

**In The Matter Of:**  
**CARE, et al.**  
**v.**  
**Cow Palace, et al.**

**Deposition of**  
**Jay Gordon**  
**June 25, 2014**



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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF WASHINGTON

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3   COMMUNITY ASSOCIATION FOR           )  
4   RESTORATION OF THE                )  
5   ENVIRONMENT, INC., a                )  
6   Washington Non-Profit               )  
7   Corporation                         )  
8                   and                   )  
9   CENTER FOR FOOD SAFETY, INC.,       )  
10   a Washington, D.C. Non-Profit       )  
11   Corporation                         )

12                                         Plaintiffs,           )

13                   vs.                   )

14   Cow Palace, LLC, a Washington       )  
15   Limited Liability Company,           )  
16                                         Defendant.           )  
17                                         )  
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26   COMMUNITY ASSOCIATION FOR           )  
27   RESTORATION OF THE                )  
28   ENVIRONMENT, INC., a                )  
29   Washington Non-Profit               )  
30   Corporation                         )  
31                   and                   )  
32   CENTER FOR FOOD SAFETY, INC.,       )  
33   a Washington, D.C. Non-Profit       )  
34   Corporation                         )

35                                         Plaintiffs,           )

36                   vs.                   )

37   GEORGE & MARGARET, LLC, a           )  
38   Washington Limited Liability        )  
39   Company                               )  
40                   and                   )  
41   GEORGE DERUYTER & SON DAIRY,        )  
42   LLC, a Washington Limited           )  
43   Liability Company                    )  
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48                                         )  
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50                                         )

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51                                         Defendants.           )  
52                                         )  
53                                         )  
54                                         )  
55                                         )

**CERTIFIED COPY**

No. CV-13-3016-TOR

No. CV-13-3017-TOR

1 COMMUNITY ASSOCIATION FOR )  
RESTORATION OF THE )  
2 ENVIRONMENT, INC., a )  
Washington Non-Profit )  
3 Corporation )  
and )  
4 CENTER FOR FOOD SAFETY, INC., )  
a Washington, D.C. Non-Profit )  
5 Corporation )  
)  
6 Plaintiffs, )  
)  
7 vs. ) No. CV-13-3019-TOR  
)  
8 HENRY BOSMA DAIRY, a )  
Washington Proprietorship, )  
9 aka HANK BOSMA DAIRY, aka )  
BOSMA DAIRY, )  
10 and )  
LIBERTY DAIRY, LLC, )  
11 )  
Defendants. )  
12

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13 VIDEOTAPED DEPOSITION OF WA DAIRY 30(B)(6) WITNESS,  
W. JAY GORDON  
14 Wednesday, June 25, 2014  
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24 Reported by: Kylie Hammington, CCR, RPR  
License No. 2054  
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## APPEARANCES

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MATHEW HARRINGTON  
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Also Present:

Marc Lykken, Videographer  
Dan Wood



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REQUESTED INFORMATION

Request for Production.....26:19  
Request for Production.....40:18



1           BE IT REMEMBERED that the deposition upon oral  
2 examination of WA DAIRY 30(B)(6) WITNESS, W. JAY GORDON, was  
3 taken on Wednesday, June 25, 2014, at 200 Second Avenue  
4 West, Seattle, Washington, before Kylie Hammington,  
5 Certified Court Reporter in the State of Washington.

6

7                   THE VIDEOGRAPHER: This is the video  
8 deposition of 30(b)(6) representative Jay Gordon in the  
9 matter of Community Association for Restoration of the  
10 Environment, et al., plaintiffs versus Cow Palace, LLC,  
11 a limited liability company, et al. defendants. The  
12 case is in the United States District Court, Eastern  
13 District of Washington. Case Nos. CV-13-3016-TOR,  
14 CV-13-3017-TOR, and CV-13-3019-TOR.

15           Today's date is Wednesday, June 25, 2014, and the  
16 time is 9:10 a.m. This deposition is taking place at  
17 the offices of Stritmatter Kessler Whelan located at  
18 200 Second Avenue West, Seattle, Washington, 98119. It  
19 was noticed by the plaintiffs.

20           Video and court reporting services are being  
21 provided by Central Court Reporting, 1700 Seventh  
22 Avenue, Suite 2100, Seattle, Washington. Phone number  
23 206-682-5896. Court reporter today is Kylie  
24 Hammington. She will swear in the witness, but first  
25 will the attorneys voice identify themselves and state





1       whom they represent and any other parties in the room  
2       with them. We will start with the plaintiffs, please.

3               MR. TEBBUTT: Charlie Tebbutt for the  
4       plaintiffs.

5               MS. RODGERS HARRIS: Andrea Rodgers Harris  
6       for the plaintiffs.

7               MR. COOKE: JT Cooke, Houlihan Law, for  
8       Washington State Dairy Federation.

9               MR. HARRINGTON: Mathew Harrington of Stokes  
10      Lawrence for the defendants.

11              MR. WOOD: And I'm Dan Wood with the  
12      Washington Dairy Federation.

13

14   W. JAY GORDON, having been first duly sworn upon oath,  
15                      testified as follows:

16

17

EXAMINATION

18   BY MR. TEBBUTT:

19   Q     Good morning, Mr. Gordon. Would you please state your  
20           full name for the record?

21   A     William J. Gordon.

22   Q     And where do you reside, sir?

23   A     5166 U.S. Highway 12, Elma, Washington.

24   Q     And what is your present occupation?

25   A     I'm the executive director of the Washington State



1 Dairy Federation.

2 Q And how long have you been in that role?

3 A Thirteen years, eight months.

4 Q How many people work at the Washington State Dairy

5 Federation?

6 A We have six.

7 Q Are they all full time?

8 A No.

9 Q How many are full time?

10 A Three.

11 Q And who are they?

12 A Myself, Dan Wood, and Darcel Nootenboom.

13 Q And the other three people, how much do they work?

14 What are their FTE equivalents?

15 A We are have a part-time office assistant, about half

16 time, and two field staff that are probably a couple

17 days a month, tenth of an FTE.

18 Q Mr. Gordon, have you ever been deposed before?

19 A No.

20 Q Have you ever been a party to a legal action?

21 A One.

22 Q And what case was that?

23 A It was an auto accident years ago in Portland.

24 Q You personally were involved in that?

25 A I think so. The insurance companies took care of it.



1 Q Has the Washington State Dairy Federation been a party  
2 to any litigation?

3 A No.

4 Q How about the action before the Pollution Control  
5 Hearings Board on the challenge of the 2006 Washington  
6 General CAFO Permit?

7 A We were intervenors in that case. If that makes us a  
8 party, then that would be a case that we've been  
9 involved in.

10 Q Yes. You were a party to that litigation. That's --  
11 that is exactly right.

12 MR. HARRINGTON: Objection. Calls for legal  
13 conclusion.

14 Q Have you been an intervenor in any other legal actions  
15 other than that one?

16 A Yes. The Washington Dairy Federation was also an  
17 intervenor in a case involving stock water. That's all  
18 I can remember. There may be others, but that's what I  
19 remember right now.

20 Q And that stock water case, did that involve a  
21 concentrated animal feeding operation in Eastern  
22 Washington?

23 A Yes.

24 Q What was the name of that facility?

25 A That would have been Easterday Ranches, I believe.



1 Q How long ago was that?

2 A Five, six years ago when it began. I can't remember  
3 exactly. It went to the Washington State Supreme  
4 Court, so I can't remember when it concluded.

5 Q Mr. Gordon, I'm going to just go over a couple ground  
6 rules of deposition with you. You understand today  
7 that you are under oath and you were sworn to give full  
8 and complete answers?

9 A Yes, sir.

10 Q The purpose of deposition is -- is multifold. One is  
11 to get information about information that's relevant to  
12 this case, these cases, the -- and I'll be referring to  
13 these cases as the "cluster cases." Do you understand  
14 that for today's purposes?

15 A Sure.

16 Q Do you know what the cluster cases are?

17 A These dairies that are named in this suit.

18 Q All right. And these dairies in this case are the  
19 Bosma Dairies, Cow Palace, and the George DeRuyter and  
20 D & A Dairies; do you understand that, for today's  
21 purposes?

22 A Yes.

23 Q One thing I'm going to ask you to do is to wait until I  
24 complete my question before you give an answer. It's  
25 natural to anticipate a question, but because the court



1 reporter can only get one of us down at a time, please  
2 give a little time for me to finish my question and  
3 then give your response. Do you understand that?

4 A Yes.

5 Q And we need audible responses: yeses, noes, not  
6 uh-huhs or shakes of the head. That doesn't really  
7 work very well. Do you understand that?

8 A Yes.

9 Q All right. Thank you. And the other purposes of this  
10 deposition would be, for instance, if -- there's a  
11 possibility that this transcript could be used at trial  
12 without your appearance. Do you understand that?

13 A Yes.

14 Q It can also be used if you give different testimony at  
15 trial. I would inform the Court that you gave  
16 different testimony during this deposition. Do you  
17 understand that?

18 A Yes.

19 Q Please describe for us your educational background.

20 A I graduated in Kaiser, Oregon, from McNary High School,  
21 attended Oregon State University for -- got a degree in  
22 dairy science. Did a little bit of work at Evergreen  
23 in public policy.

24 Q So do you have a BS in --

25 A Yes.



1 Q -- agricultural science from Oregon State?

2 A Dairy science. Oregon State University.

3 Q When did you get that degree?

4 A 1983.

5 Q Have you taken any courses on animal science or

6 agricultural science since that time?

7 A No. Not that I can recall.

8 Q So you graduated with a BS in 1983. What's been your

9 work history since 1983?

10 A I came back to our family farm after graduation, farmed

11 with my grandfather, and then farmed after he passed in

12 '90, so I've been crop farming and dairy farming.

13 Still do that in my 5:00 on time and weekends

14 since even before graduating, so since the late '70s,

15 1979 I started in farming.

16 Q At the family farm?

17 A Um-hmm.

18 Q Okay. And you still have that farm?

19 A Yes.

20 Q Where is that located?

21 A It's in Elma where we live.

22 Q In where?

23 A In Elma where we live.

24 Q Okay?

25 A So the address is the business address.



1 Q So who -- are you the manager of that facility?

2 A I'm the owner. I have a long time partner that manages  
3 the farm day-to-day. We manage it together. But, for  
4 instance, today he's taking care of the cows and the  
5 crops and the water and the irrigation.

6 Q And your job at WSDF, I'll call that the Dairy  
7 Federation --

8 A Um-hmm.

9 Q -- is a full-time job; is that correct?

10 A Um-hmm. Yes, sir.

11 Q What type of a farm do you have?

12 A We have about a 900 acre organic crop farm. We were  
13 organic on the dairy up until this spring. So we have  
14 a conventional dairy and about 600 acres of organic  
15 ground we farm.

16 Q And what type of crops do you grow on the 600 acres?

17 A Grass, up until this year, grain, corn, alfalfa. This  
18 year, mostly grass and then we have a gentleman that's  
19 leasing part of it and we're helping him grow organic  
20 beans, green beans.

21 Q And about how many dairy cows do you have?

22 A Cows?

23 Q Yes.

24 A Or total animals?

25 Q Let's start with cows first.



- 1 A About 150.
- 2 Q And are those milkers?
- 3 A That would be milking and dry cows.
- 4 Q And do you have heifers, as well?
- 5 A Yes.
- 6 Q How many of those do you have?
- 7 A About 150.
- 8 Q You raise your own heifers?
- 9 A Yes.
- 10 Q And you said it's no longer organic; is that right?
- 11 A No. We switched back to conventional.
- 12 Q Are you still a member -- are you -- have you ever been
- 13 a member of Organic Valley?
- 14 A We were members of Organic Valley up until May 1st of
- 15 this year. For numbers -- eight years, I believe.
- 16 Q Is there a reason that you went back to conventional?
- 17 A We had a foot disease we couldn't solve with organic
- 18 problems and we were out of ideas and just felt it
- 19 wasn't fair to the cows and to us, and we just couldn't
- 20 find a solution to a particular foot disease called
- 21 hairy wart.
- 22 Q At your facility that you presently have, is there a
- 23 name for that dairy?
- 24 A Gordon Dairy, Incorporated.
- 25 Q Do you have a lagoon or moor at that particular





1 facility?

2 A We have a lagoon, yes.

3 Q And how is that designed and constructed?

4 A We --

5 MR. COOKE: I'll object. This is all outside  
6 the scope. I understand this is background, Charlie --

7 MR. TEBBUTT: It is.

8 MR. COOKE: -- but it's not about his dairy  
9 farm, this litigation.

10 MR. TEBBUTT: It's --

11 MR. COOKE: So I'll give you some leeway, but  
12 I'm telling you this isn't about Jay Gordon's dairy  
13 farm. This is about the dairy farms that are part of  
14 your lawsuit. And it was clearly outside the scope of  
15 your deposition topics. So if you want to finish up  
16 your background questions, that's fine.

17 MR. TEBBUTT: It's background. It's relevant  
18 to the issues that he will be testifying to throughout  
19 the day.

20 MR. COOKE: I guess I disagree with that, but  
21 I'll let you finish up this questioning and if you're  
22 going to keep going down that line, I'll just object.

23 MR. TEBBUTT: All right.

24 Q Go ahead and answer the question, please.

25 A The lagoon was designed by the Natural Resources



1 Conservation Service. I don't remember the date. We  
2 purchased the farm with the lagoon on it, but I've seen  
3 the engineering and design blueprints from NRCS  
4 sometime in the last 25 years that we've owned that  
5 portion of the farm that has a dairy lagoon on it.

6 Q And you've owned the facility since the '70s, correct?

7 A This piece of property, we purchased -- no. This piece  
8 of property that has the lagoon on it we purchased in  
9 19, I believe, 91, '92. The rest of the farm we've  
10 owned since the 1870s.

11 Q So the lagoon is not synthetically lined; is that  
12 correct?

13 A No.

14 Q Do you have a dairy nutrient management plan for the  
15 Gordon Dairies?

16 A Yes.

17 Q When was that most recently updated?

18 MR. HARRINGTON: Objection. Beyond the  
19 scope.

20 Q Go ahead and answer.

21 A About three years ago, I think was our last update.

22 Q And how do you determine at that facility how much  
23 manure to apply and when?

24 MR. HARRINGTON: Objection. This is beyond  
25 the scope of a 30(b)(6) deposition.



1           MR. COOKE:  If you're doing a fishing  
2   expedition as to his farm, especially given your  
3   client's lawsuits -- you're here to depose Washington  
4   State Dairy Federation.  Not Jay Gordon's individual  
5   farm.

6           So you've got your background.  I think you've got  
7   enough background.  Let's move on to the Dairy  
8   Federation questions.

9           MR. TEBBUTT:  I disagree because this is  
10   relevant to his knowledge about manure applications and  
11   nitrates.  He said he has a degree in agricultural  
12   science, so this is all very relevant to questions that  
13   will be asked later today --

14          MR. COOKE:  He's not being -- he's not being  
15   identified --

16          MR. TEBBUTT:  Just a minute.  Just a minute,  
17   please.  These are foundational to the questions that  
18   will follow later today.

19          MR. COOKE:  He's not being identified as an  
20   expert by any party in this case.  So the foundation  
21   and the need for it is baseless.

22          MR. TEBBUTT:  There are extensive documents  
23   where Mr. Gordon opines about nitrates and other things  
24   that he's going to be questioned about today.  So all  
25   this is foundational for that.



1 MR. COOKE: And, again, he's not being  
2 identified by an expert -- by any party, as far as I  
3 know.

4 MR. HARRINGTON: Not by us.

5 MR. COOKE: If you have facts about  
6 Washington State Dairy Federation and their activities,  
7 we can answer those questions. This is not a  
8 deposition about Jay Gordon's individual farm.

9 Q Mr. Gordon, throughout the day there's going to be  
10 objections that your counsel will be interposing and  
11 Mr. Harrington, on behalf of the dairies, will be  
12 interposing. You understand that unless you're  
13 instructed not to answer the question, you are to  
14 answer the question?

15 A Yes, sir.

16 Q Okay. Please answer my question.

17 A Please restate the question.

18 Q Yes. How do you determine how much manure to apply and  
19 when at your facility?

20 MR. HARRINGTON: Same objection.

21 Q Go ahead.

22 A Thanks. On our facility, the fundamental pieces of how  
23 we determine the manure to apply is obviously the farm  
24 plan lays out -- is kind of the formal document that  
25 lays out what are your crops, what are the -- what are



1 the soil types, what are the yields that you've been  
2 having, and what is the calculated amount of nutrients  
3 that you need for an individual farm. We also utilize  
4 soil tests, both in the spring -- sometimes in the  
5 spring, in the fall, cropping history on different  
6 fields. I personally have some fields that I have 30  
7 years of soil tests. Not every year, but a good chunk  
8 of soil tests.

9 And given our history of yields in our fields on  
10 corn or grain or grass or -- we've grown echinacea and  
11 artichokes. We don't use a lot of manure on that, but  
12 different varieties, we then utilize a lot of WSU or  
13 Oregon State University data, British Columbia data to  
14 determine what our recipe is that we need to feed those  
15 crops. So with organic, our basic fertilizers are  
16 chicken manure, cow manure, wood ashes. And we develop  
17 a formula based on each field, each crop every...

18 Q Do you raise your own chickens, as well?

19 A No.

20 Q So you import chicken manure?

21 A Yes.

22 Q What did you do to prepare for your deposition today?

23 MR. COOKE: Objection to the extent it calls  
24 for attorney-client privileged communications.

25 You can answer to extent you can without



1 disclosing any conversations you've had with me.

2 A So --

3 Q And, by the way, just to clarify, you can disclose the  
4 fact of the conversations and the amount of time that  
5 you may have spent with an individual, but I don't want  
6 your attorney -- your specific attorney-client  
7 communications with Mr. Cooke.

8 A Okay. So, again, the question was?

9 Q What did you do to prepare for your deposition today?

10 A We reviewed the request you -- finally got settled on  
11 for what today was about, for last several weeks;  
12 reviewed the documents that we've submitted; had  
13 conversations with our attorney; got dressed; had a cup  
14 of coffee; and came here.

15 Q Have you spoken with anyone other than Mr. Cooke about  
16 your deposition today?

17 A Mr. Wood, obviously, on the way up.

18 Q Why obviously?

19 A We drove together this morning.

20 Q Is that the only time you've talked to him about the  
21 deposition?

22 A No.

23 Q When else did you talk with him?

24 A We've talked since April about the deposition, the  
25 contents of the request, the production of documents,



1 the documents that have been sent. Dan works for the  
2 Federation and has been an integral part of being -- in  
3 getting prepared for this.

4 Q Does Mr. Wood -- well, describe for me the process of  
5 how you responded to the subpoena requesting documents.

6 MR. COOKE: Objection. Outside the scope.

7 Q You can answer.

8 A Okay. So to prepare for this, we had large sticky  
9 notes, whatever the flip charts, on the wall with all  
10 the names of the requests for documents, the names of  
11 people, the times, the scope of what you were looking  
12 for. We went through and -- went through all of the  
13 computers in the office, the file cabinets in the  
14 office, the documents sitting on shelves and -- and  
15 went through down as -- we went through each of those  
16 key words, key individuals, key conversations within  
17 the time frame, checked those off, and had a large box  
18 in the office to make sure we've gotten those all done,  
19 and transmitted electronically to JT.

20 Q Who assisted with the document review?

21 MR. COOKE: Same objection. Outside the  
22 scope.

23 A Document review?

24 Q Yeah. The documents that were requested as part of the  
25 subpoena. Gathering the documents?



1 A Gathering?

2 Q Yes.

3 A Darcel Nootenboom in our office, Linda Capps in our  
4 office, Dan Wood, and myself.

5 Q And you said you did -- you searched computers as well?

6 A Yes.

7 Q How did you search the computers?

8 A Went through the filing systems by file, by key word,  
9 looking for any documents as requested.

10 Q And the key words that you used, were they key words  
11 that you determined should be used?

12 A We pulled them out of --

13 MR. COOKE: Same objection.

14 A We pulled them out of the document.

15 Q When you say "we," who's we?

16 A Dan and I.

17 Q So you didn't get any advice from your attorneys about  
18 how to --

19 MR. COOKE: Objection to the extent it calls  
20 for attorney-client privileged communications.

21 Q Just a yes or no.

22 MR. TEBBUTT: Are you instructing not to  
23 answer that question?

24 MR. HARRINGTON: I'm not clear on what the  
25 question is.





1 MR. COOKE: Can you repeat the question?

2 MR. TEBBUTT: Yes.

3 Q I'm asking: Did -- did you get advice from your  
4 attorneys about how to do the word searches on the  
5 computers or did you -- did you come up with the word  
6 search information and process yourself?

7 MR. COOKE: Objection. It's -- yes.

8 MR. HARRINGTON: That is looking for the  
9 content of the communication.

10 MR. COOKE: And it's a compound question. So  
11 no, you don't have to answer.

12 MR. TEBBUTT: Let me -- let me rephrase it.

13 Q Did you come up with the computer search term process  
14 yourself?

15 MR. HARRINGTON: Objection to the extent it  
16 invades the attorney-client privilege.

17 MR. TEBBUTT: Objection is nonsensical.

18 Q But go ahead, Mr. Gordon, and answer the question.

19 Do you understand the question?

20 A Yeah.

21 MR. COOKE: I'm also objecting it's outside  
22 the scope of the topics of your -- of your deposition.

23 MR. HARRINGTON: If the answer would invade  
24 the attorney-client privilege, it's not a proper  
25 question, and you should not answer if it would



1 disclose the conversations you had with your lawyer.

2 MR. TEBBUTT: Are you representing Mr. Gordon  
3 today, Mr. Harrington?

4 MR. HARRINGTON: I'm not.

5 MR. TEBBUTT: So you're not instructing him  
6 not to answer, are you?

7 MR. HARRINGTON: I'm not.

8 MR. TEBBUTT: Okay.

9 Q Mr. Gordon, please answer the question. Do you  
10 under- -- you said you understand --

11 A I understood the question, and I'm not sure -- so I'm  
12 not sure.

13 Q You're not sure?

14 A Yes.

15 Q You're not sure how you came up with the search terms?

16 A No. The search -- I'm not sure if it was an original  
17 idea that came out of my head or our office's head or  
18 in conjunction with my attorney in conversations. The  
19 conversations with our attorney began as soon as  
20 this --

21 MR. COOKE: All right.

22 A -- subpoena. So if you're asking if it was an original  
23 idea all by ourselves in a vacuum, the answer is no.

24 Q Did you document what search terms you used --

25 A Yes.



1 Q -- in order to find the documents? Do you have a memo  
2 to that effect?

3 A No. It was a large sticky note on the wall of the  
4 office.

5 Q Do you still have that sticky note?

6 MR. COOKE: Objection. Calls for  
7 attorney-client privileged communications and work  
8 product. And it's outside the scope of the deposition.

9 MR. TEBBUTT: Are you instructing him not to  
10 answer whether it still exist or not?

11 MR. COOKE: No. I'm just lodging my  
12 objections.

13 Q All right. Does that -- does that note still exist --

14 A Yes.

15 Q -- with key terms?

16 A Yes.

17 Q I'd ask you to preserve that. I'd ask you to actually  
18 produce that.

19 (Request for production.)

20 MR. HARRINGTON: Objection. That's not a  
21 proper question.

22 MR. TEBBUTT: It's a statement for the  
23 record, Mr. Harrington. Let's not muddle the record,  
24 please.

25 Mr. Cooke, do you have any objection to producing



1           that document?

2                       MR. COOKE: I do have an objection to  
3           producing that document. I'll produce it in a  
4           privilege log. It will say "list."

5                       MR. TEBBUTT: I don't believe that the search  
6           terms would be properly subject to protection in this  
7           circumstance, because it goes to the process of how  
8           documents were created and produced.

9                       MR. COOKE: We're going to have to agree to  
10          disagree on that point, and I'm sure we will.

11 Q       Mr. Gordon, how does one become a member of the  
12       Washington State Dairy Federation?

13 A       I can't recall the exact wording in the bylaws, but I  
14       believe it's -- you have to be a licensed grade A  
15       dairy, state of Washington, with cows. We engaged in  
16       speciesism. No goats. Sorry. It was a lively debate.

17 Q       That's all right. All right.

18                       And how many dairies are members, approximately?

19 A       Approximately 420.

20 Q       Okay. Are the Bosma Dairies members?

21 A       Yes.

22 Q       And DeRuyter Dairies? And when I'm speaking of  
23       DeRuyter, I'm speaking of George DeRuyter & Sons and D  
24       & A Dairy?

25 A       Both. When you say "DeRuyters" you're referring to



1           both?

2   Q       Yes.

3   A       Yes. Both of them are.

4   Q       I'm not referring to DeRuyter Brothers or Jake DeRuyter

5           or any other DeRuyters that may exist out there for

6           today's purposes.

7   A       Yes, they're both members?

8   Q       Okay. And the Cow Palace is a member?

9   A       Yes. Also.

10   Q       And the R & M Haak Dairy, were they members?

11   A       They were.

12   Q       Are they still?

13   A       No, they don't -- they don't own cows.

14   Q       Going back to your deposition preparation, have you had

15           any conversations with the Givens Pursley firm about

16           your deposition preparation?

17   A       About specifically conversations? State the question

18           again.

19   Q       Yes. Have you had any communications with the Givens

20           Pursley firm to prepare for this deposition today?

21   A       I may have had a quick conversation with Deb Kristensen

22           very early on, but I can't remember for sure.

23   Q       Telephone conversation?

24   A       Oh, yeah.

25   Q       Was this shortly after receiving the subpoena?



1 A Yeah. About that time frame, I think.

2 MR. HARRINGTON: Objection. Mischaracterizes  
3 the testimony.

4 Q And was -- what was the topic of that conversation?

5 MR. COOKE: Objection to the ex- --

6 MR. HARRINGTON: Objection. Mischaracterizes  
7 the testimony.

8 MR. COOKE: And also could call for  
9 attorney-client privileged communication.

10 MR. HARRINGTON: And calls for speculation.

11 MR. COOKE: The Dairy Federation has a  
12 relationship, ongoing legal relationship with the  
13 Givens Pursley firm, so the substance of that  
14 communication, it stays off limits.

15 I direct you not to answer about the content of  
16 your communication with Deb.

17 Q Okay. Well, let me ask you about that.

18 What relationship does the Washington State Dairy  
19 Federation have with the Givens Pursley firm?

20 A We've had an ongoing client relationship with them for  
21 a number of years.

22 Q In what respect?

23 MR. COOKE: Objection. Calls for  
24 attorney-client communications.

25 A They've represented us on a number of issues.



1 Q Are they all related to the EPA report and the cluster  
2 dairies?

3 MR. COOKE: Objection. Calls for  
4 attorney-client privileged communications.

5 MR. HARRINGTON: Objection. Vague.

6 MR. TEBBUTT: Are you instructing him not to  
7 answer, Mr. Cooke?

8 MR. COOKE: Yes.

9 MR. HARRINGTON: Would you like to confer  
10 about matters of privilege?

11 MR. COOKE: Yeah. Can we take a few minutes?

12 MR. TEBBUTT: There's a question pending.

13 MR. COOKE: Well, then I'll direct him not to  
14 answer.

15 MR. TEBBUTT: All right. Then why don't you  
16 take a few minutes, because that is -- this is an  
17 important area.

18 THE VIDEOGRAPHER: We're going off the record  
19 at 9:38.

20 (Off the record.)

21 THE VIDEOGRAPHER: We are going back on the  
22 record at 9:43.

23 Q Mr. Gordon, when we left off, we were having a little  
24 dispute amongst the attorneys about attorney-client  
25 privilege. And your counsel instructed you not to



1 answer the question that was pending. I'll ask  
2 Mr. Cooke.

3 MR. TEBBUTT: Are you still maintaining that  
4 request -- objection?

5 MR. COOKE: I've instructed my client that he  
6 can describe the nature of the representation, but the  
7 substance and the details of the work that was done are  
8 obviously off limits.

9 Q Can you describe the nature of the representation,  
10 please?

11 A Pursley Givens [sic] has represented us on scope of EPA  
12 authority under the Safe Drinking Water Act, which  
13 related, obviously, to the groundwater nitrate issue in  
14 Yakima in 2012, and the pending litigation.

15 Q Givens Pursley has represented you concerning the  
16 pending litigation?

17 A Well, this -- this litigation.

18 Q Did part of that representation include commenting on  
19 the EPA report that came out in September 2012?

20 MR. COOKE: Objection. Attorney-client  
21 privilege. You don't have to answer. We provided the  
22 nature and the scope of what they were representing  
23 them with.

24 MR. TEBBUTT: Well, you actually provided --

25 MR. COOKE: We provided you answer --





1 MR. TEBBUTT: -- documents about that, too.

2 So I wanted to get -- lay some foundation before I get  
3 into the documents that you produced that are relevant  
4 to these questions.

5 MR. COOKE: Well, if just documents were  
6 inadvertently produced that could be privileged, then I  
7 ask that they be returned back, and I guess we can get  
8 there when we get there.

9 A Could you ask the question again?

10 Q Yes. Did you work with the Givens Pursley firm to  
11 provide comments on the EPA groundwater report that  
12 came out in September 2012 in the Lower Yakima Valley?

13 A Yes.

14 (Exhibit No. 205 marked for identification.)

15 Q Mr. Gordon, handing you what's been marked as  
16 Exhibit 205, this is a report from Mark WasseMiller to  
17 Janet Leister, and the subject says, "Final Report.  
18 Written review of the EPA report and other sources of  
19 technical, engineering, and scientific information and  
20 literature relating to storage basins/lagoon,  
21 permeability, assumptions regarding leakage and  
22 design." Do you see that?

23 A Yes.

24 Q And you've seen this document before, correct?

25 A Yes.



1 Q And, in fact, this was produced by you in response to  
2 the subpoena, correct?

3 A No. This was produced by the Washington Dairy Products  
4 Commission and Mark Wassemiller. We assisted.

5 Q Right. And my question was: This is -- this is a  
6 document, based on the -- the Bates stamp down in the  
7 bottom right-hand corner, this document was produced to  
8 us as part of the subpoena, correct?

9 MR. HARRINGTON: I think the witness is  
10 confused about the meaning of the term "produced."

11 MR. TEBBUTT: Oh, I understand that. That's  
12 why I was clearing it up.

13 Q You understand my question now, right?

14 A Yes.

15 Q Okay. So you did assist with the review of the EPA  
16 report and Mr. Wasemiller's comments, correct? Let me  
17 rephrase that.

18 You assisted with the preparation of this  
19 document, correct?

20 A No.

21 Q Okay. What was your role in seeing that this document  
22 was produced? Created. Let's say that.

23 MR. HARRINGTON: Objection. Vague.

24 A Mr. Wasemiller produced the document.

25 Q Right. Did you ask him to?



1 A The Washington Dairy Products Commission, we helped  
2 find him for the Washington Dairy Products Commission  
3 as an engineer in the area.

4 Q Why did you choose Mr. Wasemiller?

5 A I believe he was an engineer, had experience in the  
6 Columbia Basin. I think he came recommended by a  
7 number of people in the area, I think. If I recall  
8 right, I believe he used to work for the NRCS.

9 Q Had you had any other prior communications with  
10 Mr. Wasemiller?

11 A Prior to this?

12 Q Prior to this report, yes.

13 A None that I recall.

14 Q Did you have any communications with Mr. Wasemiller in  
15 his role at NRCS?

16 A None at the Federation that I'm aware of. Individual  
17 producers, maybe.

18 Q If you'll take a look at the second page of Exhibit  
19 205, and that's WSDF001570. Can you see that?

20 A Yes.

21 Q The first bullet point kind of in the middle of the  
22 page says, "When credit for a reduction of seepage from  
23 manure ceiling is allowed" and then it continues on.

24 A Um-hmm.

25 Q Again, you've read this report before, correct?



1 A Yes.

2 Q Do you take issue with Mr. Wasemiller's conclusion that  
3 there is seepage or leakage from lagoons?

4 MR. COOKE: Objection --

5 MR. HARRINGTON: Objection. Lack of  
6 foundation.

7 MR. COOKE: -- to the extent it calls for an  
8 expert opinion.

9 Q You may go ahead and answer the question.

10 A I'm going to go by what he says here. He's the  
11 engineer.

12 Q So you don't disagree with his conclusions?

13 MR. COOKE: Same objection.

14 A I'm not an engineer -- yeah, I wouldn't have enough  
15 knowledge to know whether to agree or disagree with  
16 him. But he's the engineer, so I take what he says to  
17 be credible information.

18 Q And you, the Washington State Dairy Federation, helped  
19 commission this -- this report, correct?

20 A Yes.

21 Q Do you know when this report was finalized?

22 A I can't remember the exact date. It would have been in  
23 the November -- late October, November of 2012 time  
24 frame.

25 Q And part of -- and this was just part of the comments



1 or critique of the EPA report, correct?

2 A Comments, yes.

3 Q These are comments that -- that, again, that the Dairy  
4 Federation helped commission to respond to the EPA  
5 report, correct?

6 MR. HARRINGTON: Objection. Vague.

7 MR. COOKE: Objection. Asked and answered.

8 Q You may answer the question.

9 A Yes.

10 (Exhibit No. 206 marked for identification.)

11 Q Mr. Gordon, handing you what's been marked as Exhibit  
12 206, this is the privilege log produced by your  
13 counsel, Mr. Cooke, to our firm dated yesterday. Did  
14 you assist in the preparation of this log?

15 MR. COOKE: Objection. Outside the scope.

16 Q You may answer.

17 A No.

18 Q Are you familiar with each of the documents that are  
19 described in this privilege log?

20 MR. COOKE: And same objection.

21 A Log's pretty vague. Not a lot to go on on this list.

22 Q All right. Well, let's -- let's see if we can be  
23 specific, then. The first document says it was  
24 produced in May 2013, and the author was the Givens  
25 Pursley firm, and the recipient was Bob Naerebout.



1 Who's Mr. Naerebout?

2 A Bob Naerebout is the executive director of the Idaho  
3 Dairymen's Association.

4 Q And you also had a copy of this document, correct, in  
5 your files?

6 A Yes.

7 Q How were you provided with a copy of that document?

8 A I'm going to assume email, but I don't recall.

9 Q Who would you have received an email from?

10 MR. COOKE: Objection. Outside the scope.

11 A Again, I'd have to look. My assumption would be from  
12 either Hugh O'Riordan or Deb Kristensen.

13 Q Are those the two people with whom you have contact at  
14 the Givens Pursley firm?

15 A I'm sorry. Say that question.

16 Q Are those the two people, Hugh O'Riordan and Deb  
17 Kristensen, are those the only two people that you have  
18 contact with at the Givens Pursley firm?

19 A Those are our primary contacts.

20 Q My question is: Are there others?

21 A There's another gentleman we've talked with over the  
22 last several years once or twice. Trying to remember  
23 his name. Brandon? Shows you how much contact we've  
24 had.

25 Q Preston Carter?



1 A There we go, Preston.

2 Q Have you also had conversations with Brendan Monahan at

3 the Stokes Lawrence firm?

4 A Have I had conversations with him?

5 Q Yes.

6 A Yes.

7 Q When have you had conversations with Mr. Monahan?

8 A Last fall I know we had a phone call. We had lunch

9 together in Yakima once, the only time I ever met him.

10 And I don't remember when that occurred. Spring of

11 last year is my guess.

12 Q Spring of 2013?

13 A 2013, yes.

14 Q And was that lunch a small private lunch, or was it

15 part of a larger meeting of the Dairy Federation; do

16 you know?

17 A No, it was just a small lunch.

18 Q Do you know who was present?

19 A If I recall, it was Dan and you and I and Preston.

20 Q And when you say "you," you're referring to

21 Mr. Harrington?

22 A Yes.

23 Q Do you know where you had lunch?

24 A Sports bar in Yakima. Can't remember the name.

25 Q All right.



1 A Good French fries.

2 Q Now, Mr. Naerebout is with the Idaho Dairymen's  
3 Association; is that correct?

4 A Yes.

5 Q Do you have a common interest agreement with the Idaho  
6 Dairymen's Association with respect to this litigation?

7 A Ask the question again.

8 MR. COOKE: Objection to the extent it calls  
9 for a legal conclusion.

10 Q Do you have any kind of written agreement with the  
11 Idaho Dairymen's Association with respect to this  
12 litigation?

13 A No.

14 MR. TEBBUTT: Mr. Cooke, I'm going to ask  
15 that WSDF000080 through -81 be produced, because there  
16 is no attorney-client privilege, as there is no  
17 relationships that is attorney-client privilege between  
18 Mr. Naerebout and the Idaho Dairymen's Association and  
19 the Washington State Dairy Federation.

20 MR. COOKE: Disagree, but we can --

21 MR. HARRINGTON: Your statement is noted.

22 MR. COOKE: Your statement is noted.

23 Q Now, with regard to the second document listed, Exhibit  
24 206, a November 2012 draft comment letter to EPA  
25 authored by Givens Pursley, how did you receive that





1 document?

2 MR. COOKE: Objection. Outside the scope.

3 A That would have come from Hugh O'Riordan.

4 Q By email?

5 A I would presume, yes.

6 MR. HARRINGTON: Objection. Calls for  
7 speculation.

8 Q And do you recall who else was emailed on that -- on  
9 that transmission?

10 MR. COOKE: Same objection. Outside the  
11 scope.

12 A No, I don't.

13 MR. HARRINGTON: Objection. Misstates the  
14 testimony.

15 MR. TEBBUTT: Mr. Cooke, we're going to ask  
16 that the email itself be produced that indicates who  
17 received the document.

18 (Request for production.)

19 MR. TEBBUTT: We're not asking for the  
20 content of the document, but just who the recipients  
21 were, whether it was --

22 MR. COOKE: I under- --

23 MR. TEBBUTT: Just a moment, let me finish.  
24 Whether it was directly to them, whether they were cc'd  
25 or bcc'd.



1                   MR. COOKE: I understand your comment and  
2                   your request.

3                   MR. TEBBUTT: Okay. Will you produce that to  
4                   us?

5                   MR. COOKE: I'll ask my client to look  
6                   through their files again see if that email does, in  
7                   fact, exist. If it exists, I'll take a look at it. If  
8                   it's not a privileged communication in and of itself,  
9                   I'll provide it to you. If it is privileged, I'll  
10                  amend my privilege log. That's the best I can do.

11                  MR. TEBBUTT: All right. And I'm not asking  
12                  for the content, just who the recipients were.

13                  MR. COOKE: I understand.

14                  MR. TEBBUTT: Okay.

15                  MR. COOKE: And if it's a privileged  
16                  communication, my privilege log will reflect who the  
17                  recipients are.

18                  MR. TEBBUTT: All right.

19    Q            Let's look at the document on Exhibit 206. And this  
20                  is -- the description is a technical review of EPA  
21                  groundwater report by Olympus Technical Services.

22                  Who is Olympic -- Olympus Technical Services?

23                  MR. COOKE: Again, outside the scope.

24                  MR. TEBBUTT: Mr. Cooke, I don't know how you  
25                  say it's outside the scope when this stuff was produced



1 as a privilege log. This is directly within the scope  
2 --

3 MR. COOKE: You're talking about production  
4 issues, and production is not part of your list of  
5 topics. So you're asking about documents that he's  
6 already said he doesn't -- he wasn't familiar with  
7 this. He didn't help prepare it.

8 MR. TEBBUTT: This is -- this is silly.

9 Q If you had included in your list of deposition topics,  
10 I want to know about how documents were produced, I  
11 would have made sure Mr. Gordon was prepared to answer  
12 these questions.

13 MR. TEBBUTT: Well, he -- this is -- this is  
14 a natural part of questioning.

15 Q Go ahead and answer the question, Mr. Gordon.

16 A Olympic [sic] Technical Services, at the moment I'm not  
17 sure.

18 Q Are you familiar with the technical review of the EPA  
19 groundwater report, the description of the document?

20 MR. COOKE: Same objection.

21 A There were a number of technical reviews done on the  
22 EPA groundwater report.

23 Q That WSDF helped commission?

24 A Oh, there was a number -- we helped commission, helped  
25 various groups commission, and others that we didn't.



1 And there's a lot of them and they were a long time  
2 ago.

3 Q But the Olympus Technical Services document is in your  
4 file, correct? So is it correct to state that WSDF  
5 helped commission that particular set of comments?

6 MR. COOKE: Same objection. Calls for  
7 speculation. He stated he's not familiar with these  
8 documents.

9 MR. TEBBUTT: Let's not go into a narrative,  
10 please. Just state your objection, please.

11 MR. COOKE: Well...

12 A I don't recall if this was one we were involved in or  
13 not.

14 Q Do you have a list of the entities that WSDF was  
15 involved with commissioning to comment on the EPA  
16 report?

17 A There may be a list. I can't recall. I know we were  
18 aware of a lot of them. Some of them we were involved  
19 in, and some we just heard or knew that were also  
20 commenting, which we produced -- which we were directly  
21 involved in and which we just knew or were aware of. I  
22 can't, at this time, tell you which ones.

23 Q Let's ask about HDR Engineering. That's the fourth  
24 document on this page. Same thing, another entity who  
25 provided comments in the EPA report, correct?



1 MR. COOKE: Same objection.

2 A I would assume so, given the information I've got.

3 Q Well, in order to have, you know, some kind of an  
4 attorney work product relationship, this would have had  
5 to have been done at your request or your attorney's  
6 request, and you received a copy of this. So can't we  
7 presume that WSDF was part of the commissioning of  
8 this?

9 MR. HARRINGTON: Objection to form.

10 Q You may answer.

11 A If it was done under -- by Pursley Givens [sic], we  
12 were part of the commission of this.

13 Q And, again, your normal method of receiving documents  
14 from Givens Pursley was by email, correct?

15 MR. COOKE: Objection. Misstates prior  
16 testimony.

17 A The final report we received by mail.

18 Q From whom? From Givens Pursley or from --

19 A From Pursley Givens [sic]. It was a big thick thing.

20 Q Were you given opportunities to review draft reports?

21 A I don't remember that, no.

22 Q Did you provide redline edits of any reports?

23 MR. HARRINGTON: Sounds like --

24 MR. COOKE: Asked and answered.

25 MR. HARRINGTON: -- that sounds like



1 attorney-client communication.

2 A I don't remember doing any of that, no.

3 MR. HARRINGTON: Charlie, are you moving on  
4 to another topic?

5 MR. TEBBUTT: I think so, yes.

6 MR. HARRINGTON: Can we just address on the  
7 record Ms. Rodgers Harris' -- Harris Rodgers?

8 MS. RODGERS HARRIS: Rodgers Harris.

9 MR. HARRINGTON: Rodgers Harris' status  
10 representing the plaintiffs; is that correct?

11 MR. TEBBUTT: She has a common interest  
12 consulting attorney agreement, yes, on this case. So  
13 she is representing the plaintiffs.

14 MR. HARRINGTON: I just want to make sure we  
15 had that.

16 MR. TEBBUTT: We stated that very early on in  
17 the record.

18 Q Mr. Gordon, what was your involvement with EPA once the  
19 September 2012 Lower Yakima Valley groundwater report  
20 came out?

21 A What was my involvement in what regard?

22 Q Well, did you -- let's start with, did you consult with  
23 any of the cluster dairies when that report came out?

24 MR. HARRINGTON: Objection. Vague as to  
25 consult and cluster.



1 Q You know who I'm talking about with cluster, right?

2 A Um-hmm.

3 Q The cluster dairies?

4 A Yes.

5 Q The ones we're talking about today: Bosma, Cow Palace,

6 and the two DeRuyter facilities, correct?

7 A Yes.

8 Q Okay.

9 A Did I talk to them?

10 Q Yes.

11 A Yes.

12 Q And who was your main contact -- or who did you

13 contact, if more than one, at the Bosma facilities?

14 A Henry Bosma, Jr., and Hank Bosma, Sr., I believe.

15 Q How long have you known Hank Bosma?

16 A Fourteen, 15 years.

17 Q Since -- since you started working?

18 A Since I started, yes.

19 Q Okay. Has Mr. Bosma been on the board of the

20 Washington State Dairy Federation?

21 A Mr. Bosma, Sr. has not. Mr. Bosma, Jr. has.

22 Q And when was Mr. Bosma, Jr. on the -- on the board?

23 A Approximately 2002 or 2003 until about 2005. And those

24 are approximates. I'd have to check.

25 Q Did Henry Bosma -- I'll refer to Henry Bosma, Jr. just



1 as "Henry." If I'm speaking of Henry Bosma Sr., I'll  
2 call him "Hank," okay?

3 A Very good.

4 Q Did you consult with Henry Bosma about the EPA study  
5 itself before the study came out. When EPA -- let me  
6 just give you some background. When EPA first said, We  
7 want to come out to the Yakima dairies and do some work  
8 out there, will you let us onto your properties, did  
9 you consult with Henry Bosma?

10 MR. HARRINGTON: Objection. Assumes facts  
11 not in evidence.

12 You may answer.

13 A I may have.

14 Q Do you recall any specific consultation with them?

15 A I talked to a number of farms in March of 2012, I  
16 believe, would be the time frame you're referring to.

17 Q March of 2012?

18 A Excuse me. March of 2010.

19 Q Okay. And so with the number of farms, does that  
20 include Cow Palace and the DeRuyter facilities that  
21 we're talking about today?

22 A I don't remember if I talked to Cow Palace. I do  
23 remember talking to Henry somewhere in that time frame  
24 around 2010, March or April of 2010.

25 Q What did you talk to Henry about?





1 A The one that I recall was he had called after EPA had  
2 come to the farm in late March, early April, and we  
3 talked about what they did a little bit. They took  
4 samples, like soil samples, manure samples, walked  
5 around. He was -- we talked about the initial EPA  
6 knock at the door and where they announced they were  
7 there to do science, and the farms could get a search  
8 warrant if they wanted to.

9 Q So did you get advice to Mr. Bosma about how to respond  
10 to EPA?

11 A I seem to recall I said, You might want to talk to your  
12 attorney.

13 (Exhibit No. 207 marked for identification.)

14 Q Mr. Gordon, handing you what's been marked as Exhibit  
15 207, an email from WSDF to various people, including  
16 Hank Bosma, Henry Bosma, Bill Dolsen, Adam Dolsen, and  
17 George and Dan DeRuyter, among others, is that an email  
18 that you sent?

19 A Yes.

20 Q And so the email address, wsdf@msn.com, is that your  
21 personal account for WSDF?

22 A That's the main email and the one that I use.

23 Q Are there other email addresses that you use on behalf  
24 of WSDF?

25 A I believe there's a Gmail account. We use it very



1 little.

2 Q Exhibit 207 discusses your -- well, describe for me  
3 what you think Exhibit 207 is intended to do.

4 MR. HARRINGTON: Objection. Vague.

5 Q Do you understand my question? Do you understand my  
6 question, Mr. Gordon?

7 A Yeah. I guess it is rather broad. What is it intended  
8 to do? It's a communication to some key individuals in  
9 the Yakima area about what's going on with the EPA at  
10 this point in time in early April. They are coming  
11 into the valley with a science team -- and I'm  
12 paraphrasing "science team," but I may have used that  
13 term.

14 Q When you're saying "they," you're referring to EPA?

15 A Yes.

16 Q Again, just for purposes of today's deposition, if I  
17 ask a question and you don't understand it, I would  
18 like you to tell me that. Otherwise, I'm going to  
19 assume that you understood my question for the purposes  
20 of the record, okay?

21 A Okay.

22 Q All right. So why did you send them this  
23 particular -- let me back up.

24 Why this group of people that you sent this email  
25 to? Is there a particular reason for this group of



1 people to be sent this email?

2 A This would loosely be folks I'm familiar with in  
3 leadership roles, people I know.

4 Q What type of leadership roles?

5 A Dairy Federation board, some key people in the dairy  
6 industry and the Yakima Valley Dairy Commission,  
7 Darigold. Most of the people I was familiar with.

8 Q Are these some of the largest dairy producers in the  
9 Yakima area?

10 A Doesn't really have anything do with size. There's  
11 some big ones there. I don't know all -- I don't know  
12 all their sizes. That wasn't really a screen test for  
13 this.

14 Q Did these individuals ask you for assistance with the  
15 impending EPA study?

16 A No.

17 Q So this is a list that you put together?

18 A Yeah.

19 Q Okay.

20 A The -- the title, "FYI Tony et al.," Tony would be Tony  
21 Viega, first on the list. Tony, I believe, was still  
22 my president at the time. And so this would be just  
23 kind of an update to my leadership and some other key  
24 individuals that are in the Yakima Valley.

25 Q And who's Steve George?



1 A Steve George is a part-time field -- field staff person  
2 for the Dairy Federation. I identified him earlier.

3 Q And he also works for another -- a Yakima County group;  
4 is that correct?

5 A Not that I'm aware of. He has a number of businesses,  
6 a plastics recycling company, a small farm.

7 Q So is that a Yakima County Dairy Federation?

8 A There's a Yakima County Dairy -- so Dairy Federation.  
9 It's a subunit of our federation.

10 Q Okay. Does he head that up?

11 A He provides some staff assistance for that local team,  
12 local group of Yakima dairy producers.

13 Q Okay. Is he the only WSDF staff that assists over  
14 there in the Yakima Valley?

15 A Yeah. We assist some from the office, but he's field  
16 staff. He's in the field and local, and that's one of  
17 his primary duties.

18 Q If you look at the second page of Exhibit 207 at the  
19 very bottom, it's a short email from Sage Consulting.

20 A Um-hmm.

21 Q That's Mr. George, correct?

22 A That's correct.

23 Q So in this capacity, did he BCC you? Is that how you  
24 got ahold of this -- this email?

25 MR. COOKE: Objection. The document speaks



1 for itself.

2 A It would appear.

3 Q There -- it doesn't appear there. That's why I'm  
4 asking.

5 A Sorry.

6 MR. COOKE: Same objection. The document  
7 speaks for itself.

8 A It -- it would seem that I was bcc'd on the second  
9 page --

10 MR. COOKE: Are we looking at the same  
11 document, Charlie?

12 MR. TEBBUTT: Second page of Exhibit 207 --

13 MR. COOKE: Are you looking at the bottom?

14 MR. TEBBUTT: -- at the very bottom. Right  
15 down here. Yep.

16 MR. COOKE: Yeah.

17 Q Oh, okay. You are cc'd there. I apologize.

18 Do you agree with Mr. George's statement at the  
19 very last sentence? It said, "With financial resources  
20 generally at a premium for regulatory compliance work,  
21 voluntary compliance is the quickest and most  
22 cost-effective means to make changes."

23 Do you agree with that statement?

24 MR. HARRINGTON: Objection. Lack of  
25 foundation.



1 A Not totally.

2 Q Okay. What do you disagree with?

3 A That's a generality, that last statement. It depends  
4 on the circumstances. Mr. George is referring to  
5 voluntary compliance, the last sentence -- the last  
6 part of the sentence, "voluntary compliance is the  
7 quickest and most cost-effective means to make  
8 changes."

9 That would certainly be true, but it's not the  
10 only way to get there, I guess is the best way to  
11 answer it. You could --

12 Q What do you think other ways are?

13 A Other ways to achieve compliance? What would be  
14 compliance -- the intent of your question?

15 Q Well, to achieve --

16 A To make changes or --

17 Q Yeah. To -- to achieve compliance. What other ways  
18 are there besides voluntary?

19 MR. COOKE: Objection. Vague.

20 You can go ahead.

21 A Obviously, enforcement. Monetary penalties, changing  
22 rules. There's a number of different tools in the tool  
23 box for compliance or making changes.

24 Q So you believe those are other effective ways to bring  
25 about change as well?



1 A Absolutely.

2 MR. COOKE: Objection. Misstates his prior  
3 testimony.

4 Q Your answer was absolutely?

5 MR. COOKE: Objection. Misstatements his  
6 prior testimony.

7 MR. TEBBUTT: He just answered. He just said  
8 absolutely. I just want to make sure that that's what  
9 we all heard.

10 MR. COOKE: Same objection.

11 (Exhibit No. 208 marked for identification.)

12 Q Exhibit 208 in front of you, Mr. Gordon, is an email  
13 from you to Steve George and Chris Cheney. Do you see  
14 that?

15 A Yes.

16 Q Who is Mr. Cheney?

17 A Mr. Cheney was our lobbyist, contract lobbyist at the  
18 time.

19 Q So essentially he was the predecessor to Mr. Wood?

20 A Dan is an employee. Chris was a contract lobbyist.  
21 Job descriptions were quite a bit different.

22 Q Okay. So Mr. Cheney was the lobbyist for the  
23 Washington legislature?

24 A Yes.

25 Q And regulatory agencies as well?



1 A Yes.

2 Q And does Mr. Wood carry on those same duties as  
3 legislative lobbyist and agency lobbyist?

4 A Yes. Among others.

5 Q What other -- well, tell me -- tell me Mr. Wood's full  
6 job description.

7 A Government relations, work with the legislature, work  
8 with legislative agencies or regulatory agencies, work  
9 with industry partners. We lean heavily on the last  
10 section, which is "other duties as assigned," which  
11 includes cleaning the bathroom and emptying the waste  
12 can.

13 He primarily works on policy, policy analyst,  
14 policy regulations. So title is government affairs and  
15 everything it entails.

16 Q When did Mr. Wood come on as an employee of WSDF?

17 A January 1 of 2013? Yes.

18 Q Was he brought on for any particular reason?

19 A We made changes. Mr. Cheney was retiring and we needed  
20 to fill that government relations and policy work that  
21 Mr. Cheney had provided. That was in large part.

22 Q What is Mr. Wood's professional background?

23 A Mr. Wood's professional background would be -- I'll pay  
24 for it later if I get it wrong. I believe 17 years  
25 with the Washington State Farm Bureau. He was a county





1 commissioner in Grays Harbor County for approximately  
2 five years. He's been with the Dairy Federation  
3 for -- since January 2013. Worked in ag policy arena  
4 for a number of years.

5 Q Looking at Exhibit 208, you earlier testified about  
6 having spoken with Henry Bosma about the impending EPA,  
7 I believe you called it, science team.

8 A Um-hmm.

9 Q Is this email about that initial EPA science team  
10 inquiry?

11 A Yes.

12 Q And had you reached out to Henry Bosma or did he reach  
13 out to you about this?

14 A If you're referring to the first line here, same report  
15 I just got from Henry Bosma at 5:00 last night, I don't  
16 remember if Henry called me or I called him. We  
17 talked.

18 Q Henry Bosma has been an important member of WSDF, and  
19 the Bosma facilities have been members of the WSDF for  
20 quite some time, correct?

21 A Yes.

22 Q So they -- they're an important member to you?

23 A Yeah.

24 MR. HARRINGTON: Objection. Vague.

25 Q When the Bosma facility, Cow Palace facility got notice



1 from EPA of their intent -- or their desire to come on  
2 and do some testing on the dairy sites, did they  
3 contact you right away to discuss that?

4 A If I recall, yes. That would have been much earlier  
5 than this. March -- late March, I believe?

6 Q And did you give them the kind of advice that is  
7 reflected in Exhibit 208?

8 MR. HARRINGTON: Objection --

9 A The first page?

10 MR. HARRINGTON: -- vague.

11 Q Yes.

12 A The three questions?

13 Q Yes.

14 A No, I don't remember doing that.

15 Q Did you instruct them to be evasive with EPA?

16 A This is a conversation in March that --

17 Q Yes. In 2010.

18 A No. Actually, if I remember right, my understanding,  
19 it was a science team that was going to come, and I  
20 said, Let them on.

21 Q You didn't say make sure they have a warrant or  
22 anything like that?

23 A No. Not in March.

24 Q Did you tell them what to allow them to do, whether to  
25 allow them to take soil samples or anything to that



1 effect?

2 A I don't remember -- I don't remember saying that, no.

3 Q If you look at the second page --

4 A Um-hmm.

5 Q -- this is an email in the middle of the page from Adam

6 Dolsen to Steve George. Did Mr. George forward this

7 email to you from Adam Dolsen?

8 A It would appear, yes.

9 Q And Mr. George, in his role at Sage Consulting

10 Services, obviously wears different hats in different

11 situations, it appears, correct?

12 MR. COOKE: Objection. Vague.

13 You can go ahead and answer.

14 A Yes.

15 Q Yes. So if you're emailing to Mr. George at Sage

16 Consulting Services, it could be as a representative of

17 the Washington State Dairy Federation, correct?

18 A Sorry. If I'm --

19 Q Let me rephrase it.

20 The email address is sageconsulting@bossig.com.

21 A Yes.

22 Q But this is WSDF business, correct?

23 A Yes.

24 Q So Mr. George's business email address for his own

25 consulting business is also used for WSDF business,



1 correct?

2 MR. HARRINGTON: Objection. Calls for a  
3 legal conclusion. Vague.

4 Q You may answer.

5 A It would appear, yes.

6 Q And Mr. George sent an email to Adam Dolsen on April  
7 23rd concerning access to the Cow Palace Dairy by EPA.  
8 Do you see that?

9 A Down at the bottom? Yes.

10 Q Yes.

11 A Yes.

12 Q I don't see you cc'd on this, so I'm wondering how you  
13 got that. Oh, all right. Never mind. At the top of  
14 the second page of Exhibit 208 looks to be the  
15 forward --

16 A Oh, yeah.

17 Q -- from Mr. George to you, correct?

18 A FYI, yeah.

19 MR. TEBBUTT: Why don't we take a short  
20 break. We've been going for a little while and come  
21 back. Five minutes?

22 MR. COOKE: Sounds good.

23 THE VIDEOGRAPHER: Going off the record at  
24 10:31.

25 (Off the record.)



1 THE VIDEOGRAPHER: We are going back on the  
2 record at 10:40.

3 Q Mr. Gordon, you understand every time we go back on the  
4 record, you're still under oath, correct?

5 A Yes, sir.

6 (Exhibit No. 209 marked for identification.)

7 Q Mr. Gordon, you have in front of you Exhibit 209, which  
8 is an email from Chris --

9 A Sybrandy.

10 Q -- Sybrandy. Who is Chris Sybrandy?

11 A Chris Sybrandy is our current association president,  
12 dairy farmer in the Skagit Valley.

13 Q And how long -- is that a he or a she?

14 A It's a he.

15 Q How long has he been president?

16 A Chris is about a year and a half now. January of 2013,  
17 I believe, he was elected.

18 Q If you look at the second page of Exhibit 209, email  
19 from you to various people, correct?

20 A Yes.

21 Q I'm going to ask you: Why that particular list of  
22 people on the email of September 14, 2012?

23 A The initial recipients are the farms that were the  
24 subject of the EPA investigation and science document,  
25 and other leadership in the area, as well as other



1 leadership around the state.

2 Q Who is Jason Sheehan?

3 A Jason Sheehan would be Tony Viega's son-in-law.

4 Q And who's sfi@clearwire.net?

5 A I believe that's Bill Sheenstra [phonetic]. He was a

6 board member in Yakima at the time.

7 Q What about chamdairy2?

8 A That is Rex Chamberlain. He was on my board as an ex

9 officio at the time. He's in the Columbia Basin.

10 Q Foresterfarms, who are they?

11 A Duane Forester was on my board at the time.

12 Q The suntonfarms?

13 A That would be the Shulter [phonetic] family in Yakima,

14 and she was on my board at the time.

15 Q TDVE, who are they?

16 A Tom DeVries.

17 Q Eaglemill?

18 A John DeYoung is a dairy farmer in Whatcom County on my

19 board.

20 Q What about walterab- --

21 A Abplanalp.

22 Q Yeah.

23 A Walt is a board member from Chehalis, dairy farmer.

24 Q So other than the cluster dairy entities, were all the

25 other members in the two group board members of WSDF?



1 A In the two?

2 Q Yeah.

3 A I don't believe Dan DeGroot was on my board at the  
4 time.

5 Q Why was Mr. DeGroot a recipient of this email?

6 A Dan is a past board member. Keep -- keep fairly close  
7 contact with Dan.

8 Q And Steve Rowe, who's he?

9 A Steve Rowe is the -- I believe he's a senior vice  
10 president of Darigold.

11 Q Why was he copied?

12 A Just an FYI.

13 Q What about Fred Likkell?

14 A Fred Likkell is a field staff person in Whatcom County.  
15 Again, FYI.

16 Q For WSDF?

17 A Yes.

18 Q What about Stuart Turner?

19 A I know Stu and I know he represents another -- works  
20 with a number of farms in the valley. FYI.

21 Q Do you consider Mr. Turner to be a reliable source of  
22 advice to farmers, dairy farmers?

23 MR. HARRINGTON: Objection. Vague. Lack of  
24 foundation.

25 A Yes, I do.



1 Q Well, you kind of smiled when I said that, so were  
2 you -- is there -- is there something behind the answer  
3 that I should know about about Mr. Turner and your  
4 opinions of him?

5 A No. I think he does a good job as a consultant.

6 Q Do you talk to Mr. Turner at all about the Faria  
7 litigation? Are you familiar with the Faria litigation  
8 in Royal City?

9 A A little bit, not a lot.

10 Q Did you talk to Mr. Turner about it at all?

11 MR. COOKE: Objection. Outside the scope.

12 A I have.

13 Q Did you talk with him about it before the case went to  
14 trial?

15 A Before the Faria case went to trial?

16 Q Yes.

17 A You're going to have to give me more specifics. I  
18 don't --

19 Q Do you recall that it went to trial in the -- I believe  
20 it was December of 2010.

21 A I don't recall having a conversation with Stu about the  
22 case before -- yeah, nothing there. Sorry.

23 Q Okay. Did you ever review any transcripts of  
24 Mr. Turner's testimony in the Faria case?

25 A No.





1 Q Were you aware of his testimony at all during the Faria  
2 case?

3 A No.

4 Q Have you ever asked him about his testimony in the  
5 Faria case?

6 A No.

7 Q Has he ever told you about his testimony in the Faria  
8 case?

9 A I don't think so.

10 Q The email of September 14, 2012, discusses the EPA  
11 report, correct?

12 MR. COOKE: Objection. Document speaks for  
13 itself.

14 You can go ahead.

15 A Yes.

16 Q This email was basically about the EPA report and the  
17 follow-up from EPA, correct, with the cluster dairies?

18 A Yes.

19 Q You refer to the legal consent decree, which is the  
20 second page of Exhibit 209, WSDF001937.

21 You had a copy of it, I take it, at this point?

22 A Yes. I think so.

23 Q Okay. And this was before the EPA report was even  
24 released to the public, correct?

25 A I'm -- if I recall, the EPA report was released after



1           this -- after the 14th, yes.

2   Q       Somewhere around the 27th of September, correct?

3   A       That's about what I remember.

4   Q       So you had a copy of the consent decree.  Who provided  
5           it to you?

6   A       I believe I got that from Hank Bosma.

7   Q       And your comment is, "Generally it needs to be torn up  
8           and start with a blank sheet of paper," correct?

9   A       Yes.

10   Q       And so did you provide consultation to the cluster  
11           dairies about the content about the -- I'll call it the  
12           AOC, the Administrative Order and Consent that  
13           eventually became the AOC?

14                   MR. HARRINGTON:  Objection.

15   Q       Do you understand that --

16                   MR. HARRINGTON:  Objection, vague.

17   Q       -- terminology?

18   A       No, I don't.

19   Q       Okay.  The AOC is the Administrative Order and Consent  
20           that the cluster dairies eventually entered into with  
21           EPA and signed in March of 2013.

22   A       Yes.

23   Q       So are you familiar with the term "Administrative Order  
24           and Consent," then?

25   A       Yes.



1 Q And that's what I'll be referring to. I'll be calling  
2 it the "AOC."

3 A Yes.

4 Q So you provided strategic advice to the cluster dairies  
5 about the AOC process, correct?

6 MR. HARRINGTON: Objection. Vague, misstates  
7 the testimony.

8 MR. COOKE: Objection. Vague. Misstates the  
9 testimony.

10 A I don't know what you mean by "strategic advice."

11 Q Well, you consulted with the cluster dairies'  
12 principals about the AOC language, correct?

13 MR. HARRINGTON: Objection. Vague.

14 A We talked about it, yes.

15 Q And who did you talk with?

16 A In what time frame?

17 Q Let's start in September of 2012.

18 A I recall talking to Hank and Henry. Obviously, this is  
19 also communication, and they were on this  
20 communication. So given both the email communication  
21 and any verbal conversations I might have had, I talked  
22 with all of them.

23 Q Did you attend any of the meetings with EPA and the  
24 cluster dairies?

25 A No.



1 Q Did you have --

2 A Let -- with one caveat. There was a Dairy Federation  
3 meeting in, I believe, late September. Tom Eaton was  
4 there. At that meeting with Tom Eaton, there were a  
5 number of the cluster dairies as well as dairy farmers.

6 Q Was that before or after the EPA report was released  
7 publicly?

8 A I believe it was -- the EPA report was publicly  
9 available prior to that meeting, but it was about the  
10 same time frame, that 27th, if I remember right, 26,  
11 27, 28 time frame.

12 Q And was that meeting convened especially to address the  
13 EPA report?

14 A Yes.

15 Q And where did that meeting take place?

16 A Snipes Restaurant in Sunnyside.

17 Q Is that the Snipes Mountain Brewery?

18 A Yes, sir.

19 Q Do you have a special conference room for that meeting?

20 A There's a side room. There's the main restaurant and  
21 there's a side room for group gatherings and we, I'm  
22 sure, rented the room or -- I think we just rented the  
23 room. Bad acoustics, by the way.

24 Q Was that open to all WSDP members?

25 A I can't recall the exact invitation, but generally,



1       yeah.

2   Q    Do you have an email of who was invited to that  
3       particular meeting?

4   A    I think it was just a generic invitation that may have  
5       gone out in our weekly news, that may have gone out  
6       specifically in emails. It was well broadcast to the  
7       membership in the Yakima area.

8   Q    How well attended was it?

9   A    Pretty well attended. Sixty, rough guess.

10   Q   The third page of Exhibit 209 at the very bottom, it  
11       says, "The Report and Analysis."

12            You have some comments about the report including  
13       that there does not appear to be a peer review. What  
14       is your understanding about the EPA report and whether  
15       it was peer reviewed?

16   A    Now or as of the time frame of this document?

17   Q    As of the time frame of the document.

18   A    This would have been -- this would have been our early  
19       concerns about the peer review. It -- it seemed to be  
20       missing -- it seemed to be missing some peer review,  
21       and I may have done some checking -- I know I did some  
22       checking, whether it was -- it appears right before  
23       this on what was required for EPA on their science to  
24       have for peer-review quality. And we had concerns that  
25       this is -- surprised it's this early, but we had



1 concerns about the peer-review quality of this  
2 document, and this would have been September 15th. So,  
3 yeah, we -- we were concerned and remain concerned  
4 about the peer-review quality of the document.

5 Q What do you think is lacking in peer review of EPA  
6 study?

7 A My analysis of what EPA -- again, just Googling, EPA  
8 has some guidance on peer review for documents like the  
9 science manual. I believe there's a White House order  
10 from -- I can't remember the exact name of the order,  
11 but there's an order from 1996 that gives guidance to  
12 agencies on what they need to have for peer review.  
13 There's very little congressional guidance on peer  
14 review, but there is both White House guidance and EPA  
15 guidance that I've reviewed on what peer review needs  
16 to be included and incorporated into a peer-review  
17 document -- or into a document.

18 EPA -- I don't know if I knew it at this time, but  
19 in the process of analyzing this, EPA classified this  
20 science as highly influential, which carries a  
21 heavier -- a higher level, according to EPA or that  
22 White House document, a higher level of peer-review  
23 expectation. And so those -- both EPA and the White  
24 House peer-review standards, we've been unabashed that  
25 we don't see that they were met.



1 Q The last page of Exhibit 209. Talk about the process  
2 problem, and you say in the second paragraph there, you  
3 don't -- to paraphrase, you don't think that by the  
4 four farms changing their practices they'll make any  
5 difference to the nitrate problem in the area, correct?

6 MR. COOKE: Objection. The document speaks  
7 for itself.

8 A Could you state the question again?

9 Q Yeah. You're saying the four farms. We're talking  
10 about the cluster farms at this point, you are,  
11 correct, in that -- in that document?

12 A Yes. Four families, yes.

13 Q And that they alone wouldn't make any difference if  
14 they fixed their manure management practices, I assume  
15 you were referring to; is that right?

16 A My statement is -- it's written right there. I mean, I  
17 think I said it pretty well. Is that alone these  
18 farms -- yeah, the -- the two sentences together really  
19 state my opinion. I mean, I can read them back to you.

20 Q No, I'm not asking you to do that. What I'm trying to  
21 get at is, you don't disagree, as you state it in the  
22 paragraph above, that that's a serious nitrate problem  
23 in the Lower Yakima Valley, correct?

24 MR. COOKE: Objection. Calls for expert  
25 opinion.



1 MR. HARRINGTON: Objection. Vague.

2 A No, I don't disagree.

3 Q Okay. And what -- has WSDF made a determination about  
4 how much of the problem that dairies are contributing  
5 to the nitrate problem versus other forms of  
6 agriculture?

7 MR. COOKE: Objection. Calls for expert  
8 opinion.

9 A Determination? No.

10 Q Do you have an opinion about how much the dairies are  
11 contributing to the problem versus other agriculture in  
12 the area?

13 A No.

14 Q No opinion whatsoever?

15 A I would characterize our opinion as we're part of the  
16 community, and so we're part of the problem.

17 Q You don't disagree that the dairies are contributing to  
18 the contamination problem of nitrates in the  
19 groundwater --

20 MR. COOKE: Objection. Calls for a legal  
21 conclusion.

22 Q -- is that right?

23 MR. HARRINGTON: Calls for expert opinion and  
24 vague.

25 A State the question again.





1 Q You would agree that the dairies are contributing to  
2 the overall problem of nitrate contamination in the  
3 Lower Yakima Valley, correct?

4 A No.

5 MR. COOKE: Same objection.

6 MR. HARRINGTON: Same objection.

7 Q You wouldn't?

8 A No.

9 Q Who's responsible for the nitrate contamination in the  
10 Lower Yakima Valley, then?

11 MR. HARRINGTON: Same objections.

12 A The list is long from a time and distance standpoint.

13 Q And you think the dairies aren't part of the problem?

14 MR. COOKE: Objection. Asked and answered.

15 Q I think you just testified earlier that they were part  
16 of the problem. So are you now saying that they aren't  
17 part of the problem?

18 A I think the dairies are both part of the problem and  
19 part of the solution. And the characterization of that  
20 depends on the time frame of what we're looking at.

21 Q Tell me more about that. What do you mean by "the time  
22 frame"?

23 A The time frame would be agriculture and dairy have been  
24 part of the Yakima Valley for 100 or 150 years.  
25 Obviously, the nitrates came from somewhere, and



1 agriculture is a source.

2 The question the EPA report raised was when did  
3 those nitrates get in the groundwater and where did  
4 they come from? And I think those are still the  
5 questions that we have answered -- not answered.

6 Q You believe that the dairies are contributing to that  
7 problem?

8 MR. COOKE: Objection. Misstates his prior  
9 testimony.

10 A Today?

11 MR. HARRINGTON: Asked and answered.

12 Q Yes.

13 A I don't believe the dairies today are.

14 Q When did they stop contributing?

15 MR. COOKE: Objection. Calls for expert  
16 opinion and speculation.

17 A I don't -- vague question.

18 Q Six months ago? A year ago? Two years ago?

19 MR. COOKE: Same objections.

20 Q Give me an answer. You said at some point you said  
21 that -- you don't think they are today. Well, when did  
22 they stop becoming a problem?

23 MR. COOKE: Same objections.

24 MR. HARRINGTON: Mischaracterizes the  
25 testimony.



1 A I don't know how to answer that question.

2 Q I'm sorry?

3 A I don't know how to answer that question.

4 Q Based on your testimony, at some point they were  
5 contributing to the problem. You would agree with  
6 that?

7 MR. COOKE: Objection. Misstates his prior  
8 testimony.

9 A That's an assumption on my part, yes.

10 Q So do you think it was during the '90s that they  
11 contributed to the problem?

12 MR. COOKE: Objection. Asked and answered.

13 A It's possible.

14 Q In the 2000s?

15 A It's possible.

16 Q And what about this decade, 2010 to present?

17 A I think it's less likely.

18 Q Why?

19 A I think farm plans and management -- and I'm speaking  
20 in general terms. I think farm plans, management,  
21 cropping histories, cropping patterns, dairy patterns  
22 have changed significantly since the 2000s and  
23 especially in the last eight, ten, 12 years, 15 years.

24 Q And are you basing this -- when you say the "farm  
25 plans," are you talk about the dairy nutrient



1 management plans?

2 A Yes.

3 Q So are you saying that if the facilities complied with  
4 the dairy nutrient management plans that they wouldn't  
5 be contributing to the nitrate loading problem in the  
6 Yakima Valley?

7 A That's correct, yes.

8 Q So if they weren't complying with the dairy nutrient  
9 management plans, would you be concerned about that?

10 MR. HARRINGTON: Objection to form.

11 A Complying -- I may be.

12 Q You might be concerned, depending on what they weren't  
13 complying with?

14 A There's a lot of -- yeah. There's a lot of variables.

15 Q Right. But if it was shown that the dairy nutrient  
16 management plans weren't being complied with even  
17 within the last year, would that affect your opinion  
18 about whether the dairies are contributing to the  
19 nitrate problem?

20 MR. HARRINGTON: Objection. Calls for  
21 speculation, incomplete hypothetical, and vague.

22 Q Go ahead and answer.

23 A Okay. Say the question again, please. If -- I'll let  
24 you say it.

25 MR. TEBBUTT: Can you read it back please,



1 Kylie?

2 (Question read as follows:)

3 "QUESTION: But it was shown that the dairy  
4 nutrient management plans weren't being complied with  
5 even within the last year, would that affect your  
6 opinion about whether the dairies are contributing to  
7 the nitrate problem?"

8 MR. HARRINGTON: Same objections.

9 MR. COOKE: Also object that it's outside the  
10 scope of the deposition notice.

11 A It might. It would depend. Farm plans could be not  
12 being complied with. It would have nothing -- no  
13 impact, no difference, no effect. It would depend.

14 Q Well, if, for instance, field application information  
15 was not taken into account, like -- well, let me ask  
16 you: The things that would be critical for manure  
17 application that you would need to know -- and you're a  
18 farmer yourself, so you would know this, is -- and you  
19 testified about this earlier. You would need to know  
20 what crop is going on a field, right?

21 A Yes.

22 Q What the nitrate levels are in the soil before you  
23 plant the crop and whether additional fertilizer is  
24 needed, right?

25 A Yes.



1 Q So you look at the residual nitrates, as well?

2 A Yes.

3 Q And what the uptake of a particular crop, the optimal  
4 nitrate levels for optimal uptake would be, correct?

5 A Yes.

6 Q And so in order to do that, you would look at past crop  
7 yields to determine what you believe the optimal manure  
8 application rates and nitrate levels should be in the  
9 soil for an optimal crop yield, correct?

10 A Yes.

11 Q And if those weren't complied with, if the numbers of  
12 nitrates were -- the residual nitrates were higher than  
13 the optimal crop need and the manure is still being  
14 applied, that would be reason to be concerned about  
15 nitrates still being contributed to the soil at levels  
16 beyond which the crop could use?

17 MR. COOKE: Objection. Calls for an expert  
18 opinion --

19 Q Correct?

20 MR. COOKE: -- and speculation.

21 A It could be but it might not be. It really depends.

22 Q Do you recall doing an interview with an industry  
23 publication about the nitrate contamination problem in  
24 the Lower Yakima Valley?

25 MR. COOKE: Objection. Vague.



1 A Which publication?

2 Q Have you reviewed any YouTube -- any pieces of like a  
3 TV interview that you have done that's been posted on  
4 YouTube?

5 A Have I done -- say that again.

6 Q Yeah. Have you done any interviews with a photo  
7 journalist about the problems of contamination in the  
8 Lower Yakima Valley?

9 A Oh, I don't remember that. It's possible. No -- that  
10 I -- I don't remember doing an interview on camera, no.  
11 It's possible.

12 Q You do quite a few interviews about this issue, right?

13 A Yeah, some, but not photo.

14 Q Well, video?

15 A It's possible.

16 Q Earlier, Mr. Gordon, you testified about a conversation  
17 with --

18 (Exhibit No. 210 marked for identification.)

19 Q -- a conversation with Deb Kristensen about this  
20 deposition. Does this document, Exhibit 210, refresh  
21 your recollection about that conversation?

22 A Sorry, the question again?

23 Q Yeah, this is an email -- I'll rephrase it -- an email  
24 from you to Steve Rowe at Darigold, correct?

25 A Yes.



1 Q And this is about your conversation with Deb  
2 Kristensen, correct?

3 MR. HARRINGTON: Objection to the extent this  
4 is going to try to get into the content of a  
5 conversation. But if it's just --

6 MR. COOKE: I have the same objection.

7 MR. HARRINGTON: -- if it's just asking about  
8 this email, you may answer.

9 MR. TEBBUTT: That's what I asked.

10 A This refreshes my memory.

11 Q It does?

12 A Sure.

13 Q So you had a conversation with Deb Kristensen about who  
14 would represent you at this deposition?

15 A Yes, I did.

16 Q And so she was not representing you -- she declined to  
17 represent you for the purpose of this deposition,  
18 correct?

19 A Yes.

20 Q Were you ever part of any conversations with Deb  
21 Kristensen and JT Cooke?

22 A Not that I recall.

23 Q And Deb told you that she was going to consult with JT  
24 Cooke about the deposition, correct?

25 MR. COOKE: Objection. Calls for attorney





1           -client communications.

2                   MR. TEBBUTT: There's no attorney-client  
3 privilege in that particular situation. She declined  
4 to represent him.

5                   MR. COOKE: Can you repeat the question?

6 Q       Deb Kristensen told you that she would be consulting  
7 with JT Cooke about the deposition, correct?

8 A       At this time?

9 Q       Yes.

10 A       I don't recall if she said that or no.

11 Q       Okay. Well, you state it in your email, don't you?

12                   MR. COOKE: Objection. Document speaks for  
13 itself.

14 A       No, that's not what it says.

15 Q       It says he and Deb were to talk Friday.

16 A       But it doesn't say whether Deb said that or whether  
17 Jason -- JT said that.

18 Q       Okay. Mr. Gordon, I'm going to show you a YouTube  
19 video and ask you a couple questions about it.

20                   THE VIDEOGRAPHER: I've got five minutes  
21 left. Do you want to make a tape change now?

22                   MR. TEBBUTT: No, I should be able to handle  
23 it.

24 Q       That's you, isn't it?

25                   (Video playing.)



1 A Yes, sir.

2 Q Star of stage and screen. Who's the gentleman that  
3 you're -- that you're with, do you know?

4 A No, I don't.

5 Q Do you know what entity he's with?

6 (Video playing.)

7 Q Do you know who -- do you know who that is?

8 A I don't. I may remember as I watch the video, but I  
9 don't recall.

10 Q Do you know where the video was shot?

11 A I think this was down at the Oregon Dairy Convention.

12 Q All right.

13 A I don't remember when yet, but...

14 Q And you stated earlier that you believe there are  
15 multiple sources of the nitrate contamination in the  
16 Lower Yakima Valley, correct?

17 A Yes.

18 Q And one of them, historically, at least, one of those  
19 sources, at least, is the dairies, correct?

20 A Could be, yes.

21 Q All right. And you state that again here in this  
22 interview, don't you?

23 (Video playing.)

24 Q You agree that -- well, let's see. Let's back up here.

25 (Video playing .)



1 Q Do you admit there that the dairies are part of the  
2 problem?

3 MR. COOKE: Objection. Calls for a legal  
4 conclusion.

5 Q They are part of the village that messed up the  
6 agriculture, correct?

7 MR. COOKE: Same objection. Go ahead.

8 A Yes.

9 MR. COOKE: Asked and answered.

10 Q I'm going to show you another segment where you talk  
11 about settlement agreements. I'll just run that clip  
12 briefly.

13 (Video playing.)

14 Q So you're talking about the citizens at this point, at  
15 that particular point of the video; is that right?

16 MR. COOKE: Objection. Calls for  
17 speculation. He hasn't been allowed to review the  
18 entire YouTube video. You're taking snippets.

19 Q Do you need to review the entire video to understand my  
20 question and give an answer?

21 A No.

22 Q Okay. So you're talking about the citizen suits at  
23 this point, right?

24 A Yes.

25 Q And that they usually settle out of court for



1           undisclosed sums?

2   A       That's what I said, yes.

3   Q       Are you aware of any settlements that have been  
4           undisclosed between the citizens and the dairies?

5                   MR. COOKE:  Objection.  Vague.

6   A       Tell me what you mean.  Rephrase it.

7   Q       Well, you said they usually settle out of court for  
8           undisclosed sums.  What's your basis for that  
9           statement?

10  A       I don't know.

11  Q       You have no basis for that statement, do you?

12  A       I think that's -- I don't know, it's common knowledge  
13           in the valley that settlement -- can't tell you what it  
14           was for.  That's the basis.

15  Q       Are you talking about any of the CARE litigation when  
16           you're referring to that in that particular video?

17  A       I believe that's what I said, yeah.

18  Q       What CARE litigation do you believe has been  
19           undisclosed -- settlements, CARE settlements have been  
20           undisclosed?

21  A       Do you want me to go through the list that I'm aware  
22           of?

23  Q       Sure.  Yeah, please.

24                   THE VIDEOGRAPHER:  I'm going to need to make  
25           a disk change here.



1 MR. TEBBUTT: All right.

2 THE VIDEOGRAPHER: So we're going to end Disc  
3 No. 1 in the deposition of Jay Gordon. We're going go  
4 off the record at 11:21.

5 (Off the record.)

6 THE VIDEOGRAPHER: This is going to begin  
7 Disk No. 2 in the deposition of Jay Gordon. We're  
8 going back on the record at 11:27.

9 Q Mr. Gordon, when we changed tape, we were -- you were  
10 just about to list the CARE settlement agreements that  
11 you believe had undisclosed terms of settlement, right?

12 A I believe -- yes.

13 Q What ones -- give us the list.

14 A So the ones I'm aware of are kind of common knowledge  
15 going back a number of years is -- CARE has engaged in  
16 whatever legal action -- whether it was litigation or  
17 not, I don't know -- legal action -- Bosma family. I  
18 believe there was the group in 1996 that's just  
19 generally referred to as the lawsuit of  
20 Tanner-something. That was part of my employment. I'm  
21 certainly aware of that litigation. I believe there  
22 were settlements in many of those cases. I think eight  
23 is the number I've heard over the years. Litigation  
24 against Jake and Jimmy DeRuyter. Again, don't know the  
25 terms of what the settlement was or what the litigation



1 was or how the outcome was. Those are the ones that  
2 come to mind, but that characterizes the list of  
3 actions and...

4 Q Okay. Did you ever look into whether those documents,  
5 those settlements were actually public records?

6 A No.

7 Q So you're just making an assertion without a basis of  
8 knowledge, then, correct? Based on rumor?

9 MR. HARRINGTON: Objection.

10 MR. COOKE: Objection.

11 MR. HARRINGTON: Mischaracterizes testimony.

12 MR. COOKE: And asked and answered.

13 A I've been characterizing the general sense of the  
14 knowledge in the valley including my own.

15 Q So if I were to represent to you that all the CARE  
16 settlements have been a matter of public record, have  
17 been filed with federal district courts, and are  
18 available to any member of the public, would you be  
19 able to disagree with that?

20 A I would check and see if that were true.

21 Q Well, I would suggest you do that before you make  
22 assertions in public again that there are undisclosed  
23 settlements.

24 MR. HARRINGTON: Objection.

25 MR. COOKE: Is there a question there?



1 MR. HARRINGTON: It's improper. Go ahead and  
2 ask a question if you have one, Mr. Tebbutt.

3 Q Wouldn't that be your due diligence to determine  
4 whether those rumors are true before you restate  
5 them --

6 MR. HARRINGTON: Objection.

7 Q -- in public --

8 MR. COOKE: Objection. Argumentative.

9 MR. TEBBUTT: Hold on a second, let me finish  
10 my question.

11 MR. COOKE: I'm getting my objection in.

12 MR. TEBBUTT: No. You wait until I finish my  
13 question before you -- the courtesy is to wait until I  
14 finish my question.

15 Q So my question is: Wouldn't it be the prudent thing to  
16 do to determine whether the rumors are true before you  
17 simply pass those rumors along in, you know, televised  
18 public interviews?

19 MR. COOKE: Objection. Vague.  
20 Argumentative.

21 A I think that's an excellent suggestion.

22 Q Good. I hope you'll take it.

23 MR. COOKE: You want to talk about  
24 courtesies?

25 Q I'm going to show you just one more clip, Mr. Gordon,



1 from that YouTube video.

2 (Video playing.)

3 Q Is that enough?

4 A Um-hmm.

5 Q I'm going to stop the clip there. That was at about  
6 the seven-minute, 30-second mark of the YouTube video.  
7 You said the science was unconscionably bad and that  
8 the science was, I think you said, horrible.

9 What do you base that conclusion on?

10 A As I mentioned earlier, the peer review was initially a  
11 concern, and the more we explored that -- just that one  
12 example of what the quality that peer review should  
13 have was a big piece of that. I mean, there's a lot of  
14 their technical details that are in the reports of  
15 various people across. But for us, one of the things  
16 that was a piece of that and led to that emotion that  
17 you see in that tape would have been the peer review.

18 Q So when you stated that the EPA science was atrocious,  
19 I believe was the word you used, you're saying that  
20 that was an emotional representation of it?

21 MR. COOKE: Objection. Misstates the prior  
22 testimony.

23 A No. It was both emotional and based on -- it was --  
24 the peer review was terrible. It was not conducted  
25 according to EPA's own standards, White House





1 standards, guidance for peer review that we saw that  
2 was required of the agency.

3 Q Okay. And so that's your opinion based on -- based on  
4 what?

5 A The -- looking at those guidances that EPA has and that  
6 the White House has issued for that science.

7 Q A few minutes ago we talked a little bit about -- you  
8 said that you believe the dairies were a contributing  
9 factor to the nitrate problem in the Lower Yakima  
10 Valley but they're not anymore. Is that a fair  
11 paraphrase of what you said earlier?

12 A That's generally. It's...

13 Q Okay. What management practices have changed that you  
14 believe have made the dairies stop being part of the  
15 problem?

16 A I think there's a number of things that have made us  
17 better managers: More intense cropping, better  
18 varieties of corn, triticale, alfalfa.

19 Q That are varieties in what respect?

20 A Higher yielding, earlier -- earlier maturing. For  
21 instance, double cropping has become a very standard  
22 practice in the valley, you see a lot of corn and  
23 triticale or alfalfa, corn, and triticale rotations.

24 I think the attention to detail in irrigation  
25 water management, soil testing, genetics, general



1 levels of knowledge I've seen increase in the 15, 20  
2 years I've been paying attention. Those are examples.

3 Q What about the lagoons? Have the lagoons changed over  
4 time?

5 A Yeah.

6 MR. COOKE: Objection. Vague.

7 Q So lagoons that were built in the 1980s or 1990s that  
8 are still there, those haven't changed, have they?

9 MR. COOKE: Objection. Calls for  
10 speculation.

11 A May have, I don't know.

12 Q How would they have changed?

13 MR. COOKE: Objection. Calls for  
14 speculation.

15 A An example, lagoons can be retrofitted. I'm not aware  
16 of any that have, but it's possible. That would be an  
17 example of a lagoon changing.

18 Q And if the lagoons hadn't changed and they were part of  
19 the problem 20 years ago, they would still be a part of  
20 the problem today, right?

21 MR. COOKE: Objection.

22 MR. HARRINGTON: Objection. Calls for expert  
23 opinion. Calls for speculation.

24 A There's an assumption that they were part of the  
25 problem 20 years ago that I don't -- I don't believe.



1 Q You don't believe that the lagoons are a problem?

2 A You said lagoons 20 years ago. You were inferring an  
3 assumption that lagoons 20 years ago were a problem,  
4 and I don't believe that.

5 Q You don't believe they were a problem ever, the  
6 lagoons?

7 A No.

8 Q What science do you have to back that up?

9 A We've reviewed a lot of the science that's come in over  
10 the course of the last two years.

11 Q What science is that?

12 A It's published on the EPA -- a lot of the science was  
13 referred to in the EPA comments.

14 Q In the comments that WSDF commissioned?

15 A Some that we commissioned, some that we didn't.

16 Q And you have a list of that science that you believe  
17 confirms your opinion that the lagoons are not a  
18 problem?

19 MR. COOKE: Objection. Misstates the prior  
20 testimony.

21 A I would go to the EPA website and look at those -- the  
22 science that I referred to is on the EPA website.

23 Q Have you looked at any of the Department of Ecology  
24 studies about lagoons and their impacts on groundwater?

25 A It's possible.



1 Q Have you looked at any of the Department of Ecology  
2 studies in the Sumas-Blaine aquifer?

3 A I think I've seen one, yeah, a long time ago.

4 Q Have you seen Ecology's conclusions that the dairies  
5 are a major part of the problem in the Sumas-Blaine  
6 aquifer?

7 MR. COOKE: Objection. Assumes facts not in  
8 evidence.

9 A No, I haven't seen that.

10 Q Have you looked?

11 A I can't recall.

12 Q Have you ever reviewed a study on the Edaleen Dairy?

13 A No.

14 Q Done by Dennis Erickson from Department of Ecology?

15 A No.

16 Q Have you ever reviewed any studies by Dennis Erickson  
17 from the Department of Ecology about dairy  
18 contributions to nitrate contamination in groundwater?

19 A No. Not that I recall.

20 Q Have you ever reviewed any of the studies by Melanie  
21 Redding Kimsey about nitrate contamination from dairies  
22 to groundwater?

23 A Doesn't ring a bell.

24 Q She works for the Department of Ecology. She's a  
25 hydrogeologist.



1 A No. Haven't seen that.

2 Q Do you know Kevin Freeman?

3 A I know who he is.

4 Q Who is he?

5 A He's a -- works for Arcadis Consulting Firm.

6 Q When did you first meet Mr. Freeman?

7 MR. COOKE: Objection --

8 A Go ahead.

9 MR. COOKE: -- assumes facts not in evidence.

10 Go ahead.

11 A I believe I've only met Kevin once. It was at a  
12 meeting. It was either April of '12 or April of '13, I  
13 think. I can't remember which year. I think it was  
14 '13.

15 Q 2013?

16 A 2013.

17 Q Was that right after the AOC was signed by the dairies?

18 A It would have been, I believe, yes.

19 Q You were present during the appeal of the Pollution  
20 Control Hearings Board case of the 2006 Washington  
21 General CAFO Permit, correct?

22 A Yes.

23 Q Does that refresh your recollection about meeting  
24 Mr. Freeman another time?

25 A Yep. That's right. I forgot about that. He was an



1 expert witness or testified there.

2 Q On -- on behalf of the Washington State Dairy  
3 Federation, right?

4 A Yeah, he did, yes.

5 MR. COOKE: Objection. It's also outside the  
6 scope of the deposition topics.

7 Q Did you spend some time talking with Mr. Freeman then  
8 about your case?

9 A The case at the time?

10 Q Yeah, the case at the time, the PCHB appeal.

11 A Oh, gosh.

12 MR. COOKE: Objection. Outside the scope of  
13 the deposition topics.

14 A I -- I don't remember the nature of our conversations  
15 at the time. It's been a long time.

16 Q Anything else I could do to refresh your recollection  
17 of whether you've met Mr. Freeman at other times?

18 A You could try, sure.

19 Q Have you ever been on site of any of the cluster  
20 dairies yourself?

21 A I've been on the farms, yes.

22 Q When were you -- let's keep it to the 2010 and forward  
23 time frame. When were you on the Bosma Dairy from  
24 2- -- what started in 2010. Were you ever on the Bosma  
25 Dairy in 2010 right around the time when EPA said they



1           were going to come out and conduct some -- some tests?

2   A       I don't think so, no.

3   Q       Okay. Same question -- would you give the same answer  
4           for Cow Palace and the two DeRuyter facilities?

5   A       Yes, I would.

6   Q       Okay. Tell me when you believe you were on site at  
7           those facilities since 2010.

8   A       Oh, good gracious. I would have probably been on the  
9           farms in September of '12 -- of 2012. I know I went  
10          over there shortly after the AOC -- the initial AOC  
11          language and the science report was given to the  
12          families.

13   Q       And did you go to each of the facilities?

14   A       I don't remember. I remember --

15   Q       Let's go with what you do remember.

16   A       I remember going to the Bosma Dairy.

17   Q       Let me stop you there. Who were you with?

18   A       I believe I was with myself.

19   Q       Just you, and did you meet with Henry?

20   A       I think I saw Henry.

21   Q       Did you take a tour of the facility?

22   A       I could just -- I think at that meeting in September, I  
23          went to his office on one of the dairies.

24   Q       And what did you talk about?

25   A       The science and the AOC that had been presented to



1           them.

2   Q       Give me more specifics.  What did you talk about?  Did  
3           you talk about the soil sampling?

4   A       I don't remember that, no.  I remember --

5   Q       Did you -- did you review any -- any documents of  
6           theirs?

7   A       I would have -- I think that was about the time, so in  
8           September of 2012 would have been when I got a  
9           copy -- I think Hank came down to the office with Henry  
10          and I, and I got a copy of the science compendium that  
11          the EPA had submitted and a copy of the AOC language.  
12          And I think we spent most of the time talking about  
13          that.

14  Q       Did they give you or did you ask for any of their soil  
15          sampling records?

16  A       No.

17  Q       Did you look at their dairy nutrient management plan?

18  A       No.

19  Q       Did you do any kind of drive-around through the  
20          facility?

21  A       No.

22  Q       How long were you there?

23  A       Half an hour, 45 minutes.

24  Q       And the purpose of the meeting was what?

25  A       Check in with them and see how they were doing, get a





1 report on what they were confronted with and how they  
2 were doing and what was going on.

3 Q Did you have similar meetings with people from Cow  
4 Palace?

5 A I may have. I do remember, that time frame, meeting  
6 Dan and, I believe, George DeRuyter. Just having a  
7 hard time picturing where we met at and what that  
8 conversation was about. But I remember I went over  
9 there to talk to the families.

10 Q And that was just you?

11 A Yes. I believe so.

12 Q And you said you met with the DeRuyter families. Did  
13 you meet with the Dolsens?

14 A I don't remember. I've met with them a number of times  
15 and I've been on their farm once, maybe twice --

16 Q When?

17 A -- in the last two years.

18 Q In the last two years.

19 A I think we had a meeting there maybe early October, and  
20 that was a meeting -- we had a meeting at  
21 DeRuyter -- at Dolsen's farm, and there would have  
22 been, I think, DeRuyters and Dan was there, Henry, and  
23 the Haak family and the Dolsens. And I think it was  
24 just Bill. I don't think Adam Dolsen was there. So  
25 that would have been on the Dolsen farm.



1 Q And what was discussed then?

2 A I think it was a lot about the -- again, the EPA  
3 science, the questions that we had, who was going to  
4 address what the quality of the science was. Probably  
5 talked a little about the current AOC. That would have  
6 been my recollection of the main conversation.

7 Q Did you ever attend a meeting where Bud Hover was also  
8 present at the dairies?

9 A No.

10 Q Do you remember being part of a discussion with the  
11 Department of Agriculture -- Ginny Prest, Julie Morgan,  
12 or Bud Hover -- about a meeting that was to take place  
13 at some of the cluster dairies?

14 A I remember conversations. Ginny, Julie -- I can't  
15 remember. I think most of them were either email or  
16 phone -- but -- and I can't remember the time frame.  
17 It was not too long ago. I'd have to look for a time  
18 frame.

19 (Off the record.)

20 THE VIDEOGRAPHER: We are going back on the  
21 record at 11:50.

22 Q Mr. Gordon, you have in front of you a tablet with  
23 Exhibit 35. I'm going to hand you a copy, which is the  
24 same thing. I'm not going to ask the court reporter to  
25 remark it, but it's Exhibit 35 that's been prior



1 marked.

2 A Yes.

3 Q You're copied on this email --

4 A Yes.

5 Q -- correct? Does this refresh your recollection about  
6 whether you participated in a meeting with Director Bud  
7 Hover of the Washington State Department of Agriculture  
8 at the dairies -- the cluster dairies?

9 A Yeah. I wasn't here.

10 Q You were not?

11 A No.

12 Q Do you know if Mr. Wood was present at that meeting?

13 A I'd have to ask.

14 Q Do you know if you designated or delegated this task to  
15 someone else from the Dairy Federation to attend?

16 A It's possible.

17 Q Did you provide comments on this meeting and the  
18 agenda?

19 A Vaguely remember discussions about the agenda, the  
20 renewable natural gas especially. I think that was one  
21 of the things we wanted Bud to see. And then No. 2  
22 speaks for itself, it says, "Impacts from the EPA  
23 decree." And vaguely remember discussions from, I  
24 think it was, Ginny, may have been with Julie on just  
25 Bud go over and listen to the families.



1 Q So when you say, "We wanted them to see," are you  
2 talking about you and Ginny Prest?

3 A Sorry? Say --

4 Q Yeah. You said earlier that we wanted them to see the  
5 digester, the methane -- I assume that's what you're  
6 talking about here?

7 A No. We would have been -- Dairy Federation, also a  
8 gentleman that's not listed on here named Dan Evans,  
9 is -- and I don't know if he made it to this meeting or  
10 not, but he's a gentleman the families have been  
11 working with on the renewable natural gas project, and,  
12 again, I don't know if he made it, but that we would  
13 be, Dairy Federation, and that -- RNG digester  
14 projects, goals, hopes, and challenges loosely would  
15 describe getting Bud familiar with the -- what the  
16 renewable natural gas project is about.

17 Q And my question is: Earlier you said, "we wanted Bud  
18 to see this." Who's "we"? Is it you and Ginny?

19 A No. It would have been -- I mean, when I said "we," I  
20 meant me, and the other one that would have been in  
21 there would have been Dan Evans. I think I had a  
22 conversation with Dan as well.

23 Q So did you have discussions with Ginny Prest about the  
24 agenda?

25 A Yes.



1 Q Was it just the two of you who had those conversations?

2 A I think I also had a little conversation with Julie  
3 Morgan, as well, and may have even talked to Bud  
4 briefly about it.

5 Q Before the meeting?

6 A Um-hmm. Yes.

7 Q And when you talked with Julie, was Ginny also present?

8 A She could have been.

9 Q Did you have a conference call or did you do it in  
10 person?

11 A I don't remember.

12 Q Going back to the AOC process.

13 (Exhibit No. 211 marked for identification.)

14 Q Exhibit 211, the first part of it is an email from Bill  
15 Dolsen to you and a couple other people. Do you know  
16 what Mr. Dolsen was referring to, "I appreciate your  
17 communication and commitment to resolve this headache"?  
18 What's he referring to?

19 A The EPA science and AOC.

20 Q So what meeting is it that is being referred to,  
21 though?

22 A I'm sorry?

23 Q Oh, I'm sorry. The headache is the AOC generally?

24 A Yes.

25 Q Okay. And the email of the same date from you to a



1        number of people, including Bill Dolsen, which is 46  
2        minutes earlier than Bill Dolsen's reply, what meeting  
3        is it that Mr. Dolsen is referring to and that you are  
4        referring to in your email?

5    A     That would be the groundwater management area meeting  
6        or meetings.

7    Q     Do you go to all of those?

8    A     No.

9    Q     Do you go to some of them?

10   A     I've been to a few.

11   Q     And who is Jean as referred to on the first page of  
12        211, do you know? "I'm sitting at the table with the  
13        two of you, across from Jean."

14   A     That would probably be Jean Mendoza.

15   Q     And what's the significance of the mention of Jean  
16        Mendoza?

17                    MR. HARRINGTON: Objection. Vague.

18   A     Sorry. Could you -- just to make sure --

19   Q     Yeah. I'm just wondering why you mentioned Jean here.  
20        What's the significance of mentioning Jean Mendoza?

21   A     Jean Mendoza is on the groundwater management area with  
22        Jason Sheehan and Dan DeGroot, who were both --

23   Q     Right. But why do you mention Jean specifically?  
24        She's not the only one on the GWMA, right?

25   A     No.



1 Q Why do you mention her?

2 A She's been an active participant in the process and, I  
3 would say, a voice that we need to address.

4 Q Why? What do you mean "need to address, a voice you  
5 need to address"?

6 A She brings up concerns and brings up arguments and  
7 discussions on points in science, and -- I'm  
8 characterizing as best I can, but Dan and Jason would  
9 sit with Jean a lot more on GWMA, and so it's -- that's  
10 generally my characterization of it. I'm not sure if I  
11 answered your question.

12 Q I'm not sure you did either. Are you trying to address  
13 Jean Mendoza's questions, or are you trying to nullify  
14 them?

15 A Oh, no. I don't think we're trying to nullify them. I  
16 think there's been a lot of conversations. I've not  
17 been part of them, but I've heard they are long and  
18 exhaustive conversations between the GWMA participants  
19 and especially Jean and Jason and Dan as  
20 representatives, so...

21 Q In the second paragraph of your email, you say, "The  
22 studies over the years do clearly show nitrates are  
23 higher than they should be based on federal standards."

24 A Where are you at? First page?

25 Q First page of Exhibit 211. And then in parentheses it



1       says, "which have a medical safety factor of at least  
2       1,000 percent."

3               What are you basing that statement on?

4   A       So I don't recall where that information came from, but  
5       it was in background study over the years of where and  
6       how did the EPA ten-part-per-million drinking water get  
7       established, and it is -- again, I can't recall where I  
8       got it, but it's my understanding from conversations,  
9       just my perception, that the standard in the United  
10       States was set at about 10 parts per million, which  
11       clinical symptoms were assumed to be somewhere above  
12       100. And so EPA had determined that they wanted to  
13       have ten times the level of reduction for safety.

14   Q       So that's not 1,000 percent, right?

15   A       So my math would be if 100 percent was half, 10 would  
16       be 1000. But if my math is wrong, I stand to be  
17       corrected. But my point was tenfold.

18   Q       Have you ever -- ever heard any studies or any -- well,  
19       have you ever heard that, in fact, there is no safety  
20       factor built into the maximum contaminant level for  
21       nitrates in groundwater?

22               MR. HARRINGTON: Objection.

23               MR. COOKE: Assumes facts not in evidence.

24               MR. HARRINGTON: Assumes facts not in  
25       evidence. Also expert opinion.





1 A Ask the question again.

2 Q Have you ever seen any literature that indicated that  
3 there is no safety factor built in to the maximum  
4 contaminant level for drinking water?

5 A No, I haven't.

6 Q Have you ever seen one that says that there is a safety  
7 factor built in, or is this the same kind of rumor that  
8 you determined was used for the consent decrees and  
9 undisclosed --

10 MR. HARRINGTON: Objection. Argumentative.

11 MR. COOKE: Objection. Argumentative,  
12 there's not a question.

13 A I can't remember if I saw documentation on that or not.

14 Q Is that why you have the question marks next to it?

15 A It could be, yes.

16 Q On the second page of Exhibit 211, under No. 2, you say  
17 that "EPA used one study by a Ph.D. named Ham to make  
18 its determination that lagoons leak and pollute. There  
19 are dozens of studies on lagoons and leakage rates and  
20 this is the first one that claims" -- all in caps --  
21 "there are significant amounts of nitrates coming from  
22 lagoons."

23 What studies are you talking about there, those  
24 dozens of studies?

25 A This would have been referring at this time frame to an



1 initial screening. We had talked to some of the  
2 scientists that ended up doing some reviews, both at  
3 our request and at others' requests. So there would  
4 have been a gentleman in Texas -- I'll think of his  
5 name in a second -- that we would have talked to by  
6 this point in time that would have been the basis of  
7 that statement. And I'll -- I'm going to have  
8 to -- it's a funny name. If it's okay, we'll move on.  
9 I know his name will come to me in a minute.

10 Q Let's see if we can get to --

11 A Dr. -- Dr. Sakamuktar [phonetic] would have been at  
12 Texas A&M.

13 Q So he's one of the people that WSDF engaged to critique  
14 the EPA report?

15 A We engaged him to review it, yes.

16 Q Did he cite the dozens of studies that you are talking  
17 about in his comments?

18 A I think he did -- I'd have to go look at his final  
19 report, but I believe there were citations in that,  
20 yes.

21 Q What are the Yakima Dairy Federation kitchen meetings?

22 A We have tried over the years to have just a  
23 get-together for producers. No set schedule, although  
24 typically we'll do a spring and a fall. It's just a  
25 chance for the local board and the state board and



1 state leaders have a lunch, get together, chat.

2 Q So the kitchen meetings are a euphemism for a meeting  
3 somewhere; is that right?

4 A Yeah. We don't hold them in anybody's kitchen anymore,  
5 but --

6 Q It's a nice quaint term.

7 A It is.

8 Q You talk about on the very bottom of the second page of  
9 Exhibit 211 recruiting a couple more dairy folks to  
10 pitch in on the GWMA committee process.

11 A Yes.

12 Q So you want more membership on GWMA; is that what  
13 you're trying to do?

14 A No. I think there's one seat, Jason Sheehan, and Dan  
15 DeGroot is the alternate. But there's a lot of  
16 meetings and there was going to be a lot of  
17 subcommittee meetings. And our concern then and now is  
18 the sheer volume of time that it takes to make sure  
19 that you can cover all the meetings. And I refer to  
20 that on the next page. The GWMA committee process was  
21 already starting to be a concern.

22 Q So that's your -- that was an email from Dan to you  
23 that you're referring to dated October 13, 2012?

24 A So my email's following the one from Dan -- Dan  
25 DeGroot, yes.



1 Q So that's what you're referring to in your email of  
2 October 18th?

3 MR. HARRINGTON: Objection. Vague.

4 Q Are you referring to Mr. DeGroot's October 13th email  
5 responding to that, in part at least, with your October  
6 18th email, correct?

7 A The last -- the last part of that page 2, the last  
8 paragraph, if you're still on the question of recruit  
9 more dairy folks, where I say, "If we can recruit a  
10 couple more dairy folks to pitch in on this GWMA dairy  
11 process," yes, I'm referring to Dan DeGroot mentioning  
12 committee processes for the Columbia -- or for the  
13 Yakima GWMA.

14 Q So you -- you're not a member of the GWMA yourself, are  
15 you?

16 A No.

17 Q Are any members of WSDF members of the GWMA itself?

18 A Yes. Jason Sheehan is a member. He's the lead. And  
19 Dan DeGroot is the alternate. Both of them are  
20 members.

21 Q Those are both board members. But none of your staff  
22 are on the GWMA; is that right?

23 A Not in a role. Steve George is on the GWMA as a farm  
24 bureau member.

25 Q So he can wear dual hats as a Dairy Federation



1 representative too, right?

2 A He's there as a member of the Washington -- of the  
3 Yakima Farm Bureau.

4 Q So when you're talking about on the third page of  
5 Exhibit 211, second -- oh, I'm sorry, this  
6 isn't -- this is from Dan DeGroot. Do you know if --  
7 Mr. DeGroot is referring to about "we need to reject  
8 this and come up with something Jean will still go  
9 along with"?

10 MR. COOKE: Objection. Calls for  
11 speculation.

12 Q Do you know what that's about?

13 MR. HARRINGTON: Objection. Lacks personal  
14 knowledge.

15 A No, I don't. It refers to the education and outreach  
16 report at that time in October, obviously, according to  
17 that paragraph. The object would be the education and  
18 outreach report, and I don't think I ever saw that.  
19 Dan would have seen it.

20 (Exhibit No. 212 marked for identification.)

21 Q Mr. Gordon, you have in front of you Exhibit 212, an  
22 email from you to all of the subjects of the -- well,  
23 all of the cluster dairies plus Marlene Haak, correct?

24 A Yes.

25 Q And this was right before the AOC was signed on March



1 5, 2013? Do you agree with that?

2 A Yes.

3 Q And so you've talked -- your email indicates that  
4 you've talked with folks and you're basically  
5 responding to questions that came up that they raised;  
6 is that correct?

7 A It would appear so, but I'm not absolutely certain of  
8 that. But it does appear that these questions came  
9 from one or more of the families.

10 Q Right. So you're essentially giving them legal advice  
11 about consent decrees; is that correct?

12 MR. COOKE: Objection. Calls for a legal  
13 conclusion.

14 MR. HARRINGTON: Objection. Mischaracterizes  
15 the testimony.

16 Q You're giving them advice, aren't you?

17 A I'm suggesting they go visit a website; wiseGEEK, what  
18 is a consent decree.

19 Q So during the AOC process, you were advising the  
20 various members of the cluster dairies about how to  
21 proceed with the AOC, correct?

22 MR. HARRINGTON: Objection.

23 MR. COOKE: Objection. Misstates his prior  
24 testimony.

25 A No.



1 Q You're not -- you weren't at all?

2 A I -- advising them to go look at wisegeek.com, and I  
3 believe I cut and pasted the contents below that line.

4 Q Right. But I'm just talking more generally. You  
5 were -- you were involved with lots of discussions with  
6 these folks about the AOC itself, were you not?

7 MR. HARRINGTON: Objection. Vague.

8 Q Earlier on, we showed you a document that you wrote  
9 that said that the AOC should be ripped up and started  
10 all over on a blank sheet, right?

11 A I said in my -- yes.

12 Q So from that time, which was in September of 2012,  
13 until the time of the email in Exhibit 212, you were  
14 having regular conversations with the people at the  
15 cluster dairies about the AOC and its process, correct?

16 MR. COOKE: Objection. Misstates his prior  
17 testimony. Assumes facts not in evidence.

18 MR. HARRINGTON: Vague as to "regular."

19 A I've had a lot of conversations with members of our  
20 association that wanted to have me look for answers for  
21 them.

22 Q I'm not talking about the association. I'm talking  
23 about the specific members of the cluster dairies and  
24 the AOC itself. My question was related to the AOC  
25 itself. You were involved with discussions with the



1 members of the cluster dairies and in relation to the  
2 AOC process itself throughout the process, correct?

3 MR. HARRINGTON: Objection. Vague.

4 Mischaracterizes the testimony.

5 A Say the question again if I'm supposed to answer it.

6 Say it again.

7 Q You were involved with -- in consulting with the  
8 cluster dairy principals about the AOC and what should  
9 be in it, right?

10 MR. COOKE: Same objections.

11 MR. HARRINGTON: Same objection.

12 A The document I have in front of them is -- is very  
13 clear. It says --

14 Q I'm not asking about the document in front of you right  
15 now. I'm just asking generally.

16 A Okay. So I've had questions from the members that are  
17 involved in the discussion with the AOC, yes.

18 Q And they've asked you for advice about the AOC process  
19 and what they should do, correct?

20 A That's rather broad. Yes.

21 MR. TEBBUTT: 12:14. Do we want to take a  
22 break for lunch?

23 MR. COOKE: How much time do you have left?

24 MR. TEBBUTT: Oh, lots.

25 MR. COOKE: Well, then I guess we should.





1                   MR. TEBBUTT: We're going to be here the  
2 whole day.

3                   MR. COOKE: Gonna be a couple hours, it's  
4 another -- but gonna be here the whole day, I guess.

5                   MR. TEBBUTT: All right. 12:15 now...

6                   THE VIDEOGRAPHER: Going off the record at  
7 12:15.

8                                 (Off the record. Lunch break taken.)

9                   THE VIDEOGRAPHER: All right. We are going  
10 back on the record. The time is 1:27.

11 Q       Mr. Gordon, you recognize you're still under oath, I  
12 assume?

13 A       Yes, sir.

14 Q       I'm going to just ask you a question about lagoons  
15 again.

16                   (Exhibit No. 213 marked for identification.)

17 Q       You have in front of you Exhibit 213, which is an email  
18 from Ginny Prest to you, and you to Ginny Prest dated  
19 September 27, 2013. And you say in it, "I'm willing to  
20 listen and want to know, but every study I've seen says  
21 generally, there are always exceptions, lagoons are not  
22 the problem. Time to trot this hypothesis out in the  
23 sunshine and expose it to a real evaluation."

24                   We discussed this earlier and you said you  
25 couldn't remember any studies that said lagoons aren't



1 the problem. But you said now in this email that  
2 you -- every one you've reviewed, right?

3 So what ones have you reviewed?

4 A The ones that we would have had seen in the analyses  
5 that were done on the EPA assignment. So, obviously,  
6 we saw the Ham study that said they were a problem. We  
7 saw the work that Sakamuktar had done in his  
8 compendium. There was -- I can't recite the exact  
9 study. We just refer to it as the UC Davis study. I'd  
10 have to go hunt up exactly citations on that one.  
11 There was another one that we had -- that comes to mind  
12 that we reviewed -- we loosely refer to it as the  
13 Israeli study. I think all of those were included in  
14 those materials that came from a variety of different  
15 commenters to the EPA science.

16 Q Earlier when you testified you couldn't remember  
17 anything, did you review anything at lunch that helped  
18 refresh your recollection about these --

19 A No.

20 Q -- studies? No? They're just coming to your mind now?

21 A Yeah. I don't remember saying I couldn't remember  
22 exact studies, but...

23 Q Okay. And this is a year after the EPA report came out  
24 publicly, so is this discussion that you had with Ginny  
25 Prest and the context of the Washington CAFO general



1 permit workings at Ecology NA?

2 A I don't know what context this would have been in. I  
3 would guess this is probably not -- it doesn't have  
4 anything to do with the CAFO permit. I would guess  
5 that it has to do with kind of the ongoing dialogue  
6 about the EPA study, about EPA interests on lagoons in  
7 the Yakima.

8 Q And skipping back to just a follow-up question about  
9 Arcadis. Have you ever been on site of any of the  
10 cluster dairies when any members of Arcadis were  
11 present?

12 A I don't believe so. I don't remember any.

13 Q Have you ever been present when any physical samples  
14 were taken at any of the cluster dairies?

15 A No. I'm pretty sure.

16 Q Pretty sure of?

17 A Yeah, I don't recall any time I've been on the dairies  
18 when sampling was taking place of any kind.

19 Q Do you know how Arcadis came to be a consultant to the  
20 cluster dairies as part of the EPA process? Were you  
21 part of that decision-making process?

22 A No. And, no, I don't know how they came to be.

23 Q I think I asked you earlier about your involvement with  
24 EPA with regard to their report and the AOC process. I  
25 actually asked you more in -- in the con- -- well, I



1 asked you different questions about each topic. But  
2 now I want to ask you a question about the report  
3 itself. Have you urged or requested EPA to withdraw  
4 its report on the Lower Yakima Valley?

5 A I -- that would generally, I believe, characterize our  
6 comments that we official- -- officially submitted and  
7 verbal statements that we've made since late 2012.

8 (Exhibit No. 214 marked for identification.)

9 Q And are these -- handing you what's been marked as  
10 Exhibit 214, are these the Dairy Federation's official  
11 comments on the EPA report?

12 A No.

13 Q What are these?

14 A This would be a follow-up correspondence to Dennis  
15 McLerran, Region 10 administrator.

16 Q And you said, among other things in this letter, that  
17 "targeting a few dairy farms with bad science is  
18 damaging efforts to actually solve nitrate problems in  
19 Yakima and makes it necessary to take legal action to  
20 oppose those agency actions."

21 What legal action have you taken to oppose the  
22 agency actions?

23 A We haven't taken any legal action -- the Federation  
24 hasn't taken any legal action against EPA. That's more  
25 of a generic statement there.



1 Q Do you intend to take legal action against EPA?

2 A No.

3 Q You say in the next sentence, "Therefore, we are  
4 prepared, willing, and able to fight your agency  
5 legally as far as necessary."

6 What do you mean by that?

7 A Well, I'm not sure, other than what it says.

8 Q It was just an attempt at bullying an agency?

9 MR. HARRINGTON: Objection.

10 MR. COOKE: Objection. Argumentative.

11 Q Go ahead and answer.

12 A I think that was a characterization of our thinking at  
13 the time.

14 Q A fair characterization?

15 A At the time.

16 Q Um-hmm.

17 A I think -- I think we were -- yeah, that characterizes  
18 our thinking at the time.

19 Q Also state on the very first sentence of the letter to  
20 Mr. McLerran that "Washington Dairy Federation has  
21 worked the last several years to establish" -- "to help  
22 establish a shared cooperative, basin-wide process to  
23 address excess nitrates in the Yakima Basin."

24 What has the Dairy Federation done in those -- in  
25 that time frame that you're referring to to address



1 excess nitrates in the Yakima Basin?

2 A That would be referring to our work with the Yakima  
3 GWMA. So we have, again, designees that serve on that  
4 GWMA, Jason Chelan and Dan DeGroot. We have both  
5 producer members, as well as Steve George helping with  
6 the Yakima producers, engaged in conversations, review  
7 discussions, going back to -- I believe, Ecology  
8 produced a report in '08 or '09 or maybe early 2010 on  
9 kind of a characterization -- I would call it a process  
10 evaluation -- to look at what options are available in  
11 the community. I can't remember the exact title of  
12 that Ecology report, but once that report -- when that  
13 report came out, I know we had Steve George, a number  
14 of producers -- I'm generalizing -- that had  
15 conversations with county commissioners about different  
16 processes, and the GWMA was ultimately chosen. I  
17 believe there was four processes identified in that  
18 report. And so that would -- those would be examples  
19 of what I was referring to there.

20 Q So basically, then, to summarize your testimony right  
21 then, you're saying that the Dairy Federation and its  
22 people have had meetings to discuss the problem.

23 MR. HARRINGTON: Objection. Mischaracterizes  
24 the testimony.

25 MR. COOKE: Objection.



1 Q Would that be a fair characterization?

2 I didn't -- let me rephrase that.

3 I didn't hear anything in your testimony saying --  
4 talking about specific actions that are taken to reduce  
5 nitrate loading in the basin, correct? You didn't say  
6 anything about that?

7 MR. COOKE: Objection.

8 MR. HARRINGTON: Objection. Mischaracterizes  
9 testimony.

10 Q Go ahead. You may answer.

11 A I did not. I was referring to establish a shared  
12 cooperative basin-wide process.

13 Q So process. Nothing substantive at this point?

14 A You asked about what that sentence meant.

15 Q Right. So has the Dairy Federation done thing  
16 substantively to address the nitrate problem during  
17 this time frame that you wrote this letter prior to  
18 that time?

19 MR. HARRINGTON: Objection. Vague.

20 A The Dairy Federation doesn't farm in the Yakima Valley,  
21 so if you're saying did we farm differently --

22 Q No, I'm not asking that. I'm just asking whether --  
23 you know, you're saying the Federation is doing all  
24 these things to help reduce the nitrate problem, but  
25 what have you done -- have you made recommendations to



1       your members to reduce nitrate loadings or anything to  
2       that effect?

3   A     So different question than referring to this?

4   Q     Yes.

5   A     Okay. I'd have to go back and look to see if we've  
6       sent out communications regarding -- I mean, nitrates  
7       are hay farm specifically.

8   Q     So you can't think of anything as you're sitting here  
9       today where you made recommendations to your members to  
10      change the practices?

11  A     Not specifically, no.

12               (Exhibit No. 215 marked for identification.)

13  Q     So the letter that you sent to Dennis McLerran dated  
14      December 27, 2012, that was Exhibit 2014 -- sorry, 214.  
15      I've handed you what's been marked as Exhibit 215.  
16      That's a letter sent some 11 days later also to  
17      Mr. McLerran. What is so different from this letter,  
18      Exhibit 215, than 214?

19               MR. COOKE: Objection. The documents speak  
20      for themselves.

21  Q     Let me rephrase the question. Why did you send this  
22      letter 11 days later?

23  A     I don't recall exactly. I'm trying to think -- I think  
24      one of it was both Idaho and Oregon associations, by  
25      that time, wanted to join in their concerns.





1 MR. HARRINGTON: If you need time to review  
2 both documents, feel free.

3 MR. TEBBUTT: I don't appreciate the  
4 narrative or prodding.

5 MR. HARRINGTON: Would you rather he comment  
6 on the letters without reading them?

7 Q Well, let me rephrase the question.

8 Is this just, in a way, to exert the Oregon Dairy  
9 Farmers Association and Idaho Dairymen's Association's  
10 muscle into the Washington process?

11 MR. COOKE: Objection. Argumentative.

12 A Both Oregon and Idaho are in Region 10. And so  
13 obviously between here and there, my -- what I remember  
14 is I do remember talking to Jim Krahn in Oregon. He's  
15 executive director down there -- or was. And Bob  
16 Naerebout. And for whatever reason we decided to  
17 follow this up when we said we'd like to join in on our  
18 concerns and that's about the extent of it.

19 Q So this is just part of the campaign to continue, as  
20 you said before, essentially bullying the agency into  
21 retracting its earlier report, correct?

22 MR. COOKE: Objection. Argumentative.

23 MR. HARRINGTON: Mischaracterizes the  
24 testimony.

25 Q Would you agree with that?



1 A No. I've not used the word "bullying," I don't  
2 believe, ever.

3 Q Well, you agreed to that characterization of mine from  
4 earlier.

5 MR. COOKE: Objection.

6 A Well, then I'd like to say I did not used the word  
7 "bullying" and I would not characterize it that way.

8 Q It's essentially -- I mean, essentially the same  
9 letter, but now you've just added two more dairy  
10 federations to it. I mean, there's some differences,  
11 but --

12 MR. COOKE: Objection. Document speaks for  
13 itself.

14 MR. TEBBUTT: Just a moment, please. I'm  
15 trying to finish my question.

16 Q The letters are basically the same message, aren't  
17 they?

18 MR. COOKE: Objection. The document speaks  
19 for themselves, it's asked and answered.

20 A The content appears to be similar. The distinction  
21 here is this letter -- and I'm looking at one  
22 distinction that I see -- is we were asking for a  
23 meeting at the very end, the very last sentence. We  
24 were asking for a meeting -- and it was Dairy  
25 Federation. And in this letter we said, Washington,



1 Oregon, and Idaho would like to have a meeting with  
2 you. And so between then and now, one primary  
3 difference I see is that my counterparts in Idaho and  
4 Oregon wanted to be added to that request to have a  
5 meeting.

6 Q And did that make it happen?

7 A I don't think either Jim Krahm or Bob Naerebout -- we  
8 did have a meeting later in January that year with  
9 Dennis McLerran -- it was Mr. Wood and I -- and neither  
10 Mr. Krahm nor Mr. Naerebout were at that meeting.

11 Q Who else was at that meeting besides you and Mr. Wood  
12 and Mr. McLerran?

13 A Bill Dunbar.

14 Q Who's he?

15 A Bill Dunbar is a special assistant or -- to  
16 Mr. McLerran.

17 Q Is that the extent of the group?

18 A I don't recall anybody else in the room. There could  
19 have been, but I thought it was Bill and Dennis and Dan  
20 and I.

21 Q Where did the meeting take place?

22 A EPA headquarters in Seattle.

23 Q What did you talk about?

24 A Talked about the science and the concerns expressed in  
25 this letter.



1 Q And what did Mr. McLerran tell you?

2 A Not much.

3 Q Did he tell you that he was planning to retract the  
4 report?

5 A No.

6 Q Did you ask him to at that meeting?

7 A I'm sure we did, yes.

8 Q What was his answer?

9 A I do remember one of his answers was -- is we  
10 complained about the science and the quality of the  
11 science in the report, and his response, which I  
12 remember very clearly was, he said, We're fixing it.

13 Q Do you believe it's been fixed?

14 A No.

15 Q Do you think that Director McLerran agreed that the  
16 science was flawed?

17 A I think his statement --

18 MR. COOKE: Objection. Calls for  
19 speculation.

20 Q Did he tell you -- did he tell you that the science was  
21 flawed?

22 A His statement in response to my statement, "we're  
23 fixing it," speaks for itself.

24 Q So you inferred that he thought there was a problem.  
25 He didn't say it, but you inferred that, correct?



1 A From his statement, yes: We're fixing it.

2 Q Do you believe that there's a proper threshold level  
3 for nitric -- residual nitrates in the soil before  
4 manure -- more manure is added to a field, for, let's  
5 say, the east side?

6 A A proper threshold as in a number?

7 Q Yes.

8 A No. I think it depends on the field.

9 Q What does it depend on?

10 A What do you got going in, where are you at, soil types,  
11 yields on those particular fields or farms, what  
12 type -- I think I said what types of crops. All of  
13 those, I think, are factors.

14 Q Okay. And for the crops themselves on the east side,  
15 what's the effective zone below ground surface where  
16 the crops can update nitrates?

17 MR. COOKE: Objection. Calls for expert  
18 opinions.

19 Q Let's start with corn and triticales.

20 MR. COOKE: Same objection. Calls for expert  
21 opinion.

22 A This goes back to my farming experience. I would say  
23 corn and triticales would generally be shallower, foot,  
24 maybe two feet. Depends on the soil. You could  
25 have -- I've seen corn -- pictures of corn roots



1 down -- not in the Yakima Basin, examples from the  
2 Midwest -- six -- five, six seven feet. Again, it  
3 depends on the soil type, depends on the character of  
4 the soil and how it was treated.

5 Q As a manager, you would say that most of that nitrogen  
6 uptake happens in the top one to two feet?

7 MR. COOKE: Objection. Misstates his prior  
8 testimony.

9 A That's -- that's a generalization, and I'd be  
10 uncomfortable with saying most, but that's -- for corn  
11 and triticale, the top few feet would be where you're  
12 actively taking up those nutrients and recycling.

13 Q Top two or three feet you were saying, then?

14 A Yeah.

15 MR. HARRINGTON: Objection. Calls for expert  
16 opinion.

17 A Corn I've seen deeper. And it depends on the soil,  
18 depends on the structure, depends on the type of soil.

19 Q Have you ever analyzed the type of soil as to the  
20 appropriate levels of uptake at what levels below  
21 ground surface would be appropriate on the east side of  
22 Washington?

23 A No.

24 Q Have you had any discussions with any WSDP members or  
25 others about what that -- what the appropriate level is



1 for residual nitrates in the soil?

2 A Specific conversations with specific members? Maybe.

3 But none come to mind in particular. In general,

4 the -- you know, WSU guidances, the NRCS guidances have

5 been discussed, but I'm -- I'd have to -- you'd have to

6 be more specific or I'd have to be more specific on

7 that, I guess.

8 Q Have you ever had any email communications with any

9 WSDF members or others about what the appropriate

10 approach to take is for nitrate residuals in soil on

11 the east side?

12 MR. HARRINGTON: Are you asking him

13 in -- whether he had personally had communications --

14 MR. TEBBUTT: Yes.

15 MR. HARRINGTON: -- or whether the entity

16 that he is here to testify on behalf of has had such

17 communications?

18 MR. TEBBUTT: One in the same, because

19 they're both.

20 MR. COOKE: I disagree.

21 Q Let's go in your capacity -- your capacity as a WSDF

22 executive director. Have you had any conversations?

23 A So ask me the question again.

24 Q Yeah. Have you ever had any conversations with WSDF

25 members about the appropriate level of residual



1 nitrates in the soil for the east side in Lower Yakima  
2 Valley?

3 A I don't recall any specifically, but I may have. I  
4 don't -- like I said, don't recall any specifically,  
5 but I may have.

6 Q Do you remember having any conversations about 45 parts  
7 per million being an appropriate level?

8 A We've had some conversations. I don't remember having  
9 those with individual members. It may have come up in  
10 some emails with the board. I'd have to see them to  
11 see what the nature of them was. I know 45 parts per  
12 million has been bantered around, and I think there's  
13 45 and 30, and, again, generally in the context of NRCS  
14 standards.

15 Q Have there been any more recent discussions about what  
16 the appropriate residual nitrate levels are in the  
17 soil?

18 A Yes. That discussion -- there was a conference in  
19 early May that was in Olympia. A lot of the topic of  
20 that conversation and science discussions was about  
21 soil nitrates and soil fertilizer levels and agronomic  
22 rates. So that was a topic of conversation at the  
23 conference.

24 Q Have you ever had any conversations with anyone about  
25 whether 15 parts per million is an appropriate level





1 for residual nitrates?

2 A Yes.

3 Q Who have you spoken with?

4 A I know Ginny Prest and I have talked about that.

5 Trying to think of his name. There's a kid over in

6 Ecology -- trying to remember his name -- Ron Cummings,

7 was on the -- there was an advisory committee for NRCS

8 on the 590 nutrient management standard, and Ron would

9 have been involved in that conversation. Ginny would

10 have been involved in that conversation. There was a

11 lot of people on that advisory committee, and that

12 would have been part of that conversation, if I

13 remember correctly.

14 Q And that was a conversation that took place relatively

15 recently, correct, back in late 2013, early 2014?

16 A Well, which conversation are we referring to?

17 Q The NRCS 590 standard, for instance.

18 A That conversation has been going on since May of either

19 2011 or 2012.

20 (Exhibit No. 216 marked for identification.)

21 Q I'd like you to take a look at Exhibit 217 [sic],

22 Mr. Gordon.

23 MR. COOKE: I think you got the wrong

24 exhibit. Just for the record.

25 MR. TEBBUTT: 216, did I say?



1 MR. COOKE: You said 217.

2 Q Sorry. 216.

3 A (Witness complied.) Okay.

4 Q Who's Bill -- is it Wavrin or Wavrin?

5 A Wavrin.

6 Q Who's Bill Wavrin?

7 A He's a dairy farmer in Yakima area, Sunnyside.

8 Q Is he a WSDF member?

9 A Yes.

10 Q Does this refresh your recollection whether you've had  
11 a specific conversation with a WSDF member about the  
12 appropriate nitrate residual levels in the soil on the  
13 east side?

14 A Yes. This gives me some specifics.

15 Q Now, do you recall having a very specific discussion  
16 with Mr. Wavrin about what the appropriate nitrate  
17 residual levels are?

18 A Okay. Yes.

19 Q Do you disagree with any of the statements in the first  
20 paragraph of Mr. Wavrin's email to you dated 2/10/13?

21 MR. HARRINGTON: Objection. Lack of  
22 foundation.

23 A Can I mark on this?

24 Q No.

25 A Okay.



1 Q Is there some particular sentence that you -- I mean,  
2 we can do that. If -- if there's a particular sentence  
3 that you disagree with, but not the whole thing, if you  
4 want -- you want to go sentence by sentence and say you  
5 agree or disagree, we can do that. We can highlight  
6 various sentences; we can number them; we can do it  
7 that way, if you'd like.

8 A You asked me about all --

9 Q Do you want to go sentence by sentence?

10 A I think if you're going to --

11 Q All right. Let's do that. Let's take a look -- you  
12 can use my yellow highlighter. And why don't  
13 you -- let's first identify where statements  
14 of -- opinions or statements of fact by Mr. Wavrin  
15 exist. Let's say the second sentence. Let's highlight  
16 that, the one "I guess my point is." Can you highlight  
17 that in yellow?

18 A Um-hmm. (Witness complied.)

19 Q And put a number one right in -- in -- with your ink  
20 pen right before the first word of that sentence.  
21 Circle it.

22 A (Witness complied.)

23 Q There you go. Do agree or disagree with that  
24 statement?

25 MR. HARRINGTON: Objection. Lack of



1 foundation. Calls for expert opinion. And the  
2 witness's prior statement and the prior email speaks  
3 for itself.

4 MR. TEBBUTT: Just asking him whether he  
5 agrees or not.

6 A Not totally, no.

7 Q What do you disagree with?

8 A The "no spread directive."

9 Q Is that the only part you disagree with in that  
10 sentence?

11 A Yes.

12 Q Okay. So you're basically saying that there may be  
13 situations where there's nitrates above 45 where it  
14 would still be okay to apply manure?

15 A That would be -- that would characterize my concerns.  
16 There may be.

17 Q And is that 45 parts per million in the top one foot or  
18 two feet? At what level do you think it's appropriate?

19 MR. COOKE: Objection. Calls for expert  
20 opinion.

21 A That one I can't -- 45 -- I don't know what he's  
22 referring to there. I assume that's the top foot, but  
23 I don't -- I'd have to go back and look at what the  
24 context is for the 45.

25 Q All right. I'm going to ask you to highlight the



1 sentence "in addition, if you've gotten to 45 nitrate"  
2 in the middle. Do you see that? Highlight that in  
3 yellow, if you would.

4 A You want it highlighted?

5 Q Yes, please.

6 A (Witness complied.)

7 Q And put a 2 next to that.

8 A (Witness complied.)

9 Q Okay. Do you agree or disagree with that statement?

10 MR. HARRINGTON: Objection. Calls for expert  
11 opinion. Lack of foundation. Incomplete hypothetical.

12 A Can I answer?

13 Q Of course you may. Unless you're instructed not to  
14 answer.

15 A Okay. He could be right and he could be wrong. So I  
16 would have to disagree that that is blanketly always  
17 true.

18 Q But in some circumstances you would agree with that?

19 MR. COOKE: Objection. Asked and answered.

20 A Again, in some cases Bill could be correct, Mr. Wavrin  
21 could be correct, and in other fields he could be  
22 wrong.

23 Q In what situations would he be correct?

24 A Would he be correct?

25 MR. HARRINGTON: Same objection.



1 MR. COOKE: Objection. Calls for  
2 speculation.

3 A I think the sentence points to it. "If you have a  
4 large backlog of organic nitrogen, that 45 could be  
5 accurate.

6 Q So you not only are looking at the actual nitrate  
7 residuals, but you'd always be looking at the ammonium  
8 residuals, correct?

9 MR. HARRINGTON: Objection. Calls for expert  
10 opinion --

11 MR. COOKE: Vague.

12 MR. HARRINGTON: -- incomplete hypothetical.

13 A This is nitrate nitrogen.

14 Q Okay. But I'm just asking, generally, based on your  
15 knowledge of crop science and the work that you do in  
16 your field, when you're calculating the -- I'm trying  
17 to use the right terminology here. Did you say  
18 "backlog of organic N," right? That's what it says in  
19 the sentence right above it?

20 A Yes.

21 Q And that's the appropriate terminology?

22 MR. HARRINGTON: Wait. For Mr. Wavrin or  
23 Mr. Gordon?

24 MR. TEBBUTT: Would you just let him answer  
25 the question?



1 MR. COOKE: Objection. Vague.

2 A Ask the question again.

3 Q Yeah. We're talking at a back- -- you just said it  
4 depends on the backlog of organic N, right? That it  
5 could be right in certain circumstances.

6 And I asked you in what circumstances, and you  
7 said if the backlog of organic N was -- was high, then  
8 that could be right.

9 MR. COOKE: Objection. Misstates his prior  
10 testimony and that wasn't a question.

11 Q Yeah, I think you would disagree with that objection,  
12 wouldn't you? It did characterize your prior statement  
13 correctly, didn't it?

14 MR. COOKE: Same objection.

15 A I'm not sure. Can we start with the question?

16 Q I'm asking you what -- if there's a backlog of organic  
17 N, what is the backlog number that you'd be looking at  
18 to determine whether 45 parts was appropriately applied  
19 in that circumstance?

20 MR. COOKE: Objection. Calls for  
21 speculation.

22 MR. HARRINGTON: Incomplete hypothetical.  
23 Calls for expert opinion.

24 A Yeah, that one is impossible to answer, Charlie.

25 Q Why is that?



1 A How much organic -- and the backlog of organic N to me  
2 means -- so backlog organic N means to me soil organic  
3 matter.

4 Q Right.

5 A So backlog of organic N is Bill's words. It's an  
6 interesting choice of words. And generally I take it  
7 to mean soil organic matter that's sitting there that  
8 may or may not be releasing nitrogen. He's saying he's  
9 got some organic matter there that's sitting in reserve  
10 and it may be releasing nitrogen.

11 Your question was, when do you have a backlog big  
12 enough that a 45 is enough?

13 Q Right.

14 A And, again, my original answer was it depends. I don't  
15 necessarily agree with Bill's statement here, because  
16 it depends.

17 Q Depends on what?

18 A What kind of soil you've got, what temperature you got,  
19 what water conditions you got -- this is just my  
20 experiences -- of how fast, what time of year, the  
21 aeration conditions of the soil. How fast is that  
22 organic matter going to change to, as he says, backlog,  
23 which infers to when is it going to turn to nitrate.

24 Q Right. Let me stop you there. Because backlog means  
25 there's other available total N, right? Total





1       nitrogen, Total Kjeldahl nitrogen in the soil that  
2       could and is likely to convert to ammonium nitrite or  
3       nitrate and be available to the crop, correct?

4                   MR. COOKE: Objection. Calls for expert  
5       opinion.

6   A    "Could" would be the operative word. It could. And  
7       you said "available." It's available as in  
8       potentially --

9   Q    Right.

10   A   -- but not available as in the plant can't use it when  
11       it's --

12   Q   At that moment.

13   A   At that moment.

14   Q   Right. But if there's a backlog, it can be -- come  
15       available later, correct, during the course of --

16   A   Again, the operative is "could."

17   Q   Right. And if it's warm, right, and the soil is well  
18       aerated, it will likely convert faster, won't it?

19   A   That's --

20                   MR. COOKE: Objection. Calls for expert  
21       opinion.

22   Q   Go ahead.

23   A   That's the data we've seen in drafts we've seen, is  
24       warmer aerated moist soils tend to convert organic  
25       matter faster.



1 Q So Mr. Wavrin says late in the paragraph, "Even in the  
2 face of that" -- they are talking about the  
3 standards -- "why would we argue to be able to continue  
4 to apply beyond agronomic rate? I think this kind of  
5 approach makes even a rational regulator pretty  
6 inclined to view us as disingenuous and maybe more  
7 inclined to make his/her conclusions without  
8 considering the parts of our arguments that do have  
9 merit."

10 Do you believe that your argument that -- well,  
11 let me back up.

12 Does WSDF take the position that there should be  
13 no narrative standard for residual nitrates in soil?

14 A No.

15 Q What's the narrative standard that you believe -- I'm  
16 sorry. Let me rephrase it.

17 Do you believe that there is no numerical standard  
18 that should be appropriate?

19 A So tell me what you mean by "standard."

20 Q For residual nitrates in soil.

21 MR. HARRINGTON: Objection. Vague.

22 Q Let me ask the question another way. Is there a number  
23 of residual nitrates in soil that you believe no  
24 further manure should be applied?

25 A No.



1 Q No number whatsoever?

2 A Not an absolute.

3 Q What about for corn and triticale?

4 MR. COOKE: Objection. Asked and answered.

5 A I don't know of a number -- how do I phrase this? I

6 don't know of a number -- could you ask the question

7 again? (Last question read.)

8 "QUESTION: What about for corn and triticale?"

9 MR. COOKE: I'm going to renew my objection.

10 Q Yeah, so it's a numerical standard for when manure

11 should not be applied to a field that will be planted

12 in corn or triticale.

13 A I think that there is a number individual to those

14 fields. Should there be a uniform number across the

15 state or across a region or in an area? No. There

16 is -- so an agronomic rate at which -- a number at

17 which you have likely got the agronomic needs for that

18 crop met, either with existing or anticipated

19 fertilizer contributions from that soil during that

20 crop, would be how I would characterize the number that

21 you're referring to.

22 Q So would you agree with the NRCS guidelines in the

23 dairy nutrient management plans for amount of nitrogen

24 that should be available in pounds per acre for a corn

25 or triticale crop?



1 MR. COOKE: Objection. Vague.

2 A Again, they are guidelines. I think that the  
3 guidelines are designed to be on a field and on a farm  
4 and on a region and on a crop basis. So, generally,  
5 I'm going to say yes.

6 Q So if -- let me rephrase.

7 If a number were in the DNMP -- let's say, for  
8 instance, the 250 pounds of N per acre, right, for  
9 corn. If that's the number in the DNMP and it says  
10 that's a sufficient amount of nitrogen for a crop to  
11 grow, shouldn't -- should any further manure be applied  
12 in that situation if that nitr- -- nitrogen is  
13 available to the crop?

14 MR. COOKE: Objection. Calls for  
15 speculation.

16 MR. HARRINGTON: Calls for expert opinion and  
17 incomplete hypothetical.

18 A I don't know of a circumstance where it should be, but  
19 I couldn't rule out that it may be a good practice to  
20 do that. Yeah, I'm going to stay with that.

21 Q Isn't it -- isn't it the point that you're trying to  
22 take the nitrogen out of the cycle? That's why you add  
23 fertilizer. You add fertilizer so that the nitrogen  
24 would be available to the crop to take up, correct?

25 A Correct.



1 Q So, theoretically, at the end of a growing season, you  
2 should take up virtually all of that nitrogen in the  
3 crop; is that correct?

4 A In -- that's an example. But another example would  
5 be -- so you want that corn to take up -- you use 250  
6 pounds -- corn to take up the 250 pounds. But it's not  
7 practiced so much on the east side of the state, but  
8 the west side of the state, you have a relay crop.  
9 Grass seed is planted midsummer in amongst the corn.  
10 By the time the corn is taken off, the idea is to have  
11 another crop that's there to then be also taking up  
12 more nitrogen.

13 Q So let's stick with the east side for a minute.

14 A So the east side --

15 Q Double cropping.

16 A Corn, triticales rotation. And you would want to have  
17 some nitrogen. You wouldn't want zero for that  
18 triticales two days or four days or however long after  
19 you harvest the -- the guys would harvest their corn to  
20 have a seeding of triticales in. You'd want a little  
21 bit of nitrogen there to feed that crop, and certainly  
22 as the winter went through, you're on to another crop.  
23 So there's an overlap there in how you would do the  
24 budgeting.

25 Q Did you agree or disagree with Mr. Wavrin about the



1 last -- his question, which I -- why don't we start by  
2 highlighting that and giving that a 3. Starting with  
3 "Even in the face of." The last two sentences in the  
4 first paragraph. Highlight them both, if you would.

5 A (Witness complied.)

6 Q And then put a 3 right before "even."

7 A (Witness complied.)

8 Q Okay. Do you disagree -- well, let me ask you this:  
9 Did you -- you, I'm speaking of the Dairy Federation,  
10 accept Mr. Wavrin's suggestion to change the approach  
11 of -- or continuing to argue that applications at more  
12 than 45 parts per million would be appropriate in  
13 certain circumstances?

14 MR. COOKE: Objection. The document speaks  
15 for itself.

16 MR. HARRINGTON: Misstates the document.

17 A My answer comes from -- there's a lot going on in that  
18 question. Could you narrow it down a little bit?

19 Q I'm just asking whether you adopted his approach.

20 MR. COOKE: Objection. Vague.

21 Q Yes or no? Did you adopt the approach or not?

22 MR. COOKE: Renew the objection.

23 MR. HARRINGTON: Objection. Vague.

24 A I think his approach is simpler than what our approach  
25 has been.



1 Q And the second page of Exhibit 216 is your email to  
2 Bill. When you say in the second line, "the 45 PPM is  
3 current a guideline number that indicates a high level  
4 of nitrates, and management changes should or might  
5 need to be implemented."

6 A Where are you at, please?

7 Q Second line -- second and third lines of the second  
8 page of Exhibit 216. See that?

9 A Yes.

10 Q That's your email to Bill, right?

11 A Um-hmm.

12 Q So you agree, essentially, that 45 parts per million is  
13 a benchmark at which concerns are raised?

14 MR. COOKE: Objection. The document speaks  
15 for itself.

16 A I -- I wrote there and I think it's still accurate,  
17 that at 45 -- "45 parts per million is current a  
18 guideline that indicates high levels of nitrate or  
19 management changes should or might need to be  
20 implemented."

21 Q Right.

22 A And I stand by that statement.

23 Q Okay. Have you reviewed any documents more recently  
24 that indicate that that number should be lower?

25 A I may have. There's been -- again, there was a lot of



1 conversation about the 1st of May, a lot of materials.  
2 And, again, I remember a 30 parts per million as being  
3 discussed. I don't remember the exact specifics of it.  
4 But there's been -- there's been a discussion  
5 about should that -- is that the right number for a  
6 guideline, a trip wire, a level of concern, as I  
7 expressed in that statement.

8 Q And then the fourth and fifth pages of Exhibit 216,  
9 which is WSDF 2179 and 2180, do you see that? An email  
10 from you to Dan and George DeRuyter, Bill and Adam  
11 Dolsen, and Rick and Marlene Haak. Do you see that?  
12 Dated February 9, 2013.

13 A Yes.

14 Q You, essentially, are making some suggestions and  
15 recommendations to these entities about certain  
16 questions; is that correct?

17 MR. COOKE: Objection. The document speaks  
18 for itself.

19 A I don't see to where you're referring to.

20 Q I'm just generally saying you're making suggestions and  
21 recommendations, right? For instance, the very last  
22 part of your email: "This fertility plan should have  
23 been detailed and outlined in your farm plans."

24 A I'm sorry. I don't -- where are you at?

25 Q Right before "have a good weekend." Right here.





1 MR. HARRINGTON: Take a moment to read the  
2 whole email.

3 A (Witness complied.) Okay. What's the question again,  
4 please?

5 Q So you've basically been providing assistance, guidance  
6 to the DeRuyters, Dolsens, and the Haaks, correct?

7 A I'm not sure why I responded to them in it. It doesn't  
8 come through in the email. But these are some  
9 examples, and there's two points there. It was  
10 information.

11 Q Are there other emails that you've received or other  
12 calls from them specifically requesting this kind of  
13 help?

14 MR. COOKE: Objection. Vague.

15 A Again, I don't know what the genesis of this -- of this  
16 email. I'm looking down at the bottom and there's a  
17 gentleman from National Milk that's preceding this  
18 string.

19 Q Is it Brian Bennett?

20 A Brian Bennett.

21 Q Where is he?

22 A He's in Arlington, Virginia.

23 Q All right. But on the fourth page of Exhibit 216, an  
24 email from Bill Dolsen to you, cc'ing others. It says,  
25 "Jay, you have been extremely helpful throughout the



1 entire process. Words cannot express my deep  
2 appreciation."

3 What entire process is Bill Dolsen referring to?

4 MR. COOKE: Objection. Calls for  
5 speculation.

6 A This would be consistent with the whole science, EPA  
7 process.

8 Q Including the Administrative Order and Consent?

9 A Well, that's part of it.

10 MR. COOKE: If you are going to look at  
11 another document, can I bother you to just take a break  
12 really quick?

13 MR. TEBBUTT: No, go ahead.

14 MR. COOKE: I just need to go to the  
15 bathroom. That iced tea went right through me.

16 THE VIDEOGRAPHER: We are going on break at  
17 2:23.

18 (Off the record.)

19 THE VIDEOGRAPHER: We are going back on the  
20 record at 2:29.

21 Q Mr. Gordon, I want to ask you some questions -- well,  
22 first, before I do, I'm going to hand you --

23 (Exhibit No. 217 marked for identification.)

24 Q Do you have in front of you Exhibit 217, an email from  
25 Kevin Freeman to you dated April 17, 2013? Did you



1 talk with Mr. Freeman in response to his request to do  
2 so?

3 A I think so.

4 Q Did you do that by telephone?

5 A Yes. I think. If I would have talked to him, it would  
6 have been by telephone.

7 Q And was this in the context of -- it said -- asking  
8 about how much of the work would qualify as research.  
9 Does that ring a bell to you?

10 A Yes.

11 Q Okay. And what was -- why is the issue of whether this  
12 is research or not irrelevant?

13 A I believe Henry was wanting Mr. Freeman to ask if this  
14 would qualify as research that the Dairy Products  
15 Commission might be interested in funding, or could be  
16 other entities.

17 Q Does it -- is the Dairy Products Commission part of  
18 WSDF?

19 A No.

20 Q They're a separate entity all together?

21 A No.

22 Q Do they have overlapping boards of directors?

23 A No.

24 Q And is this question of the research, is this the  
25 question of the work that's done under the AOC?



1 A Yes.

2 Q And is this to help fund the AOC work at the cluster  
3 dairies?

4 A It could.

5 Q Okay. So, Mr. Gordon, you've been out on the road  
6 trying to raise funds for defense costs in this  
7 litigation, right?

8 A I suppose I would say yes.

9 Q How many organizations have you visited to try to raise  
10 funds for the defense costs in this litigation?

11 A Oh, I don't know if I even have that number.

12 Q More than five?

13 A Yes.

14 Q More than ten?

15 A Probably.

16 Q Name -- name who you can.

17 MR. COOKE: Objection.

18 MR. HARRINGTON: At this point, I'm going to  
19 instruct the witness not to answer. The source of the  
20 funding -- who is funding the litigation, how it works,  
21 that is all subject to privilege and also is  
22 irrelevant. And if we want -- if you insist on going  
23 further, I think we should have a conference with the  
24 judge.

25 MR. COOKE: I'd echo the same sentiments as



1 Mr. Harrington.

2 MR. TEBBUTT: Well, the privilege has been  
3 waived because it's been written about in newsletters  
4 that are available online and lists a lot of the  
5 different entities who have been funding the  
6 litigation.

7 MR. HARRINGTON: I disagree.

8 MR. TEBBUTT: You disagree that people have  
9 been named, that entities have been named?

10 MR. HARRINGTON: I'm not sure what you're  
11 saying.

12 MR. TEBBUTT: What I'm saying is that there  
13 are newsletters that WSDF has produced, Idaho  
14 Dairymen's Association has produced that are available  
15 online to the public that identify what other  
16 organizations Mr. Gordon has visited and who has  
17 funded -- helped to fund the litigation.

18 MR. HARRINGTON: I'm not aware of that and  
19 the accuracy of that representation. The objection  
20 still stands.

21 MR. TEBBUTT: If I were to show you some of  
22 those documents, would that change your position?

23 MR. COOKE: Well, they may be waived to those  
24 specific individuals possibly, but it wouldn't be to  
25 other not named individuals whose right to privacy is



1 still entitled to protection. And there's First  
2 Amendment case law on this too, as I'm sure your groups  
3 are full aware of. Member lists and donor lists are  
4 not discoverable.

5 MR. TEBBUTT: That's not what I'm asking for.

6 MR. COOKE: Well, it seems to me --

7 MR. TEBBUTT: I'm asking a very specific  
8 question.

9 MR. COOKE: You asked who has been donating  
10 money.

11 MR. TEBBUTT: No, I'm asking who he's gone to  
12 talk with, which is very different.

13 MR. COOKE: Which I think is getting at the  
14 same information.

15 MR. HARRINGTON: I agree.

16 MR. TEBBUTT: I have a right to it.

17 MR. COOKE: I would disagree, and I've had  
18 this battle with organizations on the flip side. And  
19 there's First Amendment case law that exists.

20 MR. TEBBUTT: Not when it's been waived.

21 MR. COOKE: Waived to those potential  
22 individuals, and that's assuming it wasn't  
23 inadvertently waived.

24 MR. TEBBUTT: Taking a look at Exhibit 106 in  
25 this case. If you didn't bring your documents that's



1 your problem.

2 MR. COOKE: We weren't provided documents,  
3 excuse me. So that's not my problem. I would believe  
4 that is your problem, Mr. Tebbutt.

5 MR. TEBBUTT: No. Here's Exhibit 106. Why  
6 don't you take a look at it. Second page.

7 MR. COOKE: (Complied.)

8 MR. TEBBUTT: Are you withdrawing your  
9 objection as to these entities?

10 MR. COOKE: As to those specific entities?

11 MR. HARRINGTON: The identity of those  
12 entities as entities which have been solicited, I agree  
13 is a matter of public record. But I disagree that  
14 there's any broader waiver that reaches any other  
15 issues or any other information, including details  
16 about those entities.

17 MR. COOKE: I echo the same sentiment,  
18 especially as it pertains to any other entities,  
19 organizational or individual.

20 MR. HARRINGTON: So if you wish to ask the  
21 witness, you know, is it true that one of those  
22 entities named on that document -- I don't remember  
23 what the wording was -- has been solicited, I would not  
24 object to him answering that question. But anything  
25 further, I would object.



1 Q I'm going to hand you what's been previously marked in  
2 this case as Exhibit 106, Mr. Gordon. And on the  
3 second page of this tablet will have a paragraph that  
4 discusses -- let's see if we can pull it up for you.  
5 Right here. It says, "The Washington State Dairy  
6 Federation and Idaho Dairymen's Association are both  
7 helping out and are seeking support from other industry  
8 organizations. They've received pledges from several  
9 groups, including DFA's Mountain Area Council."

10 Did you visit them, the Mountain Area Council?

11 MR. HARRINGTON: I'm going to instruct the  
12 witness not to answer that question.

13 MR. TEBBUTT: I thought we just said we were  
14 waiving that -- you were waiving that --

15 MR. HARRINGTON: No, I'm saying you can't ask  
16 him --

17 MR. TEBBUTT: You can't instruct the witness  
18 not to answer, by the way. He's not -- he's not your  
19 client.

20 MR. HARRINGTON: Well, I think Mr. -- I  
21 believe I --

22 MR. TEBBUTT: Are you speaking -- are you  
23 speaking on behalf of Mr. Cooke?

24 MR. HARRINGTON: I believe I can instruct the  
25 witness not to answer, Mr. Tebbutt.





1 MR. TEBBUTT: On what grounds?

2 MR. HARRINGTON: On the grounds that it is a  
3 matter of privilege as to who is funding the  
4 litigation, and there is a common interest as to that  
5 issue, that limited issue. But I also think it's a  
6 moot point if that's the point you want to make,  
7 because I think that Mr. Cooke agrees to me, but he's  
8 certainly free to --

9 MR. COOKE: More than happy if that resolves  
10 the issue.

11 Q I just asked you a little while ago who you visited.  
12 Is the Mountain Area Council one of the entities you've  
13 solicited?

14 MR. HARRINGTON: We're instructing --

15 MR. COOKE: I'm instructing him not to  
16 answer.

17 MR. TEBBUTT: It's a public document. I have  
18 the right to ask him this question.

19 MR. HARRINGTON: You can ask him to affirm  
20 the information in the public document. But you're  
21 asking a --

22 MR. COOKE: It's something completely  
23 different than what's in that document.

24 MR. TEBBUTT: It's not completely different.  
25 It says they've sought and received pledges.



1 MR. COOKE: So if you ask --

2 MR. HARRINGTON: That's inaccurate.

3 MR. TEBBUTT: Seeking support from other  
4 industry organizations, right? It says --

5 MR. HARRINGTON: It does say that.

6 MR. TEBBUTT: -- they've received pledges  
7 from several groups.

8 MR. COOKE: It says nothing about seeking.

9 MR. HARRINGTON: It doesn't say that.

10 MR. TEBBUTT: It does right in the prior  
11 sentence: "Seeking support from other industry  
12 organizations." Can you not read?

13 MR. COOKE: Excuse me.

14 MR. HARRINGTON: It's not -- you paraphrased  
15 it inaccurately. But, fine, if you want to ask him  
16 what is actually in that article and to affirm that,  
17 feel free.

18 MR. COOKE: That's not --

19 MR. TEBBUTT: That's not what I'm asking.  
20 I'm asking questions about it.

21 Are you giving -- are you giving a blanket  
22 instruction not to answer those questions? That's what  
23 I want to know.

24 MR. HARRINGTON: No. We will -- I mean,  
25 I can't speak for Mr. Cooke, but we will assess the



1 validity of each question as you -- as you pose it.

2 Q All right. I'll ask again: Did you visit the Mountain  
3 Area Council?

4 MR. COOKE: Same objection.

5 MR. TEBBUTT: What's the same objection? You  
6 haven't posed any objection.

7 MR. COOKE: Attorney-client privilege. I  
8 have too. I've just echoed Mr. Harrington's.

9 MR. TEBBUTT: All right. So you're saying  
10 attorney-client privilege --

11 MR. COOKE: Yes.

12 MR. TEBBUTT: -- in that association?

13 MR. COOKE: Yes.

14 Q Is there an attorney-client -- Mr. Gordon, is there an  
15 attorney-client -- I asked you earlier whether you had  
16 any common interest agreements with any other entities,  
17 and you said no.

18 MR. HARRINGTON: You asked --

19 MR. TEBBUTT: I believe there is no  
20 attorney-client --

21 MR. COOKE: I don't -- think you should go  
22 back and take a look at the deposition --

23 MR. HARRINGTON: That -- that is inaccurate.

24 MR. COOKE: -- transcript.

25 Q All right. Well, let me ask you this: Is there a



1 common interest agreement between the Washington State  
2 Dairy Federation and the Mountain Area Council? Is  
3 there or isn't there? Yes or no. There's no  
4 objection. Answer the question, please.

5 A No.

6 Q Is there a common interest agreement between any of the  
7 other entities listed in that paragraph that we were  
8 just discussing in Exhibit 106?

9 A Ask it again, please.

10 Q Is there a common interest agreement with any of the  
11 other entities listed in the paragraph we were just  
12 discussing in Exhibit 106?

13 A This paragraph right here?

14 Q Yes.

15 A No.

16 MR. HARRINGTON: Are you asking for a written  
17 agreement or otherwise?

18 MR. TEBBUTT: I'm asking if there was a  
19 common interest agreement. His answer is no.  
20 Privilege is waived. Do you disagree with that?

21 MR. HARRINGTON: I do disagree with that.

22 MR. TEBBUTT: On what basis?

23 MR. HARRINGTON: On the basis that there is a  
24 common interest between the defendants in this case and  
25 the Washington State Dairy Federation regarding the



1 information about the funding of the lawsuit. That is  
2 off limits and is also irrelevant.

3 MR. TEBBUTT: I don't know how you can say  
4 it's off limits when it's vitiated because they are  
5 talking to all these other groups, and there is no  
6 other common interest agreement with these other  
7 entities. There's no attorney-client privilege in that  
8 circumstance. Where is the privity? Tell me where the  
9 privity is.

10 MR. HARRINGTON: The privity is that the  
11 Federation is -- well, the privity is that there is a  
12 funding of the lawsuit. And the information about how  
13 the lawsuit is funded, how it works, who is funding is  
14 all irrelevant and it is -- and it is privileged as  
15 between Mr. Gordon and the defendants in this case.

16 MR. TEBBUTT: Well, there's a --

17 MR. COOKE: Why do you need the information  
18 so bad, Charlie? I guess I just -- I'm failing to  
19 see --

20 MR. TEBBUTT: There's a very significant  
21 question here about who the real parties and interests  
22 are. If your firm or the Givens Pursley firm is  
23 representing all these entities in a common interest  
24 agreement, who's making the decisions?

25 MR. COOKE: That's none of --



1 MR. HARRINGTON: What is the relevance of any  
2 of this?

3 MR. TEBBUTT: Well, who the real parties and  
4 interests are, whether you have conflicts of interest.  
5 Those are -- those are real issues that we get to  
6 explore.

7 MR. HARRINGTON: They are not real issues  
8 that you get to explore. They may be real issues, but  
9 those are issues between the parties and their lawyers.

10 MR. TEBBUTT: Well, we'll just put that one  
11 on reserve for now rather than fighting all day. We  
12 reserve the right to recall Mr. Gordon if the Court  
13 rules that we are allowed to pursue this line of  
14 questioning.

15 MR. HARRINGTON: Do you wish to call the  
16 Court now?

17 MR. TEBBUTT: I don't right at the moment.

18 THE VIDEOGRAPHER: Would this be a good time  
19 to change the tape?

20 MR. TEBBUTT: Oh, sure, yeah.

21 THE VIDEOGRAPHER: This is going to end Disk  
22 No. 2 in the deposition of Jay Gordon. Going off the  
23 record at 2:44.

24 (Off the record.)

25 (Exhibit No. 218 marked for identification.)



1 THE VIDEOGRAPHER: This will begin Disk No. 3  
2 in the deposition of Jay Gordon. We are back on the  
3 record at 2:47.

4 Q Mr. Gordon, I have handed you what's been marked as  
5 218. You created this document, did you not?

6 A Yes.

7 Q And who was this document prepared for?

8 A Generally for general purposes, reports to membership,  
9 report to the board, that kind of thing.

10 Q Was this used for fundraising purposes as well?

11 Go ahead and answer. Don't -- quit looking at  
12 your counsel. If you don't hear an objection, please  
13 answer the question.

14 MR. HARRINGTON: If there is a concern about  
15 privilege, I think it is appropriate for you to pause  
16 and give us an opportunity to interpose an objection.

17 Q There was no objection interposed.

18 MR. HARRINGTON: There is no objection to  
19 this question.

20 Q Please answer the question.

21 A Yes.

22 Q So you took this on the road with you and emailed this  
23 and used this to give to anyone who you were  
24 fundraising from?

25 A This was being -- this was used to raise awareness of



1           what the case was, yes.

2   Q       Who has this been distributed to?

3           MR. COOKE:  Objection.

4           MR. HARRINGTON:  Instruct the witness --

5           MR. COOKE:  Instruct the witness -- you're  
6       not --

7           MR. TEBBUTT:  On what grounds?

8           MR. COOKE:  On you're not entitled to member  
9       lists or donor lists or donor information or possible  
10      people who they've solicited funds from, period.

11          MR. TEBBUTT:  You guys are really going far  
12      afield here with a very blanket objection when a lot of  
13      these issues have been waived.  You produced this  
14      document to us.  You produced other documents to us  
15      that indicate who you guys have been soliciting.

16          MR. COOKE:  I produced this document which  
17      doesn't name any parties.  So that's what I'm  
18      maintaining my objection about.

19   Q       In the second page of this document, Mr. Gordon, you  
20      state under how these farm -- "How have these farm  
21      managed their manure?"  And that's a "sic' after  
22      "farm."  You say, "These farms all have implemented  
23      farm plans and updates to those farm plans over at  
24      least the past 16 years as a requirement of Washington  
25      State law."





1                   What did you do to confirm that?

2   A     I didn't.

3   Q     You just -- what basis do you have for making that  
4           statement?

5   A     Statements made by some of the families over the course  
6           of the several-year discussion.

7   Q     So you took them at their word without looking at the  
8           documents behind them?

9   A     Yes, I did.

10   Q    And the same with the last sentence of that same  
11          paragraph: "None of the farms have had any issues in  
12          the numerous inspections by the State Department of  
13          Ecology and Agriculture over the past 16 years."

14               What did you do to confirm that statement?

15   A     I took that as a statement from producers -- the  
16          families have been made over the course of discussions  
17          over the last couple years.

18   Q     Did you actually look at the inspection reports?

19   A     No.

20   Q     Did you look at any inspection reports for any of the  
21          facilities at any time?

22               MR. COOKE:  Objection.  Vague.

23   A     No.

24   Q     Would it surprise you to find out that the Department  
25          of Agriculture has said levels of nitrate are excessive



1 at many of these farms?

2 MR. COOKE: Objection --

3 MR. HARRINGTON: Objection.

4 MR. COOKE: -- assumes facts not in evidence.

5 Calls for speculation.

6 Q Would it surprise you?

7 A Yes.

8 Q Mr. Gordon, handing you what's been marked as Exhibit  
9 15, McCarty. I'm going to show you an inspection  
10 report dated March -- let's see. Date of inspection is  
11 March 13, 2013. This is for the DeRuyter facilities.  
12 I'd like you to take a look at it.

13 MR. HARRINGTON: Can I review this?

14 MR. COOKE: Do you have a hard copy of that?

15 MR. TEBBUTT: I don't have a hard copy.

16 MR. HARRINGTON: Are you going to be asking  
17 about each page of 15?

18 MR. TEBBUTT: Mostly about some later pages.

19 MR. HARRINGTON: Are you asking about all six  
20 pages of the document or just --

21 MR. TEBBUTT: I'm going to ask about specific  
22 pages as well.

23 MR. COOKE: There's an email as well. I  
24 just -- so I'm not wasting everyone's time --

25 MR. TEBBUTT: Including the email.



1 MR. COOKE: Okay. That's what I was asking.

2 MR. TEBBUTT: Yep, look at the whole thing.

3 MR. COOKE: I just noted that the inspection  
4 report isn't signed. Is there -- is there a signed  
5 one?

6 MR. TEBBUTT: It's in the record, okay?

7 MR. COOKE: I was just asking.

8 MR. TEBBUTT: I don't know.

9 MR. COOKE: Okay.

10 MR. TEBBUTT: But it's in the record.

11 MR. COOKE: All right. I've not been privy  
12 to your exhibit list, so I'm simply asking a question.  
13 Q Mr. Gordon, I'm handing you, again, 15 McCarty on the  
14 tablet provided by the court reporters. This is  
15 Exhibit -- as I said, Exhibit 15, McCarty. It says  
16 right here on the -- I believe it's the third of six  
17 pages in this document, that DeRuyter is out of  
18 compliance. Do you see that?

19 MR. COOKE: I will object. The document  
20 speaks for itself and lack of foundation.

21 Q Do you see that?

22 A Yes.

23 Q And it says "warning," correct? The box "warning" is  
24 checked?

25 A Yes.



1 MR. COOKE: Same objections.

2 Q And it also says, "DNMP does not account for current  
3 cow numbers." Do you see that?

4 MR. COOKE: Same objections.

5 Q Under comments?

6 A Yes.

7 Q And going to the fifth page of the document is an email  
8 from Chery Sullivan to Ginny Prest about -- and to Dan  
9 DeRuyter, do you see that?

10 A Yes.

11 Q And it says, Thank you for following up. And it says a  
12 number of things. Let me see it for a moment.

13 And it says, among other things, According to the  
14 inspection report, your nitrate levels range from 300  
15 pounds per acre to over 600 pounds an acre, and  
16 essentially said that those are excessive numbers, does  
17 it not?

18 MR. COOKE: Objection. Document speaks for  
19 itself.

20 MR. HARRINGTON: If he's asking you to -- as  
21 to what the document essentially says, please review  
22 the document in full.

23 A Ask the question again. I have read it, please.

24 Q Yes. It says basically that nitrate levels are  
25 excessive, doesn't it?



1 A It says they're high.

2 MR. HARRINGTON: Objection. Vague.

3 Q Does that mean excessive to you? Never mind. Strike  
4 that.

5 So based on this one document -- and there are  
6 many others, I can assure you, that are in the exhibits  
7 already in this case. But just based on this one  
8 document, would you like to retract the statement that  
9 none of the farms have had any issues in the numerous  
10 inspections by the State Department of Ecology and  
11 Agriculture over the past 16 years that you stated in  
12 Exhibit 218?

13 MR. HARRINGTON: Disregard counsel's  
14 representation and preamble about what other facts are  
15 not in evidence here.

16 Are you asking if he'd like to retract --

17 MR. TEBBUTT: I'm just saying based on this  
18 document --

19 MR. HARRINGTON: Does he want to retract his  
20 document or retract his answer to the prior question?  
21 What is your question, Mr. Tebbutt?

22 MR. TEBBUTT: I don't appreciate the  
23 narrative.

24 Q I asked the question. Please answer it, Mr. Gordon.  
25 Do you understand my question?



1 A Yes.

2 Q Can you answer it, please?

3 A No. I made that statement at the time based on the  
4 information that I had at the time --

5 Q And you had no information at the time, correct? You  
6 already admitted that.

7 MR. COOKE: Objection. Misstates his prior  
8 testimony.

9 A No. I did say I had had conversations and that was the  
10 information I had.

11 Q And that's all -- so sitting here today, based on what  
12 you see here, is the statement you made in Exhibit 218  
13 on the second page that we just talked about, is  
14 that -- is that accurate?

15 MR. COOKE: Objection. Lack of foundation.  
16 Document speaks for itself.

17 A This report indicates that farm needs -- needs to do  
18 some work.

19 Q Right. Which contradicts the statement that none of  
20 the farms have had any problems, that you stated in  
21 Exhibit 218, correct?

22 A That's correct.

23 Q I'm going to, rather than giving you the tablet  
24 version, just hand you a hard copy, which I've already  
25 handed to counsel, which has been previously marked as



1 Exhibit 165 in this case.

2 MR. HARRINGTON: Can I ask a clarifying  
3 question about the use of the iPad here? A moment ago  
4 you represented that the i- -- that this is the  
5 certified document that came from the court reporter,  
6 or that this was an iPad that was brought by the court  
7 reporter?

8 MR. TEBBUTT: Both. These are the documents  
9 that have been all scanned in from previous  
10 depositions. So it's up-to-date with all of the  
11 information.

12 MR. HARRINGTON: And the actual hardware was  
13 brought by the court reporter today? Is that --

14 MR. TEBBUTT: This little Lenova tablet --

15 MR. HARRINGTON: That's what I -- the tablet,  
16 yes.

17 MR. TEBBUTT: Yes.

18 MR. HARRINGTON: Okay. Thank you.

19 Q Just looking at the first page of that document, which  
20 was produced by you, WSDF00005, is this a document that  
21 you prepared?

22 A I don't believe so.

23 Q Do you know who prepared it?

24 A I don't.

25 Q Did you participate in the preparation of this agenda?



1 A I don't believe so and don't recall doing that.

2 MR. COOKE: When you say "you" -- I'm still  
3 confused, because a lot of these questions have been  
4 individual to Jay. Are you referring to the Dairy  
5 Federation, or are you referring to Jay individually?

6 MR. TEBBUTT: Good question.

7 Q First, I will state that the question applied to you,  
8 Mr. Gordon. You're saying you personally didn't. Do  
9 you know if the Dairy Federation assisted in the  
10 creation of this agenda?

11 A I don't believe we did, but I'm not 100 percent certain  
12 of that.

13 Q So this was an agenda for a meeting which was to occur  
14 on March 2, 2013, in Pasco, correct?

15 A Yes.

16 Q Did you attend that meeting?

17 A Yes.

18 Q Did Dan Wood attend that meeting?

19 A Yes.

20 Q Did everyone who is listed on the first page of Exhibit  
21 165 attend that meeting, to your knowledge?

22 A As far as I know, yes.

23 Q What did you say in your welcome and introductions?

24 A I don't remember exactly. I would have probably had  
25 everybody go around to the room and do an introduction,





1 if I remember right, and introduced Deb Kristensen.

2 Q Had you worked with or met -- I'll rephrase the  
3 question.

4 Had you met Deb Kristensen prior to this meeting?

5 A I don't remember if I met her before. I don't recall  
6 meeting her before this meeting.

7 Q Did you have any kind of attorney-client relationship  
8 with Deb Kristensen or Givens Pursley prior to this  
9 meeting?

10 A Yes.

11 Q What was the nature of that relationship?

12 A They --

13 MR. COOKE: I'm going to object. It is  
14 attorney-client privilege.

15 You can describe the nature, but any specific  
16 conversations you've had are not disclosable.

17 MR. TEBBUTT: I'm not asking for specifics.

18 MR. COOKE: I know. I just wanted to make  
19 sure he was clear on that.

20 A Pursley Givens [sic] was our attorney working on the  
21 EPA science document.

22 Q Did you find Givens Pursley?

23 A What do you mean by "find"? I'm sorry.

24 Q Did you seek out a law firm to engage to work on the  
25 comments for the AOC, or did someone suggest them to



1           you?

2   A       I may have -- may have seeked them out, talked to Bob  
3           Naerebout, my counterpart. And I don't remember the  
4           genesis of how we found each other.

5   Q       So did you and Bob Naerebout come to an agreement that  
6           you should engage Givens Pursley?

7   A       Yes.

8   Q       When did that occur?

9   A       Mid to late September of 20- -- 2012, would be my  
10          guess.

11   Q       What was the strategy that was laid out during this  
12          meeting that occurred on March 2, 2013? You see  
13          section 4B?

14   A       Yes.

15   Q       What was the strategy that was discussed?

16   A       I -- other than what the document says, it's about what  
17          I remember, was maybe conversations about the deadline  
18          when the motions were due, as well as the motion to  
19          consolidate all the families. That would -- generally,  
20          it says what the conversation that I recall --

21   Q       Well, I understand this is an outline, but I'm looking  
22          for specifics. What do you recall?

23   A       I remember the conversation about there being a  
24          timeline, especially the discussion between all the  
25          families about the consolidation. That's generally



1 about what I remember.

2 Q Was there a discussion about what experts to employ?

3 A I don't remember that, no. Could have been, but don't  
4 remember.

5 Q Are you under any medications or drugs that would  
6 impair your memory as you sit here today, Mr. Gordon?

7 A No, sir.

8 Q This is kind of a big part of your job, is it not?  
9 Kind of a big deal to put together a defense strategy  
10 and a meeting like this. That's something you might  
11 remember?

12 MR. COOKE: Objection. Assumes facts not in  
13 evidence.

14 A This is not part of my job to do a defense strategy.  
15 That was why Ms. Kristensen and Pursley Givens [sic]  
16 were there.

17 Q Right. But you're part of that strategy and  
18 discussion, correct?

19 MR. COOKE: Objection. Assumes facts not in  
20 evidence.

21 A No.

22 Q Have you had any discussions with Ms. Kristensen about  
23 the defense of these cases?

24 A We've talked about the case. I guess I have to ask  
25 what -- tell me what you want. What do you mean?



1 Q Have you had any discussion with Ms. Kristensen,  
2 you -- just the two of you on the phone about the  
3 cases?

4 A We've talked about the cases.

5 Q When?

6 A I can't recall exact dates.

7 Q I understand that. Would you have a calendar that  
8 would tell you when you've had discussions with  
9 Ms. Kristensen about these?

10 A No.

11 Q Do you keep notes about those discussions?

12 A No.

13 Q How many times have you talked with her since March  
14 2013 about this litigation? And when I'm saying "this  
15 litigation," I'm talking about the CARE/CFS litigation.

16 A Since March of 2013?

17 Q Yes.

18 A I remember talking to her in May and asked for a  
19 generic update. That would have been May of 2013. I  
20 believe in the summer of -- it would be July or early  
21 August of 2013 --

22 MR. HARRINGTON: I want to interpose an  
23 objection here and caution the witness not to divulge  
24 what we would consider privileged and objectionable and  
25 irrelevant information about who is funding the



1 lawsuit, how much, how that funding works,  
2 communications about the funding.

3 MR. TEBBUTT: I'm not discussing the funding  
4 right at the moment.

5 MR. HARRINGTON: I just want to make sure  
6 that the witness wasn't going to volunteer that.

7 A Your question -- can I have the question repeated back  
8 again, please?

9 (Last question and answer read as follows:)

10 "QUESTION: How many times have you talked with  
11 her since March 2013 about this litigation? And when  
12 I'm saying "this litigation," I'm talking about the  
13 CARE/CFS litigation.

14 "ANSWER: Since March of 2013?

15 "QUESTION: Yes."

16 Q So we have two. May of 2013. One is in July/August of  
17 2013. Let's start -- let's go with May. What was  
18 discussed in May of 2013?

19 A I asked her for an update, just kind of where's the  
20 case, what's the timeline, what's it going -- or how's  
21 it going.

22 Q What did she tell you?

23 A I don't remember on the phone call. I believe they  
24 sent some kind of a generic update at the time.

25 Q In writing?



1 A Yes.

2 Q Did you produce that to us?

3 A I don't know.

4 Q It's not in the privilege log either.

5 MR. TEBBUTT: We request a copy of that  
6 update.

7 MR. COOKE: We'll look for it, to the extent  
8 it hasn't been produced already.

9 Q What about in July or August of 2013? What did you  
10 talk about?

11 A I think I asked if she would be available to come to  
12 Portland to a meeting.

13 Q And I believe it's documented in the file that you  
14 produced she did come and give an update to the group  
15 in Portland, correct?

16 MR. COOKE: It was produced. It's the first  
17 one on the production log, May 2013. I believe that's  
18 the record.

19 MR. TEBBUTT: Okay. That's the one we  
20 requested earlier, because there's no attorney-client  
21 privilege.

22 MR. COOKE: Again, that's noted and we would  
23 disagree with that.

24 MR. TEBBUTT: I didn't hear any objections  
25 when I was questioning the witness about it or there



1 was any --

2 MR. COOKE: I've been trying to provide you a  
3 little bit of leeway to get to the nature and substance  
4 of the representation, not the exact details or  
5 substance of those communications. So if you'd like, I  
6 can object every time you raise it and we keep battling  
7 it out, but I was trying to give you some flexibility  
8 to ask your questions to get the information you think  
9 you need.

10 MR. TEBBUTT: Once again, the record speaks  
11 for itself.

12 Q Okay. So did Ms. Kristensen agree to come to Portland?

13 A Yes.

14 Q And who -- who was the audience for that meeting?

15 A Mostly dairy producers from across Oregon, Washington,  
16 my board.

17 MR. HARRINGTON: And we're going to object to  
18 divulging any additional information about the  
19 audience.

20 Q Well, all of those entities were not in any kind of  
21 attorney-client privilege relationship with Givens  
22 Pursley, were they?

23 A I don't know.

24 MR. HARRINGTON: If you know.

25 A I don't know.



1 THE WITNESS: If this is a convenient time,  
2 can we get another break?

3 MR. TEBBUTT: Yes.

4 THE VIDEOGRAPHER: We're going off the record  
5 at 3:16.

6 (Off the record.)

7 (Exhibit No. 219 marked for identification.)

8 THE VIDEOGRAPHER: We are going back on the record  
9 at 3:21.

10 Q The last exhibit that you had there, can you hand that  
11 to me, please?

12 Again, going back to Exhibit 165, previously  
13 marked, what else of the conversations during that  
14 meeting do you recall?

15 A During this meeting?

16 Q Yes.

17 A I -- that's -- I don't recall a lot about it, again.

18 Q And then you had dinner that night, correct?

19 A Yes.

20 Q And did you discuss the cases and the strategy with  
21 some of your individual WSDF members at that meeting?

22 MR. HARRINGTON: Objection. Vague as to  
23 "strategy."

24 A I don't remember that. It was more of just a dinner to  
25 relax and get to know each other.





1 Q No questions were asked or discussed about the  
2 litigation?

3 A At dinner? No. I don't really remember. I remember  
4 it being kind of light and social.

5 Q So questions about CARE and who they were and CFS and  
6 who they were?

7 A No. I don't remember that.

8 Q About any of the attorneys who were involved?

9 A (Witness shook head negatively.)

10 Q Were there discussions about the legal team for the  
11 plaintiffs during the 3/30 meeting?

12 A What 3/30 meeting are you referring to?

13 Q The agenda.

14 A I'm sorry. Ask the question again.

15 Q Yeah. Was there discussion about the plaintiff's legal  
16 team and their strategies during -- during that  
17 meeting?

18 A The plaintiffs, the families, is who you're referring  
19 to?

20 Q No. I'm referring -- the plaintiffs are CARE and  
21 Center For Food Safety.

22 A Oh, I'm sorry. I don't remember that coming up, no.

23 Q Moving on -- I'll take that back, please.

24 Handing you what's been marked as Exhibit 219 in  
25 this case.



1           This was produced by you, and it's WSDF 002217.

2           Is this the meeting that you were referring to  
3       where Ms. Kristensen appeared in Portland to discuss  
4       the RCRA lawsuits?

5   A     Yes.

6   Q     And were both Ms. Kristensen and Mr. O'Riordan present?

7   A     I don't believe Mr. O'Riordan was there.

8   Q     And what did Ms. Kristensen tell the audience at that  
9       meeting?

10               MR. HARRINGTON:  Objection.  Asked and  
11       answered.

12   A     Again, the outline says it pretty much was -- she gave  
13       an update of the timeline, generic activities and  
14       actions regarding the case in Yakima.

15   Q     Right.  What did she say?  I understand what the  
16       document says, but you tell me what it says.  It was  
17       from 1:00 to -- 1:00 to 5:00.  So how long did her  
18       briefing last?

19               MR. HARRINGTON:  Objection.  Asked and  
20       answered.

21               MR. TEBBUTT:  It wasn't.

22   A     Her briefing might have been a half-hour to 45 minutes  
23       of that, if I remember right, which I think I do, I  
24       think.

25   Q     So what actions did she say that the defendants were



1 taking to defend the case?

2 A I don't remember her talking about the specific actions  
3 of defending the case. I remember her talking about  
4 describing RCRA, what the law was, and how a change  
5 in -- via this litigation would affect producers and  
6 what it would mean. I'm sure she -- I know she talked  
7 about timeline, of kind of generic what the case was  
8 time -- the timeline was on. That's about what I  
9 remember.

10 Q Was this part of your fundraising strategy, to bring  
11 the attorney in to try to raise funds from these other  
12 groups?

13 MR. HARRINGTON: Objection. Vague.

14 A No. This was more informational, just producers,  
15 what's going on, what's the -- what's the whole  
16 situation in Yakima about.

17 Q Was there discussion about media or public relations  
18 campaigns to try to counteract the message that came  
19 out of the EPA report or the citizen lawsuits?

20 A I don't remember that, no.

21 Q Does WSDF have a media strategy in place to try to  
22 counteract the EPA study and the litigation by CARE and  
23 CFS?

24 A No.

25 Q No media strategy at all?



1 A (Witness shook head negatively.)

2 Q Are you part of the commercials that are airing on the  
3 radio about how wonderful the milk producers are in the  
4 state of Washington and how they contribute to the  
5 economy?

6 MR. COOKE: Objection. Misstates the  
7 evidence.

8 A No. I don't know what commercials you're talking  
9 about.

10 Q WSDP hasn't participated in those?

11 MR. COOKE: Same objection.

12 A No.

13 (Exhibit No. 220 marked for identification.)

14 Q Handing you what's been marked as Exhibit 220 in  
15 production from you, meaning the Dairy Federation,  
16 produced by your counsel, email from you dated October  
17 23, 2013. And there are three emails on the page.  
18 These were -- referred to contribution agreements.  
19 What contribution agreements are you referring to?

20 MR. HARRINGTON: And I am going to object on  
21 the same basis as before, including common interest and  
22 attorney-client privilege and associational privileges,  
23 and irrelevance.

24 You can testify whether the statement in the email  
25 is correct or not, but I'm going to instruct you not to



1 answer as to the content of any contribution agreements  
2 or any details about them.

3 Q So I'm going to ask you: Did you ever find the  
4 contribution agreements?

5 A Yes.

6 Q And did Wendy keep a copy?

7 A I don't know.

8 Q Do you have a copy in your files?

9 A I don't believe so.

10 Q How do you know they exist?

11 A Hugh would have tormented me if we hadn't gotten them  
12 to him.

13 Q So when you said earlier that you found them, they were  
14 at the Givens Pursley firm?

15 MR. HARRINGTON: Objection. Mischaracterizes  
16 testimony.

17 Q Well, you said you found them. Where did you find  
18 them? Let's try it that way.

19 A What I say in here is we had Dave Boon as the president  
20 of the Washington Ag Legal Foundation, and he signed  
21 them.

22 Q I know that. But my question is, you said you found  
23 them. I'm just asking you where you found them.

24 A I don't know.

25 Q But you said you found them, so you've seen them?



1 MR. HARRINGTON: Objection. Mischaracterizes  
2 the witness's testimony.

3 A I have seen signed contribution agreements.

4 Q They weren't produced to us in discovery and they're  
5 not on the privilege log, so I'm going to ask, at the  
6 very least, they be identified in the privilege -- are  
7 you claiming privilege for them?

8 MR. COOKE: We will be claiming privilege for  
9 them to the extent WSDF has them in their possession.

10 Q Do you know today whether they are in WSDF possession?

11 A They are not.

12 Q So when you were looking for documents in response to  
13 this subpoena, did you -- did you find them?

14 A We did not.

15 Q Did you inquire as to where they were during the  
16 request for the subpoena?

17 MR. COOKE: Objection. Outside the scope of  
18 the deposition documents.

19 A State the question again.

20 Q Did you search for them as part of the response to the  
21 subpoena?

22 MR. COOKE: Same objection. Outside the  
23 scope.

24 A This would have been part of the search and they did  
25 not come up.



1 (Exhibit No. 221 marked for identification.)

2 Q You have in front of you, sir, Exhibit 221, a document  
3 prepared by you called, "Report on Yakima Litigation,"  
4 correct, dated October 26, 2013?

5 A Yes.

6 Q And to whom was this provided? What -- I know  
7 it's -- who it says, but is there a certain group or  
8 category of people to whom this was provided?

9 A Interested parties.

10 Q And, again, how did you determine who the interested  
11 parties were?

12 A Starts with the board, other dairy groups around the  
13 west and across the nation. Other groups and other  
14 people that are on here.

15 Q And that includes the primary defendants in these  
16 cases, correct? Down at the bottom of the bcc's.

17 A Yes.

18 Q On the second page of Exhibit 221, bottom, "Activity to  
19 Raise Awareness and Funds to Support the Litigation."  
20 Discusses Bob Naerebout met with certain entities and  
21 that Jay and Dan -- and I assume that's Dan Wood,  
22 correct?

23 A Yes.

24 Q -- have participated in virtually all national  
25 agricultural environment conference calls since last



1 winter.

2 How many of those conference calls have you had?

3 MR. HARRINGTON: Objection. Vague as to

4 "you."

5 Q Have you been on, you personally.

6 A As of the writing of this email or as of today?

7 Q Well, let's start with as of the writing of the email.

8 A Oh, I can't say for sure. Five, eight, six, somewhere  
9 in there. Probably less than ten.

10 Q Are they monthly calls?

11 A No. They're ad hoc.

12 Q Did you call any of -- when I say call them, did you  
13 call to order any of these national calls?

14 A No.

15 Q No? You just joined in existing ones?

16 A Yes.

17 Q Did you request that one or more of these calls be  
18 brought together on an ad hoc basis to discuss these  
19 cases?

20 A No.

21 Q Has WSDF retained the services of a professional  
22 fundraiser for these cases?

23 A No.

24 Q So the statement at the top of the third page is  
25 incorrect? Well, it says it's working on retaining the





1 services of a professional fundraiser. Did that ever  
2 happen?

3 A It did not.

4 Q How much of the litigation costs are being covered by  
5 the Dairy Federation and other nonparties to the  
6 litigation?

7 MR. COOKE: Objection.

8 MR. HARRINGTON: Objection.

9 MR. COOKE: I'll instruct the client not to  
10 answer.

11 MR. TEBBUTT: There's a lot of information in  
12 here about the costs. I'm just trying to figure out  
13 what the share is.

14 MR. HARRINGTON: Instruct the witness not to  
15 answer.

16 Q There have been other representations in other  
17 documents which are already in the record that say 50  
18 percent of the costs are being covered. Let me  
19 rephrase the question.

20 Are more than 50 percent of the costs of  
21 litigation being covered by outside entities, other  
22 than the actual defendants in this case?

23 MR. COOKE: Objection. Attorney-client  
24 privilege. Instruct you not to answer the question.

25 MR. HARRINGTON: Objection. Same basis as



1 before, yeah.

2 MR. TEBBUTT: I'll reserve on that issue once  
3 again.

4 (Exhibit No. 222 marked for identification.)

5 Q Mr. Gordon, you have in front of you Exhibit 222, email  
6 from Dennis Halladay at Hoard's West to you. And  
7 asking you to edit an article for Hoard's Dairyman,  
8 H-o-a-r-d-s. Do you see that?

9 A Yes.

10 Q And in your email to Mr. Halladay dated November 2,  
11 2013, regarding the article, you say your intent "was  
12 to say that we can't promise nitrogen will get below  
13 the root zone ever." Is that --

14 MR. COOKE: Objection. Document speaks for  
15 itself.

16 Q So what did you change in the article, is my question?

17 A I believe the reference -- the document says it, by and  
18 large, but I said the line about 11 parts per million  
19 in the groundwater shouldn't be written that way. My  
20 intention was to say that we can't promise nitrogen  
21 won't get below the root zone ever.

22 Q So you weren't promising that nitrates will never get  
23 above 11 parts per million. Is that what you changed?

24 A I was asking -- again, the document says -- the line  
25 about 11 probably should be -- my intent was to say we



1 can't promise nitrogen won't get below the root zone  
2 ever.

3 Q Right. But what I don't have is the draft that said  
4 something about 11 parts per million, right? There's  
5 this article --

6 A Right.

7 Q -- but I don't have the first draft of it. Do you  
8 still have that first draft?

9 A I -- I do not.

10 Q What would you have done with it?

11 A I don't know.

12 Q You received it by -- the article by email, correct?

13 A I probably would have, yes.

14 Q Well, it says -- doesn't it say right on the first page  
15 of 222, "Good morning, Jay. Please take a look at this  
16 and let me know"? So it wouldn't have been an  
17 attachment?

18 A It would have been an attachment --

19 MR. COOKE: Objection. Misstates the  
20 document.

21 Q Where's the attachment?

22 A I don't know.

23 MR. TEBBUTT: Request the attachment to that  
24 email, please.

25 MR. COOKE: To the extent it exists.



1 MR. TEBBUTT: Well, if you deleted it, you  
2 can get it off the hard drive.

3 Q And in the article itself -- which is actually not  
4 marked by WSDF, so it looks like we got it through  
5 another source -- you say, "There is no possible  
6 way" -- on the second page -- "that some nitrogen won't  
7 get below the root zone sometimes, despite farmers'  
8 best plans and intentions."

9 You said that, right?

10 A Yes.

11 Q So this article came out in November of 2013?

12 A No. January 10, 2014.

13 Q Okay. Where do you see that?

14 A Last line. Well, third-to-last line. Right down at  
15 the very bottom.

16 Q Oh, okay. Thank you. And above -- just above that,  
17 you say, "I'll guarantee that our side is going to  
18 submit testimony about the 38 individual scientists,  
19 associations, organizations, and agencies that  
20 submitted comments to EPA saying its science is so bad  
21 it needs to be done over."

22 Who's your side?

23 A That's a generic reference to the defendants' side,  
24 dairy farmers, the families.

25 (Exhibit No. 223 marked for identification.)



1 Q Mr. Gordon, you have in front of you Exhibit 223, which  
2 is an email from you to various people, including the  
3 defendants in these cases. What is the significance of  
4 this attachment in sending this link to those  
5 individuals?

6 A This appears to be an FYI.

7 Q About what?

8 A About this article.

9 Q Right. So is the intent to show -- what? Anything?

10 MR. COOKE: Objection --

11 Q Any message you're trying to convey here?

12 MR. COOKE: Objection. Asked and answered.

13 A No.

14 (Exhibit No. 224 marked for identification.)

15 Q 224 is an email from Bill Dolsen to you dated February  
16 6, 2014. How much conversation have you had with  
17 Mr. Dolsen about these cases?

18 A Not very much.

19 Q Are the emails produced the extent of the  
20 communications you've had with Mr. Dolsen and what  
21 you've already testified to today, or have you had  
22 other communications with him?

23 A We've talked on the phone a couple of times, few times.

24 Q When you say "Mr. Dolsen," you're referring to Bill?

25 A I am. Bill, in this particular case, yes. I have



1           talked to Bill and to Adam occasionally.

2   Q     Do you talk to them together all the time or  
3           separately?

4   A     Usually separate.

5   Q     Are you talking to them about the billings in this case  
6           or are you talking to them about other things? And I'm  
7           asking just generally, not with respect to this  
8           particular document yet, just generally.

9           And just -- I'm asking a general question. Do you  
10          talk to them about billing issues only or about  
11          substantive issues or case issues? And I'm not  
12          referring to this document right at the moment.

13  A     Okay. The last few times I think have been mostly  
14          billing. And this -- and this -- and this would be a  
15          written clarification.

16  Q     So do you receive the full bills as well from -- from  
17          the attorneys' offices?

18  A     The Washington Ag Legal Foundation does, and we receive  
19          them.

20  Q     So they receive the actual billing information not just  
21          the summaries, but the actual individual time sheets  
22          and summaries of actual time worked?

23  A     No, I've never seen that.

24  Q     Just the summaries?

25  A     Yes.



1 Q Just the final, Here's the total; here's what you owe?

2 A Yes.

3 (Exhibit No. 225 marked for identification.)

4 Q So, Mr. Gordon, is Exhibit 225 an example of the kind  
5 of billing statement that you get in these cases?

6 MR. HARRINGTON: I'm going to instruct the  
7 witness not to answer for the reasons stated before,  
8 and I think we're going to consider whether this was  
9 inadvertently produced.

10 MR. COOKE: Disclosed. I agree with that.

11 MR. TEBBUTT: Are you instructing him not to  
12 answer?

13 MR. HARRINGTON: Yes.

14 MR. COOKE: Um-hmm.

15 MR. TEBBUTT: We take exception to that, once  
16 again, and we'll reserve for a later time.

17 (Exhibit No. 226 marked for identification.)

18 Q Exhibit 226 is an email from you to Mike Anderson of  
19 Farmers Co-op, correct?

20 A Yes.

21 Q And who's Farmers Co-op?

22 A Farmers Co-op Creamery is a cooperative based out of  
23 Oregon.

24 Q And they've been contributing as well?

25 MR. HARRINGTON: Objection.



1 MR. COOKE: Objection.

2 MR. HARRINGTON: Same basis. Therefore,  
3 instruct the witness not to answer.

4 MR. TEBBUTT: Tells you right there on the  
5 page: "Thank you and your board for their help and  
6 leadership." So they've been contributing?

7 MR. COOKE: Objection.

8 MR. HARRINGTON: Same objection.

9 MR. TEBBUTT: You provide the document to us  
10 and now we can't ask questions about it?

11 MR. COOKE: I think it possibly was  
12 inadvertently disclosed.

13 MR. TEBBUTT: Inadvertently disclosed?  
14 There's no attorney-client privilege between WSDF and  
15 Farmers Co-op.

16 MR. COOKE: Well, I've already told you my  
17 position on donor lists and membership lists. Have you  
18 disclosed your membership list for your organization?

19 MR. TEBBUTT: I'm not asking for membership  
20 lists.

21 MR. COOKE: Donor lists?

22 MR. TEBBUTT: We have a legitimate right to  
23 keep it withheld. You've made public declarations as  
24 to what they are. So I have a right to inquire into  
25 those.





1 MR. COOKE: I guess I disagree with that  
2 assessment.

3 MR. TEBBUTT: We haven't made public  
4 declarations to that effect.

5 MR. COOKE: I disagree with that assessment.

6 MR. TEBBUTT: Well, the record speaks very  
7 well for itself.

8 MR. COOKE: It's noted.

9 Q So do you give these kinds of updates to all of the  
10 entities that contribute to this litigation?

11 A No.

12 Q Who do you give them to?

13 MR. HARRINGTON: Objection to the extent that  
14 it would identify any particular donor.

15 MR. TEBBUTT: Let me rephrase.

16 Q What criteria do you use -- criterion or criteria do  
17 you use to determine who to give updates to?

18 MR. HARRINGTON: Objection to that as well.  
19 That would disclose information about this particular  
20 entity's participation.

21 MR. TEBBUTT: No it wouldn't. I'm just  
22 asking generally --

23 MR. HARRINGTON: Anything he answers would  
24 mean that they, by default, fit that criteria.

25 Q Other than this entity, what criterion or criteria do



1           you use to determine who you sent updates to?

2   A       I don't have any fixed criteria.

3   Q       So it's just arbitrary?

4   A       This towards the bottom is an example of an update that  
5           we have talked about before. Goes out to the board,  
6           key leaders on an ad hoc basis occasionally.

7   Q       So the information that's on the bottom of the page 226  
8           and carries over onto 227 is a cut and paste from a  
9           document that goes to lots of different entities? Is  
10          that what you're saying?

11                   MR. HARRINGTON: Objection.

12                   MR. COOKE: Objection.

13                   MR. HARRINGTON: Mischaracterizes the  
14          witness's testimony.

15                   MR. COOKE: Same objection.

16   Q       Is that a fair summary?

17   A       I don't know if this was cut and paste or this was  
18           added to, but it's -- it's what it says it is. It's an  
19          update.

20                   (Exhibit No. 227 marked for identification.)

21   Q       In front of you is Exhibit 227, WSDF000252. This talks  
22           about -- it's a Memorandum of Understanding between the  
23           State Dairy Federation and Yakima County Dairy  
24           Federation. Why do you need a Memorandum of  
25          Understanding if the Yakima County Dairy Federation is



1 a subsidiary of WSDF?

2 A I believe this document refers to -- this is a  
3 written -- just a written -- it's very formal. I'm not  
4 sure why we wrote it this formal. But this would have  
5 referred to an agreement that we would help the local  
6 unit with some technical -- make sure that we had  
7 technical assistance, policy review, and this would  
8 have been related mostly -- I think actually  
9 exclusively to the groundwater management area process.  
10 And so this is just putting in writing kind of  
11 a -- putting in writing an agreement between our local  
12 board and representatives on the GWMA. Again, written  
13 a little formally for a document like this, but that's  
14 the intent of what the document was.

15 Q And this is trying to obtain technical information to  
16 assist Dairy Federation members in the GWMA process?

17 A Yes.

18 Q Okay.

19 (Exhibit No. 228 marked for identification.)

20 Q Exhibit 228 is research fund proposals that have been  
21 produced by you in response to the subpoenas in your  
22 file.

23 A Yes.

24 Q Just have a couple of questions about them. The first  
25 one, the Pre-Proposal Template, which is Bates-stamped



1           293, principal investigator Joe Harrison, Nutrient  
2           Management-Environmental Stewardship-Nitrogen  
3           Utilization. States that this project was to start, it  
4           looks like, in 2012 and be completed in the summer of  
5           2013. Was this study done, to your knowledge?

6                   MR. HARRINGTON: Which page are you referring  
7           to, Charlie?

8   A       It's 293 --

9   Q       293.

10   A       -- and 294?

11   Q       Correct.

12                   MR. HARRINGTON: So these are all part of  
13           228?

14                   MR. TEBBUTT: They are.

15   Q       Do you understand my question?

16   A       I do. I do.

17   Q       My question is: Is the study done?

18   A       I don't know if the study was ever done. This was a  
19           preproposal.

20   Q       Do you know if it was accepted?

21   A       I don't recall. I don't know.

22   Q       Is there something in your files that would tell you  
23           whether it was or not?

24   A       No. This would have been handed off to the dairy  
25           commission for their consideration at this time, and I



1 don't believe they approved this.

2 Q Did you have input into whether to approve this  
3 project?

4 A No. Not at the end.

5 Q Well, in the beginning, did you have input?

6 A No.

7 Q Did you give your seal of approval to the project? Did  
8 you ask the Dairy Commission to approve the project?

9 MR. HARRINGTON: Objection. Compound.

10 Vague.

11 A Our board would have discussed this, and I don't -- I  
12 don't remember -- I don't remember the discussion,  
13 whether they approved it or not that year. I mean,  
14 this is --

15 Q So that would be reflective -- approval or not would be  
16 reflective in WSDF minutes of meetings?

17 A No, I don't think it would.

18 Q Why not?

19 A Again, this -- this process is -- we help gather  
20 information -- or interested parties, and then this is  
21 passed on to their products commission. We may  
22 have -- may have record of this, but I don't recall  
23 this study being funded.

24 Q All right. Going to ask you the same question with  
25 289, which is -- the principal of the project was



1 Nicole Embertson. Was this project approved?

2 A I don't -- I don't believe this one was -- I don't  
3 recall it being approved, and I -- yeah, I don't -- I  
4 don't remember this being approved, but, again, this  
5 would have gone to the Dairy Commission, and I -- but I  
6 don't recall this one being approved either.

7 Q In the first paragraph of the Purpose and Rationale of  
8 Study, it refers -- it says, third sentence, "However,  
9 due to a lack of practical guidance otherwise  
10 currently, the most common practice for determining  
11 manure nutrient is retroactively by taking a manure  
12 sample during application time and getting results a  
13 week later -- getting results a week later or by using  
14 the previous year's results to calculate agronomic  
15 rates for the current year. Both of these methods lead  
16 to inaccurate nutrient value estimations and  
17 application range -- rates, which waste a valuable  
18 resource."

19 Do you agree or disagree with those statements?

20 MR. COOKE: Objection. Calls for an expert  
21 opinion.

22 A I disagree in some regards with that statement, yes.

23 Q And agree in some regards, I take it, too?

24 A Yes.

25 (Exhibit No. 229 marked for identification.)



1 Q You have in front of you 229, Mr. Gordon. On the  
2 second page of 229 is a WDPC report on the meeting  
3 which occurred January 29, 2013. It talks  
4 about -- forgive my ignorance, but who -- what's WDPC?

5 A That's the Washington Dairy Products Commission.

6 Q Okay. There's a discussion on the bottom of the second  
7 page, which is Bates-stamped 348, about how WDPC gets  
8 the media to publish dairy stories.

9 Do you know who Mark Leader is?

10 A Mark Leader was an employee of the Washington Dairy  
11 Products Commission.

12 Q And says here, "Janet explained that Mark Leader is a  
13 traditional newspaper reporter, and he will write the  
14 story and review each story with Blair Thompson and Jay  
15 Gordon before calling his contacts with the media. She  
16 said that there are times the media accepts the article  
17 and other times they will not. Some stories are paid,  
18 others are not." Is this part of your media strategy  
19 to get your word out about the dairy industry?

20 MR. COOKE: Objection. Misstates his prior  
21 testimony.

22 A This is a discussion about the Dairy Products media  
23 work and the people, Mr. Leader and Blair Thompson  
24 and -- at the Dairy Products Commission.

25 Q Right. And it says you.



1 A Yes.

2 Q You get to review all of these articles before they go  
3 out. So you're part of this media strategy too,  
4 correct?

5 A I don't review every story, but I do occasionally get  
6 calls.

7 Q But you do get the opportunity to review them, do you  
8 not?

9 A Not on every article, but occasionally, yes.

10 Q Take a look at the fifth page of Exhibit 229, which is  
11 Bates-stamped 351. Do you see that?

12 A Yes.

13 Q And the section "EPA Lower Yakima Valley nitrate  
14 issues."

15 A Where are you at?

16 Q Middle of the page.

17 A Okay. Yes.

18 Q Third paragraph -- well, just read it to yourself. And  
19 does this refresh your recollection about what was  
20 discussed at your meeting with Mr. McLerran and  
21 Bill Dunbar of EPA that you testified to earlier?

22 A (Witness complied.)

23 Question again, please?

24 Q Does this document refresh your recollection about what  
25 was discussed at your meeting with Mr. McLerran and





1 Mr. Dunbar that you and Mr. Wood attended?

2 A Yes.

3 Q Anything else you want to tell us about that meeting  
4 that isn't reflected in these notes?

5 MR. HARRINGTON: Objection. Vague and  
6 compound.

7 MR. TEBBUTT: I'll strike it and we'll move  
8 on.

9 (Exhibit No. 230 marked for identification.)

10 Q Mr. Gordon, handing you what appear to be minutes from  
11 a board call on February 20, 2013, of the Washington  
12 State Dairy Federation. Do you see -- you agree that  
13 these are minutes of that call?

14 A Yes.

15 Q Under the category "Yakima and EPA" --

16 A Yes.

17 Q -- that talks about the Administrative Order and  
18 Consent with EPA and that you reported that the revised  
19 agreement was very close to what the producers and the  
20 Federation have been asking for. Do you see that?

21 A Yes.

22 Q And so the consent decree that EPA originally gave to  
23 you and you saw and testified to earlier that you saw  
24 in September of 2012 changed quite a bit to what you  
25 have characterized here in this call in February of



1           2013, correct?

2                   MR. HARRINGTON:  Objection.  Vague.

3           Compound.

4  A       Yeah.  I'm sorry.  Could you say that question again?

5  Q       Well, essentially it says that the producers and Dairy  
6       Federation got what they wanted, doesn't it, what they  
7       asked for in the consent decree?

8                   MR. HARRINGTON:  Object --

9                   MR. COOKE:  Objection.  Misstates the content  
10       of the document.  Document speaks for itself.

11 Q       It says, "very close to what the producers and  
12       Federation have been asking for," correct?

13 A       It does say that.

14 Q       You agree with that statement, right?

15 A       That's what it says.

16                   (Exhibit No. 231 marked for identification.)

17 Q       Exhibit 231 is a Legislative and Regulatory Update  
18       prepared by the Dairy Federation, correct?

19 A       Yes.

20 Q       And is this something Mr. Wood would have prepared?

21 A       We would have done this together.

22 Q       So you and he did this together.

23                   The second page of the document, "Upcoming Work  
24       and Discussions."  It says, the third bullet point,  
25       "EPA.  Continues back-channel.  Ignorance-based



1 arm-twisting tactics."

2 You're talking about EPA there?

3 MR. HARRINGTON: Objection. Mischaracterizes  
4 the document.

5 Q Are you referring to EPA?

6 A Yes.

7 Q So these other recommendations are ones that you and  
8 Mr. Wood have identified to your -- to, whom, your  
9 membership or to others?

10 A I'm sorry. Say the question again.

11 Q Yes. To whom does this legislative and regulatory  
12 update go?

13 MR. HARRINGTON: If you need a minute to  
14 review the document.

15 A This would likely go to my board.

16 Q Okay.

17 (Exhibit No. 232 marked for identification.)

18 Q Exhibit 232, email that was produced by WSDF and talks  
19 about the fundraising plans, correct?

20 A Yes.

21 (Exhibit No. 233 marked for identification.)

22 Q 233, are these notes prepared by you or Dan Wood?

23 MR. HARRINGTON: Take a minute to review the  
24 document if you need.

25 Q It says you were not present, right?



1 A It does say that.

2 Q Right. So who would have -- who would have taken these  
3 minutes?

4 MR. HARRINGTON: Objection. Mischaracterizes  
5 the document.

6 MR. TEBBUTT: It's a question, not a  
7 characterization.

8 A I don't know.

9 Q Someone at WSDF?

10 A I don't know.

11 Q Okay. They were provided to you, correct, to WSDF?

12 A I don't know.

13 Q Well, it came out of your files. So they were either  
14 created by you or provided to you, correct?

15 A That would be correct.

16 Q Right. So the goal is to raise \$5 million for the  
17 defense of these cases; is that right?

18 MR. HARRINGTON: Objection. Document speaks  
19 for itself.

20 MR. COOKE: Objection. Document speaks for  
21 itself.

22 MR. HARRINGTON: And instruct the witness not  
23 to answer.

24 MR. TEBBUTT: It says right here. I'm asking  
25 him a question about a document that's been produced.



1 It's a perfectly legitimate line of questioning.

2 MR. HARRINGTON: I disagree. Objection.

3 MR. TEBBUTT: You produced the document and  
4 you're not letting me ask questions about it. That is  
5 completely irrational and unsupportable.

6 Are you still -- are you instructing him not to  
7 answer the question?

8 MR. HARRINGTON: I'm instructing him not to  
9 answer. As I stated before, our position is that  
10 information about the fundraising and the funding of  
11 the lawsuit, who are the funders, the manner in which  
12 the lawsuit is funded, the agreements, if any, that  
13 underlie the funding of the lawsuit, all of that is  
14 protectable, it is privileged, it is irrelevant to the  
15 investigation, and it also implicates the associational  
16 interests of the defendants and of the WSDF --

17 MR. TEBBUTT: All I'm asking --

18 MR. HARRINGTON: -- and we are instructing  
19 you not to answer anything additional beyond  
20 what -- what is disclosed in this document, and we will  
21 consider whether it was properly produced.

22 MR. TEBBUTT: Well, all I'm trying to verify  
23 is that the goal is to raise \$5 million, and you're  
24 instructing him not answer that.

25 Are you instructing him not to answer that, Mr.



1 Cooke?

2 MR. COOKE: I'd echo the same objections.  
3 He's already stated them. He's stated our position.

4 MR. TEBBUTT: So you're adopting his  
5 objections?

6 MR. COOKE: I have the same objections.

7 MR. TEBBUTT: Well, I didn't hear them until  
8 just now.

9 MR. COOKE: Would you like me to raise them  
10 again? I can talk over him, if that's going to help.

11 MR. TEBBUTT: I just want to know whether  
12 you're objecting, because you're his counsel.

13 MR. COOKE: And I said --

14 MR. TEBBUTT: Just now you did.

15 MR. COOKE: -- I have the same objections --

16 MR. TEBBUTT: Okay.

17 MR. COOKE: -- when you asked.

18 (Exhibit No. 234 marked for identification.)

19 Q Not to belabor the point any more than I have to,  
20 Mr. Gordon, Exhibit 234 is more information about  
21 fundraising activities, is it not, with respect to this  
22 litigation?

23 A Yes.

24 Q And, sir, are you part of the Washington Agriculture  
25 Legal Foundation? "You," meaning the Washington State



1 Dairy Federation?

2 MR. COOKE: Objection. Outside the scope.

3 A No.

4 Q Who is the Washington Agriculture Legal Foundation?

5 A It's an agricultural legal foundation in the state of  
6 Washington.

7 (Exhibit No. 235 marked for identification.)

8 Q Exhibit 235 is something on Washington Agriculture  
9 Legal Foundation, WSDFs, and IDA's letterhead. Do you  
10 see that?

11 A Yes.

12 Q Did you help produce this document?

13 MR. HARRINGTON: Objection. Vague as to  
14 "produce."

15 Q Did you help write it?

16 A Yes.

17 Q And to whom did this go?

18 A Again, interested parties, dairy farms, dairy farmers.

19 Q Part of the fundraising strategy?

20 A That's correct.

21 Q Mr. Gordon, when was the first time you saw a copy of  
22 the draft general permit for CAFOs from the new round  
23 of CAFO permitting?

24 MR. COOKE: Objection. Vague.

25 Q Do you know what I'm talking about, the new round of



1 CAFO permitting starting in about 2011, 2012?

2 A It's supposed to get going.

3 Q Right. When was the first time you received a draft of

4 the general permit?

5 A I saw a copy -- I don't remember. It would have been

6 2011, 2012, I remember seeing a copy of it.

7 Q How did you get it?

8 A I don't remember.

9 Q Who gave it to you?

10 A I don't know. I just remember seeing it.

11 Q Was it given to you in hard copy?

12 A I remember seeing a hard copy of it.

13 Q Were you given a hard copy of it?

14 A I had a copy of it, so I got it from somebody. I don't

15 remember where.

16 Q Where did you first see it?

17 A I don't remember.

18 Q Was it given to you at your office?

19 A No. If I remember right, I got a copy at my house. It

20 was mailed to me.

21 Q By whom?

22 A I don't know.

23 Q Do you still have the envelope it came in?

24 A I doubt -- no, I doubt it. It was a long time ago.

25 Q Was there a return address on it?





1 A I don't remember, no.

2 Q You don't remember whether there was or not, or there  
3 wasn't?

4 A I don't recall a return envelope -- a return address on  
5 it.

6 Q Was there any note included with it?

7 A None that I recall.

8 Q Was there a little sticky note on it that says, "See  
9 this"?

10 A I don't remember that, no.

11 Q Did it come from Ginny Prest?

12 A I suspected at the time it did.

13 Q Did you confirm later whether it did or not?

14 A No.

15 Q Do you still suspect that it came from her, then?

16 A I do.

17 Q Would you call it brown bag?

18 MR. COOKE: Objection.

19 Q Basically an unmarked envelope?

20 MR. HARRINGTON: Objection.

21 MR. COOKE: Objection to form.

22 A Yes.

23 Q How many copies of the draft permit have you seen since  
24 then?

25 A That -- that one was the one I remember seeing and



1           that's it.

2   Q       The only one?

3   A       Yes.

4   Q       Did that have in the draft a 15-part-per-million  
5           nitrate standard?

6   A       I don't remember.

7   Q       Did you have discussions with Ginny Prest about 15  
8           part-per-million nitrate standard in the permit and  
9           that being unreasonable?

10   A       We had discussions about the 15 part per million, I  
11           know that. Whether it was unreasonable -- yeah, I'd  
12           characterize it as that.

13   Q       So you felt -- you feel it's unreasonable, the  
14           15-part-per-million standard?

15   A       Yes.

16   Q       Did Ginny say that she felt it was unreasonable too?

17   A       She may have said that, yes.

18   Q       Have you ever asked Ginny whether she provided you that  
19           document or not?

20   A       I have not.

21   Q       Have you carefully avoided asking her that question?

22                   MR. HARRINGTON: Objection.

23   Q       So as not to get her in trouble?

24   A       I just have never asked her that question.

25   Q       Have you thought about whether, if you asked her that



1 question and she said yes, it would get her in trouble?

2 MR. HARRINGTON: Objection. Calls for  
3 speculation.

4 A Not a lot, no.

5 Q That means that you have thought about it?

6 MR. COOKE: Objection. Misstates his  
7 testimony.

8 A I haven't asked Ginny that question.

9 Q That wasn't my question. I asked whether you thought  
10 about it and you said, "Not a lot." So you have  
11 thought about it?

12 A Yes.

13 Q How often do you communicate with Ms. Prest?

14 A Fairly frequently.

15 Q What's that?

16 A Once, twice a month.

17 Q How do you communicate with her?

18 A Phone calls, emails, stop in her office. Sometimes we  
19 meet each other at a bar south -- west of town.

20 Q What bar is that?

21 A Buzz's Inn -- or Buzz Inn.

22 Q Is that something that you set up regularly or is it  
23 just ad hoc?

24 A No. It's just ad hoc.

25 Q So you communicate with her once or twice a month?



1 A Yeah. Off and on. Sometimes more, sometimes less. It  
2 just depends.

3 Q How much more sometimes?

4 A Maybe once a week sometimes. If I'm in town,  
5 legislative session.

6 Q But no more than that?

7 A Communicate more often than once a week?

8 Q Yeah.

9 A Oh, no, there may be times that we would talk more than  
10 that. I don't know.

11 Q What would be the maximum that you would ever  
12 communicate with her in a month?

13 A In a month?

14 Q Yeah.

15 A Eight, ten, 12 times, 15 times maybe.

16 Q Maybe.

17 A Between phone calls or seeing her at meetings -- if  
18 it's a busy meeting -- busy month, yeah.

19 Q That would be the highest, then, 10, 12, 15 times?

20 A Yeah. That would be my guess, yes.

21 Q You have a cell phone that WSDF provides to you?

22 A It's my personal cell phone, but it's -- I use it for  
23 the Federation as well.

24 Q And when you were looking at documents to produce in  
25 response to the subpoena, did you look at your phone?



1 A I don't believe I did. I mean, I have email on it and  
2 we looked at the email.

3 Q Do you ever text with Ms. Prest?

4 A Yes.

5 Q Sticking with your story that the maximum you ever  
6 communicate with her during the month is 15?

7 MR. TEBBUTT: I'm sorry. Sorry. Go ahead  
8 and mark that.

9 (Exhibit No. 236 marked for identification.)

10 Q Are you sticking with your story that it's unusual to  
11 talk with her more than -- you know, around 10, 12, 15  
12 times a month?

13 MR. COOKE: Objection. Vague, argumentative.  
14 Misstates his testimony.

15 A That's my best estimate right now, yeah.

16 Q Okay. Handing you what's been marked as Exhibit 236.

17 MR. TEBBUTT: By the way, for the record,  
18 these texts were not produced to us in response to the  
19 subpoena. They've come from other sources.

20 MR. HARRINGTON: What sources are those?

21 MR. TEBBUTT: That's our business.

22 MR. COOKE: I'm sorry. What was that?

23 MR. TEBBUTT: That's our business.

24 MR. HARRINGTON: His answer was, "That's our  
25 business."



1 MR. TEBBUTT: 237?

2 THE COURT REPORTER: 236.

3 Q Would it surprise you that you and Ms. Prest in one  
4 month, I believe it was in February of 2014, texted to  
5 each other 32 times?

6 MR. COOKE: Objection. Lack of foundation.

7 MR. HARRINGTON: Objection. Assumes facts  
8 not in evidence.

9 A Are those -- I haven't seen this document before. So  
10 32 times -- 32 texts?

11 Q Just in one month.

12 A Okay.

13 MR. HARRINGTON: I'm going to object. We  
14 have not seen these documents before.

15 Q Maybe even 33. I might have underestimated.

16 Now, let's take a look at these.

17 MR. HARRINGTON: Are you counting each  
18 individual text as its own communication --

19 MR. TEBBUTT: Yep.

20 MR. HARRINGTON: -- in your count, Charlie?

21 MR. TEBBUTT: Absolutely.

22 Q On the first page: "I'm ready" -- "tomorrow night."  
23 When you get back? "Tomorrow night. I'm ready."

24 Ready for what?

25 A I don't know.



1 Q Did you send that text or did Ms. Prest send that text?

2 MR. COOKE: Objection. Lack of foundation.

3 MR. HARRINGTON: Objection. We don't even  
4 know --

5 MR. COOKE: Unidentifiable source. We don't  
6 know who this is to or from.

7 MR. HARRINGTON: What is your representation  
8 as to what this is, Mr. Tebbutt?

9 MR. TEBBUTT: These are texts between Jay  
10 Gordon and Ginny Prest.

11 MR. COOKE: How do we know that?

12 MR. TEBBUTT: Because it came from public  
13 records requests from the Department of Agriculture.

14 MR. HARRINGTON: So this is from the  
15 Department of Agriculture?

16 MR. TEBBUTT: These are Department of  
17 Agriculture files.

18 Q Do you agree that these are texts between you and  
19 Ms. Prest, Mr. Gordon?

20 MR. HARRINGTON: Take a minute to review the  
21 whole document to make sure you're sure.

22 Q By all means.

23 A (Witness reviewed.)

24 Q The top of each page has a cutoff that says "Jay  
25 Gordon" on it?



1 A Yes.

2 Q At the top of every page.

3 A Yes. These appear to be texts between Ms. Prest and I.

4 Q Okay. Want to correct your testimony at all about how  
5 often you communicate after seeing these?

6 MR. COOKE: Objection. Misstates his  
7 testimony.

8 A You asked about how often we communicate. You're  
9 counting in a different manner than what I was  
10 counting.

11 Q What were you counting?

12 A I was counting episodes, if you would like  
13 clarification.

14 Q So what's an episode to you?

15 A A day, during the afternoon, do you text and -- it's a  
16 conversation.

17 Q So if you have ten communications a day with someone,  
18 you'd only count it as one because it's one day?

19 MR. COOKE: Objection. Misstates --

20 Q Is that what you're saying? Is that how you're trying  
21 to reframe this?

22 MR. COOKE: Objection. Argumentative.

23 MR. HARRINGTON: Objection. Vague,  
24 incomplete hypothetical, argumentative.

25 MR. TEBBUTT: There's no hypothetical. It's





1 right in front of him.

2 A It's a text communication log in front of me, and it  
3 has communication back and forth in front of me between  
4 Ms. Prest and I. Some of those occurred on the same  
5 day. Some of them in the same time frame, an hour, so  
6 I would classify this as a string of communications,  
7 and how you want to count it is up to you.

8 Q So when you say it's a string of communications, are  
9 you saying each string is one communication? Is that  
10 how you're trying to characterize this?

11 MR. COOKE: Objection. Vague and  
12 argumentative.

13 A I'm not sure how to answer your question.

14 Q Why not? What's the matter with my question? Is there  
15 something wrong with my question?

16 Let me ask you, Mr. Gordon. How do you  
17 characterize these communications? How many would you  
18 say you have?

19 A I already answered that. I told you I thought, based  
20 on just a rough guess, Ginny and I communicate maybe as  
21 much as 10, 15 times a month at the most.

22 Q Right. And my question is: How do you determine  
23 what's a communication? What do you consider a  
24 communication?

25 A I consider a communication a conversation, and that is



1 a two-way conversation between people. So if one text  
2 and then a reply constitutes two communications as  
3 you're asking, then we're counting these...

4 Q So you're saying that a text and a response, in your  
5 calculation, would be one communication?

6 MR. COOKE: Objection. Misstates his  
7 testimony.

8 Q That's all I'm trying to get at.

9 A A text and response --

10 Q I'm trying to get an answer.

11 A A text and response would -- in my mind, would  
12 consider -- would be an event. So if you have a  
13 conversation and they're linked, that is a  
14 conversation. A conversation implies a two-way  
15 conversation between people.

16 Q It's a communication. Email is a communication one  
17 way, right?

18 A Yes.

19 Q And you may or may not get a response, correct?

20 A Yes.

21 Q And a text in one direction is a communication, is it  
22 not?

23 A It is.

24 Q And you may or may not get a response, correct?

25 A That's correct.



1 Q Let's take a look at the third page of Exhibit 236.

2 A (Witness complied.)

3 Q The next of November 7, 2013. "Hey there. Can we  
4 visit soon?"

5 Is that from you or from -- from Ginny?

6 A I don't know.

7 Q Can you tell from the context of that page who sent  
8 that text?

9 A No, I can't.

10 Q Who sent the text, "Nice letter. Green light IMHO."

11 A I don't know.

12 Q What's IMHO?

13 A That would be shorthand, I believe, for "in my humble  
14 opinion."

15 Q Green light. Green light in my humble opinion. I see.  
16 Is that the kind of shorthand that you use?

17 A I've used IMHO on occasion. It's not something I'm in  
18 the habit of doing.

19 Q What's "good to read" refer to?

20 A I do not know.

21 Q Was that in response to "Same old stuff here. Had  
22 Roylene, Mark Clark and Bud on podium last evening,  
23 went well"? Did you send that?

24 A Yes.

25 Q What podium was that?



1 A We had Roylene Wright, Mark Clark, and Bud Hover at our  
2 annual meeting, and that would be what that was  
3 referring to.

4 Q So you can't remember "can we visit soon," what that's  
5 about?

6 A No, I can't.

7 Q Was it personal or was it in a professional capacity?

8 A It would have likely been in a professional capacity.

9 Q Let's turn to the fourth page of Exhibit 236.

10 "Headed to Wesens tomorrow."

11 Is that you?

12 A I believe so, yes.

13 Q Okay. And was Ginny talking about the 590 discussion?  
14 When we're speaking of 590 discussion, we're talking  
15 about the NRCS 590 standard, correct?

16 A Yes.

17 Q So you're congratulating her on a good job on that,  
18 correct?

19 A Yes.

20 Q On the seventh page of Exhibit 236 --

21 A The pages are not numbered.

22 Q They're not, so you're just going to have to go 2, 4, 6  
23 and I'll help you. In fact, you're looking at the  
24 right page right there.

25 A Okay.



1 Q Text about "Jay, just a Happy Thanksgiving to you and  
2 yours. Have a terrific trip to Cabo." Do you exchange  
3 personal as well as professional texts with Ms. Prest  
4 on a regular occasion?

5 A Yes.

6 Q On the very next page, there's another text about "need  
7 a warm beach badly." It's your response to Ginny,  
8 right?

9 A Yes.

10 Q And talks about a "chat about the prospective language  
11 re: GWMA soil test pilot."

12 What's that about?

13 A I'm not sure. There was some conversation last fall at  
14 the GWMA about a -- how to do soil test pilots. And  
15 that's about what I remember.

16 Q All right. Who's Patrick that you referred to, a  
17 friend you want to run it by?

18 A The only friend that I would know in Seattle would be  
19 Patrick Ryan.

20 Q And who's he?

21 A He occasionally is our attorney at the Dairy  
22 Federation.

23 Q And is he an attorney with K & L Gates, Foster  
24 Pepper --

25 A No.



1 Q -- Perkins Coie?

2 A Perkins Coie.

3 Q Perkins Coie. Okay.

4 The next text on the following page says, "Call  
5 any time. Sent it to irrigated ag committee Jim Trull  
6 and Steve Turner. I am confident WSDA will support."  
7 That's from Ginny to you, right?

8 A Yes.

9 Q And what is it she's referring to? Is that the GWMA  
10 soil test pilot?

11 A It would appear, yes.

12 Q Says she's suggesting Honeyford and Chandler, to them,  
13 to lobby, I suppose. Is that what you -- how you would  
14 interpret that email?

15 A I don't recall what this was about, and I don't  
16 remember why or I can't speculate on why the Honeyford  
17 and Chandler.

18 Q All right. Let's go to the next in 12/19, a couple  
19 pages later.

20 A Okay.

21 Q Actually, on the prior page, I think, is where that  
22 starts. Let's look at the one on 12/18. It says,  
23 "Buzzes?"

24 A Yes.

25 Q Is that to you -- from you to her or her to you? The



1 next one says, "You must be in Idaho."

2 A "Buzzes" would have been my text.

3 Q So you wanted to meet Ginny to talk about something.

4 A Could have just been -- yep.

5 Q Okay. And then so the couple texts, one at 4:46, one  
6 at 6:09, one at 6:10. Are all three of those from you?

7 MR. HARRINGTON: Objection. Assumes facts  
8 not in evidence. Calls for speculation.

9 MR. TEBBUTT: Trying to establish the facts.

10 A I cannot follow this string.

11 Q Let's keep going; we don't want to belabor this too  
12 much.

13 Let's go with 12/26. "Ole, Senor." I assume  
14 that's Ginny to you, since she's not a senor, correct?

15 A That would be correct.

16 Q Next one, you respond: "I am not. Family needed a  
17 driver in Florida. We can chat as you wish, since I  
18 will be either standing in line at Disney World or  
19 drinking beers and talking to you."

20 What were you talking about?

21 A What do you mean?

22 Q Did you talk to her?

23 A It doesn't appear so, no.

24 Q So in addition to the texts, you also talk to her on  
25 cell phones, correct?



1 A Yes.

2 Q And emails?

3 A Yes.

4 Q And in person?

5 A Yes.

6 Q Okay. And how often do you get together at Buzz's

7 every month?

8 A It depends.

9 Q At least once a month at Buzz's?

10 A Some months more, some months less. It just depends.

11 Q How many is the maximum time you meet at Buzz's in a

12 month?

13 A Oh, gosh. I don't know.

14 Q With her.

15 A Maybe when the legislative season is going on, again,

16 it may be once, twice a week some weeks. Other times,

17 not for weeks on end.

18 Q Let's go to 1/2. You sent a text of a picture

19 from -- it's maybe the -- it's one, two, three, fourth

20 page in with 1/2 on the bottom, 7:51p. Do you see

21 that?

22 A Yes.

23 Q Sent a picture of Disneyland castle to Ginny? What

24 would have been, what, 10:51 Eastern Time?

25 A Sure. Yes.





1 Q So right around New Year's?

2 1/9. Let's go a couple of pages later. Starts  
3 out on the bottom page, "When are you in town next?"  
4 Response, "Late tonight. I am in Lynden."

5 So that was your response, I assume, "Late  
6 tonight. I am in Lynden"?

7 A Yes.

8 Q And then the response is, "Jay, can we visit when you  
9 get time? I would like to schedule a meeting with you,  
10 Dan, and members of your board."

11 What -- what was -- was it a meeting -- did that  
12 meeting happen?

13 A I believe Ginny attended our board meeting in January  
14 for a little while.

15 Q Before the director's talk?

16 A I'm sorry. What?

17 Q Before the director's talk, which was referenced on the  
18 next page?

19 A I don't remember if we got it -- when our board meeting  
20 was. I'd have to go look.

21 Q It says you have a -- okay.

22 A The next page says we have -- I replied we have a board  
23 of directors meeting the 28th.

24 Q Right. And there's a visioning session the 23rd in  
25 Oregon; I think 24th is open; about a bit of time with



1 wild board.

2 What does that mean?

3 A With -- typo.

4 Q With whole board?

5 A Might have been whole board. So the meeting -- our  
6 board meeting would have been the 28th.

7 Q And it's essentially, it would be, Ginny wants to  
8 either lobby the WSDF or have the board lobby her about  
9 what needs to be done with the director's talk,  
10 correct?

11 MR. COOKE: Objection.

12 MR. HARRINGTON: Calls for speculation.

13 They --

14 MR. COOKE: Document speaks for itself.

15 Q Right?

16 A No. I wouldn't say that.

17 Q What would you say?

18 A The previous page, she says she wants to meet with the  
19 board. Includes issues in Yakima, Whatcom, Samish, and  
20 potential changes to RCW 90.64.

21 Q Yep.

22 THE VIDEOGRAPHER: I need to make a change  
23 here.

24 MR. TEBBUTT: Okay.

25 THE VIDEOGRAPHER: This is going to end Disk



1 No. 3 in the deposition of Jay Gordon. We're off the  
2 record at 4:51.

3 (Off the record.)

4 THE VIDEOGRAPHER: This will begin Disk No. 4  
5 in the deposition of Jay Gordon. We're back on the  
6 record at 4:55.

7 Q Mr. Gordon, I'm going to ask you some more questions  
8 about Exhibit 236, the texts between you and Ginny  
9 Prest. Let's look at the texts on 1/10. Do you see  
10 those?

11 A Yes.

12 Q So looks like on 1/10 you met for drinks at Buzz's,  
13 right?

14 A Whoops, I'm sorry. 1/10. Yes.

15 Q Okay. "Meet you there. Got to talk about 590, winter  
16 apps, Whatcom surface, and GRH20," which I assume is  
17 groundwater; is that right?

18 A Yes.

19 Q Is that text from you or from Ginny?

20 A I think that's from Ginny.

21 Q Okay. So I assumed you guys talked about 590 and  
22 winter apps, Whatcom surface, and groundwater. Was  
23 that during the context of legislation -- during the  
24 legislative session?

25 A No. 590 would have been the discussion relevant to the



1 590 process that NRCS is going through, which includes  
2 the winter application guideline that was under  
3 consideration at the time. Not sure exactly what the  
4 Whatcom surface and groundwater discussion refers to.

5 Q 1/13, "Following up. You want us at lunch at Rambling  
6 Jacks to talk 90.64 issues on January 28th?" Is that  
7 from you?

8 A Yes. No. That would have been Ginny.

9 Q Okay. Then you say, "Yes, I guess. But if this is  
10 about legislation for 2015, is there a better place and  
11 time?"

12 Are you concerned about meeting in public to talk  
13 about legislative issues?

14 A I remember this one. It -- I think what that's  
15 referring to was 2015 was a long ways away, so if this  
16 was about legislation -- because legislature had  
17 already started, and so there was really, at that  
18 point, no point in talking about 90.64 for the 2014  
19 legislation.

20 Q What did you want to change of 90.64?

21 A So I'm not the one asking. Ginny is. There's been  
22 ongoing discussions about 90.64 for 16, 17 years and  
23 about the statute --

24 Q What do you want to do to change it?

25 A At this point, we haven't -- for the 2015 session, we



1 haven't really had any conversations about what needs  
2 to be changed.

3 Q What did you talk about at lunch that day --

4 A I know the department --

5 Q -- the 13th of January?

6 A -- I know the department has expressed concern that the  
7 90.64 is in need of cleanup, for number one. And --

8 Q When you say "the department," are you talking  
9 Department of Agriculture?

10 A Yes.

11 Q At your behest?

12 A I'm sorry, say that again.

13 Q You're saying it needs cleanup at your behest, at your  
14 request?

15 A No.

16 MR. COOKE: Objection. Misstates his  
17 testimony.

18 A No. The department has -- the statute has references  
19 in it that have been there for a long time and needs  
20 cleaning up. They would like to have more  
21 conversations about what else in 90.64, in particular  
22 the needs changed. So I don't remember what we talked  
23 about at our board meeting. Anyway, sorry.

24 Q Okay. And then "Lunch tomorrow" -- this is the 13th.  
25 "Lunch tomorrow with Julie, Ted, and me? Noon?"



1                   So that's Julie Morgan. Who's Ted?

2   A       Where are you at? I'm sorry.

3   Q       Next page. See where it says, "Lunch tomorrow with

4           Julie, Ted, and me? Noon?"

5   A       Yes.

6   Q       "Or Wednesday same time." Wednesday is great. And

7           then Julie -- or Ginny writes back and says, "I think

8           we should grab lunch and meet in Julie's office, okay?"

9           Or is that you that says that?

10   A      Oh, my gosh. Where are you at?

11   Q      Next page.

12   A      Okay. Ginny is the "yes, that would be great."

13   Q      So you had lunch in Julie's office that day, right?

14   A      I don't remember where we had lunch, if -- I don't even

15           remember if we had lunch.

16   Q      Do you remember what you talked about?

17   A      No.

18   Q      You have lots of conversations with the folks at

19           Department of Ag, correct?

20   A      Yes.

21   Q      How often do you meet with Julie Morgan on a monthly

22           basis?

23   A      Once, twice a month, maybe. Again, it varies.

24   Q      How often do you meet with Bud Hover on a monthly

25           basis?



1 A Maybe as often as once or twice a month, but, again,  
2 some -- some months not -- not.

3 Q Are they always in his office or do you meet him at  
4 Buzz's too?

5 A No. I have not met Bud as Buzz's, but he did come over  
6 to a function at our annual meeting. And to this board  
7 meeting that we had on the 28th.

8 Q And, I'm sorry, we -- a guy named Ted was mentioned  
9 earlier. Who's Ted? You mentioned it in one of the  
10 texts. It was in the context of Julie, Ted, and me.

11 A Oh, I'm presuming -- I think that's Ted -- Ted Maxwell,  
12 is, I think, Ginny's boss. Runs the -- whatever  
13 division it is. Ted Maxwell is his name.

14 Q Let's go to 2/27.

15 A (Witness complied.)

16 Q And this is the last of the 2/27 texts. "FYI, we are  
17 trying to get a shit hauling brigade lined up by  
18 morning for the family."

19 What family is that?

20 A Okay. Where are you at? 2/27?

21 Q 2/27. The last text of 2/27. Did you write that one?

22 A Yes, I wrote that one.

23 Q Objection. What -- what's that about. What family are  
24 you lining up this shit hauling brigade for and why?

25 A The Snook family. I think the farm name is Snookbrook.



1        Their lagoon was getting very full and they had been  
2        getting in trouble with it running over. And so we had  
3        a number of rain events coming. I believe this would  
4        have been -- I remember it being just before a weekend.  
5        We were going to have a lot of rain, and some of the  
6        local farmers were getting tractors and manure tankers  
7        lined up to keep this guy from having his lagoon breach  
8        over during the weekend.

9    Q    Which it did do, right?

10   A    I don't know.

11   Q    It did for about six weeks straight.

12                MR. COOKE: Objection. Assumes facts not in  
13        evidence.

14   A    There were problems on this farm.

15   Q    And it was discharging for weeks straight, was it not?

16                MR. COOKE: Same objection.

17   A    I don't know if it was weeks straight, but there were  
18        problems on this farm.

19   Q    Is it the Dairy Federation's normal enterprise to line  
20        up shit hauling brigades?

21   A    No.

22   Q    How often -- other than for Snookbrook, have you done  
23        it?

24   A    This is the only case I know of.

25   Q    Where was the shit taken?





1 A I know some was hauled to a methane digester  
2 at -- sorry, drawing a blank. Vander Haak's dairy.

3 Q And this in, where, Whatcom County?

4 A Yes.

5 Q How much of it was taken there and how much of it was  
6 taken elsewhere?

7 A I don't know how much was taken elsewhere. Steve  
8 Vander Haak is on my board, and I did talk to him, and  
9 I believe he got -- what I remember, about 20,000  
10 gallons.

11 Q How many thousands of gallons was carted off  
12 altogether?

13 MR. COOKE: Charlie, I know we've got like  
14 seven hours in this deposition. I don't see how this  
15 is relevant at all, so, I mean, I'm more than willing  
16 to allow some flexibility over that seven hours, but  
17 for him to talk about irrelevant issues...

18 MR. TEBBUTT: You know, you're right. I'll  
19 just -- I'll skip it at this point.

20 MR. COOKE: Thanks.

21 Q Moving on to 3 -- well, let's go 4/1. No, let's not.  
22 There's plenty.

23 (Exhibit No. 237 marked for identification.)

24 Q You have in front of you Exhibit 237, Mr. Gordon, an  
25 email from Ginny Prest to you dated September 10, 2013.



1           The fourth numbered item talks about limiting P  
2           applications. P is phosphorus, correct?

3   A     Yes.

4   Q     It says, "We encourage producers to keep P -- soil P  
5           below 120 parts per million. Dairy producers have been  
6           working on this a long time. Slow but steady  
7           progress." That indicates that a lot of producers have  
8           over 120 parts per million of phosphorus in their soil,  
9           correct?

10   A    I think it -- I think it says what it says.

11   Q    Right. Doesn't that indicate to you that a lot of  
12          producers have P over 120 parts per million?

13               MR. COOKE: Objection. Calls for  
14          speculation.

15   A    Yeah. I...

16   Q    Would you agree with that statement?

17   A    You can infer that there are fields and producers that  
18          have soil above 120 parts per million in that  
19          statement, yes.

20   Q    And over 120 would be excessive, correct?

21               MR. COOKE: Objection. Calls for an expert  
22          opinion.

23   A    I would not -- I'd have to have more context and more  
24          information.

25               (Exhibit No. 238 marked for identification.)



1 Q Exhibit 238 is a document produced by you, correct?

2 MR. HARRINGTON: Are there no control numbers  
3 on this, Charlie?

4 MR. TEBBUTT: No, there aren't.

5 A Yes, it would appear so.

6 Q And this is with respect to regulating issues in the  
7 groundwater contamination in the Lower Yakima Valley,  
8 correct?

9 MR. COOKE: Take your time.

10 Q Among other things. Under the "Review of Ongoing  
11 Programs" session?

12 A Where are you at, please? Oh, page 1?

13 Q On the October 13, 2001, letter.

14 MR. HARRINGTON: Are you asking him to  
15 characterize the whole document?

16 MR. TEBBUTT: No, just this -- just that this  
17 includes those kinds of documents.

18 A Could you state the question again?

19 Q Well, let me just rephrase it.

20 A Okay.

21 Q This letter dated October 9, 2013, to the governor, to  
22 the director of ecology, to other entities, is  
23 essentially an advocacy piece on behalf of your  
24 members; is it not?

25 MR. HARRINGTON: Take your time to review the



1 document so you're comfortable with your answer.

2 MR. TEBBUTT: I don't appreciate the  
3 narrative.

4 A This is a letter I wrote, and I would characterize it  
5 as informational to the named parties: Director  
6 Bellon --

7 Q All right.

8 A -- Brian, the chairman of the House and Senate ag  
9 committees, and to Commissioner Bouchey.

10 (Exhibit No. 239 marked for identification.)

11 Q And Exhibit 239 is an email from Ginny Prest to you.  
12 Subject, "Answers for the governor."

13 You had -- did you have a meeting scheduled with  
14 the governor?

15 MR. HARRINGTON: What page are you looking  
16 at, Charlie?

17 MR. TEBBUTT: Very top page. It says subject  
18 line is "Answers for the governor."

19 A No, I did not -- I do not recall any meeting with the  
20 governor in the time -- this -- this would have been  
21 fall in 2013.

22 Q So this document was one produced by the Department of  
23 Agriculture for the governor; is that right?

24 MR. HARRINGTON: Objection. Lack of  
25 foundation. Calls for speculation.



1 Q Do you know?

2 A I don't know who produced it.

3 Q Okay. Did you help produce it?

4 A No.

5 Q Did you give Ginny any comments about this letter?

6 A I don't remember doing so, no.

7 Q Did you talk to Ginny about this letter?

8 A Yes.

9 Q Okay. What did you talk about?

10 A The part I remember, I think, talking to her about was  
11 point No. 2, which is "Washington should require  
12 livestock operations and third-party land applicators  
13 to ensure manure applications are not the source of  
14 nitrate transport to drinking water."

15 Q And in No. 2, it says, "The program uses a  
16 nitrate-nitrogen threshold of 45 parts per million  
17 N03-N in the top 12 inches."

18 A Yes.

19 Q Right? That's basically the policy of Department of Ag  
20 to use that?

21 A Yes.

22 Q It's not regulation; is that correct?

23 MR. COOKE: Objection. Calls for a legal  
24 conclusion.

25 MR. HARRINGTON: Lack of foundation.



1 A It outlines in the next sentence what happens.

2 Q Okay. Well, we'll continue on.

3 MR. HARRINGTON: Charlie, in the last several  
4 documents, ever since the strings of texts, so 236,  
5 237, 238, 239 to -- and this upcoming document, 240, I  
6 believe you represented one of them was produced by  
7 WSDf. And I wanted to confirm that representation for  
8 the record.

9 MR. TEBBUTT: No. I said I think it  
10 wasn't -- I said it wasn't produced by WSDf.

11 MR. HARRINGTON: So these documents that  
12 we've been looking at, the last five exhibits, are also  
13 coming from your public records request to the  
14 Department of Agriculture?

15 MR. TEBBUTT: Right. And they were not  
16 provide to us by you --

17 MR. COOKE: I think it's --

18 MR. TEBBUTT: -- as part of -- part of the  
19 record request.

20 MR. HARRINGTON: Very well.

21 MR. COOKE: Just for the record, I don't  
22 think they're responsive to the record request.

23 MR. TEBBUTT: I disagree.

24 (Exhibit No. 240 marked for identification.)

25 Q Mr. Gordon --



1 A Yes, sir.

2 Q -- Exhibit 2-

3 A 240.

4 Q -- 240, email from Ginny Prest to you dated October 25,  
5 2013. Do you see that?

6 A Yes.

7 Q And it says, second paragraph, "We've opened up our  
8 search for an inspector to help us complete work. It  
9 will be a two-year project position working out of our  
10 Lynden office. We would appreciate your help getting  
11 the word out."

12 Did you give Ginny or the Department of Ag any  
13 assistance with finding an inspector that they were  
14 looking for?

15 A I don't remember doing that, no. It's possible we -- I  
16 don't know. No, I don't recall that.

17 (Exhibit No. 241 marked for identification.)

18 Q Handing you what's been marked as Exhibit 241, does  
19 this refresh your recollection whether you assisted  
20 with helping Department of Agriculture find a new  
21 inspector?

22 A This would be referring to a producer who would be on  
23 the interview panel for the -- for whatever candidates  
24 they had for the position.

25 Q Did you provide a response to this with a -- with a



1 recommendation?

2 A I know we worked on getting a producer to help in that  
3 interview process.

4 Q And so you got one on the interview panel?

5 A I think so, yes. No, I know so.

6 Q At that regulated community --

7 MR. COOKE: Is there a question there?

8 Q -- that -- the inspectors?

9 MR. COOKE: Is there a question there?

10 Q With respect to the 590 standard, did WSDF take a  
11 position on the most recent proposed 590 standard?

12 A We took a number of positions, yes.

13 Q And there was a proposed change from the national staff  
14 to the 590 standard that you opposed, correct?

15 A No. That's not correct.

16 Q Then what is -- what is correct.

17 A There was a --

18 MR. HARRINGTON: Objection. Calls for  
19 narrative.

20 A There was a proposed change to the national standard  
21 that we opposed.

22 Q Okay. What was the proposed change that you opposed?

23 A The elimination of what is referred to as the winter  
24 manure -- Western Washington winter manure grass-based  
25 application or tech note 14 in that 590 standard.





1 Q Was that just for the west side?

2 A Yes.

3 Q And, in fact, you were able to get that pulled due to  
4 pressure from the Dairy Federation, correct?

5 A We advocated for leaving that tech note 14 winter  
6 application standard in the 590, yes.

7 Q How often do you communicate with Laurie Crowe?

8 A Oh, every once in a while. Maybe once a month, once  
9 every two months, sometimes more, sometimes less.

10 Q And how do you communicate with her?

11 A Phone. Occasionally email. See her at meetings. She  
12 was on the 590 review committee, NRCS.

13 Q You don't text with her?

14 A I don't believe so, no.

15 Q Are there any other employees at the Department of Ag  
16 with whom you text?

17 A I think I just sent a text to Julie Morgan, but that's  
18 like a couple of days ago.

19 Q And how often do you text with her?

20 A Not very often. Matter of fact, I think this may have  
21 been the second or third time.

22 Q How about with members -- employees of Department of  
23 Ecology? How often do you text with them? Or is there  
24 anyone with whom you text?

25 A I can't recall anybody that I text with at the



1 Department of Ecology. There may be, but I can't  
2 recall anybody. It's possible.

3 (Exhibit Nos. 242 & 243 marked for  
4 identification.)

5 MR. HARRINGTON: Charlie, have you produced  
6 236 through 243 in discovery?

7 MR. TEBBUTT: I'm not sure.

8 Q So 242 is a memo from you to all Washington dairy  
9 producers about the NRCS 590 Nutrient Management  
10 Standard being changed, correct?

11 A Yes.

12 Q And then Exhibit 243 includes an email from Laurie  
13 Crowe to a number of people. I don't see you copied on  
14 here, but I do see Steve George copied.

15 MR. HARRINGTON: Do you have a question,  
16 Counsel?

17 MR. TEBBUTT: I do.

18 Q Ms. Crowe states that she's confirmed from their local  
19 NRCS that the December 590 nutrient management standard  
20 has been pulled temporarily from the Internet due to  
21 pressure from the Dairy Federation.

22 Do you agree with that statement?

23 MR. HARRINGTON: Objection. Calls for  
24 speculation. Lack of foundation.

25 A That's Ms. Crowe's opinion.



1 Q Do you disagree with it?

2 A I would certainly not take credit for that solely. And  
3 that's what it implies.

4 Q It certainly does, doesn't it?

5 A Yeah, it does.

6 Q Earlier there was a document we used that referenced a  
7 PowerPoint presentation that Dan Wood had said that  
8 needed to be changed a little bit. I'm trying to  
9 recall which document that was.

10 Do you recall that document?

11 A No, I do not.

12 Q How often do you meet with people from Ecology about  
13 the Washington CAFO permit?

14 A Not very often. And John -- Ron Cummings was on the  
15 590 panel. I believe he attended a couple of those  
16 meetings, but it was not about the CAFO permit.

17 Q You find it more effective to go through Ag to get your  
18 voice heard than Ecology?

19 A No. The CAFO permit process is solely Ecology's, and I  
20 think I would characterize it as we're in a waiting  
21 pattern. They've been -- gonna start that process for,  
22 what, three years now.

23 Q Right. And you've been -- you've had access to the  
24 permitting process from the beginning, right?

25 MR. COOKE: Objection. Assumes facts --



1 Q From the production of the documents --

2 MR. COOKE: Objection. Assumes facts not in  
3 evidence.

4 A I saw a copy --

5 MR. COOKE: Mischaracterizes the testimony.

6 A -- as I testified earlier a long time ago.

7 Q Have you ever looked at any of the AOC data that's been  
8 produced? And I'll be specific. I'll start with soil  
9 sampling results.

10 A No.

11 Q You haven't looked at any of them?

12 A No.

13 Q Have you looked at any of the groundwater monitoring  
14 results from the AOC?

15 A No.

16 Q Have you had any discussions with anyone from Arcadis  
17 about the results?

18 A No.

19 Q Have you had any discussions with any of the defendants  
20 about the results?

21 A I remember having a conversation with -- I believe, it  
22 was Henry Bosma, Jr. -- Henry. It was last fall, a  
23 phone conversation. And the sense I got from Henry was  
24 it looked pretty good.

25 Q That's what he told you?



1 A Last fall. Earlier this spring I remember also having  
2 a conversation. I don't remember if that was Henry or  
3 Dan.

4 Q Dan DeRuyter?

5 A Dan DeRuyter. There were some test wells that were  
6 running high.

7 Q Have you gotten any opinions from any scientists as to  
8 whether the nitrate problem in the Lower Yakima Valley  
9 is caused or contributed to by the cluster dairies?

10 MR. COOKE: Objection to the extent it calls  
11 for attorney-client work product communications.

12 Q Could you restate the question again, please?

13 MR. TEBBUTT: Kylie?

14 (Question read as follows:)

15 "QUESTION: Have you gotten any opinions from any  
16 scientists as to whether the nitrate problem in the  
17 Lower Yakima Valley is caused or contributed to by the  
18 cluster dairies?"

19 MR. COOKE: To the extent you've received any  
20 opinions from experts who were retained by counsel in  
21 preparation for that, then you don't have to answer  
22 questions about that or disclose those.

23 MR. HARRINGTON: Or information, I would add,  
24 provided to you by your counsel.

25 MR. COOKE: Agreed.



1           MR. TEBBUTT: We would disagree. If it comes  
2 from Givens Pursley -- if any of that came from Givens  
3 Pursley or Stokes Lawrence, we would -- we would not  
4 agree with that. If you have independent counsel who's  
5 giving you advice, then I want to know who that  
6 independent counsel is.

7           MR. HARRINGTON: Would you like to confer  
8 about a matter of privilege before answering that  
9 question?

10          MR. TEBBUTT: Can't do it. It's -- there's a  
11 question pending.

12          MR. HARRINGTON: It's a matter of privilege.

13          MR. COOKE: It's a matter of privilege. He  
14 can talk to us as to whether or not it's a privileged  
15 communication or not or privileged information.

16          Then I'll just instruct you not to answer the  
17 question.

18          MR. TEBBUTT: You're instructing him not to  
19 answer?

20          MR. COOKE: I'm instructing him not to  
21 answer.

22          MR. TEBBUTT: Now that we have something on  
23 the record, why don't you take a minute to confer about  
24 it and get back to me.

25          THE VIDEOGRAPHER: We are going off the



1 record at 5:34.

2 (Off the record.)

3 THE VIDEOGRAPHER: Going back on the record  
4 at 5:36.

5 Q Mr. Gordon, you've conferred with your counsel, JT  
6 Cooke, and you also conferred with Mr. Harrington,  
7 correct, about the privilege question in the break you  
8 just took?

9 A We just had a conversation, yes.

10 MR. TEBBUTT: And, Counsel, are you going to  
11 continue -- let me ask my question first -- continue to  
12 assert privilege over the question that was asked?

13 MR. COOKE: I think Mr. Gordon is prepared to  
14 answer the question in the manner that doesn't reveal  
15 privileged communications.

16 MR. TEBBUTT: Okay. Kylie, could you please  
17 read --

18 MR. HARRINGTON: And I'd like to clarify that  
19 we had two separate conversations, one in which I was  
20 not present.

21 MR. TEBBUTT: Kylie, would you please read  
22 back my question.

23 (Question read as follows:)

24 "QUESTION: Have you gotten any opinions from any  
25 scientists as to whether the nitrate problem in the



1 Lower Yakima Valley is caused or contributed to by the  
2 cluster dairies?"

3 A Could you say that again? I'm sorry.

4 (Question read as follows:)

5 "QUESTION: Have you gotten any opinions from any  
6 scientists as to whether the nitrate problem in the  
7 Lower Yakima Valley is caused or contributed to by the  
8 cluster dairies?"

9 MR. HARRINGTON: And you may answer unless it  
10 implicates an issue of privilege.

11 MR. TEBBUTT: Again, it's not counsel for  
12 Mr. Gordon who's making the objection. I think it's  
13 inappropriate.

14 MR. HARRINGTON: Will you make the same  
15 objection, Mr. Cooke?

16 MR. COOKE: For the record I will.

17 MR. TEBBUTT: And Mr. Cooke was prompted by  
18 Mr. Harrison to make it, as the record reflects.

19 MR. HARRINGTON: And Mr. Tebbutt pointed it  
20 out.

21 A Okay. Third time is a charm. Please.

22 (Question read as follows:)

23 "QUESTION: Have you gotten any opinions from any  
24 scientists as to whether the nitrate problem in the  
25 Lower Yakima Valley is caused or contributed to by the





1 cluster dairies?"

2 A Yes.

3 Q And how did you get that communication?

4 A There were various scientists that were hired by  
5 Pursley Givens [sic] -- through Pursley Givens [sic],  
6 another scientists who reviewed the EPA documentation  
7 in the -- in the background study that EPA produced.  
8 Some of that was posted on the EPA website. We read  
9 various commentaries from various sources.

10 Q Were any of these opinions given to you subsequent to  
11 the introduction of the AOC or the signing of the AOC  
12 in March 2013?

13 MR. COOKE: I'll object to the extent it  
14 calls for attorney work product.

15 MR. TEBBUTT: Just asking a time frame.

16 A Tell me what you mean by "subsequent." I'm sorry.

17 Q Sub- -- after March 15, 2013, did any of the opinions  
18 about whether the dairies were causing or contributing  
19 to nitrate contamination in the valley occur after that  
20 date?

21 A I don't recall any after that date, no.

22 Q And is it your claim that there was an attorney-client  
23 relationship between the Givens Pursley firm and WSDF  
24 during the time period that you received the opinion or  
25 opinions about whether nitrates or contamination was



1           caused or contributed to by the cluster dairies?

2   A       Yes.

3   Q       Going back to Exhibit 233. Do you see the fourth  
4           bullet point on Exhibit 233?

5           It says, "Use of pamphlet and PowerPoint, Dan  
6           Wood, maybe make existing PowerPoint more  
7           professional."

8           Do you see that?

9   A       Yes.

10   Q       What existing PowerPoint is that at that time?

11   A       I don't know.

12           MR. TEBBUTT: That PowerPoint wasn't produced  
13           to us in this litigation, nor was it listed as  
14           privileged under the privilege log and we would request  
15           that it be provided.

16           MR. COOKE: We'll take another look for it.

17           MR. TEBBUTT: And that's with respect to  
18           Exhibit 233 just to make it easy for everyone.

19           MR. HARRINGTON: What request was that in  
20           responsive to?

21           MR. TEBBUTT: The exhibit is 233.

22           MR. HARRINGTON: I know. But  
23           what -- what --

24           MR. TEBBUTT: PowerPoint presentation.

25           MR. HARRINGTON: What part of the subpoena is



1 that responsive to? Your contention is that WSDF  
2 should have produced it or --

3 MR. TEBBUTT: Yes.

4 MR. HARRINGTON: -- or it would be  
5 responsive --

6 MR. TEBBUTT: Yes.

7 MR. COOKE: That's a fair question.

8 MR. TEBBUTT: It's responsive to Exhibit A,  
9 probably 3, 4 --

10 MR. COOKE: Wait, wait, wait, wait.  
11 Exhibit A is your deposition topics.

12 MR. WOOD: I saw it in your binder, Charlie.  
13 It is incorrect that you don't have it. I saw it in  
14 that binder. You have the pictures.

15 MR. COOKE: Dan, it's okay. Thanks.

16 MR. WOOD: Well, I'm --

17 MR. TEBBUTT: Well, that might just speed it  
18 up. Because this -- is this --

19 MR. HARRINGTON: Mr. Wood is not here to  
20 provide testimony. We will --

21 MR. COOKE: We'll take a look, and if that's  
22 not the one that was produced in response to that,  
23 we'll evaluate it against your request for documents,  
24 not your deposition contents, which is Exhibit A. At  
25 least my Exhibit A to my --



1 MR. TEBBUTT: You're right. We'll continue  
2 on.

3 And with regard to the subpoena, it's relevant to  
4 items 2 and 3, at the very least, and possibly 4, not  
5 knowing what's on it.

6 MR. COOKE: I got it. We'll take a look.

7 MR. TEBBUTT: And just for the record...

8 (Exhibit No. 244 marked for identification.)

9 Q Do you see Exhibit 244, an email from Ginny Prest to  
10 you and Dan Wood, presentation for the GWMA meeting?

11 A Yes.

12 Q Do you believe that this would be the PowerPoint that's  
13 referred to in Exhibit 233?

14 A No, it is not.

15 Q So there's another PowerPoint presentation out there  
16 that is referred to in 233, correct?

17 A It's not possible for this, because the -- Exhibit 233  
18 is on the -- September of 2013, and this is in January  
19 of 2014. And I wouldn't -- I think it's safe to assume  
20 that's a different PowerPoint they were referring to in  
21 these notes.

22 Q Okay.

23 A I was not at this meeting, so...

24 (Exhibit No. 245 marked for identification.)

25 Q Handing you what's been marked as 245, just to clarify



1 the record, is the "Third Amended Note of Video  
2 Deposition" with the subpoenas attached that we were  
3 just discussing. I just wanted to introduce that to  
4 the -- for the record. I have no questions about it.

5 MR. TEBBUTT: I want to take just a short  
6 break and I'll see if I'm done.

7 THE VIDEOGRAPHER: We're going off the record  
8 at 5:47.

9 (Off the record.)

10 THE VIDEOGRAPHER: We are going back on the  
11 record. The time is 5:52.

12 Q Mr. Gordon, we've talked about the fact that there is a  
13 nitrate problem in the Lower Yakima Valley and you  
14 agreed with that, right?

15 MR. HARRINGTON: Objection. Asked and  
16 answered.

17 Q What does WSDF support to reduce excess nitrates that  
18 are out there right now, to fix the problem? What do  
19 you support to try to fix the problem?

20 A We support the GWMA process. We support the dairy  
21 nutrient management program. We support the use of  
22 farm plans. We support the use of dairy inspections by  
23 the Department of Ag. We support, again, 90.64 and the  
24 requirement to keep records to show agronomic  
25 application. We like the NRCS standards process, by



1 and large, and generally the standards.

2 Q And you like the NRCS process because you have a lot of  
3 influence over it, right?

4 MR. COOKE: Objection. No question.  
5 Argumentative.

6 A I think that process gives everybody input.

7 Q Are there other things that you support besides the  
8 process?

9 A Well, behind those statements of process are substance.  
10 Those are actual inspectors on the ground. Those are  
11 actual farmers that are following farm plans. Those  
12 are actual soil tests and crops that are being grown.  
13 So behind each of those processes is a whole host of  
14 steps and actions that occur on farms and -- yeah, I  
15 think that characterizes it.

16 Q Okay. Let me give you a hypothetical. Let's say that  
17 there are nitrate levels at 80 parts per million and an  
18 application field at four- to five-foot depth. What  
19 would you recommend or support to remediate that kind  
20 of high nitrogen?

21 MR. COOKE: Objection. Calls for  
22 speculation.

23 MR. HARRINGTON: Incomplete hypothetical.

24 A I assume I still get to answer the question?

25 Q You sure do.



1 A Okay.

2 Q You figured that out. Very good.

3 A Hypothetically, and I'm going to characterize your  
4 statement that four to five feet down there's an  
5 80-part-per-million test in the soil.

6 Q Right.

7 A Actual, if you're asking me what -- if that was my  
8 field and somebody came to me and said you've got high  
9 nitrates, I'd consider planting alfalfa to pull that  
10 nitrogen out of the soil. Other deep-rooted crops --  
11 and I'd have to do some study, but there's other  
12 deep-rooted crops that you could use to recover that  
13 nitrogen and get it back. And so those are -- those  
14 are tangible examples of this hypothetical. So let's  
15 just say it was my field, that's what I'd engage in.

16 Q And how deep will something like alfalfa go to extract  
17 nitrates --

18 MR. COOKE: Object- --

19 Q -- at that level?

20 MR. COOKE: Sorry. Objection. Calls for  
21 expert opinion.

22 MR. TEBBUTT: He's a farmer. He knows this  
23 stuff.

24 Q Go ahead.

25 A My understanding in reading and studying, alfalfa can



1 draw water and nutrients from as deep as 14 feet. It  
2 may be shallower, it may be deeper, but it's -- alfalfa  
3 is generally a deep-rooted crop. I've grown alfalfa on  
4 my farm for many years, and it stays green when the  
5 soils are real dry from drawing water and nutrients. A  
6 very deep-rooted crop.

7 Q Have you done any review of the sciences to what  
8 percentage of the nutrients that feed alfalfa are taken  
9 from the zero-to-one-foot level, the one-to-two-foot  
10 level, the two-to-three-foot level --

11 A No, I haven't.

12 Q -- and so on?

13 A No.

14 Q Are you familiar with documents that indicate that  
15 alfalfa takes most of its nutrients from the top few  
16 feet?

17 A I'm not. Be fun to look at, but not familiar with  
18 those.

19 Q If ammonia or nitrate levels were in excess of 50 at  
20 ten feet below a cow pen, how would you, the Dairy  
21 Federation, propose fixing that?

22 MR. COOKE: Objection. Calls for  
23 speculation --

24 MR. TEBBUTT: It's hypothetical.

25 MR. COOKE: -- expert opinion.





1 A I would actually -- how would we propose fixing it?  
2 First thing is I would go find some experts that could  
3 give us some guidance on what options might be  
4 available.

5 Q And earlier, you testified that you, individually as a  
6 farmer, would do what we just talked about about  
7 getting alfalfa. What would WSDF support to fix a  
8 problem like that of, say, 80 parts per million of  
9 nitrate at a five-foot level in a soil -- in a -- in an  
10 application of the field?

11 MR. COOKE: Objection. Outside the scope of  
12 the deposition.

13 A What would the Dairy Federation do?

14 Q What would the Dairy Federation support?

15 MR. COOKE: Same objection.

16 MR. HARRINGTON: And incomplete hypothetical.

17 A Again, that -- yeah, that one's tough to answer. Dairy  
18 Federation doesn't farm. If an individual  
19 farmer -- let's play hypothetical.

20 Q Let me back that up for just a second. I mean, you  
21 advocate on behalf of your members.

22 A Yes.

23 Q You advocate very specific kinds of things: NRCS  
24 standards or lack thereof --

25 A Yes.



1 Q -- soil levels of nitrate. Do you advocate for fixing  
2 a problem once it's found in any way?

3 MR. COOKE: Objection. Vague.

4 A Yes.

5 Q And how would you -- how would you fix a problem like  
6 that?

7 MR. COOKE: Objection. Vague. Calls for  
8 speculation.

9 A If -- if this was -- if a farmer or regulator, a  
10 researcher came to my board and said, we've got an  
11 80-part-per-million at six feet, I'd have to sit down  
12 and go talk to -- find -- okay, that's deeper than  
13 alfalfa or isn't going to pull that. We'd have to  
14 get -- you know, look around and find people to help us  
15 figure out, okay, what do you do about that? How do  
16 you pull that? How do you recover that?

17 Q So you don't have a solution right now?

18 A Not for your specific example. You've talked about a  
19 field. That I can answer. Under a cow pen, I'd have  
20 to -- I'd have to go do a Google search.

21 Q Under a field, you'd say plant alfalfa?

22 A Alfalfa, another one that a friend of mine grew years  
23 ago was burdock. Deep-rooted --

24 Q On the east side?

25 A I think burdock actually has been grown on the east



1 side.

2 Q That's all I have.

3 A Okay.

4 MR. COOKE: I don't have any questions. I  
5 do, however, reserve the right to either request that  
6 certain documents that have been inadvertently  
7 disclosed as privileged communications be turned back,  
8 and also reserve the right to at least, at a minimum,  
9 have those marked as confidential business information.

10 MR. TEBBUTT: You have to do that. That's  
11 not my job.

12 MR. COOKE: I'm just noting it for the  
13 record. I'll let you know what they are. We can have  
14 that discussion.

15 MR. TEBBUTT: You had two months to produce  
16 the documents, and we just got a bunch of them within  
17 the last few days, so --

18 MR. COOKE: I turned them over --

19 MR. TEBBUTT: -- I think you would have been  
20 thorough about that.

21 MR. COOKE: -- when I received them. Thanks  
22 for your narrative. I appreciate that.

23 THE VIDEOGRAPHER: That will be the record --  
24 deposition of Jay Gordon on Disk No. 4. We're off the  
25 record at 6:00.



1 (Deposition concluded.)  
2 (Signature reserved.)  
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## 1 CHANGE AND SIGNATURE SHEET

2 I, the undersigned, WA DAIRY 30(B)(6) WITNESS,, do  
3 hereby certify that I have read the foregoing deposition and  
4 that, to the best of my knowledge, said deposition is true  
and accurate, with the exception of the following  
corrections listed below:

5 PAGE LINE CHANGE

6 \_\_\_\_\_

7 \_\_\_\_\_

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9 \_\_\_\_\_

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Date Signature

21

22 Case name: CARE v. Cow Palace, et al.  
Cause No.: CV-13-3016-TOR, CV-13-3017-TOR, CV-13-3019-TOR  
23 Date taken: June 25, 2014

24 Kylie Hammington, CCR, RPR  
Return to: Central Court Reporting, 1700 Seventh Ave.,  
25 Suite 2100, Seattle, WA 98101



## 1 CERTIFICATE

2

3 I, KYLIE HAMMINGTON, a Certified Court Reporter,  
4 do hereby certify that I reported in machine shorthand the  
5 deposition of WA DAIRY 30(B)(6) WITNESS,, called as a  
6 witness at the instance of the Plaintiff, for purposes of  
7 discovery in the above-entitled cause; that the said witness  
8 was duly sworn by me; that the reading and signing of the  
9 completed deposition by the witness was reserved; that the  
10 foregoing transcript was prepared under my personal  
11 supervision and constitutes a true record of the testimony  
12 of the said witness.

13 I further certify that I am not an attorney or  
14 counsel of any parties, nor a relative or employee of any  
15 attorney or counsel connected with the action, nor  
16 financially interested in the action.

17

18 DATED this 10th day of July, 2014.

19

20 \_\_\_\_\_  
Kylie Hammington, CCR, RPR  
21 Certified Court Reporter

22

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24

25

26



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