portion of the WSP and for some 26 individual systems in May of 1997.
9 AWR’s WSP plan update was due to be approved by May 2003. The SMA
10 plan was due in 2001. Neither is currently approved. An updated SMA
11 plan has not been submitted. WSP amendments and updates have been
12 submitted, mostly in response to DOH requests for updated financial
13 viability information. DOH’s concern for the financial condition was
14 precipitated by AWR letters in May and August 1998 notifying DOH that
15 AWR was suspending all non-critical expenditures. Exhibits No. ____
16 (DL-20); Exhibit No. ____ (DL-21).

17

1 **Q. Did AWR file a water system plan for approval in 2003?**

2 A. AWR has submitted some updates to DOH for its umbrella plan since the
3 original 1997 WSP, to respond to financial viability issues. As noted in our
4 8/9/02 letter to AWR, we have developed an approach for submittals that
5 is consistent with the 2000 settlement agreement. Exhibit No. ___ (DL-2).
6 We are looking for system-specific capital improvement justification and
7 over-all company financial viability before any approval is given. This is
8 noted in the previous answer. A few individual (part B) elements have
9 been received by DOH in the last year or two. These have been reviewed
10 by the appropriate regional office staff and DOH is awaiting AWR's
11 response to DOH comments.

12
13 **Q. How has DOH responded to AWR's failure to submit a water system
14 plan as required?**

15 A. DOH has turned all Group A water system operating permits yellow,
16 indicating lack of current approved WSP and lack of current financial
17 viability information. They will remain in that category until appropriate
18 information is provided to DOH, and approved. Exhibit No. ___ (DL-3).
19 No formal compliance actions are pending at this time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Q. Mr. Fox states in his testimony that part of AWR’s corporate goals was to pay “particular attention to the letter of DOE, DOH, and UTC regulations” in a manner that was cooperative and mutually beneficial to the Company, its customers, and its regulators. Exhibit No. ___ (VRF-1T) at 8:20 to 9:2. With regard to DOH, has this happened?

A. As answered elsewhere, this has not always happened. Compliance orders and penalties were among the actions DOH took in response. Since the time those were resolved (early 2000), no further public health/water quality problems have come to our attention. But DOH is still waiting for AWR to comply with terms of the settlement agreement signed in January 2000.

Q. What terms of the settlement agreement has AWR failed to comply with?

A. AWR has not yet submitted any of the documentation required under II. B.: update of each individual Group A plan element with engineering justification for identified capital improvements, updates of each Group B element with basic information and discussion of the needed

1 improvement, a revised operations and maintenance plan for all systems
2 owned and/or operated by AWR, the revised financial viability portion of
3 its SMA plan and WSP which demonstrates its abilities to respond to and
4 make improvements to respond to emergencies without obtaining prior
5 funding approval from UTC, other revisions to the financial plan for long
6 term improvements and other specific details enumerated in the
7 settlement agreement.

8

9 **Q. Mr. Fox testifies that the WUTC and DOH believe that AWR expanded**
10 **too quickly. Exhibit No. ___ (VRF-1T) at 10:5-7. With regard to DOH, is**
11 **this an accurate assessment?**

12 A. Yes. DOH observed AWR acquire many small water systems in its initial
13 years. Several factors indicated to DOH that AWR had expanded faster
14 than its ability to manage all the systems. DOH received a high number of
15 customer complaints about slow response by the company to customer
16 calls about system problems. Another indicator for DOH was the need to
17 issue orders and penalties to get immediate public health improvements
18 made.

19

1 Q. Mr. Fox testifies about AWR purchasing water systems that were in
2 poor condition. Exhibit No. ___ (VRF-1T) at 19:5-10. Mr. Fox also
3 testifies that AWR moved as fast as possible to bring conditions “up to
4 standards.” Exhibit No. ___ (VRF-1T) at 19:11-12. Please respond.

5 A. A letter from DOH to UTC, dated 6/30/98, indicates that AWR was
6 acquiring a number of systems that had been considered to be problems
7 systems – with little or no water quality monitoring and/or maintenance
8 or adequate staff. Exhibit No. ___ (DL-4) at 1. Many small independent
9 (not owned by AWR) water systems are still not meeting DOH standards,
10 which is an on-going problem that we have tried to address in multiple
11 ways, including encouraging satellite management for existing systems
12 and requiring it for new ones. I can find nothing to substantiate or refute
13 Mr. Fox’s assertion that they moved as fast as possible. We did
14 acknowledge that he was providing enhanced service to many of the
15 systems. *Id.* One of the common things we observe in larger systems
16 taking over smaller, deficient systems, is the amount of money it takes to
17 make the improvements, and bring the smaller systems up to the other’s
18 standard. DOH sent Mr. Fox a letter dated 6/30/98 regarding this
19 investment issue. Exhibit No. ___ (DL-5).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

Q. Mr. Fox testifies that AWR has “voluntarily agreed to curtail further expansion until such a time as it is acknowledged to be in compliance with DOH health related rules.” Exhibit No. ___ (VRF-1T) at 10:8-10. Please respond.

A. One of the things Mr. Fox offered as DOH pursued penalties and SMA approval revocation in 1999, was to curtail further expansion of AWR. Exhibit No. (DL-23) This was incorporated into the 2000 settlement agreement. AWR has to provide specified information to DOH before expansion of AWR will be permitted. Exhibit No. ___ (DL-6).

Q. Has AWR or the SMA bought or assumed management of additional water systems since entering into the 2000 settlement agreement with DOH?

A. As far as I know, AWR has not acquired any additional systems or agreed to operate any others not listed at the time of the 2000 settlement. AWR did sell a number of systems to Peninsula Light, Gig Harbor around 2002.

1 **III. 1999 CAPITAL IMPROVEMENT BUDGET**

2 **Q. Are you familiar with the capital improvement budget prepared by**
3 **AWR in 1999, which identified over 90 capital upgrades?**

4 A. I am aware that a list was submitted in 1998, and has been updated at least
5 twice. The 1999 version was provided to UTC and DOH by consultants
6 Howard Godat, Pantier and Associates in February 1999. Exhibit No. ____
7 (DL-22). The current version in the draft WSP is dated 5/18/01. Exhibit
8 No. __ (DL-7). It reflects 69 separate projects on 44 Group A and B
9 systems. The 1999 capital improvement budget was the basis for a
10 requested surcharge presented to UTC in 1999.

11
12 **Q. What happened with that list?**

13 A. The original list of capital items was revised to reflect key public health
14 issues – items of highest priority to accomplish. Subsequent submittals of
15 the capital plan to DOH have eliminated items identified for the 13
16 systems that were funded in the eventual surcharge. Obviously, there are
17 other on-going capital needs required by the various water systems, and
18 DOH expects AWR to present them in the WSP and to plan to accomplish
19 them in a timely way – and demonstrate it can afford to do that.

1

2 **Q. How did the list of capital improvements decrease from 90 to 13 items in**
3 **1999?**

4 A. The list of capital improvements was narrowed down to critical public
5 health improvements necessary on 13 water systems (48 separate items
6 listed in Docket UW-990518). I can find correspondence that indicates
7 some consultation between AWR and DOH, with UTC's interest in
8 determining key items. Exhibit No. ___ (DL-8); Exhibit No. ___ (DL-9).
9 DOH regional offices primarily looked to existing 1999 orders for systems
10 that had coliform violations (boil water advisories) for the highest priority
11 improvements. This priority list (12 systems at the time) was conveyed to
12 AWR in a WSP review letter dated March 15, 1999. Exhibit No. ___
13 (DL-8).

14

15 **Q. Mr. Fox has indicated that no explanation was provided with regard to**
16 **why the list of capital improvements was narrowed to 13 items. Exhibit**
17 **No. ___ (VRF-1T) at 30:2-3. Is that true?**

18 A. I can find a record of a meeting with the two agencies and AWR in
19 September 1999, where progress on a DOH compliance order for five of

1 the thirteen systems was discussed. Exhibit No. ____ (DL-24). The 3/15/99
2 letter noted above conveyed the approach to AWR. Exhibit No. ____ (DL-
3 8). A follow-up letter from DOH to AWR, dated October 19, 1999,
4 explains that UTC asked DOH to assist in prioritizing improvement
5 projects for AWR. Exhibit No. ____ (DL-10). The selection of 13 projects
6 (13 systems) was primarily based on public health concerns and
7 information found in the AWR WSP.

8

9 **Q. Mr. Fox has indicated that the remaining items were “time bombs**
10 **waiting to explode.” Exhibit No. ____ (VRF-1T) at 30:1-2. How would**
11 **you respond to that statement?**

12 A. Many listed improvements are source and service meters, which DOH
13 does regard as important. There are also a number of improvements
14 listed that would be of higher importance for public health and reliability
15 purposes, such as reservoir cleaning, installing new pressure tanks and
16 well pumps. There are also a couple of projects to install or improve
17 hypochlorination, which DOH also regards as important for public health
18 protection. Although I was not part of the discussion at the time, my
19 opinion is that DOH expects other identified capital needs to be taken care

1 of in a timely fashion, so that the systems are always in compliance with
2 drinking water regulations, and so that the purveyor can ensure that safe
3 and reliable water is being provided to the customers. I also note that new
4 capital needs can occur or be observed at any time, and the purveyor
5 should keep the list current (even if only for his/her own sake) and
6 reprioritize the needs, and act accordingly to make improvements.

7

8 **Q. In his testimony, Mr. Fox mentions penalties issued by DOH with**
9 **regard to the 13 capital improvement items and provides a reference**
10 **number, Ref DOH Order #99-007. Exhibit No. ___ (VRF-1T) at 31:13-14.**
11 **Are you familiar with the penalties to which Mr. Fox refers?**

12 A. Yes.

13

14 **Q. Please describe the basis for the penalties and how they were resolved.**

15 A. Penalties were imposed in Docket No. 99-014 (4/23/99) and Docket No. 99-
16 034 (9/8/99). They were imposed for failure to comply with DOH orders,
17 Dockets number 99-007 and 99-008. Exhibit No. ___ (DL-11); Exhibit No.
18 ___ (DL-12). The penalty action was based on AWR's failure to produce
19 project reports and submit construction documents, to install chlorination

1 equipment, to install certain facilities, to install disinfection equipment, to
2 submit a corrosion control recommendation report, and to sample for lead
3 and copper. Exhibit No. ___ (DL-11) at 2-3. The total amount of the first
4 penalty was \$3,420; the second penalty was \$11,790.

5 AWR filed a request for an adjudicative proceeding for both
6 penalties, and to DOH's request to suspend approval of AWR as a satellite
7 management agency (SMA). Before the consolidated hearings were held,
8 a settlement agreement was negotiated. Exhibit No. ___ (DL-6). AWR
9 agreed to voluntarily withdraw its approved SMA status, although it is
10 allowed to continue to operate/manage systems already under its care.
11 Revised capital plans, engineering analyses, and financial viability
12 analyses were required, as was a penalty of \$5,880 (allowed to be paid
13 over time).

14 The penalty has been paid, but the WSP information, including
15 financial analysis is not complete.

16

1 **Q. How often does DOH issue penalties against water companies for**
2 **issues relating to capital improvement plans?**

3 A. As far as I am aware, it is highly unusual for penalties to be issued related
4 to a capital plan. It would be slightly more common if projects in a plan
5 relate to an issue of public health failures, or if they were combined with
6 more significant violations of the water regulations. If specific capital
7 projects will improve public health (such as surface water treatment
8 facilities) and water quality, DOH will require the construction of the
9 project in a compliance order. Failure to meet deadlines can result in
10 issuance of penalties.

11

12 **Q. How often is a company required to submit a capital improvement**
13 **budget to DOH?**

14 A. Unless otherwise requested, a utility or entity owning multiple water
15 systems is expected to provide a detailed six year capital improvement
16 plan every six years, with submittal of its updated WSP.

17

1 **Q. Has AWR filed a new capital improvement budget since 1999?**

2 A. Yes, AWR has submitted updated information. The most recent revisions
3 to the umbrella plan are dated 5/21/01. However, the information has not
4 received DOH approval yet; it is not complete. Exhibit No. ___ (DL-2), the
5 8/9/02 letter from DOH to AWR, and Exhibit No. ___ (DL-6), the
6 settlement agreement, detail expectations. Appropriate submittals have
7 not been received from AWR or its consultant, Hatton Godat Pantier.

8

9 **IV. RELATIONSHIP BETWEEN DOH AND AWR**

10 **Q. Mr. Fox has testified that prior to the 1999 surcharge issue, AWR's**
11 **relationship with DOH had been excellent. Exhibit No. ___ (VRF-1T) at**
12 **31:3-4. Is that an accurate assessment?**

13 A. Records reflect that our northwest regional office was having difficulty in
14 1997 and 1998, getting AWR to make public health improvements to
15 various Pierce County systems to comply with state regulations. Prior to
16 the surcharge, DOH had two compliance orders in place for five systems
17 that had public health problems. Four of those systems were in the
18 southwest region for DOH. The items in the orders formed the basis for
19 the thirteen improvements authorized in the surcharge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Q. Mr. Fox has testified that AWR’s relationship with DOH deteriorated after the 1999 surcharge issue. Exhibit No. ___ (VRF-1T) at 31:3-8. Is that an accurate assessment?

A. If the relationship deteriorated, I cannot say it was as a result of the surcharge. DOH expected public health improvements to be made in a timely fashion. That was not done. Compliance orders were written by DOH. Penalties were assessed against AWR for failure to comply with the orders. A settlement was reached, but information to be supplied by AWR has not been received since the agreement was signed in January 2000. AWR and/or Virgil Fox have continued to show up in DOH records with interests in various water systems, under various names. As AWR, our database reflects approximately 146 Group A and B systems. Lewis County Water and Sewer District (Birchfield Water System), Crystal Water (10 Group Bs), are others that appear to be linked to Virgil Fox and the AWR address. The southwest regional office has been frustrated in trying to understand how many water systems are truly owned and operated by the same people. We have questions about how United Utilities, Glacier Water and other entities may be related to AWR and/or Mr. Fox. Our

1 concern is that we cannot tell what the financial and managerial capacity
2 of all these in aggregate are.

3

4 **Q. Mr. Fox claims that AWR's relationship with DOH has deteriorated due**
5 **to negative communications regarding the Company between DOH**
6 **employees and WUTC employees. Exhibit No. ___ (VRF-1T) at 31:3-8.**
7 **Did the relationship between DOH and AWR deteriorate due to**
8 **anything WUTC Staff said to DOH?**

9 A. I don't believe that UTC has influenced DOH's relationship with AWR.
10 DOH has a vested interest in seeing all water systems have the financial
11 resources to perform their job to deliver safe and reliable drinking water.
12 In the case of private-for-profit water purveyors, we rely on UTC to make
13 the financial capacity determination. I can see in DOH records many
14 instances where both agencies have asked for information from AWR to
15 make that determination.

16

17 **Q. Did WUTC Staff ever "badmouth" AWR to DOH, as Mr. Fox claims?**
18 **Exhibit No. ___ (VRF-1T) at 31:6?**

19 A. No, not that I am aware of.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

Q. Did WUTC Staff ever “complain” to DOH regarding AWR, as Mr. Fox claims? Exhibit No. ___ (VRF-1T) at 31:7-8.

A. No, not that I am aware of. There is certainly a level of frustration in DOH that materials agreed to be provided in the settlement agreement have not been submitted by AWR. We continue to question whether this company is financially capable of carrying out its water purveyor duties.

Q. Would you please describe your impression of how the relationship between AWR and DOH deteriorated?

A. I do not believe the relationship has deteriorated. DOH still has expectations for AWR’s performance, as are very clearly laid out in the settlement agreement and in drinking water and SMA regulations. DOH has a significant interest in AWR’s success, on behalf of all the customers served by AWR.

Q. How would you describe the current state of the relationship between AWR and DOH?

1 A. As noted above, we expect AWR to demonstrate to DOH that
2 management, financial and physical capacity are assured for these
3 systems. AWR has agreed to provide that data, per terms of the
4 settlement agreement. Exhibit No. ___ (DL-6). Mr. Fox recently verbally
5 requested the ability to expand his SMA base. I turned down the request,
6 because the settlement agreement items have not been submitted. AWR
7 continues to operate and manage the systems identified in the agreement,
8 so is still a DOH-regulated entity.

9

10 **V. SATELLITE MANAGEMENT AGENCY (SMA) APPROVAL**

11 **Q. Mr. Fox testifies that the WUTC and DOH has consistently refused to**
12 **allow United Utilities to obtain SMA approval. Exhibit No. ___ (VRF-**
13 **1T) at 15-17. Can the WUTC or WUTC Staff refuse to allow anyone to**
14 **obtain SMA status?**

15 A. Not that I am aware of. The regulations regarding SMA status reside in
16 DOH regulations, with DOH authority.

17

18 **Q. Has DOH granted United Utilities SMA approval?**

19 A. No, it has not.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

Q. Why not?

A. This is a compliance issue. Financial viability has not been demonstrated for AWR. DOH believes that United Utilities has failed to convince DOH that it is an entity independent and distinct from AWR. Exhibit No. ___ (DL-19). As previously discussed, financial submittals are required under settlement agreement terms, which have not yet been fulfilled. It is important to DOH, on behalf of water customers, that this be addressed before expansion of responsibilities be permitted.

VI. GROUP B PUBLIC WATER SYSTEM PROJECT

Q. Mr. Fox testifies about a directive from DOH requiring counties to review all Group B water systems. Exhibit No. ___ (VRF-1T) at 6:15-23. Does such a DOH directive exist?

A. There is a program, currently in its second stage, funded by DOH, to inspect and collect information on Group B systems across the state. The state is not directing counties to do this, but negotiating a scope of work and payment schedule if the county agrees to participate. A report on the

1 first phase has been published: DOH publication # 331-243. Exhibit No.
2 ____ (DL-13).

3

4 **Q. Is the program mandatory or voluntary with respect to local health staff**
5 **participation?**

6 A. DOH has attempted to contract with the local health staff in each county
7 for the Group B inspections. It is voluntary for any county to participate
8 on DOH's behalf. It is also voluntary for a Group B system to allow the
9 inspection. They may decline. However, this could affect the county's
10 adequacy evaluation for building permit requests and loan certifications.

11

12 **Q. How many counties are participating in the Group B Project?**

13 A. In the initial phase, 35 of 39 counties participated. In this second phase,
14 with the 3 and 4 connection systems, 36 counties are participating. DOH
15 is employing outside contractors in those counties whose local health staff
16 are not performing the work, so Group B systems are being inspected
17 state-wide.

18

1 Q. Are Pierce, Thurston, Lewis and Grays Harbor Counties participating?

2 A. Yes.

3

4 Q. What is required of the local health staff, particularly with respect to the
5 site assessment visits?

6 A. Local health inspectors are expected to complete a checklist and update
7 Water Facility Inventory (WFI) form information (ownership, contact
8 numbers, connections, etc.). They also leave the water system operator
9 certain water quality information produced by DOH, and a copy of the
10 completed checklist. The inspector may follow up with a summary letter,
11 although this is not required by DOH. The checklist and WFI information
12 is then provided to DOH by the local health inspector.

13

14 Q. Would you please estimate how much time a site assessment visit
15 would take to assess one water system.

16 A. I would estimate that a single survey should take one to two hours, plus
17 driving time.

18

1 Q. How would your estimate be affected if multiple water systems are
2 located adjacent to one another in the same building or area?

3 A. That would reduce the travel time, and probably the inspection time.

4

5 Q. Is the water system purveyor required to be present during the site
6 assessment?

7 A. Either the purveyor or a representative of the water system who is
8 knowledgeable about the water system is expected to be present. That
9 individual describes the operation of the water system, provides access to
10 the facilities, and gives the inspector any updated information needed for
11 the DOH database.

12

13

VII. BIRCHFIELD WATER SYSTEM

14 Q. Are you familiar with the Birchfield water system?

15 A. Yes, it is a water system located in Lewis County, formerly owned by
16 Virgil Fox individually, then by Lewis County Utility Corporation, and
17 then by AWR. It is now owned by the Lewis County Sewer and Water
18 District #5 (LCSWD #5).

19

1 Q. Please explain Birchfield's history.

2 A. DOH requires each water system owner to file a Water Facilities Inventory
3 (WFI) form for each water system owned. DOH assigns each water
4 system a unique number for tracking purposes. Mr. Fox submitted an
5 initial WFI for Birchfield in 1991. Exhibit No. ___ (DL-14). The WFI for
6 Birchfield shows its system number to be 003157. *Id.* The initial WFI
7 indicates that Birchfield was a new system with one well owned by Mr.
8 Fox. *Id.*

9 By January 1995, Mr. Fox had transferred or sold Birchfield to
10 Lewis County Utilities, Inc., also owned by Mr. Fox. In 1997 Lewis
11 County Utilities, Inc., including Birchfield, was transferred to AWR. In
12 September 2002, AWR submitted an updated WFI for Birchfield. Exhibit
13 No. ___ (DL-15). The updated WFI shows that Birchfield consists of three
14 wells and is owned by AWR. Mr. Fox is listed as President of AWR. *Id.*

15 AWR apparently sold or transferred Birchfield to LCSWD #5. DOH
16 was notified of the change in ownership on June 19, 2003. Exhibit No. ___
17 (DL-16). AWR was listed as the SMA for the system. Exhibit No. ___ (DL-
18 16). LCSWD #5 submitted an updated WFI for Birchfield indicating the
19 ownership change. Exhibit No. ___ (DL-16).

1

2 **Q. When AWR owned Birchfield, did DOH have any information regarding**
3 **what the system consisted of?**

4 A. Yes. In addition to WSP submittals, DOH received a construction
5 submittal from AWR to expand Birchfield in September 2002. Exhibit No.
6 ___ (DL-17). The 2002 engineering report, indicated that Birchfield was, at
7 that time, owned by AWR. Exhibit No. ___ (DL-17) at 3. The report
8 discusses three wells associated with Birchfield, and does not indicate that
9 any other party owned Birchfield or a portion of Birchfield. Exhibit No.
10 ___ (DL-17) at 2-4.

11

12 **Q. Did DOH approve the construction plan?**

13 A. Yes. DOH approved the construction plan by letter dated November 25,
14 2002. They are now approved for 37 connections. Exhibit No. ___ (DL-18)

1

2 **Q. Has DOH received any water system plans involving the Birchfield**
3 **system?**

4 A. Yes. The first WSP was approved 4/28/95. A second WSP was approved
5 6/24/02, allowing 25 connections. A third WSP, dated 3/1/04 has been
6 submitted and is under DOH review.

7

8 **Q. What does a water system plan show?**

9 A. A WSP documents the existing system physical layout and water quality,
10 discusses projected growth, calculates existing and projected water use,
11 evaluates physical and water rights capacity, presents deficiencies and
12 proposed capital improvements, and includes an operations and
13 maintenance plan, system policies, and a financial plan that demonstrates
14 financial viability for the 6 year planning period. WSPs are required for
15 systems to grow beyond their current approved number of connections.

16

17 **Q. Did DOH approve the water system plan submitted for Birchfield?**

18 A. Yes. The first two plans were approved in 1995 and 2002. The 2004
19 Birchfield WSP is currently under review by DOH southwest regional

1 office staff. This plan review is proceeding separately from the AWR
2 WSP, which is on hold waiting for additional AWR submittals, because it
3 is owned by a separate entity.

4

5 **Q. What is Birchfield's current capacity for service?**

6 A. The Birchfield water system is currently approved to serve 37 connections.

7

8 **Q. Are owners permitted to build water systems in Washington without DOH
9 knowledge and approval?**

10 A. No. DOH requires that new public water systems be designed and
11 submitted for review and approval prior to construction. In general, for
12 the southwest region, Group B water systems are approved by local health
13 jurisdictions. (This is by negotiated joint plan of operation between local
14 health and DOH.) Group A water systems are submitted to DOH for
15 review and approval prior to construction. New sources are required to
16 obtain DOH approval prior to use – for new and existing systems. There
17 are also requirements in WAC for prior approval for construction of other
18 improvements to public water systems.

19

1 Q. You testified earlier that the WFI that AWR filed with DOH showed
2 AWR owned Birchfield and that Birchfield owned all three wells. Is it
3 possible for a water system to provide service without a source of water?

4 A. No. Every water system needs a source of water. Water can come from
5 an intertie to another water system, a surface source (e.g. lake or stream), a
6 spring, or a groundwater source (e.g. well).

7

8 Q. Does this conclude your testimony?

9 A. Yes.

10