
NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA *ex rel.*)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENT AND NATURAL RESOURCES,)

Plaintiff,)

V.)

13-CVS-11032

SIERRA CLUB, WATERKEEPER ALLIANCE,)
NEUSE RIVERKEEPER FOUNDATION,)
WINYAH RIVERS FOUNDATION, ROANOKE)
RIVER BASIN ASSOCIATION, and CAPE)
FEAR RIVER WATCH, INC.,)

Plaintiff-Intervenors,)

DEPOSITION OF
JOSHUA NATHANAEL
ELLIS

v.)

DUKE ENERGY CAROLINAS, LLC,)

Defendant.)

AND

NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA *ex rel.*)
NORTH CAROLINA DEPARTMENT OF)
ENVIRONMENT AND NATURAL RESOURCES,)

Plaintiff,)

V.)

13-CVS-14661

CATAWBA RIVERKEEPERS FOUNDATION,)
INC., APPALACHIAN VOICES, YADKIN)
RIVERKEEPER, MOUNTAINTRUE, DAN)
RIVER BASIN ASSOCIATION, ROANOKE)
RIVER BASIN ASSOCIATION, SOUTHERN)
ALLIANCE FOR CLEAN ENERGY, and)

WATERKEEPER ALLIANCE,)
)
 Plaintiff-Intervenors,)
)
 v.)
)
 DUKE ENERGY CAROLINAS, LLC,)
)
 Defendant.)

DEPOSITION OF JOSHUA NATHANAEL ELLIS

THURSDAY, SEPTEMBER 01, 2016

CONFERENCE ROOM
THARRINGTON SMITH, LLP
150 FAYETTEVILLE STREET
SUITE 1800
RALEIGH, NORTH CAROLINA
10:36 A.M.

VOLUME 1 OF 1
PAGES 1 THROUGH 82

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P R O C E E D I N G S

10:36 A.M.

(WHEREUPON,

JOSHUA NATHANAEL ELLIS

WAS CALLED AS A WITNESS, DULY SWORN, AND TESTIFIED AS
FOLLOWS:)

D I R E C T E X A M I N A T I O N 10:36 A.M.

BY MR. HOLLEMAN:

Q. Mr. Ellis, you sat through Mr. Stith's
deposition, so you have been in at least one deposition.
Have you been in any others?

A. No.

Q. And you heard what I told Mr. Stith, but let
me just repeat it for the record. I am going to be
asking you a series of questions. If you can't hear me
or can't understand me, let me know and I will try to
either clarify or speak up.

We are in a conference room in a law firm here
with your counsel and others, but you are under oath.
And the court reporter is taking down your testimony and
the testimony you give today is as though you were in
court, and might be used in legal proceedings later. Do
you understand that?

A. Yes.

Q. Can you tell me where you live?

A. I live in Fuquay-Varina.

1 Q. I am sorry?

2 A. Fuquay-Varina.

3 Q. And where did you go to college?

4 A. Graduated from UNC Chapel Hill.

5 Q. And when?

6 A. 2009.

7 Q. What was your major?

8 A. Journalism and Mass Communications.

9 Q. Do you have any postgraduate degrees?

10 A. I do not.

11 Q. Did you pursue any postgraduate studies?

12 A. Did not.

13 Q. And I believe you say you graduated in 2009,
14 is that correct?

15 A. That is correct.

16 Q. And what did you do after work -- after
17 graduating?

18 A. I was a Capitol Reporter with the Curtis Media
19 Group.

20 Q. And what -- is that a paper or just -- is it a
21 particular papers or radio stations?

22 A. Radio stations.

23 Q. And what radio stations are those?

24 A. It is a news network. It is several dozen
25 stations throughout the state.

1 Q. How long were you with them?

2 A. I was with -- in that batch of employment?

3 Q. Yes.

4 A. For -- roughly ---

5 Q. From '09 to when?

6 A. No, I was actually working with them while I
7 was in school, so ---

8 Q. Okay.

9 A. --- I was with them from 2006 to 2011.

10 Q. What did you do in 2011?

11 A. I went to work for the Department of Commerce.

12 Q. And what was your role there?

13 A. Public Information Officer.

14 Q. And how long did you stay with the Department
15 of Commerce?

16 A. Until February of 2014.

17 Q. And what did you do in February of 2014?

18 A. I accepted this role in the Governor's Office
19 as the Communications Director.

20 Q. What are your duties as the Communications
21 Director in the Governor's Office?

22 A. Communicate with the media, help prepare
23 talking points, speeches, talk to reporters and manage
24 the communication staff.

25 Q. Do you have any role in public records

1 requests or public records issues?

2 A. Yes.

3 Q. And what is your role in that?

4 A. I help facilitate requests.

5 Q. And responses, too?

6 A. Correct.

7 Q. Do you have any other duties?

8 A. Yes, the duties I -- well, the duties I just
9 listed.

10 Q. I mean besides the ones you have just listed,
11 do you have any other duties?

12 A. Those are the primary ones.

13 Q. You heard, of course, the testimony earlier,
14 so let me ask you: were you involved in preparing for the
15 press conference that Mr. Stith conducted on the evening
16 of August 2nd, 2016?

17 A. Yes.

18 Q. What was your role?

19 A. I discussed the -- the statement with Tom
20 Stith and -- and that is it.

21 Q. Did you play any role in deciding to set up
22 the press conference?

23 A. No. Well, that was the Chief's decision
24 to ---

25 Q. Did you suggest it to him?

1 A. No, no.

2 Q. Did anyone else suggest it to him?

3 A. Not to my knowledge.

4 Q. It just came solely from him -- that is, Mr.
5 Stith?

6 A. I don't know where he got the idea from.

7 Q. Well, to your ---

8 A. I -- I supported the decision.

9 Q. But to your knowledge, it was his idea and
10 didn't come from anyone else, is that correct?

11 A. Yes.

12 Q. Did you help him prepare the statement?

13 A. Yes.

14 Q. Did you draft the first draft?

15 A. I believe so.

16 Q. Did your draft include the allegation that Dr.
17 Rudo lied under oath?

18 A. Yes.

19 Q. So you are the person who first put that in
20 writing?

21 MR. PHILLIPS: Objection.

22 BY MR. HOLLEMAN:

23 Q. That statement, is that correct?

24 MR. PHILLIPS: Objection to the form of the
25 question.

1 BY MR. HOLLEMAN:

2 Q. Is that true?

3 A. Is -- I am sorry. Is what true?

4 Q. Is it true that you are the person who first
5 put in writing the statement that Dr. Rudo lied under
6 oath?

7 A. I put in writing that Dr. Rudo lied under
8 oath.

9 Q. Did anyone else do it before you did? Did
10 someone else draft that or did you draft that phrase?

11 A. Not the -- you are talking about what was sent
12 to ---

13 Q. Yes.

14 A. Yes.

15 Q. I am talking about the statement that ---

16 A. No, that was -- I drafted that.

17 Q. And when you drafted that, had you seen the
18 transcript of Dr. Rudo's deposition?

19 A. I had seen portions of the transcript, yes.

20 Q. And where had you gotten those?

21 A. I believe I first saw it from Kendra Gerlach
22 from the Department of Health and Human Services.

23 Q. And when you say "portions," do you mean
24 actual pages from the transcript?

25 A. I am not sure. I didn't review the entire

1 thing. She -- that -- I don't know how much of it was in
2 what she wrote up.

3 Q. I guess -- "what she wrote up," did you say?

4 A. The documents that she showed.

5 Q. Now, did she give you a write-up of what was
6 contained in transcripts, or did she give you actual
7 pages from the transcripts?

8 A. I don't know that.

9 Q. Okay. Just looking back at something we
10 showed Mr. Stith, Exhibit 687 [sic], you see what the
11 pages of a transcript look like?

12 (Witness peruses document.)

13 A. Yes, sir.

14 Q. Is that what you saw before you wrote the
15 draft, or was it in some other form?

16 A. No. To be clear, what I am referring to when
17 I wrote the draft was based off what was published in
18 media reports.

19 Q. Okay.

20 A. And what was also publicly available to
21 download on some of the media web sites.

22 Q. So what you are referring to are quotations or
23 excerpts contained in reporters' stories that were on the
24 web; is that what you are referring to?

25 A. No, sir.

1 Q. All right. So tell me what it is you are
2 referring to?

3 A. There were also websites that posted -- I
4 believe they were the legal file -- there was a legal
5 filing that included excerpts of the deposition.

6 Q. And did you -- did you -- the excerpts that
7 you downloaded, did they look like this (indicating)? In
8 other words, were they pages -- not particularly this
9 page -- but were they pages of a transcript that looked
10 like this (indicating)?

11 A. Yes, they looked similar to that.

12 Q. Okay. And when you put into the statement
13 that Dr. Rudo lied under oath, what were you referring
14 to?

15 A. There were several things I was referring to.

16 Q. What were they?

17 A. Any suggestion that the Governor participated
18 in the meeting. Any suggestion that the Governor asked
19 for the meeting, called for the meeting. Any suggestion
20 that Dr. Rudo spoke to or heard the Governor.

21 Q. Okay. Let's go through that for a minute.
22 First of all, the meeting -- so everything you were
23 referring to was with reference to the meeting that Dr.
24 Rudo attended in the Governor's Office, is that right?

25 A. When you say "everything I am referring to,"

1 are you talking about the ---

2 Q. The lies that you are claiming.

3 A. Yes.

4 Q. Is that right?

5 A. Yes.

6 Q. Where was this meeting?

7 A. It was in my office, in the communications
8 office.

9 Q. And where is that located?

10 A. The State Capitol.

11 Q. And where -- in the actual Capitol building,
12 itself?

13 A. That is where the Communications Office is
14 located.

15 Q. Right. And what is the room number or floor?
16 Can you identified ---

17 A. I don't even know.

18 Q. Well where is it located?

19 A. It is on the first floor.

20 Q. It is on the ground floor? When you say
21 "first floor," is that what you mean?

22 A. Yes.

23 Q. And is it adjacent to the Governor's office,
24 or where ---

25 A. No.

1 Q. --- is it in relation to the Governor's
2 office, itself?

3 A. It is on the same floor.

4 Q. Is it across the hall or down the corridor, or
5 where?

6 A. It -- it is on the same floor. It is ---

7 Q. I know, but where is the Governor's office in
8 relation to the Communications office?

9 A. Down the hall a ways.

10 Q. Down the hall? Okay.

11 A. It is an incredibly big building.

12 Q. Now, whose decision was it to have this
13 meeting?

14 A. Well, when you -- when you say meeting, are
15 you talking about ---

16 Q. The meeting with Dr. Rudo?

17 A. Well, I did not ask to have a meeting with Dr.
18 Rudo.

19 Q. Well, I mean, who asked for Dr. Rudo -- who
20 set up the meeting? Where did it come from?

21 A. I was having a meeting with Kendra Gerlach.

22 Q. Okay. You had asked for a meeting with her?

23 A. I don't remember if I asked for it or -- or
24 she just came over. I can't even remember exactly how it
25 happened, but I do remember having her over in my office

1 to -- to discuss a communications issue.

2 Q. And who is Kendra Gerlach?

3 A. The Communications Director for the Department
4 of Health and Human Services.

5 Q. And why were you having this meeting with her?

6 A. To discuss an upcoming press release and
7 letter that would have been mailed to the public.

8 Q. And what was this upcoming press release and
9 letter?

10 A. It was involving notices to well owners.

11 Q. And this was the notice to tell them not to
12 drink their water, is that correct?

13 A. Some of the notices included that, that is
14 correct.

15 Q. And so why were you involved in this issue?

16 A. Well, there was -- this was an issue that
17 involved both the Department of Environmental Quality and
18 Health and Human Services. As with -- you know, anytime
19 there is a -- multiple agencies involved and they may
20 have different ideas about how to communicate something,
21 we are typically involved in helping just kind of sort
22 out the differences.

23 Q. So do you make -- did you make the ultimate
24 decision in how the letters would be worded?

25 A. No, sir.

1 Q. And so who did?

2 A. My understanding, that was done by both the
3 Secretaries of Health and Human Services and the -- I
4 guess it was then, at the time, Department of Environment
5 and Natural Quality [sic].

6 Q. And so, then, what was your role? I am not
7 quite clear what your role was.

8 A. In -- strictly in how we would communicate
9 some of the press release, the language on the letter
10 that was sent with the form.

11 Q. Were you involved at all in how the letter
12 would be worded, apart from the press release?

13 A. I did not word the letter. I reviewed
14 versions of the letters along the way.

15 Q. Well, I mean, were you involved in how it
16 would be worded, even if you didn't write the draft
17 itself?

18 A. Yes.

19 Q. And how were you involved?

20 A. I reviewed copies of the letter along the way.

21 Q. Did you make -- suggest changes in the
22 language?

23 A. I don't recall any specific suggestions. I
24 think I heard from both DEQ and HHS on -- they had
25 different versions of the letter.

1 Q. I guess my question is, did you make any
2 changes in the letter?

3 A. I don't recall any specific changes.

4 Q. Do you remember any general points that you
5 put into the letter, apart from specific words?

6 A. I don't recall any specifics.

7 Q. Well, now, remember, what I am asking you now
8 is not if you remember the exact wording, but do you
9 remember any general concepts or points that you put into
10 the letter?

11 A. No, sir.

12 Q. So did you ask for the meeting with Kendra
13 Gerlach?

14 A. Again, I can't remember whether I asked for it
15 or -- or if she volunteered to come over.

16 Q. Who else was -- was invited to the meeting?

17 A. No one.

18 Q. It was just you and Kendra?

19 A. That is correct.

20 Q. And when did she -- was she the first person
21 to arrive? Who -- were you there when she arrived?

22 A. I was already at my -- it was in my office. I
23 was already there.

24 Q. And then was she the first person to arrive,
25 apart from you?

1 A. Yes.

2 Q. And did -- who -- did anyone come with her?

3 A. No.

4 Q. And I guess, ultimately, Dr. Rudo was there.

5 Did anyone else other than Dr. Rudo come?

6 A. No.

7 Q. In person?

8 A. Huh-uh.

9 Q. So it was three people, is that correct?

10 A. Yes.

11 Q. And when did you learn Dr. Rudo was coming?

12 A. When Kendra Gerlach told me that he

13 volunteered to come over.

14 Q. And when did Kendra tell you that?

15 A. After she got off the phone with him.

16 Q. And so did she call him in -- while he was in

17 -- while she was in your office?

18 A. That is correct.

19 Q. All right. How did that happen?

20 A. There was a -- I don't remember the exact, you

21 know, wording, but it was -- we were discussing a very

22 technical question about risk. And she called -- she

23 said that Dr. Rudo might be able to answer that question,

24 and called him.

25 Q. Did you ask her to call him?

1 A. No.

2 Q. So did you object to her calling him?

3 A. No.

4 Q. And so she -- did she call him in your
5 presence?

6 A. Yes.

7 Q. And what did she say to him?

8 A. I -- I can't -- I don't know the -- verbatim
9 what she said. But she asked him something about that
10 technical question, and he indicated to her that he was
11 on vacation, but he was near the Capital and would be
12 happy to stop by and come see us. He said he was -- you
13 know, "I am very casually dressed," but that he would be
14 happy to come over.

15 Q. And did you hear him say those things?

16 A. She was relaying that to me as ---

17 Q. (Interposing) As he talked? But you did not
18 actually hear him -- or did you? Or did you just hear
19 what she said he was saying?

20 A. I remember -- I remember her telling me this.

21 Q. And you don't remember whether you actually
22 heard him or not?

23 A. No, sir.

24 Q. Okay. And she was on her cell phone, is that
25 correct?

1 A. Yes.

2 Q. Okay. And did she call Dr. Davies while you
3 all were there?

4 A. I don't remember her calling her.

5 Q. Do you know who Dr. Davies is, when I say "Dr.
6 Davies"?

7 A. You are referring to Megan Davies?

8 Q. Yes.

9 A. Yes.

10 Q. Okay. At that time, did you know who Dr.
11 Davies was?

12 A. I -- just generally. I don't -- had not --
13 yes. I mean, I generally knew who she was.

14 Q. And did you -- at that time, did you know who
15 Dr. Rudo was?

16 A. No.

17 Q. And did Dr. Rudo arrive in your office?

18 A. He did.

19 Q. And what happened then?

20 A. I made it very clear from the very beginning
21 that I was strictly looking at the communications part of
22 it, that I had no interest in changing a recommendation
23 or getting into the -- what a form should -- you know,
24 what a standard should be. But I was asking if there was
25 a way to address the risk number that was on the bottom.

1 Q. And what risk number was on the bottom?

2 A. The risk talking about a lifetime -- I would
3 need the form to -- to show you.

4 Q. All right. But as you recall, it was a
5 number?

6 A. Yes. And when I say -- just to be very clear,
7 when I say -- I was asking a way to show the specific
8 risk related to the score, as opposed to just the
9 individual standard.

10 Q. And when you refer to "the score," what are
11 you referring to?

12 MR. PHILLIPS: You know, Frank, it might be
13 more useful if we were actually looking at a document,
14 rather than ---

15 MR. HOLLEMAN: Well, I am just asking about
16 his testimony the way I wish.

17 MR. PHILLIPS: Well I -- I am concerned -- I
18 am concerned there will be a miscommunication.

19 MR. HOLLEMAN: Well, we will get around to
20 that.

21 BY MR. HOLLEMAN:

22 Q. But I am just asking you now, what do you mean
23 by "the score"?

24 A. I am referring to the -- again, I am not a
25 scientist. I am referring to the number -- specific

1 constituent numbers, and is there a way -- I was hoping
2 to weigh -- to put the most accurate health risk number
3 pertaining to that number, as opposed to just a general
4 statement about the risk level.

5 Q. Now, while Dr. Rudo and you and Ms. Gerlach
6 was there, no one else came in during that meeting before
7 Dr. Rudo left ---

8 MR. PHILLIPS: Is that a question?

9 BY MR. HOLLEMAN:

10 Q. --- is that correct? Is that correct? That
11 is what I am asking. That is what I thought you had
12 said, but I am asking if that is right.

13 A. I believe one staff member came in and may
14 have handed me a document. And I believe another person
15 in the Governor's office gave me a copy of *The*
16 *Winston-Salem Journal*.

17 Q. But they didn't stay in the meeting, they just
18 came in and delivered something and left?

19 A. That is correct.

20 Q. So the only three people who spent any time
21 physically present in the meeting were you and Dr. Rudo
22 and Kendra Gerlach?

23 A. That is correct.

24 Q. Until Dr. Rudo left, correct?

25 A. I am sorry, can you repeat ---

1 Q. Until he left, nobody else came in while he
2 was there, other than the two staff people who relayed
3 something?

4 A. To my knowledge, yes.

5 Q. Okay. Now, did the Governor call in while Dr.
6 Rudo was there?

7 A. Yes.

8 Q. And was that at the beginning or middle or
9 end, or when during the meeting?

10 A. I don't recall exactly what time.

11 Q. Do you know when the meeting started?

12 A. I don't. It wasn't -- no, I don't.

13 Q. Do you know the date of the meeting?

14 A. I know it only because I saw it later in the
15 course ---

16 Q. Okay. What do you understand it to be?

17 A. April 2nd.

18 Q. Do you know what day of the week that was?

19 A. No.

20 Q. And did the Governor call a cell phone or a
21 land line?

22 A. A cell phone.

23 Q. And whose cell phone did he call?

24 A. He called mine.

25 Q. And is that your government cell phone or

1 your ---

2 A. (Interposing) Yes.

3 Q. --- personal? And where were you when he
4 called?

5 A. I was in my office.

6 Q. And were you -- where in your office were you?

7 A. I don't remember exactly. I believe we were
8 all sitting at that table.

9 Q. Around a table?

10 A. Correct.

11 Q. And Dr. Rudo was there when he -- when the
12 Governor called?

13 A. Yes.

14 Q. And then what happened. So the Governor calls
15 you, and then what happens?

16 A. I answered it and walked out of the room.

17 Q. What did the Governor -- and when you say you
18 walked out of the room, where did you walk to?

19 A. We have a room that is -- that is empty across
20 the hall.

21 Q. And it is just an empty room?

22 A. It is a conference room.

23 Q. Okay. And did you shut the door to your
24 office when you walked across?

25 A. I don't recall.

1 Q. Did you shut the door to the conference room
2 when you went in?

3 A. I don't recall.

4 Q. And what did the Governor call about?

5 A. I don't recall the specifics of the call.
6 Generally, it was about a bill signing ceremony that he
7 had done earlier that day, and -- somewhere in eastern
8 North Carolina.

9 Q. During the course of the call, did the
10 Governor talk at all about the issue of contamination of
11 wells or the communications ---

12 A. (Interposing) No.

13 Q. --- to be sent to well owners?

14 A. No.

15 Q. How long did the call last?

16 A. Roughly three or four minutes.

17 Q. And did any of the call relate to coal ash?

18 A. No.

19 Q. And just to be clear -- I am not sure we have
20 covered these topics -- did any of the call relate to
21 hexavalent chromium or vanadium?

22 A. No.

23 Q. And then, after you finished the call, what
24 did you do?

25 A. I walked back into the room.

1 Q. And did you, in the course of the meeting,
2 relay to Dr. Rudo or Ms. Gerlach any of the Governor's
3 concerns?

4 A. No.

5 Q. Tell us anything -- you have described, maybe
6 all of it, but part of what you said during the meeting.
7 What else did you say, if anything?

8 A. I -- I am -- can you repeat that question,
9 please?

10 Q. Well, what did you say during the meeting?
11 What did you convey during this meeting?

12 A. I -- I think I have answered that.

13 Q. I am asking you now, was there anything else
14 you conveyed during the meeting, other than what you have
15 said?

16 A. I don't recall any other ---

17 Q. How long did the meeting last?

18 A. I -- I don't know an exact number.

19 Q. Well, was it more than five minutes?

20 A. Yes.

21 Q. Was it more than an hour?

22 A. No.

23 Q. Was it more than a half an hour?

24 A. Maybe. I -- that sounds a good ballpark time.

25 Q. Somewhere between 20 minutes and an hour,

1 would that be fair?

2 A. That is fair.

3 Q. And when Dr. Rudo ---

4 A. (Interposing) I was ---

5 Q. I am sorry, go ahead.

6 A. Remind you, I was out of the room ---

7 Q. For five minutes or so?

8 A. --- for -- for several minutes.

9 Q. Right. When Dr. Rudo left, did Ms. Gerlach
10 leave at the same time? Did they both leave together, in
11 other words?

12 A. I -- I believe so.

13 Q. Did you take notes of the meeting?

14 A. I did not.

15 Q. Did you send an e-mail or a memo or any
16 communication to anyone summarizing the meeting or ---

17 A. (Interposing) No.

18 Q. --- similar to that? Did you -- in the course
19 of the meeting, what did Ms. Gerlach say?

20 A. I don't recall the specifics of what was said.

21 Q. Do you remember generally what she said in the
22 meeting, or did she say anything during the meeting?

23 A. I -- I just don't recall the specifics of what
24 was said.

25 Q. Do you remember what Dr. Rudo said during the

1 meeting?

2 A. I don't recall his specific language. I do
3 remember him explaining portions about why calculating
4 risk for each particular score would be -- would be
5 difficult to do, and why using a just general line and
6 then having them call their office for more detailed
7 information about the -- whatever constituent was in
8 there would be a better way to go.

9 Q. How did the meeting conclude?

10 A. It just -- we went through -- I don't remember
11 exactly how it wrapped up. I just remember telling him
12 "Okay, go back to your vacation."

13 Q. Did you have an understanding as to how the
14 notices to the well owners would be written when you left
15 -- when he left?

16 A. Well, to be clear, I -- we -- it wasn't my
17 decision what the notices to the well owners would look
18 like.

19 Q. Well, did you three have an understanding of
20 what the notices would look like when he left?

21 A. I can't speak to what their ---

22 Q. Well, did you?

23 A. Not entirely, because there was a piece of it
24 -- a piece of the whole thing involving the Department of
25 Environment and Natural Resources.

1 Q. When you say "a piece," what are you referring
2 to?

3 A. Some of -- it was set as a joint thing between
4 HHS and -- and DENR.

5 Q. Did you have an understanding as to what the
6 HHS portion would look like?

7 A. Not -- no.

8 Q. Was there an issue of whether the HHS portion
9 would refer to the Standards of the Federal Safe Drinking
10 Water Act?

11 A. What do you mean, "was there issues"?

12 Q. Well, did you discuss that during the meeting?
13 Did you discuss during the meeting whether the HHS notice
14 would make reference to the Standards under the Federal
15 Safe Drinking Water Act?

16 A. I believe that was discussed.

17 Q. And who brought that up?

18 A. I -- I don't remember who.

19 Q. Did you mention it?

20 A. I don't remember who brought it up.

21 Q. Well, do you remember if you discussed it?

22 A. Yes, I ---

23 Q. Yeah. And how were you familiar with the
24 Federal Safe Drinking Water Act?

25 A. I relied on the scientific advice we had been

1 given from DEQ about the Federal Drinking Standard.

2 Q. And who at DEQ had provided you that?

3 A. Well, the Communications Office, and -- I
4 can't recall the other folks at -- at the Department.

5 Q. Who in the Communications Office at DEQ?

6 A. I believe there were -- there were two or
7 three different people. I don't remember who
8 specifically.

9 Q. Well, which of the two or three would it have
10 been?

11 A. There was Crystal Feldman, Drew Elliott and, I
12 believe, Stephanie Hawco.

13 Q. Did you ever receive information from Tom
14 Reeder concerning the Federal Safe Drinking Water Act?

15 A. I -- I don't recall.

16 Q. Now, if you would look at Exhibit 638 for a
17 moment, that is the Notice -- I am sorry. That is the
18 statement that was issued by Mr. Stith on August 2nd,
19 which we have discussed earlier. Prior to this being
20 issued, did you attempt to get a copy of the transcript
21 -- a full transcript of Dr. Rudo's testimony?

22 A. No.

23 Q. Did you -- with whom did you speak before
24 drafting this (indicating), related to this statement?

25 A. Thomas Stith.

1 Q. Did you talk to anyone else?

2 A. No, sir.

3 Q. Did you talk to anyone else in Communications
4 staff about the draft?

5 A. Yeah, before -- before it went out?

6 Q. Yes. Who?

7 A. I had -- I had another staff member in the
8 office that hits the "send" button to -- yeah.

9 Q. All right. But did you talk to anyone else
10 about the content of it, other than Mr. Stith?

11 A. No.

12 Q. So did anyone look at Mr. Rudo's testimony,
13 other than you, before this statement contained the
14 charge that Dr. Rudo lied under oath?

15 A. No, not -- not to my knowledge.

16 Q. And would you say that -- did Mr. Stith rely
17 on you for that statement?

18 A. I -- I can't speak for what he relied on.

19 Q. Do you know of anyone else who provided him
20 information about whether Dr. Rudo lied under oath, other
21 than you?

22 A. I can't speak for ---

23 Q. I mean, do you know? I am asking what you
24 know.

25 A. I am not aware of it.

1 Q. Did you talk to any reporters outside of your
2 communications staff about this statement before you sent
3 it?

4 A. No.

5 Q. Before you drafted it, I am sorry.

6 A. No.

7 Q. Did you think of calling Dr. Rudo before you
8 made this charge?

9 A. Which specific charge are you referring to?

10 Q. That he lied under oath.

11 A. No. I think that is an accurate statement.

12 Q. But you did not think of contacting him first?

13 A. No.

14 Q. Did you think of contacting counsel in the
15 Governor's Office before making this -- the charge that
16 Dr. Rudo lied under oath?

17 A. I can't recall think -- thinking about that.

18 Q. Have -- have you all held -- has the
19 Governor's Office held other press conferences at night?

20 A. Yes, we have.

21 Q. Okay. And how many?

22 A. I couldn't give you an exact number.

23 Q. Approximately?

24 A. I -- I couldn't. I would be guessing.

25 Q. Less than ten?

1 A. Probably.

2 Q. And what did they deal with?

3 A. It usually dealt with any time there were --
4 well, he has done media availabilities that late at
5 night. I don't know that I would call them press
6 conferences.

7 Q. That is, the Governor has made himself
8 available to the press in the evening ---

9 A. (Interposing) Correct.

10 Q. --- is that right? Okay. But have you all
11 held a press conference -- that is the Governor's Office
12 -- about a topic at night, other than this one?

13 A. Again, they are the same -- they are the same
14 kind of thing where he may make a statement and take
15 questions.

16 Q. And do you remember the topics for those
17 meetings?

18 A. No.

19 Q. Those statements?

20 A. I can't recall.

21 Q. Why was this held at night rather than waiting
22 until the next morning?

23 A. We wanted to address not only the statements
24 that are in there, but also the narrative and the way
25 that the story was being reported. We -- we wanted to

1 address it immediately.

2 Q. Who was -- was it your idea to hold it that
3 night or was it Mr. Stith's?

4 A. I believe it was the Chief's idea.

5 Q. Did you agree with it?

6 A. Absolutely.

7 Q. Now, did you -- who -- who decided who to
8 invite to the press conference?

9 A. That was -- our Press Secretary would have
10 invited folks.

11 Q. And who is your Press Secretary?

12 A. Graham Wilson.

13 Q. Did you have any input into whom to invite?

14 A. No, I didn't.

15 Q. Okay. And do you know who was invited?

16 A. No.

17 Q. Do you know where in the deposition are Dr.
18 Rudo's lies?

19 A. I couldn't list specific page numbers, no.

20 Q. Okay. Have you -- well, let's say before the
21 statement was sent out, did you go through the pages of
22 the transcript you had and -- and identify where there
23 were lies?

24 A. And you -- you are referring to the
25 transcripts that were available ---

1 Q. I am referring to what you said you saw
2 beforehand.

3 A. Yes. That -- yes.

4 Q. You did?

5 A. Yes.

6 Q. Do you have those copies?

7 A. I don't have them, but they were available --
8 they were available on the web sites.

9 Q. My question is, did you keep copies and
10 indicate where the lies were in the transcript?

11 A. I reviewed them, and felt very comfortable
12 with that statement, that it was accurate.

13 Q. Now -- but you only reviewed what was
14 available on line, correct?

15 A. Correct.

16 Q. Now, after -- after this statement went out --
17 so since August 2nd, have you taken a transcript of Dr.
18 Rudo's testimony and identified the lies in it that you
19 consider lies?

20 A. I have reviewed it again, I don't know.

21 Q. You haven't?

22 A. I have reviewed it.

23 Q. Oh.

24 A. I can't tell you the exact page number that
25 are on that ---

1 Q. Did you ---

2 A. --- but I am happy to discuss it.

3 Q. Did you mark them or indicate them or pick
4 them out somehow?

5 A. No.

6 Q. Did you keep -- did the Governor know this
7 press conference was going to be held on August 2nd,
8 before it was done?

9 A. I don't -- I did not have any conversations
10 about it.

11 Q. Do you know if he knew about it before it was
12 -- happened -- before it happened?

13 A. I don't know that first hand.

14 Q. Has someone told you that he did or didn't
15 know about the press conference beforehand?

16 A. I don't recall that.

17 Q. Did the Governor review the statement, Exhibit
18 638, before it went out?

19 A. Not to my knowledge.

20 Q. Have you ever talked to Megan Davies about the
21 allegations against Dr. Rudo about lying under oath?

22 A. No.

23 Q. Have you talked to Megan Davies since this
24 statement was issued on August 2nd?

25 A. No.

1 Q. And I gather you didn't call her before the
2 statement was issued, is that right?

3 A. That is -- yeah, that is what I just said. I
4 hadn't talked to her.

5 Q. Have you repeated this charge anywhere else,
6 that Dr. Rudo lied under oath?

7 A. I told a reporter, "We stand by our previous
8 statements."

9 Q. And which reporter was that?

10 A. I believe it was Mark Binker with WRAL.

11 Q. Anyone else?

12 A. I can't -- I can't recall.

13 Q. Do you now have a copy of the complete
14 transcript of Dr. Rudo's deposition?

15 A. Yes, I have seen that.

16 Q. And where did you get it?

17 A. Through the counsel.

18 Q. And when you say "counsel," is that Mr.
19 Dickson and his firm, or is that from the Governor's
20 Office counsel?

21 A. I think through the Governor's Office counsel,
22 but ---

23 Q. Who else in the Governor's Office has a copy
24 of the complete transcript of Dr. Rudo's deposition?

25 A. I -- I don't have the answer to that question.

1 Q. Do you know anyone else who does, other than
2 you and counsel?

3 A. Not to my -- I am not aware of that.

4 Q. Have you ever talked to Dr. Rudo, other than
5 that one meeting?

6 A. No, I have not.

7 Q. Have you ever talked to Dr. Davies?

8 A. I can't recall a specific conversation, but I
9 am -- I am sure I have somewhere along the line, when we
10 talked about public -- the flu -- the flu stuff.

11 Q. The flu -- you mean flu?

12 A. Yes.

13 Q. Right. I am showing you what has previously
14 been marked Exhibit 500. And if you could turn over to
15 the entry for April 2nd, 2015 -- or if you want me to
16 find it, I can.

17 A. What am I looking at?

18 Q. Well, I am going to tell you. If you could
19 just turn over to this page, for April 2nd.

20 (Witness peruses document.)

21 There you go. All right. This has previously
22 been marked as an Exhibit to Dr. Rudo's deposition. And
23 I will tell you Dr. Rudo testified these are his notes of
24 the meeting we have been discussing. If you could turn
25 to the next page, and they begin -- have you -- have you

1 ever looked at these notes, this Exhibit before, of these
2 notes?

3 A. I have not seen this before.

4 Q. Okay. He begins by saying, "Called by Megan
5 Davies and told to go over to the Governor's Office and
6 meet with Governor's Press Secretary and Kendra Gerlach
7 about coal ash forms." Now, do you know whether Dr.
8 Davies called Dr. Rudo and told him to go to the
9 Governor's Office to meet with you and Kendra?

10 A. No.

11 Q. "Mr. Ellis, the press person, took a call from
12 the Governor about something else, but told him we were
13 there for the coal ash well issue." Is -- did that
14 happen?

15 A. I mentioned I was meeting -- I was headed back
16 into a meeting with Kendra.

17 Q. So did you tell the Governor on the phone that
18 -- that Kendra was there for the coal ash well issue?

19 A. I don't recall saying that.

20 Q. Do you recall you didn't say that, or you just
21 don't recall one way or the other?

22 A. I don't recall saying that.

23 Q. You don't recall whether you did or whether
24 you didn't?

25 A. I think I have just answered the question.

1 Q. No, no. I just want to be clear what you are
2 saying. I am asking you did you tell the Governor that
3 there were people -- there were one or more people there
4 with you for the coal ash well issue? Can you say
5 whether you told him that or that you didn't tell him
6 that?

7 A. I did not say that.

8 Q. Okay. Did you tell the Governor that Dr. Rudo
9 was there?

10 A. No.

11 Q. But you did tell the Governor Kendra Gerlach
12 was there, is that correct?

13 A. I said -- I just answered that question. I
14 said, "I am heading back into a meeting with Kendra
15 Gerlach."

16 Q. But did you tell the Governor the substance or
17 content or nature of the meeting?

18 A. I don't recall doing that.

19 Q. Then he says, "Mr. Ellis wanted me to put
20 specific health risk information indicated for each
21 person, so we could play down the health risk." Is that
22 correct?

23 A. No.

24 Q. Did you want him to put specific health risk
25 information into the letter for each person?

1 A. Yes.

2 Q. So what you disagree with is the phrase, "so
3 we could play down the health risk"?

4 A. Absolutely.

5 Q. But you agree with the first part of the
6 sentence?

7 A. I -- I asked him if it was possible.

8 Q. Did you all talk about how people would react
9 to the health risk?

10 A. I don't recall discussing that.

11 Q. Dr. Rudo then says, "I explained in detail how
12 we did our risk assessments and the approach based on
13 cancer and non-cancer risk." Do you remember that part?
14 Did he explain that to you?

15 A. Generally, yes.

16 Q. And then he says, "And as a result, we could
17 not predict specific risks for non-cancer endpoints." Do
18 you remember him telling you that?

19 A. I don't remember him saying it specifically
20 worded like that, but I do remember him saying there were
21 -- just talking about the difficulties of calculating a
22 risk, individualized to each score.

23 Q. Dr. Rudo then writes, "He" -- referring to you
24 -- "then wanted us to add the statement about how this
25 risk is the maximum risk or not." Do you remember that?

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

2 Q. He says, "I told him we could not ethically do
3 this on our HRE forms, because it would not be true and
4 correct, and it would be misleading." Do you remember
5 that?

6 A. I don't recall that.

7 Q. Do you remember him saying that there was some
8 information or language that they could not include on
9 the forms because it would be misleading or not true, or
10 incorrect?

11 A. I just don't -- I don't recall the specific
12 language on ---

13 Q. "We discussed our concerns with DENR" --
14 D-E-N-R -- "and their fighting with us about vanadium and
15 chromium 6." Do you remember that -- him talking with
16 you about their disagreements with DENR, or D-E-N-R?

17 A. Generally speaking, yes.

18 Q. --- "and trying to ethically compromise our
19 Risk Assessment process." Do you remember him saying
20 that DENR was trying to compromise their Risk Assessment
21 process?

22 A. No, I don't remember him saying that.

23 Q. Can you testify that he didn't say that?

24 A. Testify that I don't remember him saying that.

25 Q. And that is the -- so you can just say what

1 you remember, is that right?

2 A. Yes, I ---

3 Q. All right. "He asked" -- that is referring to
4 you -- "if we could come up with language to suggest to
5 put on the DNR form about their -- in his views, of the
6 degree of risk." Do you remember that?

7 A. I don't remember the specific form. I just
8 remember talking about is it possible to give a more
9 exact risk score.

10 Q. "And we all came up with some language for
11 suggestion to D-E-N-R, or DENR." Do you remember doing
12 that?

13 A. I -- no. I remember discussing risk language.
14 I don't remember what that language was.

15 Q. But do you remember you collectively came up
16 with language to suggest to DENR?

17 A. I remember they proposed some language. I
18 don't remember what that was.

19 Q. Was it language you agreed to, or thought was
20 appropriate?

21 A. I -- I can't even remember what that language
22 was, so I don't -- I would not be able to characterize
23 it.

24 Q. He says, "I also warned him very clearly about
25 documentation of e-mails, meeting notes, et cetera, about

1 what D-E-N-R has tried to do to compromise the HRE
2 process and protecting the residents' water around these
3 sites." Do you remember him conveying that information?

4 A. Not -- not exactly like that.

5 Q. But do you remember generally him making that
6 point?

7 A. I remember him saying he had emails that he
8 thought would look -- would make people look bad.

9 Q. And he says, "I was there about one and a half
10 hours." Do you agree with that?

11 A. No.

12 Q. Do you know if Ms. Gerlach took
13 contemporaneous notes of the meeting?

14 A. No. And I -- I do want to make a -- go back
15 to -- back up.

16 Q. Sure, absolutely.

17 A. I would -- I need to clarify. I don't think
18 any of these notes were made during the meeting. I don't
19 believe Mr. Rudo walked in -- or Dr. Rudo walked in with
20 a notepad. So he may have made these notes, but I
21 certainly did not see him make any notes during that
22 meeting.

23 Q. Well, you -- you don't know whether he made
24 notes immediately after the meeting, after he left?

25 A. I -- I don't know when these notes were made,

1 but I certainly did not see a notepad in front of him.

2 Q. In the meeting?

3 A. Correct. He came in very casually.

4 Q. Now, let me go back. Do you remember talking
5 with Dr. Megan Davies about the "do not drink" or "do
6 drink" letters, at all?

7 MR. PHILLIPS: Are you talking about this --
8 around this meeting or some other time?

9 MR. HOLLEMAN: Well, right now, I am talking
10 general -- both.

11 MR. PHILLIPS: All right. Well let me just
12 -- let me just -- I mean, I am going to object to that
13 question, but I will be -- he is going to -- I will let
14 him answer that question. But I want to reference the
15 letters that we sent you, including my letter to you this
16 Monday. You know, Mr. Ellis wants to answer you
17 questions. We have offered him up here to answer your
18 questions.

19 He is the Communication Director, of course,
20 for the Governor. He has not -- you know, he is not a
21 scientist, he is not a lawyer. We don't really think he
22 has any competent evidence to offer you in the cases, as
23 we understand them. We -- you know, we don't -- we
24 understand that you want to ask about this meeting, but
25 we really don't see the relevance of these letters that

1 were sent out by DEQ and HHS -- then DENR at the time.
2 We don't really see the relevance of them to the issues
3 in your case, as I have explained in my letters.

4 So -- but, you know, we want Mr. Ellis your
5 fair questions, but we don't think he is really obligated
6 to. And he is certainly not obligated to talk about his
7 official deliberations. And so there -- you know, there
8 needs to be an appropriate limit to it. And we are not
9 waiving any of the objections we raised in writing.

10 So -- but let's proceed.

11 BY MR. HOLLEMAN:

12 Q. All right. Let me try again with a question.
13 Did you ever talk with Megan Davies about -- let me ask
14 first -- the "do not drink" letters that went out in
15 2015, that were also the topic of this meeting with Dr.
16 Rudo?

17 A. I don't recall.

18 Q. Do you remember if you ever told her that you
19 would like to have language in those HHS Health Risk
20 Evaluation forms that reflected that the Safe Drinking
21 Water Act Standards were not exceeded?

22 A. I don't recall saying that.

23 Q. Do -- do you know that Dr. Davies has been
24 deposed in these proceedings?

25 A. Yes.

1 Q. Have you reviewed the transcript of her
2 deposition?

3 A. I reviewed a portion of her transcript.

4 Q. Have you -- are you aware she says you talked
5 with her about the "do not drink" letters?

6 A. Generally, yes.

7 Q. So you have reviewed that portion of her
8 deposition?

9 A. I would need to see it again, if you have any
10 specific questions about it.

11 (PLAINTIFF-INTERVENOR EXHIBIT 642
12 WAS MARKED FOR IDENTIFICATION.)

13 Q. This is Exhibit 642, and those are portions of
14 Dr. Davies' deposition. If you would look at page 45.

15 (Witness peruses document.)

16 MR. PHILLIPS: Let me just make a note. This
17 deposition is the Megan Davies deposition, 642 --
18 excerpts there of. The caption is the two state actions
19 -- consolidated actions. I mean, technically, I think we
20 view this as being a deposition taken in the Federal
21 case, since we objected to the ---

22 MR. HOLLEMAN: (Interposing) I will just say
23 we noticed them and subpoenaed them in both State and
24 Federal cases. And our agreement, just so you will know
25 -- you are not a part of this -- but our agreement of

1 counsel is that Discovery in the State cases can also be
2 used in the Federal cases. So that is why, in general,
3 the depositions haven't been noticed in both, but these
4 -- this one -- these were.

5 MR. PHILLIPS: So I guess I just wanted to
6 observe that that is -- that is an issue here, and that,
7 again, we understand that this deposition today is going
8 on in the Federal case. That being ---

9 MR. HOLLEMAN: It is in both cases, just to
10 be clear with that.

11 MR. PHILLIPS: Well, we can -- we can
12 disagree about that.

13 BY MR. HOLLEMAN:

14 Q. So on page 45, have you read -- have you would
15 look at what is page 45 of her transcript?

16 (No response.)

17 Have you reviewed this portion of the
18 deposition -- that is, Dr. Davies' deposition -- before?

19 (Witness peruses document.)

20 A. Yes.

21 Q. And on page 45, she says she spoke with you
22 about the "do not drink" letter that was sent out in 2015
23 to the well owners, is that right?

24 A. Is that right that ---

25 Q. She says that?

1 A. --- that her deposition says that?

2 Q. Yes, she says that?

3 A. Yes, that is what -- I read that in her
4 deposition.

5 Q. And did that happen?

6 A. I don't recall that happening.

7 Q. So are you saying it did not happen, or just
8 that you don't have a recollection one way or the other?

9 A. I don't have a recollection of that happening.

10 Q. But you can't testify it did not happen?

11 A. I don't recall that happening.

12 Q. Do you remember expressing to her or others at
13 HHS that you wanted to have wording in the HRE evaluation
14 form that reflected that Safe Drinking Water Act
15 Standards were not exceeded? Do you remember that? I am
16 sorry?

17 A. I am sorry. Can you repeat that question?

18 Q. I said, do you remember telling Dr. Davies or
19 anyone else at HHS that you wanted, or the Governor's
20 Office wanted to have wording in the Health Risk
21 Evaluation form that reflected that Safe Drinking Water
22 Act Standards were not exceeded?

23 A. No.

24 Q. Who is Matt McKillip, if you know?

25 A. He is the Governor's -- Governor's Policy

1 Director.

2 Q. Any particular topic, or all topics?

3 A. I think, generally, all topics. At the time
4 that this was going on, I am not sure of where -- I am
5 not sure if he was in that role at that time.

6 Q. You are not sure he was in that role at that
7 time?

8 A. I am not sure -- I can't remember when he
9 moved over from Health and Human Services.

10 Q. Do you remember ever discussing the "do drink"
11 letter that went out in 2016 with Dr. Randall Williams?

12 A. No.

13 Q. Have you -- have you ever discussed the issue
14 of contaminated wells around coal ash sites with Dr.
15 Randall Williams?

16 A. Yes.

17 Q. And what was the nature of that conversation?

18 A. I think there was a discussion at the Dix
19 Campus Office, that I remember them talking about what
20 they were going to do to examine how other states use
21 their -- issue drinking notices, and what they did
22 specific to -- to well water and municipal water.

23 Q. And that was a discussion with whom?

24 A. I don't remember everyone that was in -- in
25 that meeting.

1 Q. Who do you -- who was there that you do
2 remember?

3 A. Dr. Williams. I believe Mark Payne. I
4 believe Megan Davies was at that meeting.

5 Q. And what was concluded at the meeting?

6 A. It was just more about that they were going to
7 look at other things and -- so I think it was more of an
8 awareness thing, not a conclusion.

9 Q. Did you have any other meetings or discussions
10 with Dr. Williams about contaminated wells around coal
11 ash sites?

12 A. Not that I recall.

13 Q. Okay. Have you ever discussed coal ash with
14 anyone at Duke Energy?

15 A. No.

16 Q. No?

17 A. No.

18 Q. Okay. Have you ever discussed hexavalent
19 chromium with anyone from Duke Energy?

20 A. No.

21 Q. Have you ever discussed Dr. Rudo with anyone
22 from Duke Energy?

23 A. No.

24 Q. To you knowledge, has anyone in the Governor's
25 Office discussed coal ash with Duke Energy?

1 A. Not to my knowledge.

2 Q. Has anyone in the Governor's Office, to your
3 knowledge, talked with Duke Energy about hexavalent
4 chromium or vanadium?

5 A. Not to my knowledge.

6 Q. Have you ever talked to anyone at Duke Energy
7 about the Coal Ash Management Act or the Coal Ash Act
8 that passed this year?

9 A. No.

10 Q. And to your knowledge, has anyone in the
11 Governor's Office done so?

12 A. Has anyone in the Governor's Office?

13 Q. Yes.

14 A. Not to my knowledge.

15 Q. Do you know what was discussed with Duke
16 Energy at that meeting in the Governor's Mansion early in
17 June 2015?

18 A. No.

19 Q. Did you attend the meeting?

20 A. No.

21 Q. Did you review the Governor's Executive Order
22 on coal ash before it went out, or did that predate ---

23 A. What was that date?

24 Q. --- your tenure? August 1, 2014, Exhibit 632
25 [sic].

1 MR. PHILLIPS: Can we take a minute and look
2 at this?

3 MR. HOLLEMAN: Sure.

4 (Pause.)

5 MR. LONG: Frank, did you say 632 or 639?

6 MR. HOLLEMAN: I said 632, but I could well
7 have been wrong.

8 MR. LONG: Okay. I just wanted to make
9 sure.

10 MR. HOLLEMAN: What number is it?

11 THE WITNESS: Ours says 639.

12 MR. TORREY: This is the Executive Order.

13 MR. HOLLEMAN: 639.

14 MR. LONG: Thank you.

15 (Pause.)

16 MR. HOLLEMAN: Oh, you are ready? I am
17 sorry. I didn't know if you were ready. Are you ready?

18 MR. PHILLIPS: I thought you might be over
19 there ---

20 MR. HOLLEMAN: --- just waiting for you to
21 finish.

22 MR. PHILLIPS: --- consulting with yourself.

23 MR. HOLLEMAN: Well, I often do.

24 BY MR. HOLLEMAN:

25 Q. Exhibit 639, the Governor's Executive Order

1 from August of 2014 -- did you play any role in putting
2 that together?

3 A. No.

4 Q. Do you know anything about it?

5 A. I am familiar with the order.

6 Q. Do you know who did put it together?

7 A. I believe our -- our legal office.

8 Q. Do you know if they communicated with Duke
9 Energy when they put it together?

10 A. Not to my knowledge.

11 Q. If I could direct you to the excerpts from Dr.
12 Rudo's deposition, which is Exhibit 637, and direct you
13 to page 43 of that -- those excerpts.

14 (Witness peruses document.)

15 First, did you -- during the meeting, did you
16 ever indicate to Dr. Rudo that the Governor had a concern
17 about the language on the forms?

18 A. No.

19 Q. Okay. Did you ever indicate to him that the
20 Governor thought you all needed to discuss the language
21 on the forms?

22 A. No.

23 Q. Look -- if you look at line 10, Dr. Rudo says
24 -- referring to you -- or referring -- anyway, this is
25 what he says: "He had a concern about what we were

1 telling these folks on the forms." Did you have a
2 concern about that?

3 A. The language on the forms, as I recall, was --
4 has -- was already set when I got there.

5 Q. Well, I guess, did you have a concern about
6 what HHS was telling the well owners on the forms, as Dr.
7 Rudo testified?

8 A. No.

9 Q. Did the Governor have such a concern?

10 A. No.

11 Q. All right. Look at line 12. He says, "Their
12 concern was initially telling people not to drink the
13 water. He felt that was a pretty strong thing to do."
14 Did you have those concerns -- that concern?

15 A. I -- I want to also be clear that he is also
16 saying here in this deposition -- the Governor never
17 specifically said -- I want to reiterate that the
18 Governor did not participate in any way in this
19 conversation.

20 Q. I heard -- okay. Go ahead. So my concern now
21 is -- I mean, my question now is about the sentence that
22 begins, "Their concern" -- the two sentences. "Their
23 concern was initially telling people not to drink the
24 water. He felt that was a pretty strong thing to do."
25 Did you have a concern about telling people not to drink

1 their water?

2 A. I did not have a -- I was not concerned with
3 it, no.

4 Q. Did you feel that telling people not to drink
5 their water was a pretty strong thing to do? Did you
6 indicate that to Dr. Rudo?

7 A. My -- no, I did not say that.

8 Q. Did the Governor have that concern?

9 A. I can't speak for the -- for the Governor.

10 Q. Did he ever express that concern to you?

11 A. No.

12 Q. And then Dr. Rudo said, "He spent about -- at
13 least half an hour explaining" -- did Dr. Rudo spend
14 about half an hour explaining in the meeting?

15 A. I don't think that is accurate.

16 Q. And then if you skip down, at line 18 he says,
17 "I explained to him the risk assessment process: what we
18 do, how we do it, what we base it on, that it all science
19 based." Did that happen? Did he explain that to you?

20 A. He did discuss some of the -- the risk
21 assessment process.

22 Q. Then if you could go over to page 45, please.
23 Beginning at line 8, he says, "I think after we explained
24 it to him, I think he understood a lot better why we were
25 doing it this way." Did you feel, after the meeting, you

1 understood better what HHS was doing on its Health Risk
2 Assessment form?

3 A. When you say that I understood "what they were
4 doing," what specifically are you referring to?

5 Q. Well, what the purpose of the form was and
6 what they were trying to accomplish by sending it to the
7 well owners?

8 A. You are talking about the recommendation?

9 Q. Yes.

10 A. I understood why he would not be able to
11 calculate individual risk.

12 Q. And -- and why was that?

13 A. Well, I am not a scientist, but as I
14 understand it, it involved just being very complex to
15 calculate and do for each individual well owner, a
16 specifically tailored risk.

17 Q. Now, do you know -- or did you participate in
18 the decision of what the language finally -- the final
19 language would be in the Health Risk Evaluations that
20 went out to the well owners?

21 A. No, that -- that was a decision between the
22 Secretaries.

23 Q. And by that you mean the Secretaries of DEQ
24 and HHS?

25 A. Yes.

1 Q. Did you have any communication with anyone
2 after this meeting about what the final language on the
3 Health Risk Evaluation forms would be?

4 A. Not that I recall, no.

5 Q. So this was -- this was your last interaction
6 or dealing with the language on the Health Risk
7 Evaluations before they went out?

8 A. That is the last I can remember.

9 Q. And if I could show you -- excuse me just a
10 minute -- what has been marked as Exhibit 641, it is an
11 opinion piece by two officials -- one at DHHS and one at
12 DEQ -- dated August 10, 2016. Did you play any role in
13 preparing that?

14 A. No.

15 Q. Did you see it before it went out?

16 A. No.

17 Q. And let me show you what has been marked
18 Exhibit 640. That is a letter that Mr. Stith sent out on
19 August 9, 2016, to *The News and Observer*. Did you
20 prepare that letter?

21 (Witness peruses document.)

22 A. I -- I don't think it is accurate to say I
23 prepared the letter. I certainly helped work on the
24 letter.

25 Q. Who prepared the first draft?

1 A. I -- it would have been one of my staff
2 members.

3 Q. And who was that?

4 A. I believe it was -- I am not a hundred percent
5 sure. It was either Jason Tyson or -- or Graham Wilson,
6 our Press Secretary. It would have been someone in our
7 office.

8 Q. You were here when I asked Mr. Stith about
9 this. I am going to direct you to the same part. And
10 that is the next to the last paragraph talks about
11 something that happened during the Hunt administration
12 involving Dr. Rudo. What is that paragraph based on?
13 What materials?

14 A. I know there was an Associated Press article
15 that we saw that -- that references the back-and-forth
16 between the -- I can't remember the exact acronym for
17 them. They were a different -- it was DENR, whatever
18 that Department was called under the Hunt administration,
19 and the NC State scientist.

20 Q. Did you find -- who found that article -- the
21 Associated Press article?

22 A. Yes, I had found the article.

23 Q. And how did you find it?

24 A. Just searching on the -- on line.

25 Q. Searching what?

1 A. Searching through a Google search.

2 Q. And what did you put in to search for it?

3 A. I don't remember the specific search terms.

4 Q. Was it Rudo? Was Rudo one of them?

5 A. It was -- probably involved his name, yes.

6 Q. Could I see that just a minute?

7 (Document handed to counsel.)

8 This letter says -- the letter that Mr. Stith
9 sent in says, "The memo was later revealed to be false."
10 How was it false?

11 MR. PHILLIPS: Well, if you are going to --
12 if you are asking about this document, I think the proper
13 thing to do is to let him have the document, if you are
14 going to ask him that.

15 MR. HOLLEMAN: Oh, sure.

16 THE WITNESS: And can you repeat that
17 question?

18 BY MR. HOLLEMAN:

19 Q. The letter says, "This memo was" ---

20 A. That the memo was ---

21 Q. --- "later revealed to be false." How was it
22 false?

23 A. Well, according to the Associated Press
24 article, there was a conversation between Dr. Rudo and
25 the NC State scientist, where he described her as a way

1 -- I don't remember the exact word, but it was --
2 described her tone and her -- her being unstable, said
3 she dominated the conversation. And there was a specific
4 quote in there. And then the audio recording of that
5 phone call that was later released by the NC State
6 scientist showed that he had made misstatements and
7 mischaracterizations about that phone call.

8 Q. Which -- what was the misstatement?

9 A. I don't have the specific memo in front of me.
10 I would need to ---

11 Q. So you don't remember what the false statement
12 was referred to in this letter?

13 A. I am referring -- I relied on the Associated
14 Press article.

15 Q. But I am saying, do you remember what the
16 Associated Press article said was a false statement ---

17 A. It said ---

18 Q. --- that this letter refers to?

19 A. It said that he described her as dominating
20 the conversation and that is not what the audio showed,
21 that he was talking with her the -- you know, talking the
22 whole time. The article also described a specific quote.
23 I don't remember what that quote is off the top of my
24 head.

25 Q. Okay. So you don't remember the quote that

1 was said to be false, is that correct?

2 A. Not -- not at the moment, no.

3 Q. Can I see that?

4 (Document handed to counsel.)

5 Did you do anything to confirm the statements
6 here, other than to read that Associated Press article?

7 A. No, I assumed it was a -- assumed the article
8 was accurate.

9 Q. Did you check for any subsequent articles, or
10 did you just read that one?

11 A. That was -- I also saw it published in the
12 *North State Journal*, as well.

13 Q. The same article?

14 A. Uh-huh, a reference to it, as well.

15 Q. Did you read any subsequent Associated Press
16 articles about this -- this dispute?

17 A. I did not, no.

18 Q. So you don't know what was later discovered
19 about as being on the audio recording or anything about
20 it?

21 A. No.

22 Q. Other than what was in that first article?

23 A. No.

24 Q. Did you talk to Dr. Rudo before this letter
25 was prepared August 9th?

1 A. No.

2 Q. Did you talk to Dr. Davies?

3 A. No.

4 Q. Did you review the letter with counsel before
5 it was sent out?

6 A. I -- I don't recall whether or not we did.

7 Q. And did you review this letter with anyone
8 other than you, Mr. Stith, and one member of your staff
9 that you identified earlier?

10 A. Yes, that is all I can recall talking about
11 it.

12 Q. Let me show you what has previously been
13 marked as Exhibit 279. That is -- it is a letter dated
14 June 4th, 2015, from North Carolina DENR, which has
15 attached to it an HHS Well Water Information and Use
16 Recommendations to a Mr. Embarmin (phonetic), if you
17 could share that one with me.

18 Now, is this -- I believe you earlier said
19 there were some scores you were concerned about. What
20 are the scores that you were referring to?

21 MR. PHILLIPS: Wait a minute. Objection to
22 the form. I don't think -- you haven't laid any
23 foundation at all for asking him about this letter -- I
24 mean -- whether he has seen it. I mean, I don't --
25 Frank, I don't know if he has seen it.

1 BY MR. HOLLEMAN:

2 Q. Have you ever seen the "do not drink" letter
3 before that went out to people in North Carolina about
4 their wells?

5 A. I have -- I have seen -- I am not sure that is
6 this specific one, but I have seen a version of this
7 form.

8 Q. Have you ever been involved with the "do not
9 drink" letters that have gone out to any well owners,
10 other than those who live around Duke Energy coal ash
11 sites?

12 A. No.

13 Q. So you think you have seen a version of this
14 letter, at least, correct?

15 A. Yes. I don't ---

16 Q. When you referred to "scores" earlier in
17 connection with the "do not drink" letter, were you
18 referring to anything that you see on this letter?

19 A. I was referring to the -- the results for any
20 constituents that they calculated risk for.

21 Q. So in this instance, is it the chart on the
22 first page of the letter which records chromium 21.8? Is
23 that what you are referring to as a "score"?

24 A. I believe so. I am -- I am not a scientist.

25 Q. I am just asking what you referred to it as.

1 All right. And then where is the language -- you said
2 you were talking about some language on the form earlier.
3 Do you see it on this version?

4 A. I do. It is on -- it is right here
5 (indicating) on the form.

6 Q. It is on the page that is headed "North
7 Carolina Well Water Information and Use Recommendations,"
8 is that right?

9 A. Correct.

10 Q. Okay. And you are referring to the language
11 in small print at the bottom, is that correct?

12 A. Correct.

13 Q. And what was your concern about that language?

14 A. Is there any way to give a specific risk
15 associated with whatever -- whatever their particular
16 results were. This was reference to just the -- the
17 Health Screening Level that they base their
18 recommendation on, not -- you know, not -- I will just
19 leave it there.

20 Q. If you look under the section called "Test
21 Results and Use Recommendations," the last sentence says,
22 "While this recommendation represents the maximum health
23 protection, your well would still meet all the criteria
24 of the Federal Safe Drinking Water Act for public
25 drinking water sources." Do you see that?

1 A. Yes.

2 Q. Did you suggest that that sentence be
3 included?

4 A. I don't recall saying that.

5 Q. Do you recall whether you did or not?

6 A. Well, the versions of the forms that I saw all
7 had that form -- all had that language already in it.

8 Q. Did you -- did you suggest the language be in
9 there?

10 A. No, I think that was the -- that was the
11 language the Secretaries had agreed upon.

12 Q. Did you discuss this language with Dr. Rudo,
13 or language like this?

14 A. I -- I think he -- I think it was brought up
15 in that conversation. I don't remember any specifics.

16 Q. Did he bring it up or did you bring it up?

17 A. I -- I can't recall.

18 Q. Do you remember what you said about language
19 referencing the Federal Safe Drinking Water Act in that
20 meeting?

21 A. No, I don't remember any specifics.

22 Generally, I do remember asking him -- I had a
23 *Winston-Salem Journal* that had their -- I don't know if
24 it is a monthly or quarterly water results. And I
25 remember asking him what would you do if this -- if this

1 was a well? And he said that he would issue a -- the "do
2 not drink" recommendation. And I just remember saying,
3 "Well, why do you have -- why do we have a different
4 system for -- there is an inconsistency from a
5 communications standpoint in -- you know, how do we
6 bridge that gap from a communications standpoint when we
7 treat this water differently from the other.

8 Q. So, let me go back to this question, though.
9 Did you -- do you remember discussing with him, including
10 in the Health Risk Evaluation form which you have before
11 you -- the Well Water Information and Use Recommendations
12 -- language about the Federal Safe Drinking Water Act?

13 MR. PHILLIPS: I think you have already asked
14 that question.

15 THE WITNESS: I have already answered that.

16 BY MR. HOLLEMAN:

17 Q. And what is the answer?

18 A. That -- that the language was already in the
19 form.

20 Q. I know. But do you remember -- that is not my
21 question. My question is, do you remember discussing it
22 with them?

23 MR. PHILLIPS: I think you have already
24 answered that question, I think you have already asked
25 it.

1 MR. HOLLEMAN: Well, what is the answer?

2 MR. PHILLIPS: He has answered it.

3 MR. HOLLEMAN: I don't think he has answered
4 it clearly.

5 MR. PHILLIPS: Maybe the reporter can read it
6 back.

7 MR. HOLLEMAN: I would like -- I think I can
8 ask the same question twice, anyway, under the Federal
9 Rules, but I -- I don't remember you answering it
10 clearly. I mean, "yes" or "no," I mean, if that is the
11 answer.

12 BY MR. HOLLEMAN:

13 Q. Did you discuss including language -- the
14 Federal Safe Drinking Water Act in the language on this
15 form?

16 A. As I said before, it was -- yes. It was -- it
17 was brought up. I don't remember who brought it up.

18 Q. And were advocating for it being -- the
19 Federal Safe Drinking Water Act being included in this
20 form?

21 A. I did not advocate for any specific position.
22 That -- that decision was made by the Secretaries.

23 Q. Do you remember what, if anything, Dr. Rudo
24 said about the Safe Drinking Water Act language on this
25 form?

1 A. I don't remember specifically. I -- I know he
2 made references to, you know -- just made reference to
3 possibly putting that in other places on the document,
4 but I -- I just wasn't aware that -- or, well -- no.

5 Q. "In other places in the document." Are you
6 referring to put it in the D-E-N-R, or DENR letter rather
7 than on the health form of HHS?

8 A. That was -- I can't recall specifically. I
9 think that he may have suggested that.

10 Q. Have you met with Mr. Reeder at DEQ about coal
11 ash?

12 A. I can't recall any specific meeting.

13 Q. Were you involved in the issuance of the "do
14 drink" letter in 2016?

15 A. I had awareness that it was going on; that is
16 about it.

17 Q. Did you discuss it with either Mr. Reeder or
18 Dr. Williams before it went out?

19 A. I -- I had an awareness from Dr. Williams that
20 it was going out, but that is it.

21 Q. Did you see the letter or review it before it
22 went out?

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

24 Q. Did you make any suggested changes or edits to
25 the letter before it went out?

1 A. I don't recall doing that.

2 Q. Did anyone in your office review the "do
3 drink" letter before it went out in 2016?

4 A. Not to my knowledge.

5 Q. Okay. Did the Governor review it?

6 A. Not to my knowledge.

7 Q. When the Governor called you during your
8 meeting with Mr. -- Dr. Rudo, where was the Governor?

9 A. I believe he was traveling to -- just leaving
10 an event.

11 Q. And so he was in his vehicle -- or in a
12 vehicle?

13 A. Correct.

14 Q. And what phone did he call you from?

15 A. A mobile phone.

16 Q. And is it his normal government mobile phone?
17 Does he have just one?

18 A. I -- I am not sure if he had -- he called in
19 from the phone -- the number I know is his.

20 Q. And what is that number?

21 A. It is saved in my address book. I don't know
22 it off the top of my head.

23 Q. Is the transcript of Dr. Rudo's deposition a
24 public record?

25 MR. LONG: Object to the form.

1 MR. PHILLIPS: Yes, object. I object, as
2 well. That is a -- that would call for a legal
3 conclusion.

4 MR. HOLLEMAN: That is his job, part of his
5 official responsibilities.

6 MR. PHILLIPS: Well, I don't think he is --
7 he is not the judge.

8 MR. HOLLEMAN: Well, those decisions are
9 normally made by the agencies, so that is my question.

10 BY MR. HOLLEMAN:

11 Q. Given your responsibility, is the transcript
12 to the Rudo deposition a public record?

13 MR. LONG: I will object to the form, and
14 also note that this issue is being litigated in the
15 Federal Court right now. It is inappropriate to ask this
16 witness to opine on something that is pending before
17 Magistrate Judge Peake.

18 BY MR. HOLLEMAN:

19 Q. That is my question.

20 A. On questions like that, I would refer to
21 General Counsel before we released any public records. I
22 wouldn't be able to ---

23 Q. You don't ever make a decision on your own
24 whether something is a public record?

25 A. I -- I rely on General Counsel.

1 Q. I understand that. But do you, yourself, ever
2 make decisions on whether something is a public record
3 and release it without discussing it with counsel?

4 A. I can't -- very, very -- things that I know
5 are -- copies of documents we have already produced. But
6 generally speaking, we go through General Counsel.

7 Q. Have you done that in this instance, as to the
8 Rudo transcript?

9 A. No.

10 Q. Have you made a determination -- an agency
11 determination whether the Rudo transcript is a public
12 record?

13 MR. LONG: Object to the form.

14 THE WITNESS: An agency determination? I am
15 not ---

16 BY MR. HOLLEMAN:

17 Q. As the Communication -- in your role as
18 Director of the Office of Communications, have you or the
19 Office of Communications or the Governor's Office
20 determined whether the Rudo transcript is a public
21 record?

22 MR. LONG: Object to the form.

23 THE WITNESS: I don't -- not to my
24 knowledge.

25 BY MR. HOLLEMAN:

1 Q. Have you received any public records requests
2 for a copy of the Rudo transcript?

3 A. I am not -- I am not sure we have -- I don't
4 know off the top of my head.

5 Q. You don't know one way or the other?

6 A. No, sir.

7 Q. Have you ever received anything of value from
8 Duke Energy?

9 A. No.

10 MR. PHILLIPS: We are really getting a little
11 far afield here, but ---

12 MR. HOLLEMAN: There is no pending question.
13 But let us go confer, and I may be able to finish up.

14 MR. HOLLEMAN: OFF THE RECORD. 12:15 P.M.

15 (A BRIEF RECESS WAS TAKEN.)

16 MR. HOLLEMAN: ON THE RECORD. 12:22 P.M.

17 BY MR. HOLLEMAN:

18 Q. Your meeting with Dr. Rudo and Ms. Gerlach --
19 when during the day did it occur?

20 A. I don't remember the exact time.

21 Q. Was it in the morning or the afternoon or the
22 night?

23 A. It was in the afternoon, probably.

24 Q. Was it before 5:00?

25 A. Yeah, I believe so.

1 Q. It was before the end of the business day?

2 A. Correct.

3 Q. How long had Ms. Gerlach been with you before
4 Dr. Rudo arrived?

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

6 Q. Was it just soon after she arrived or some
7 time?

8 A. A few minutes.

9 Q. Okay. So when you -- when you said the - the
10 meeting lasted 20 minutes to an hour, were you referring
11 to the entire meeting or just when Dr. Rudo was there?

12 A. I don't think I have said 20 minutes to an
13 hour.

14 Q. I think you did, but tell me again how long do
15 you think the meeting lasted?

16 A. I said -- I think I remember saying roughly
17 half an hour or so.

18 Q. Okay. And when you say that, are you
19 referring to the entire meeting, or just while Dr. Rudo
20 was there?

21 A. The -- the entire meeting.

22 Q. Okay.

23 A. But I don't have a calendar, so I don't know
24 the specific time.

25 Q. I am sorry, I didn't hear you.

1 A. I don't have a calendar documentation of it.

2 Q. You don't or do?

3 A. I do not.

4 Q. Okay, do not. Now, I think you said two
5 people came in, other than you and Dr. Rudo and Ms.
6 Gerlach, but they just came in and out. Did you have an
7 assistant who sat in on the meeting, or any other person?

8 A. No.

9 Q. Apart from yourself -- I have asked you about
10 yourself, but did anyone else in the Governor's Office
11 offer any changes to the 2015 "don't drink" letter?

12 A. Not to my knowledge.

13 Q. Prior to your meeting with Dr. Rudo and Ms.
14 Gerlach on April 2nd, 2015, had you ever talked to the
15 Governor about the "don't drink" letter or about the
16 issue of contamination wells around Duke Energy coal ash
17 sites?

18 A. Yes.

19 Q. Okay. And what was the nature of that
20 conversation?

21 A. More of an awareness that -- that they were
22 working on it. It -- I think the decision -- like I said
23 before, all the decisions to do all of that had already
24 been, you know, reached by the two Secretaries of the
25 Department.

1 Q. It was before the decision was reached by the
2 two Secretaries?

3 A. No, no, no.

4 Q. I am sorry. I just couldn't hear you.

5 A. That decision had already been reached by the
6 Secretaries.

7 Q. And when you say "they were working on it,"
8 who are you referring to? You said you told the Governor
9 they were working on it?

10 A. Both Departments.

11 Q. The two Departments? And did the Governor
12 express any concerns about what the two Departments were
13 headed to doing?

14 A. I don't -- I don't recall that.

15 Q. Did he say anything or just listen to what you
16 said?

17 A. I -- I don't recall any -- any specifics.

18 Q. The call from the Governor that came in during
19 the meeting, was that a pre-scheduled call?

20 A. No.

21 Q. Did you join the Governor's Office before or
22 after the Dan River spill?

23 A. About two weeks after, I think. February 14th
24 was my first day.

25 Q. I asked you about you, but did anyone else in

1 the Governor's Office other than you -- let me put it
2 this way. Exclude yourself for a moment, because I have
3 asked you about yourself. Did anyone in the Governor's
4 Office object to telling well owners around the Duke
5 Energy sites not to drink their water?

6 A. I can't speak for -- for other folks in our
7 office.

8 Q. That you know of?

9 A. Not to my knowledge.

10 Q. And you, yourself, did not object to that?

11 A. Just to be clear, not object to ---

12 Q. Telling well owners around the Duke Energy
13 coal ash sites not to drink their water. Did you object
14 to telling them that?

15 A. No.

16 Q. Oh. Have you discussed this deposition today
17 with anyone other than your attorneys?

18 A. I discussed it with some family members.

19 Q. Apart from your family?

20 A. No.

21 MR. HOLLEMAN: That is all I have, thank you.

22 MR. LONG: No questions.

23 MS. LeVEAUX: No questions.

24 D I R E C T E X A M I N A T I O N 12:28 P.M.

25 BY MR. PHILLIPS:

1 Q. I do want to ask one question, which is, you
2 testified concerning the meeting with Mr. Rudo that --
3 Dr. Rudo, that you had asked him about the feasibility of
4 including more specific health -- health risk
5 information. Why did you ask him that?

6 A. My understanding is the goal of both the
7 Secretaries and putting that together was that they
8 wanted all the information possible. So by putting more
9 information specific to that well owner, that seemed like
10 that would be providing more information to the well
11 owner.

12 Q. So providing information that would assist a
13 well owner to know specifically what ---

14 A. (Interposing) Specifically about ---

15 MR. HOLLEMAN: Object to the form.

16 MR. PHILLIPS: Well, obviously, I hadn't
17 finished my question.

18 MR. HOLLEMAN: Well, he had started
19 answering, so I had -- that is the reason I objected to
20 the form.

21 MR. PHILLIPS: I am repeating what you had
22 said as part of my question. I wasn't suggesting -- it
23 wasn't a leading question, if that is the basis of your
24 objection.

25 BY MR. PHILLIPS:

1 Q. So the question is were you saying that by
2 providing -- was your meaning that by providing more
3 specific risk information, that a well owner could better
4 evaluate their particular risk?

5 MR. HOLLEMAN: Object to the form.

6 THE WITNESS: Yes.

7 MR. PHILLIPS: All right. Thank you.

8 R E D I R E C T E X A M I N A T I O N 12:30 P.M.

9 BY MR. HOLLEMAN:

10 Q. And did Dr. Rudo explain to you the
11 difficulties with attempting to do that?

12 A. Yes.

13 Q. And based on the experience of their agency
14 over decades in communicating with well owners, is that
15 correct?

16 A. I -- I am not -- I can't speak to their -- to
17 what he has done in the past.

18 Q. But you had no experience in communicating
19 with well owners about the contamination in their wells,
20 is that correct?

21 A. Yes.

22 MR. HOLLEMAN: No further question.

23 MR. LONG: No questions.

24 MS. LeVEAUX: No question.

25 (THE DEPOSITION WAS CLOSED AT 12:31 P.M.)

S I G N A T U R E

I HAVE READ THE FOREGOING PAGES 6 TO 80 WHICH CONTAIN A CORRECT TRANSCRIPT OF THE ANSWERS MADE TO THE QUESTIONS HEREIN RECORDED. MY SIGNATURE IS SUBJECT TO CORRECTIONS ON ATTACHED ERRATA SHEET, IF ANY.

(SIGNATURE OF JOSHUA N. ELLIS)

STATE OF _____

COUNTY OF _____

I CERTIFY THAT THE FOLLOWING PERSON PERSONALLY APPEARED BEFORE ME THIS DAY, AND I HAVE PERSONAL KNOWLEDGE OF THE IDENTITY OF THE PRINCIPAL OR HAVE SEEN SATISFACTORY EVIDENCE OF THE PRINCIPAL'S IDENTITY, OR A CREDIBLE WITNESS KNOWN TO ME HAS SWORN TO THE IDENTITY OF THE PRINCIPAL, ACKNOWLEDGING TO ME THAT HE OR SHE VOLUNTARILY SIGNED THE FOREGOING DOCUMENT FOR THE PURPOSE STATED HEREIN AND IN THE CAPACITY INDICATED:

(NAME OF PRINCIPAL)

(DATE)

(SIGNATURE OF NOTARY)

(OFFICIAL SEAL)

(NOTARY'S PRINTED NAME)

I, MICHAEL B. CARTER, NOTARY/REPORTER, DO CERTIFY THAT THE FOREGOING TRANSCRIPT WAS DELIVERED TO THE WITNESS EITHER DIRECTLY OR THROUGH THE WITNESS' ATTORNEY OR THROUGH THE ATTORNEY RETAINING THE WITNESS ON _____, AND THAT AS OF THIS DATE, I HAVE NOT RECEIVED THE EXECUTED SIGNATURE PAGE OR ERRATA SHEET.

THEREFORE, MORE THAN 30 DAYS HAVING ELAPSED SINCE THE RECEIPT OF THE TRANSCRIPT BY THE WITNESS, THE SEALED ORIGINAL TRANSCRIPT IS HEREBY FILED WITH THE ORDERING ATTORNEY BY MEANS OF PRIORITY MAIL, IN ACCORDANCE WITH THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.

(DATE)

MICHAEL B. CARTER, NOTARY/REPORTER
NOTARY NUMBER 19960030065
MY COMMISSION EXPIRES FEBRUARY 15, 2021

STATE OF NORTH CAROLINA

COUNTY OF NASH

C E R T I F I C A T E

I, MICHAEL B. CARTER, NOTARY PUBLIC-REPORTER, DO
HEREBY CERTIFY THAT JOSHUA N. ELLIS WAS DULY SWORN BY ME
PRIOR TO THE TAKING OF THE FOREGOING DEPOSITION, THAT THE
IDENTITY OF THE WITNESS WAS VERIFIED, THAT SAID DEPOSITION
WAS TAKEN BY ME AND TRANSCRIBED UNDER MY DIRECTION, AND
THAT THE FOREGOING PAGES 6 THROUGH 80 CONSTITUTE A TRUE
AND CORRECT TRANSCRIPT OF THE TESTIMONY OF THE WITNESS.

I DO FURTHER CERTIFY THAT I AM NOT COUNSEL FOR
OR IN THE EMPLOYMENT OF ANY OF THE PARTIES TO THIS ACTION,
NOR AM I INTERESTED IN THE RESULTS OF THIS ACTION.

I DO FURTHER CERTIFY THAT THE STIPULATIONS
CONTAINED HEREIN WERE ENTERED INTO BY COUNSEL IN MY
PRESENCE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
THIS 6TH DAY OF SEPTEMBER, 2016.

MICHAEL B. CARTER
NOTARY PUBLIC FOR THE
STATE OF NORTH CAROLINA
NOTARY NUMBER 19960030065
MY COMMISSION EXPIRES
FEBRUARY 15, 2021