Transcript of Richard Louis Baird, Volume 2

Date: March 1, 2017
Case: IN THE MATTER OF: FLINT WATER CRISIS
STATE OF MICHIGAN

IN THE MATTER OF:
Flint Water Crisis
Michigan Criminal Laws and
Statutes, Including But
Not Limited to Misconduct
In Office.

HIGHLY CONFIDENTIAL

Examination Pursuant to Investigative Subpoena of
RICHAELD L. BAIRD, VOLUME II,
Lansing, Michigan
Wednesday, March 1, 2017
1:34 p.m.

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Pages: 162 - 213
Reported by: Melinda S. Moore, CSR-2258
Examination Pursuant to Investigative Subpoena

of held at the location of:

525 West Ottawa Street, Suite 101,

Lansing, Michigan 48933

Before Melinda S. Moore, a Certified Shorthand Reporter
and Notary Public in and for the State of Michigan.
APPEARANCES:

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ALSO PRESENT:
Jeff Seipenko - Michigan Department of Attorney General
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Lansing, Michigan

Wednesday, March 1, 2017

1:34 p.m.

MR. FLOOD: This is the continuation of the investigative subpoena that started -- when was the date of that? I'll give it to you right here. -- February 23, 2017, with Mr. Richard Baird.

FURTHER EXAMINATION

BY MR. FLOOD:

Q. Rich, you know you're still under oath?
A. Yes.

Q. Okay. When we left off, I asked a question about the state paying or making sure people were able to get to DC and lobby for insurance purposes and the like. I don't want to talk about that right now. I want to talk about a few other things.

MR. LEVINE: Before we go, Randall Levine appearing on behalf of Baird with my associate, Tyler Steward.

MR. FLOOD: Put your name on the record.

MR. STEWART: Tyler Stewart.

MR. FLOOD: Very good. Thanks. I just wanted to hear your voice.
BY MR. FLOOD:

Q. So, Rich, I went through some of your e-mails and documents. And who made the decision -- in your research and your opinion, who made the decision to use the Flint River as a water source?

A. I don't know.

Q. Did you do some research and come up with an opinion?

A. I read some articles and I looked at some minutes of meetings, yeah.

Q. The minutes of the city?

A. Yes.

Q. City council, I should say.

A. City council.

Q. And that was with -- when the EM was around, Edward Kurtz?

A. I believe so, yes.

Q. Okay. And what did you conclude after looking at all that?

A. I was not able to find any formal minutes of a meeting that dealt with the switch to the Flint River. I just found minutes that dealt with the switch to the KWA water authority.

Q. Right. That was in March of 2013, and then later on -- those minutes is what you're speaking of?
A. Yes.

Q. And then subsequent to that, the treasury, along with Dennis Muchmore, the governor, and others did a lot of work on making a determination one way or the other to go to the KWA. Is that what you researched, or you looked at or -- I'm trying to get a sense of what you saw.

A. I didn't see any of those things until discovery and e-mails and press reports and those sorts of things. At the time in realtime I didn't have any line of sight into that.

Q. I'm not holding you to the realtime. I'm not focused on you in realtime. We already established early on in your investigative subpoena that you weren't really into the focus of Flint. You had other issues going on with Detroit; right?

A. Right.

Q. Your focus came into Flint -- although you followed it in the press and the like, your focus came after the crisis started; is that fair?

A. It came more consistent with the publicity with the elevated blood lead levels, yes.

Q. Right. So I'm picking your brain to help me out to figure out -- you peeled the layers of the
onion back in this case. You researched it for 11 months. You found the minutes and looked at some of those. You did that on your own for the KWA. You remember doing that?

A. Yes.

Q. So the KWA, what did you discover, at least what do you think you discovered? Why don't you tell me that.

A. I believe that the elected officials as well as the emergency manager had a significant desire to move away from the Detroit water as its source and to become an equity partner in the KWA formation.

Q. Okay.

(Mr. Simowski present at 1:38 p.m.)

BY MR. FLOOD:

Q. Now, as it relates to that work, you looked -- through those desires, there was a lot of work by the state treasury department, questions by the governor, things of that sort to vet it out of whether or not the KWA was good, bad or indifferent. Did you look at any of that material to see the vetting process by the state other than the EM that's appointed by the state, but other than the city?
A. I did not research it but I had conversations.

Q. And in your conversations -- let's first establish who did you have conversations with?

A. The treasury predominantly.

Q. Andy Dillon?

A. Yes.

Q. And Andy Dillon, he told you the process and the vetting of the process? Yes?

A. I don't recall exactly what Andy said, but he told me that he wanted to make sure that that move to KWA made sense given Flint's financial position.

Q. Fair enough. There was a lot of publicity about Flint joining KWA. Let's just take for argument sake -- good, bad, indifferent, that really doesn't matter to me. For argument sake, that's done, water under the bridge.

MR. LEVINE: Bad pun.

MR. FLOOD: Don't use "flood" in this question either.

BY MR. FLOOD:

Q. So, anyway, let's get to the Flint River as a source. I can't imagine that the executive branch of our state didn't try to figure out, you included, about where did the buck stop with, who made that determination, who made the decision.
I want you to help me out. Did you talk to anybody about who made that decision?

MR. LEVINE: Are you talking about the decision to go to KWA?

MR. FLOOD: No, no.

THE WITNESS: The decision to go to the Flint River.

BY MR. FLOOD:

Q. Two distinct things.

MR. LEVINE: I just wanted to make sure because we're kind of bouncing around a little bit.

MR. FLOOD: No, we're not.

MR. LEVINE: Maybe I am.

MR. FLOOD: You made a bad pun when I said "water under the bridge." I don't care about the KWA. I'm on to the Flint River. He understood my question.

MR. LEVINE: Well, you lost me.

MR. FLOOD: I know.

THE WITNESS: So your question is did I talk to anybody about the decision-making process. Not in any great depth, no.

BY MR. FLOOD:

Q. All right. Short depth, how much short depth?
Did you talk to anybody about the Flint process?
I just want to know did Flint River as a
source -- I'm sure the executive office talked
about it. I'm sure you talked to somebody about
it, looked at it. Did anyone come up with how
did we get to the Flint River as a source?

A. My understanding, Todd, is that the local elected
officials wanted it. They asked for a study to
determine whether it was feasible and what it
would cost, and at the end of the day, they
recommended that the switch be made.

Q. It was never voted on. City council never voted
on using the Flint River as a water source. Did
you know that?

A. I did not know whether there was a vote taken or
not.

Q. So let's just draw this out because I don't want
us to be confused. I want you and I to be on the
same page. I'm just pulling out my legal pad
here. We'll make this No. 18. So if I showed
you that the vote by city council to go with KWA
was March 25, 2013 -- do you know what the KWA
is? That was the -- that was the purchasing of
the construction of a pipe coming up from --
uphill from Imlay City or Lake Huron up to
Genesee County, and using that raw water through Genesee County and that KWA distribution, they voted to go and join the KWA. Is that what your understanding was?

A. It is my understanding that there was a vote to join the KWA.

Q. 7 to 1. Then from that time frame of 3/25/2013, there were discussions with Andy Dillon, the governor, DEQ and others to -- whether or not they were going to approve it or not and sign off on it. Did you know that?

A. I do now.

Q. Okay. Not realtime, but in your study of going back and looking at things? Yes?

A. Yes.

Q. Okay. And suffice it to say, Mr. Dillon, Andy, he signed off on it. Good, bad, indifferent, relying upon the experts and DEQ and the like, he signs off on it. You knew that; correct?

MR. LEVINE: Are you asking if he discovered it after the fact?

BY MR. FLOOD:

Q. Not realtime, but you discovered it after the fact?

MR. LEVINE: Do you know if Dillon
signed off on it? Yes or no?

THE WITNESS: Yes, I know he signed off on it.

BY MR. FLOOD:

Q. You were pausing. I don't want to interrupt you. You had a pregnant thought. Give me your thought.

MR. LEVINE: I don't think he had a pregnant thought.

MR. FLOOD: There's no objections.

There's no objections.

MR. LEVINE: I'm not objecting.

MR. FLOOD: He knows what --

MR. LEVINE: Okay.

BY MR. FLOOD:

Q. Help me out. What were your concerns?

A. I didn't have any concerns, but I recall that the treasurer had some work done to attempt to verify the work that the city had done.

Q. Absolutely. Tucker Young -- he had Tucker Young come into the picture. DWSD was opining. He had DEQ come into the picture. Is that what you're referring to? He had a lot of work done to make the decision. I'm not saying he made the decision independently on his own by flipping a
1 coin. He had a lot of work done.
2 A. My pause was I knew it was not an immediate
3 decision. We had those discussions.
4 Q. Right.
5 A. He had issues that he wanted to vet.
6 Q. And, Rich, you and I -- I've looked through the
7 notes and I see that he vetted it. I'm not
8 challenging the integrity of that process.
9 That's not my concern. So that takes place in
10 April, where he signs off on it after doing the
11 due diligence. Is that what you understood?
12 A. Yes.
13 Q. Okay. Now, May, June 2013, 26 -- so 6/26/2013,
14 there is an expenditure for $171,000 to study and
15 recommendation by an engineering company to use
16 the Flint River as a water source. Are you
17 telling me -- so we're not confused, I want us to
18 be on the same page. -- that you thought this
19 vote on 3/25/2013 was the same as using the Flint
20 River as a water source?
21 A. No.
22 Q. Okay. That's what I was confused with way back
23 when. June 26, 2013, Rich, that decision to
24 purchase an engineering firm's professional
25 services of 171,000, did you see that order?
A. I don't recall if I saw it or not, but --
Q. That's okay.
A. I do know that there was work done.
Q. Okay.

MARKED FOR IDENTIFICATION:
DEPOSITION EXHIBIT 19
1:48 p.m.

BY MR. FLOOD:
Q. How do you know there was work done?
A. In my review of lots and lots of documents, I remember seeing something that referenced the emergency manager approving an expenditure for feasibility to use Flint River water.
Q. So I'm going to give you have Exhibit No. 19.

MR. LEVINE: Do you have a copy of that for me?
MS. EDELEN: No.
MR. LEVINE: You're buying into his stuff now.
MS. EDELEN: That's the truth. I don't have a copy.
MR. LEVINE: Okay. That's fine. This is a short one. I can look with my client.
THE WITNESS: I don't recall seeing this, but it's possible I may have seen it.
BY MR. FLOOD:

Q. Okay. What is your understanding for an emergency manager that wants to spend over $50,000 in a city? What must he do before he can do that?

A. I don't know.

Q. Have you ever heard that he had to go through for an expenditure of more than 50,000 to get approval by the treasurer? Never heard that?

A. No.


A. I don't recall it ever coming up in any discussion I've had with anyone.

Q. In the emergency manager situation with Detroit, you worked on that? Yes?

A. I did.

Q. And you were intimately involved in that?

A. I was.

Q. And any time the emergency manager wanted to spend more than $50,000, did you know he had to go through the treasurer?

A. No. Well, no.

Q. Is there some nuance or something you know that he doesn't have to go through the treasurer?
A. My nuance is that I have always presumed that major expenditures of any kind are reviewed with the treasurer, and I didn't know what the threshold was, 50 or any other number.

Q. Gotcha. Gotcha. So did you ever come to find out that when this vote took place on the KWA, that it was the understanding that they weren't voting on using the Flint River at that time? Did you know that?

A. Could you repeat the question.

Q. Sure. It was probably poorly stated. In 2013, on March 25th of that year, there was a 7-to-1 vote to join the KWA, and in that process, that was not a vote to use the Flint River. That was only to join the KWA. Did you know that or am I wrong? Do you have a different understanding and knowledge?

A. Again, there's a nuance. I recall explicitly there was one "no" vote and that "no" vote was accompanied by a statement that said, "I believe we should go to the Flint River now."

Q. Right. Right. But that wasn't the vote. The vote was to join the KWA.

A. Correct. I did know that.

Q. Not to use the Flint River.
A. I don't know that it was a vote to not use the Flint River but it was a vote to join the KWA. I do know that.

Q. Do you know at the time of the vote whether or not there was approval for the city to borrow money to join the KWA?

A. No.

Q. Did anyone in the executive office or in your studies ever come across or discuss the issue of how could the city borrow money to join the KWA?

A. Not any conversations that I was a part of, no.

Q. Okay. Did you ever come to find out how much money now or any other time it would cost to fix the Flint Water Treatment Plant to service water from the Flint River as a source to the people in the City of Flint?

A. Yes, in recent -- you know, sometime in the last year, I remember reading -- I think the number was $48 million or something like that.

Q. So I have the Rowe. LAN -- Rowe engineering report, and I have the LAN report from 2011.

MR. LEVINE: Are those two different reports, Todd?

MR. FLOOD: Yeah.
Q. So this report was produced by LAN, and it shows the cost of what it would be to update the plant and what must be updated in the plant to use it to produce potable water from the Flint River. And in that study, the total upgrades were 61,498,000.

A. Well, I guess my 48 million isn't a good recollection, then.

MR. LEVINE: Which is this report? Is it the Rowe report or the LAN Rowe report?

MR. FLOOD: This is the LAN report.

MR. LEVINE: L-A-N?

MR. FLOOD: Let me just put it on the record.

MR. LEVINE: Thank you.

BY MR. FLOOD:

Q. This is the analysis of Flint as a permanent water supply. I'm sorry. Analysis of the Flint river as a permanent water supply for the City of Flint.

MR. LEVINE: Authored by?

MR. FLOOD: LAN.

MR. LEVINE: L-A-N, and it's Lockwood something something.

MR. FLOOD: Yes.
MR. LEVINE: Thank you. Lockwood, Andrews & Newnam. What's your question specifically?

BY MR. FLOOD:

Q. Had you ever seen that report?
A. Maybe. I've had an awful lot of things sent to me and it's hard to recall all of them, but it's possible I've seen either this report or parts of it. My number wasn't too far off.

Q. It's going to get worse. Do you ever remember seeing a more current report that showed to join Karegnondi Water Authority versus using the Flint River that -- as a source, it would cost more to update the Flint Water Treatment Plant to produce potable water than it would to join the Karegnondi Water Authority? Did you ever see a study on that?
A. I don't recall.

Q. Do you know how much money the city was guaranteeing as it relates to the KWA?
A. I believe I do.

Q. Tell me what you believe.
A. I believe that they committed to $7 million a year for 28 years.

Q. How much did that come out to as a total?
A. Somewhere in the $200 million range.

Q. So when the ACO -- do you remember looking at the ACO, administrative consent order between the DEQ and the City of Flint?

A. I believe I've seen it, yes.

Q. And when they came up with their ability to borrow money to fix the emergency, the lime sludge lagoon, it was approximately of an $85 million flow-through from the city over to the KWA to allow them to issue bonds for construction of the KWA. Is that your understanding?

A. I don't recall anything relative to that.

Q. Relative to my explanation, do you have an other -- do you have something else --

A. No.

Q. -- in your mind?

A. No.

Q. So the borrowing power as a guarantor was at the time $85 million. To fix the water treatment plant so it could use the Flint River as a permanent source, which is over a month, it would require over $85 million. Had you ever heard that?

A. I don't recall having heard that, no.
Q. How much money has the state, if you know, allocated towards the updates and fixtures and fixing the Flint Water Treatment Plant to date?
A. I don't know.

Q. Does it make sense to you in the big picture here if you see it, I'm going to fix the Flint Water Treatment Plant here, it will cost me over $85 million so I can use it during the gap time of waiting for the Karegnondi Water Authority to finish its system as opposed to I could have just stayed on the DWSD and pumped water up there for three years far less than updating $85 million worth of fixtures? Does that makes sense to you if that were true?
A. It depends.

Q. What on? I need to know what that would depend on.
A. It would depend on whether I'm going to be treating raw water or finished water when I do the Karegnondi. Is there a difference in the raw water from the lake as there is a difference between that and the river?

Q. Would you have to do more upgrades on the plant to use river water or raw water from Lake Huron?
A. I don't know that. I do know that it requires
significant upgrades in order to treat raw water from any source versus finished water from any source, which is what they had been getting.

Q. So let's just think about it depends, because that's what you said. At the time the switch was made in April of 2014, do you think you see anywhere in this world that they put $85 million into the Flint Water Treatment Plant to use it? Let's go on your hypothetical that it's a good idea to fix it up, because we're going to be using it anyway, so go on that hypothetical. Did you see anywhere in the world that they made those upgrades to the plant within one year?

A. I don't know. How would I know?

Q. I'm asking if you saw. That would be "yes" or "no."

A. If I saw what?

Q. They spent $85 million on upgrades on the Flint Water Treatment Plant in one year.

A. I don't know.

Q. So "you don't know" means you haven't seen it? You haven't seen that kind of expenditures into the plant?

A. I have not seen a reconciliation of what was spent. If you want to talk about what's being
spent since January of '16, I'm very up on that.

Q. Tell me what's been spent from January 2016.

A. On total or on the treatment plant?

Q. On the treatment plant.

A. I'd have to look that up.

Q. Where?

A. In my records of what's been appropriated and what's been spent and where the support has gone.

Q. I got it. So what do you think it's been, ballpark?

A. I don't want to speculate. I don't know.

MR. LEVINE: Excuse me. Can I consult with him for a minute?

MR. FLOOD: Sure.

BY MR. FLOOD:

Q. Do you have any idea where we could get that number?

A. I don't know.

Q. Okay. If I pulled it up and Googled it right now, and it came up with a number, would that potentially refresh your recollection of what was spent?

A. I don't -- I don't know. I don't believe that I have a line of sight into that number, so if you have something you wish to show me, show it to me
and I'll do my best.

Q. No, no. I thought -- Rich, I thought you told me that was an area that you know very well as it related to what was being put into the plant from 2016 on, and that's what I was wondering. I want to know how much money was spent in the plant from 2016 January to February 2017.

A. I would need to consult my records.

Q. Not a problem. So you, as you sit here today, have not seen from April of 2013 to April of 2014 an expenditure into that plant in that one-year period of $85 million, have you?

A. I do not believe so, no.

Q. Okay. And you don't know whose decision it was as we sit here today to use the Flint Water Treatment Plant and the Flint River as a water source during the construction of KWA?

A. No, I don't.

Q. And in your research and in your investigation into this case, that has to this date not been revealed to you?

A. That would be correct.

MR. LEVINE: While we're taking this pause, the record should reflect the exhibit that's been marked as 18, the legal pad, bears the
writing of Mr. Flood during his questioning, not Mr. Baird. Thank you.

MR. FLOOD: No, but I'm going to have him initial it. That will be fine. Don't worry. Thank you very much.

MR. LEVINE: Well, as it stands right now.

MR. FLOOD: It's not done. We're still drawing.

MR. LEVINE: I was wondering because it's kind of underneath other documents there.

BY MR. FLOOD:

Q. So this document I showed you over there that your attorney has, Exhibit No. 19, you may or may not have seen that; correct?

A. Correct.

Q. You don't see Mr. Dillon's signature on that anywhere, do you?

A. I do not.

Q. You don't see anyone from the State of Michigan's signature on that, do you, other than the emergency manager?

A. I do not.

Q. So when did you become aware that the Flint River -- we talked about this before, but we
never got a date on it. When did you become aware that the Flint River was actually going to be used for a water source, if you know?

A. I don't recall, Todd.

Q. Okay. I'm just guessing right now. Would it be fair to say a little bit of media attention that came from the city -- and I do need to make a correction as I looked at the record. Harvey Hollins was not in the photograph at the turning of the switch. Howard Croft was there, amongst others, along with the emergency manager, but Harvey Hollins was not.

MR. LEVINE: Thank you because I think the questioning was the Free Press article that showed the picture of Harvey Collins.

MR. FLOOD: Because I went back and looked at the photo.

MR. LEVINE: Thank you.

MR. FLOOD: I just wanted to make that --

MR. LEVINE: Sure.

BY MR. FLOOD:

Q. Fair enough. Would that be a potential date and time you knew a switch was taking place?

A. I recall seeing the photo. I don't recall if I
saw it in realtime or later, but I saw the photo.

Q. Do you know that was in 2014, that photo was taken? You may not have seen it in realtime, but --

A. I accept if you're telling me that's when it was taken. I have no reason to dispute that.

Q. It was approximately one year after the vote of joining the KWA in April of 2014. You talked about, with your friends and colleagues, if you remember, hard to believe that they're using the Flint River, it was always orange. Your mom used to tell you or -- you weren't allowed to swim in the water for a period of time, and that the water was not the world's best looking. Do you remember talking about that?

A. What I recall is talking about the fact that I drank the Flint River water -- my mother reminded me -- until I was 11 years old, and that I recall her telling me to let the water run in the morning because it came out orange until it stopped coming out orange.

Q. There you go. Right.

A. And as for swimming in the Flint River, it did not appear to be the kind of a color that we would want to go swimming in.
Q. Right. So the correlation of that switch and then your memory and journey in life, you have a reference point, I think you said, or talked about, "I discussed that with some of my colleagues"?

A. Yes, I recall talking with some of my Flint colleagues.

Q. Okay. In your studies of what's gone on in the City of Flint and using the Flint River as a water source, before I end in this area, you had no idea that it cost so much money to fix up the plant to use it and to take water from the Flint River and distribute it to the citizens of Flint?

A. I don't recall having any knowledge at all about what the startup costs of the water treatment plant were.

Q. Do you know how much money it cost to purchase water from the City of Detroit per year on a yearly basis?

A. Approximately, yes.

Q. What was it?

A. It ranges between 900,000 and 1.2 million a month.

Q. Okay. I'm tearing out that page so we can have it for the record. I have some doodling on there. That's an accurate depiction or timeline...
of things we just talked about; is that fair?

MR. LEVINE: The subject of his questioning for the last 15 minutes.

BY MR. FLOOD:

Q. That's a fair and accurate representation of the subject matter?

MR. LEVINE: Not that you put it on there or you gave the facts but that's what we've been talking about.

THE WITNESS: Yes.

MR. LEVINE: That's 18.

BY MR. FLOOD:

Q. So all I want to you do, if you would, just initial it and I'm going to put 18 on there.

MARKED FOR IDENTIFICATION:

DEPOSITION EXHIBIT 18

2:14 p.m.

BY MR. FLOOD:

Q. I want to talk about Legionella for a moment. Have you had discussions with Eden Wells as it relates to Legionella?

A. Yes.

Q. How often?

A. I don't know. I don't recall.

Q. Do you remember her coming into your office up in

...
Flint and talking about Legionella?

A. Perhaps. We've had conversations at various times.

Q. What have those conversations been about?

A. They've been about sourcing and selecting a research project to determine if in fact there's a linkage between the switch to the Flint River water and the spike in Legionella cases that occurred in Flint, and then also general -- general education to me about Legionella and strains of Legionella and how you get it and what it does to you and how it's treated, general knowledge sorts of things.

Q. Did she tell you that the Legionella grows between the biofilm and the service lines of the lead pipes or iron pipes? Did she ever tell you that?

A. I don't recall that that was an explicit statement. I may have -- I don't recall her telling me that, no.

Q. Where do the -- where did she tell you Legionella grew?

A. I don't recall what Eden said about it. I've also read a lot of information, and I'm having a difficult time figuring out where knowledge came
from, whether it came from a person or documents I read.

Q. Let's go into your knowledge. Do you remember what you read or heard about where Legionella grows?

A. Generally speaking, yes.

Q. Tell me what that is.

A. That it can grow in moist or stagnant, you know, non-moving environments where water has a tendency to puddle up, and that it actually is a very frequent bacteria that probably is found in up to a third of households in any given city.

Q. How does it get into the house?

A. My understanding is that it's a -- it's a bacteria that grows and there has to be certain conditions precedent for it to grow.

Q. So does it grow in the house? Is that what you're saying?

A. Wherever the water goes is where it can grow, yes.

Q. Can it grow in the service lines?

A. I presume. I don't know that I've ever asked that, but --

Q. Has Eden Wells told you her opinion of where the outbreak of Legionella has come from?

A. Could you be more explicit?
Q. Has she opined on any reference to Legionella and what was the cause of the outbreak in Flint?
A. No.

Q. She hasn't told you what she thinks what the cause was?
A. I don't believe that she ever told me that she had a view as to what created the spike.

Q. She didn't tell you it was McLaren Hospital?
A. Not that it was she who told me that, but somebody did tell me that a predominance of the cases were at McLaren.

Q. Someone told you that McLaren held the majority of the cases that was the outbreak?
A. Yes.

Q. In what year?
A. I'm presuming -- I think it was '14.

Q. So where was the majority of cases coming from in 2015?
A. I don't know.

Q. So have you talked to Nick Lyon about this?
A. About where the cases came from?

Q. Yes.

A. Yes.

Q. And what does he say?
A. Nick has said he -- he's mentioned that McLaren
had a lot of them.

Q. So is it a concerted thought that McLaren -- it's a McLaren problem, a McLaren issue?
A. I don't know.

Q. Is that your thought?
A. I'm not qualified.

Q. I understand. I'm not asking your qualifications. I'm asking in your mind is that your thought? I don't care about your qualifications. You could be in 6th grade and tell me your thought.
A. I honestly do not have an opinion on the causal relationship. I don't know.

Q. Okay. Do you know how you catch legionellosis, the bacteria, how it can affect you?
A. I have been told and I've researched that it predominantly occurs through water vapor, or vapor, steam, condensation.

Q. You been told that you can drink it and not catch it?
A. I've read that, yes.

Q. Have you been told that you can ingest it and catch it?
A. I've read that there are different ways to ingest beyond drinking it, yes.
Q. And actually being infected with the bacteria?
A. I don't recall that piece of it.
Q. So you've heard of drinking something and having it go down the windpipe?
A. Yes.
Q. Have you heard that if you drink water and it goes down the windpipe and it has Legionella in it, and it becomes aerosolized, as you cough or regurgitate you can actually be infected with the bacteria?
A. I had not heard that, no.
Q. This is the first time today?
A. It is.
Q. Have you talked to any experts on Legionella?
A. No.
Q. Do you know how many cases of deaths there are in the City of Flint of Legionella?
A. Approximately.
Q. How do you know this?
A. I think news reports.
Q. So that's it? You don't have any inside intel from the state, just from the Detroit News, Free Press or news reports from somewhere else, media?
A. Yes.
Q. What's the media told you that you're relying on?
A.   I think the number was 10 to 12, in that range.
Q.   Is that a crisis?
A.   I don't know. I would --
Q.   How many people have to die before it becomes a crisis?
A.   I was about to say anything more than zero would be of concern.
Q.   So would you have any reason to doubt that there's upwards of 21 deaths of Legionella in the city -- caused from the bacteria in the City of Flint? If you're relying upon a news media outlet, you don't believe everything you read in the news; right?
A.   Is your number a single-year number?
Q.   Total from '14 and '15.
A.   I have no reason to dispute it.
Q.   You don't --
A.   It's not a number I've dwelled on, no.
Q.   You don't have any hard data from the Michigan Department of Health and Human Services?
A.   I'm sure that it exists, but I don't have it.
Q.   Do you know if there are any deaths that have occurred in Flint where the sputum samples -- do you know what a sputum sample is?
A.   Yes.
Q. What is a sputum sample, for the record?
A. It is the phlegm from lower in the throat that is either coughed up or swabbed out.
Q. Do you know if there's any sputum samples of deaths from two different individuals that match?
A. I don't know that.
Q. Have you heard that?
A. I've heard something that I think is that, but it talks about DNA comparison and things that I don't know about.
Q. Tell me what you're talking about. You heard something --
A. If I knew what I was talking about, then I would talk about it. I don't know what I'm talking about.
Q. Tell me what you've heard and from where and from who. Where were you and who did you hear it from?
A. Hear what from?
Q. Your matching of sputum samples. I asked you if you have heard about two individuals that have matching sputum samples and deaths.
A. I don't know what that means.
Q. So phlegm, we know what phlegm -- you just identified what sputum is.
A. I know what that is.
Q. Two human beings, distinctly individuals die, victim one, victim two, and their sputum samples that they had coughed up in their phlegm were identical bacteria.

A. No, I don't think I know about that. I think I was confused about something I had read.

Q. I see. Would you want to know something about that if you were in the executive office for the governor or would you want that kept from you?

A. I wouldn't want anything kept from me that is a public health issue, period.

Q. I believe that to be true.

A. Thank you.

MR. LEVINE: Thank you.

MR. FLOOD: So I'm going to go off the record for a moment and get some water.

(Off the record at 2:26 p.m.)

(Back on the record at 2:46 p.m.)

BY MR. FLOOD:
Q. In December of 2015, there was a task force that was put together. Were you ever part of a meeting with Harvey Hollins and the task force where Harvey Hollins may have learned about Legionella in December of 2015 that you can
recall?

A. I need to separate those questions.

Q. Sure. Go ahead.

THE WITNESS: Can I talk to you for just a minute?

MR. LEVINE: Of course. I think that's why I'm here. I have to earn my keep.

(Off the record at 2:47 p.m.)

(Back on the record at 2:48 p.m.)

BY MR. FLOOD:

Q. I was looking at that December time frame with Harvey Hollins and with the task force. Were you part of a meeting with him on the task force where they learned about Legionella?

A. I want to break it down, because --

Q. Sure.

A. -- there were various tasks forces. I want to make sure we're talking the exactly the same.

Q. Sure.

A. Are you talking about the Flint water after action task force that was chaired by Ken Sikkema and Chris Kolb?

Q. Yes.

A. So that task force was stood up in October because I stood it up.
Q. I saw the people. You sent out an e-mail. You had all their names. You had everybody's e-mail addresses and telephone numbers. I reviewed that from your documents.

A. Okay. So I just want to make sure because I was also involved in setting up the FWICC and so I wanted to make sure.

Q. Yeah, I have the distinction between the two. The one that was put together --

A. Yes.

Q. -- that dealt with the Flint water task force, right.

A. And then Harvey or I or sometimes both would be invited to those meetings.

Q. Right.

A. I don't recall -- I don't recall being at a meeting where Legionella was discussed, but I do recall, as I said when we were together last week, that it was in that December/January period when I became aware of communications inside the department, the HHS Department that I was told did not escalate to a very high level.

Q. Did you ever come to find out Nick Lyon knew about Legionella back in January of 2015? I showed you those e-mails last time. Did you ever
come to find out that he knew about it?
A. No.
Q. Okay. To this day have you ever discussed with him when he first found out about it?
A. It's been a while, but, yes, I discussed it with him.
Q. And what did he say when he first finds out about it?
A. That it was that same time period where -- when he found out about it, he -- I don't know if he called me or met me or whatever, but he said you and the governor found out about it at the same time --
Q. Okay.
A. -- as he did.
Q. As he did. He was the one -- just so we have this clear on the record, in December 2015/January 2016 was when you understood Nick Lyon told you that he learned about Legionella?
A. Right. I don't recall the exact time, but it was in that time period.
Q. And do you remember that conversation? Forget the dates -- you know, the specific date of either December 1st through January 30th --
obviously we know that the governor gave an announcement on January 13th of 2016, but December 1st of 2015 -- I'm not going to pin you down to a date in that month, but do you remember the conversation? Was it via phone? Was it in person? Do you remember?

A. I don't remember, Todd. I do remember parts of the conversation.

Q. Can you tell me a little bit about that?

A. The parts I recall about the conversation is that Nick had discovered -- whether it was Nick or Tim or I don't know who, but, you know, they were -- everybody was doing a review because the natural question is who knew what when; right? And everybody was asking that from the governor, from me, you know, on down, Dennis, and what Nick had told me is that they had found e-mail correspondence amongst -- I'm assuming it was their epidemiology guys. I didn't recognize any of the names that he mentioned, but had looked at this spike in Legionella cases, and then he said "I'm still doing some review," but he said, "I can't find any evidence that we completed what we were supposed to do to make sure that Genesee County Health Department issued some kind of an
advisory." He told me at the time that we had actually drafted something that they were supposed to send and he couldn't find any evidence that it actually went, so that's what I recall, and he said he was going to the governor with it, and I believe he did, and I remember that we then discussed -- it wasn't at that call but it was some point later when it was determined that this communication that should have occurred did not occur, is when the governor said, we need to -- it's going to look strange, but we have to go public.

Q. Which you did?
A. Which is the right thing to do, and that's pretty much everything I remember.

Q. All right.

MR. FLOOD: Is there a follow-up question from any of you on that issue?

MR. SEIPENKO: Do you recall in that December 2015 time period, were you ever advised by Jarrod Agen about anything regarding Legionella?

THE WITNESS: No, I don't recall anything from Jarrod on that, but I honestly don't recall. I mean --
MR. SEIPENKO: Nor Harvey Hollins?

THE WITNESS: All of us talk frequently all the time and I just don't recall.

MR. SEIPENKO: And Harvey personally didn't bring up the Legionella to you in December 2015 either?

THE WITNESS: No, Harvey and I never had any conversations about Legionella.

BY MR. FLOOD:

Q. So this is what troubles us a little bit, is that if Nick is telling you the first time he hears about Legionella is in that time frame of December; right? He tells Tim Skubick the first time -- on air the first time he learned about it was in January of 2015, so a whole year goes by, so the two don't square up, what he tells you and what he says on the air. When he testifies in front of our legislative committee here in Lansing, he says the first time he hears about a health concern, health risk was July 22nd, and it was at that time he said he also learned about Legionella. So, again, the question was that lead or was that Legionella because the infamous e-mail, but I'm trying to put all that together, Rich. It doesn't make sense to me. Here you
have the Department of Health and Human Services
director, outbreak and -- I don't know if you
have any thoughts to that, if he was confused,
too much pressure, not enough sleep. I'm just
looking, how does that happen? To me it's
unconscionable. I don't want to say that without
knowing all the facts. If you have some other
fact --
A. I only know what I know, and my awareness level --
and the reason I'm so confident about Harvey is
that I didn't know Harvey even had any knowledge
about Legionella or anything else until somebody
else sent me an e-mail for situational awareness,
and that was like -- that was well after this.
This was in March.
Q. Right.
A. So I don't -- I honestly -- I don't know the
answer.
Q. Fair enough.
A. Yeah.
Q. The next question on that Harvey vein is Harvey
was invited to sit on the task force with Kolb
and the like on occasion.
A. Actually I think both of us were invited to attend
every meeting except ones that they specifically
said we'd rather not have anyone here.

Q. So the question is if Harvey learned through the task force in December of 2015 about Legionella, and at that time felt it to be -- compelled himself and his own thoughts about some stream of consciousness to call up Jarrod Agen and tell Jarrod while he's in Florida with his family over the Christmas break, "By the way, I just learned about there's an outbreak of Legionella in Flint," why would he do it then as opposed to when he learned about it in March and then claim in the paper in February of 2016 and quoted in the Detroit News, "It wasn't my problem. I told all the people that needed to know." There's too many fibs in that story for it to be -- I couldn't sell that to anybody. There's just too many fibs there. You got -- I learned about it in the March? I don't care. I'm not telling anybody, but I learn about it from the task force. The first person I'm going to tell, Jarrod Agen? And that's -- that's while Jarrod is on his Christmas vacay. That doesn't make sense to me. Could you explain why Harvey Hollins may have done those acts?

A. My attorney -- you're asking me for an opinion.
Q. I am.
A. And I want to give you an opinion because I've thought about this and I don't have a great answer, but I've tried to piece together what happened or didn't happen.
Q. Right.
A. And I'll share with you what I think.

THE WITNESS: And you'll probably yell at me.

MR. LEVINE: I won't yell at you at this point because I think it's fair. It's a fair question. He's asking you for your opinion for whatever it's worth. It's hard to tell what's in someone else's mind but he values your opinion. Give him your opinion.

THE WITNESS: I don't believe that Harvey understood the magnitude of the issue when he had his back-and-forth with Brad Wurfel that I learned about long after the fact, okay.

BY MR. FLOOD:
Q. Right. Right.
A. It's hard for me to know who he told or didn't tell. I know it wasn't me because I know I didn't know and I believe the governor, because he would have told me if he knew, and he didn't know.
Q. Right.
A. That's not to say that -- you know, I don't know who Harvey thinks he told or if they forgot, but Jarrod wasn't the chief of staff at the time that Harvey would have had a December conversation with somebody. I'm sorry. He was the chief of staff at that time. He wasn't the chief of staff if you go several months earlier.
Q. Right.
A. So the natural thing would have been for Harvey to go to Dennis, not to Jarrod.
Q. That's the point. He goes to Brad -- there's this conversation in March that he gets knowledge and he doesn't go to Dennis Muchmore allegedly about it. And then all of a sudden -- and he's on record about not knowing about it, and then all of a sudden, he learns about it in December and -- allegedly with the task force and instead of -- he goes to Jarrod Agen while he's on vacation. I just can't juxtapose the two things to make any sense in my mind, and I'm trying to figure out -- you've got a deadly bacteria at the same time the Flint crisis and lead is going on. If nothing else -- if I were a politician -- on the record, I am not -- but the optics of that
looks insanely bad.

A. Right.

Q. Now, put a human being in the equation and that makes me crazy.

A. That's why -- so you asked me my opinion and my opinion is I don't think these -- first of all, I honestly believe that these two guys, even though they're not scientists and they have no basis to make a conclusion, they just couldn't bring themselves to believe that there might be a connection between the water switch and the Legionella, okay. That's number one. I just don't think they understood. As to -- as to how far they took it, I do remember having conversations where there was an uptick apparently across the country in Legionella but nowhere near the spike that, you know, we saw in Flint.

Q. Yeah. When was that? Because I looked for the -- you mentioned that before.

A. Right.

Q. So I -- from last time we spoke, I've been looking for national studies on Legionella based on that and I'm trying to figure out.

A. If you're interested, I'll go back because I do recall somebody sent me something somewhere along
the line that basically said that to me. I
didn't, you know, pull that out of the sky.

Q. I've been looking for it. I want to see if there
was some correlation. Listen, there was
two cases in 2013 in Genesee County. I'm sorry.
Yeah, two cases in Genesee County in 2013. In
October of 2014, by the 13th, they had recorded
30 within Genesee County. McLaren Hospital at
that time, I believe, had 16 cases, so McLaren
reported 16. That's all McLaren knew about;
right? Genesee County through the Michigan
Department of Surveillance System, MDSS, that --
MDHSS sees everybody, because McLaren can't see
the state surveillance system or the county
surveillance system. So they see 30 cases of
Legionella, so my uptick, I mean, from two in all
of '13 to all of a sudden 30 in 2014, in October
and it goes up, spikes up to 47 that they could
control, that they know about, that's insane.

A. Right. I look back at it now and say, how
could -- how could you not at least presume that
there's a possibility?

Q. Right. Eden Wells in her discussions with you,
is it your understanding or do you know when she
first learns about it? Is it in the same time
frame, that December time frame, or do you know?

A. I don't know. I don't know. That would be -- I would presume, yes, but I don't know.

Q. Okay. There has been a cluster of fingers being pointed at each other as far as who's been the blame and the reason why of this Flint water crisis. To date, you have no idea as we sit here -- and I'm going to wrap this up -- whose determination it was to use the Flint River as a source of water?

A. You mean a single decision-maker?

Q. Yes.

A. No, I don't. I don't know that.

Q. Do you know if the governor -- well, strike that. I could go on for hours with you, Rich, just to hang out with you, but I'm going to stop. It's been a true pleasure.

And for the record, I need to place on the record I need a transcript. Thank you.

MR. FLOOD: I have no other questions.

Thank you.

COURT REPORTER: Would you like this rushed?

MR. FLOOD: Yes, as soon as possible.

(The examination was concluded at 3:08 p.m.)
CERTIFICATE OF NOTARY

STATE OF MICHIGAN )
COUNTY OF MACOMB )

I, MELINDA S. MOORE, certify that this examination was taken before me on the date hereinbefore set forth; that the foregoing questions and answers were recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to, either party nor interested in the event of this cause.

MELINDA S. MOORE, CSR-2258
Notary Public,
Macomb County, Michigan
My Commission expires: September 6, 2022
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