

GARY KRAHMER

TAPE 8, Side 1

February 21, 1996

M.O'R.: This is the continuation of the interview with Gary Krahmer at his home on February 21st.

Yeah, as I was saying, I guess it's necessary for people to sort of get together and cooperate a little bit in terms of trying to resolve this problems.

G.K.: Right. Right. And I would say Mr. Smith was very cooperative in that effort to get together. Mr. Churchill never participated to any great extent in the solution to the problem. He kind of faded out of the picture after the lawsuit was settled, and we didn't hear a great deal from him. I know he was on the Lake Oswego City Council at one time and then ultimately he moved down to the southern part of the state and we just didn't hear a great deal from him after the lawsuit was settled.

I would say that we at USA were very shocked when we received notice of the lawsuit. We felt, of course, having just pleaded five or six years prior to that time that we had built the most advanced wastewater treatment facilities in the Northwest, let alone the nation, perhaps, and that we just couldn't understand why we were being sued given the fact that we had these very modern wastewater treatment plants, but you know, you come back to reality and realize, okay, we've got these new trends we've got to deal with, and we didn't do that in the initial expansion and construction of these large facilities. But it was quite a shocker.

I suppose the most shocking thing was the sticker - the figure, \$175 million. We just were appalled at that number, you know. And oh, yeah, we had a few people going around saying, "Well, just give it to them. I mean, the whole organization isn't worth that much. Just give the whole thing to them." You know. Well, it don't work that way of course but ...

M.O'R.: Yeah. So people were a little bit shocked and kind of emotional, it sounds like, a little bit at first?

G.K.: A little shocked, a little taken back, too, yeah. Yeah.

M.O'R.: Well, now of course the lawsuit - I guess we figured out that maybe there wasn't very much time between the two of them, but they - the first lawsuit came ...

G.K.: Yeah, the first lawsuit - I think there probably was at least six to nine months between the two. I'm - I feel quite certain about that timing. And the DEQ, I'm sure working under the advice of their attorney, didn't act on the first lawsuit in a rapid manner. They were kind of slow in responding to that lawsuit. So that probably resulted in some irritation to the plaintiffs, and they decided then to move forward with the lawsuit against USA and sort of try to get this thing off balance, I suppose.

M.O'R.: Hold on for just one second.

Yeah. So the - but you say they were kind of slow responding to it. So what kind of response would they have made or would it have been possible for them to make, do you think?

G.K.: Well, I - it was - the suit was over an interpretation of federal rules and regulations, and I suspect that the DEQ felt

that they were discharging their responsibilities, and the situation was that the federal regulations have so many things involved that you had to prioritize: Okay, we're going to do these things first, and then we'll take on this next batch of responsibilities and then this.

And the one that was being challenged was that the DEQ had a responsibility through the EPA regulations to establish water quality standards on all of the streams in the state of Oregon that they had previously designated as water quality limited. Well, when they did that they identified several hundreds of streams and tributaries in the state that they felt were water quality limited. When you do that, then, you have to establish water quality standards for all of those streams, massive undertaking to say the least. And of course DEQ like every governmental organization has limited resources, so they were taking on these things not periodically, but in a very logical manner.

Well, the environmental organizations felt that they weren't doing this fast enough and felt that they were not prioritizing the worst ones to do first and the next worst second and so forth, and that's kind of what the debate was all about is they wanted DEQ to change their course of action in establishing these standards for these streams in the state. And of course it just takes so much time to, one, make changes after you agree. And of course that in itself was going to take six months just to agree between the two groups that "Yeah, this is the way we'll approach it."

And that actually ended up in court, and as I recall the federal judge actually established the sequence of streams to be analyzed and also set time lines for water quality standards to be

set on these various streams. And I can tell you today that DEQ has not met the schedule. Right now they're probably two or three streams behind schedule, and I suppose as long as they're working on it that's good, but it - the problem with setting water quality standards is that you have to do so much analysis first to find out what you have, to find out where the pollutants are coming from, and then try to allocate certain levels of pollutants that certain activities can make to these streams. Well, when you've got municipalities, and you've got an agricultural community, you've got natural sources, rock and gravel activities, and try to allocate these things out and everybody's going to end up having to do something to approve - you get into a tremendous political situation, as you can well imagine. And therefore it takes a lot of time. A lot of time.

M.O'R.: Now, what was the - I guess I - the first lawsuit was that the NEDC was suing the EPA to enforce the Clean Water Act?

G.K.: Right. That's right.

M.O'R.: And the DEQ was also a party in that lawsuit?

G.K.: DEQ was a party to that because they are a contractor to EPA to enforce the regulations.

M.O'R.: Right. They're the front line, sort of ...

G.K.: That's right.

M.O'R.: ... enforcement mechanism?

G.K.: Yes. Yes.

M.O'R.: And then the lawsuit against USA, what was the specific grounds for that?

G.K.: The specific grounds for that as I recall were that USA was a, quote, unquote, polluter and was causing degradation of

water quality within the Tualatin Basin because it was a, quote, unquote, polluter, and therefore that violates the federal law where the federal law says thou shalt not contribute anything to a stream that causes further degradation from certain standards that had been identified prior, or heretofore. And that was the basis of the suit was that USA's flow continued to increase, the amount of nutrients that were being discharged were growing, and that was causing degradation from a basic standard, if you will, of the river. That was the basis of the suit.

M.O'R.: But another aspect of it that I think was something that - at least on the NEDC side of things they had done some research and came to the conclusion that USA had 13,000 violations or something?

G.K.: Oh, yeah. Sure. Sure. Yeah, that's - that is another aspect of it that I failed to mention, and it's coming back as we discussed. Yes. Always water treatment facilities operate under a permit, and that permit includes certain limitations on things that can be discharged from the treatment plant. In other words, you have to maintain a certain level of dissolved oxygen. You can only discharge a certain level of pollutants, and I don't really want to get into detail because it is very complex, but there's a whole list of these things in a waste discharge permit.

The permits, in my opinion, were flawed because they didn't take into account the increase in flow that would result after a heavy rainstorm. You still had the same standards, even though your flow into the treatment plant may increase by a hundred percent due to cross-connections of storm sewers, leaky sewer systems, and of course all this can be fixed, but it takes a lot of time and

money, but those flows would increase dramatically in treatment plants, and that goes on today. I mean, that's a pretty common thing around the nation. And the permits didn't recognize that there should be modifications in the standards when you experience those sorts of things.

So the result of that is that you exceed the permit when you get these high flows. Well, all winter long USA plants exceeded their permits in certain areas because the flow was so great the treatment plant couldn't operate effectively. And that's where the 13,000 came from; over many years - what was it? - ten years prior to the filing of the lawsuit that they gathered the data, and the data, of course, is available from the State Department of Environmental Quality because every month each plant has to submit their report to the State and the State puts that on file, of course, and that's how they acquired the data. But that's where the 13,000 came from.

M.O'R.: Right. Well, yeah, I mean even ...

G.K.: And - excuse me. I should say that violates federal law, because "Thou shalt not exceed the permit limits," unless you have exceptions in the permit, which we didn't have at that time.

M.O'R.: And the problem is just that you just have too much effluent to deal with?

G.K.: Too much flow to deal with. That's right.

M.O'R.: And so you wind up then not being able to fully treat all of it?

G.K.: That's absolutely correct. Yes.

M.O'R.: Do you have a way of - I assume - maybe this isn't a correct assumption, but I assume that this storm runoff is not as nasty as the stuff that you get in the waste stream?

G.K.: Oh, that's very true, yeah. The storm runoff is not nearly as nasty, because you don't have the human waste and commercial waste associated with it. However, certain storm water can be bad if, as an example, you get cars driving down the streets dripping oil, and then that washes off in the storm water, that's a pretty severe pollutant if there's enough of it. Also you get ...

M.O'R.: Hard to deal with?

G.K.: Very difficult to deal with, yeah. But also, all the animal waste. How many dogs have we got in Washington County? 65,000? And we get several thousand pounds of dog waste every day that's discharged wherever dogs discharge their waste, and when it rains, that flows off. So that's a contributor through the storm water system.

But yes, you're right, the sewage is much more - carries many more pollutants than the storm water. Yeah.

M.O'R.: So you treat the two of them in separate situations? I suppose if you dump anything else that's not fully treated it's probably from the storm runoff?

G.K.: Yes. That is correct. Here we have separate systems that gather storm water versus sanitary sewage, as we call it, which comes from the houses and businesses.

Portland, on the other hand, has a combined sewer system, just to give you an example here, where all of the storm water and all of the sanitary sewage goes in one system. That's why Portland today is facing a billion dollar program to either treat all of

that water or take the storm water out of the sewer system, because Portland experiences significant overflows any time it rains where the combined sewage goes into the Willamette River, goes into the Columbia Slough, and it's one of the projects that I'm associated with now as a consultant is working with Portland in resolution of that problem. We're lucky out here; we don't have combined sewers. But sewers historically, and even today, continue to have leaks, because it's such - you have joints every three to six feet, you have manholes and you have these connections going to these homes and buildings, and there's just a ton of joints involved with the sewer system, and joints have a tendency to leak sometimes.

The quality of product and material is improving, where a lot of the system now is using the plastic materials, which are much, much more reliable in terms of avoiding leaks. But that's - that goes on all over the country.

M.O'R.: So anyway, that - so there were a lot of permit violations, but they were associated with ...

G.K.: Yes. A lot of permit violations, and we didn't deny that. I mean, it was pretty factual that that did occur. Sure. We felt it was a little over-emphasized, if you will, because it really - it looked bad in the newspaper, and it sounded bad to anybody you talked to, but it wasn't that abnormal. It occurs across the nation.

But since that time there have been significant modifications made in waste discharge permits not only at USA but throughout the nation where certain exemptions are allowed due to weather conditions, and USA has now a condition in its permits where if the stream flow is at certain level and there's a certain amount of

rainfall in any given 24-hour period, we're not exempt from meeting certain standards, but the standards are increased to allow the treatment plants to meet the standards. So that has helped quite a bit in terms of meeting permit requirements.

M.O'R.: Is it - I assume it's a situation where the kinds of volumes that you're faced with from like having the storm we had a couple weeks ago, for instance, that you can't really build to deal with the worst case?

G.K.: Yeah, that's true. It's just not practical to try to build to those levels. The more practical approach is, and this takes time, is to improve the collection system, the pipes in the ground, and try to make them as waterproof as possible to prevent the water from running in at the joints, to prevent the water from running in the manholes, make sure that the homeowners don't have their storm drains hooked up to the sanitary sewer. We find that quite often, especially in the older communities - and deal with it from that point, as opposed to building these huge facilities that might be used only 30 days out of the year. You know, that's just not practical.

M.O'R.: Okay. So anyway, the lawsuit was filed.

G.K.: Yes.

M.O'R.: What were you going to ...

G.K.: I was going to add also that when we have these excess flows we always have a lot of water in our receiving streams, so if you do get bypassing of wastewater the impact on the stream is very negligible because of the massive amount of dilution that you have. So environmentally it's not a huge serious problem. Now, if we were able to swim in the Willamette and in our waters here year

round, then that would be a real problem because one should not expose one's body to these waters when we have high flows, and we don't because it's too darn cold, you know, so it's not as serious a problem as one might think because of the high dilution that we have during those times. I wanted to add that.

M.O'R.: Okay. Well, I'm glad you did add that. So anyway, the lawsuit's filed, and we have USA getting some pretty bad press, it sounds like?

G.K.: Yes, very bad press for quite some time. Mm-hmm.

M.O'R.: And you're facing \$175 million suit.

G.K.: Right.

M.O'R.: Where did the money that you ultimately ... well, actually maybe - well, I'll ask you that question, but before I do let's just take our step-by-step process through the lawsuit here. So the lawsuit's filed. Then I assume you had to go to court on a few occasions, eh?

G.K.: Yes, that's true. The first thing we did, of course, we shared that information with the Board of County Commissioners, and we also - "we" meaning myself and the attorney for Washington County, the chief county counsel as he is called, also recommended that we pursue and use the services of an outside legal firm to assist us in this case because our attorneys were not intimately familiar with the federal Clean Water Act. And the board authorized us to do so, and we hired an outside firm to assist us in defending ourselves against this lawsuit.

Then we went to court.

M.O'R.: What was the firm?

G.K.: I see these faces, and I know these people, and I can't think of the name of the firm. What a shame. They were out of Seattle. That's where their main office was, was in Seattle, although they had a subsidiary office here in Portland. And - oh. I'm sorry. My memory doesn't assist me in this situation. Doggone it!

M.O'R.: Well, I'm sure we can find it.

G.K.: We can find it, I'll guarantee you. The lead attorney's first name was Pat, I remember that. I knew him that well, I remember his first name, but ...

M.O'R.: So you hired the law firm and then went to court. What kinds of preparation did you and the attorneys do prior to going to court?

G.K.: A number of staff people at USA participated in data gathering. The best way I can tell you in terms of what kind of preliminary work our attorneys did, it was a \$400,000 bill to that attorney firm to prepare themselves, if you will, for court activity. Now, I need to tell you we didn't actually end up in court. The case was filed here in the federal court in Portland, and it was a lady federal judge, and I can't remember her name ...

M.O'R.: Judge Frye, probably.

G.K.: Thank you. Yes, Judge Frye. Judge Frye reviewed the case and at a point in time Judge Frye, along with federal judge - well, he wasn't a judge at that time, but Judge Hogan in Eugene apparently got their heads together and looked at the case, talked to the attorneys prior to talking with USA or its board of directors, and suggested that this case had a good potential of being settled out of court. And Judge Hogan, given that's one of his

things, if you will, agreed to get the parties together to see if there was a possibility of settling it out of court. And that of course is ultimately what occurred, but I wanted to be sure that the record showed that it didn't actually end up in a trial.

M.O'R.: And what did you think about that suggestion?

G.K.: Well, we supported that, because we felt that if there was anything within reason that we could do to try to resolve the case and get on with whatever it was we needed to do to improve wastewater services, if you will, we wanted to do that. So therefore we agreed with that. We had some prior knowledge of Judge Hogan and his capabilities to resolve cases, not on cases specific to USA but just prior knowledge of him, and our attorneys felt that that would be an effort well worthwhile spending the time to see what we could do.

M.O'R.: You had prior knowledge yourself or just your ...

G.K.: Just our attorneys. Yeah, I did not have prior knowledge of Judge Hogan.

M.O'R.: But they felt that that was a good forum for you, then?

G.K.: Yes, indeed. Right.

M.O'R.: And now in the meantime the suit against the EPA was proceeding along parallel?

G.K.: Yes.

M.O'R.: And had there been any resolution there before the USA suit was settled or ...

G.K.: As I recall it was resolved prior to USA's settlement. I think. I'm not a hundred percent certain of that, but I think it

was either resolved or very, very close to resolution, but I'm not real sure.

M.O'R.: Okay. And in terms of this requirement that USA did eventually shoulder here in terms of trying to reduce the phosphates down to - well, as you say, it's less than 5 parts per million - or .05 ...

G.K.: .05, yeah.

M.O'R.: ... did that come out of - which lawsuit did that come out of? Was that out of the suit against the EPA or is that something you agreed to as part of the suit against USA?

G.K.: It was the suit against EPA.

M.O'R.: Okay.

G.K.: Because that was one of the many water quality standards that they were required to establish on the river. So it was a result of that lawsuit.

M.O'R.: I see. And so ...

G.K.: And they were under - of course they were under some pressure to establish those water quality standards because we needed to move forward with designing and constructing these additional facilities, but we didn't - we needed to know what those standards were in order that we didn't overbuild or underbuild our facilities. So DEQ was under some pressure to establish those standards.

So we had a lot of things going on. We were working. We were negotiating on the lawsuit. We were negotiating with DEQ on the water quality standards, and it was quite an exciting time.

M.O'R.: How about your own situation with Washington County, your overseers, how did they - how did all that go?

G.K.: Amazingly well. We held a number of work sessions with my board of directors, and they learned more about wastewater and wastewater treatment than they ever wanted to know, I'm sure, but explained how these violations occur, why they occur, and they were very understanding and were totally supportive throughout the entire process and totally supportive of making the huge investments that ultimately were made. Very, very cooperative.

M.O'R.: Well, that's good.

G.K.: And that was very good, because I didn't need to have them fighting with me, of course, during this process.

M.O'R.: Was Kathy Christie on the commission at that time?

G.K.: No, she wasn't. Bonnie Hays was the chairperson at that time, and Kathy had not come on the board yet. Bill - who was the representative of that? I want to say Bill Blume, but I'm not so sure that he hadn't left and somebody else was on the board. John Meek was on the board. Bonnie Hays was on the board. Oh, my. I'm not sure I can remember all of them now. I survived - I like to say after retiring I survived about 25 board of commissioners during my career, so it's hard to remember when they were all there. But it was a very supportive board, fortunately. Roy Rogers is a long-term commissioner that was on the board at that time. He's from the Tualatin area. And if anybody was going to question, it would have been Roy. He's an accountant, and it's just his nature to question things, and he did. He did question a lot of things, but was very supportive once he understood what we had to do.

M.O'R.: Well, why don't we talk for a little bit about the settlement conference you had with Hogan?

G.K.: Sure.

M.O'R.: I understand that was very intense.

G.K.: It was a very interesting process to say the least, and I have great admiration for Judge Hogan's ability to deal with these certain situations. We established a time in Eugene to meet and try to come to resolution. So we had gone down ...

[end of side one]

GARY KRAHMER

TAPE 8, Side 2

February 21, 1996

G.K.: We had gone down the night before and stayed at the Eugene Hilton, because the meeting was going to start at 8 o'clock in the morning and we wanted to do some preparation the evening before and we preferred to do it down there as opposed to doing it here and then trying to drive down there the next morning. So it was myself and my chief operations person, Stan Lesuer, and our in-house attorney, who was Laurie Skurdahl, who works for County Counsel, plus our outside attorneys.

So we proceeded to Judge Hogan's court the next morning at eight o'clock along with the plaintiffs, and the first thing he did - well, he explained to us his experience in resolving lawsuits, and the one thing I'll never forget, he said that "I have been 99 percent successful in settling these suits through negotiation, and therefore I fully expect to settle this lawsuit." And I - it was obvious to me we were not going to leave there until this thing is settled, because he's a very strong person, of course, and that was interesting.

So he then asked the attorneys for both parties to meet with him in his chambers, and to this day I do not know what that discussion was about, but they met and about half an hour later he came out and he said, "Okay. I want the plaintiffs to go to this room, and I want the defendants to go to this room, and we will commence."

So we did that, and throughout the rest of that day he would move back and forth between the two parties, the two rooms, and talk about various elements of settlement. "Can you do this? Can you do this? Okay, why can't you do this?" and so on and so forth. And that went on all day long. So about five o'clock that evening we - he comes in and he said, "I strongly recommend that you call the Hilton and tell them you're going to be here for another night, because we need to have some more time on this."

So we said, "Okay, Your Honor." So we proceeded to ask the Hilton if we could stay another night, and sure, that was fine, so we proceeded back to the Hilton. The next morning we met again at eight o'clock, and by noon or prior to noon of the second day he had both parties in the same room, and the attorneys were writing out the settlement issues. And by four o'clock that day we had a settlement of the lawsuit whereby USA agreed to pay out certain monies. We agreed to improve wastewater treatment to certain levels. We agreed to remove certain treatment plants from the system and combine those systems with others, which we had previously planned to, anyway.

The one thing that - not one, but the major thing that was not in any plan that we had done previously was the improvement in terms of nutrient removal. So that was probably something that we hadn't planned on doing but agreed to do. And all of this was agreed to under a certain schedule. And it ended up being about a 15-page document identifying these things that we had agreed to do and when they would be done. And to my knowledge, we have not to this day missed a deadline.

And the plan, as I recall, it carries on to the year 2000, as I recall. But the major things are completed, and we're very thankful for that, of course.

To give you an example, Portland has until the year 2010 to address its problems. So these all were long-term, and certainly you have to have that because you're talking major investments and just simply time to build things.

M.O'R.: Sure.

G.K.: But it was an interesting experience. I enjoyed it. I have to admit that I enjoyed it, even though we ended up paying out, oh, \$1,400,000, which is a heck of a lot less than \$175 million. Now, the 1,400,000 was - 900-and-some thousand dollars went to a fund which is currently being managed by the Oregon Community Foundation, and those monies are devoted to improving water quality and water environment within the Tualatin Basin, which is good. And \$250,000, as I recall, went to the plaintiffs' attorneys, and then we paid the DEQ something less than \$100,000, and the purpose for that was is for them to have enough staff to work directly with USA and others within the Basin on a continuous basis to assure that we met our responsibilities.

On top of that, then, we had to pay our attorneys, and as I previously indicated it was approximately \$400,000 that we paid our attorneys.

And then of course the third lawsuit - I don't' know if you're ready to talk about that.

M.O'R.: Well, we'll get to the third one in a minute.

G.K.: Great.

M.O'R.: One of the things that Jack Smith told me was that there was a point in these negotiations - maybe not the Eugene negotiations, but I - I was a little fuzzy about that - but there was a point, anyway, where he said that the - I believe it was the Justice Department, U.S. Justice Department, was proposing that they would take the money.

G.K.: They wanted a piece of the action. That's right. That's absolutely right. Yes, I do recall that. Yes. The U.S. Justice Department felt that the federal government had a right to the monies that were being paid out, the penalty-type money, the 900-and-some thousand dollars, and in fact wrote a letter to Judge Hogan and copied every lawyer in the valley suggesting - not suggesting, demanding that that money be paid to the federal government.

Well, immediately we got on the phone with our representatives, AuCoin and Hatfield and whoever else might have been in Congress at that time, as well as sent them telegrams and letters complaining that this is not right and that the money ought to stay here in the valley and be used to improve water quality. And that brought that issue to an immediate halt. Thank goodness for our Congressmen! Yeah, that's right. Jack has a good memory. He remembers all this stuff.

M.O'R.: He said - well, maybe it wasn't Ed Meece who maybe wasn't directly involved, but I guess at some point or another a judge had - was threatening to subpoena Ed Meese or something. I forget what that was all about.

G.K.: Yeah, I have vague memories of that, yeah. Right.

M.O'R.: Well, I guess the other thing with respect to these damages was that in the end there was some - was there some consensus between all of you in terms of how this money would be spent and ...

G.K.: Yes.

M.O'R.: It almost sounded the way Jack described it that it was sort of ...

G.K.: Oh, yes.

M.O'R.: ... worked out cooperatively.

G.K.: Yes, it was. Very much so. And DEQ had a person involved, by the way, in the settlement of the lawsuit, one, because they were a recipient of some money, but also they participated in how the money would be used, and we were all very cooperative in how we dealt with that, where we all felt that this was a good thing to have this money available to various organizations who might be doing things to improve the quality of the water in the Basin. Yeah, that was a very cooperative effort on all the parties, yeah.

M.O'R.: Right. And I guess from the standpoint of the plaintiffs' side, Jack Smith's side, that they wanted - they weren't - the way he described, anyway, they weren't so much interested in the money per se but that they wanted the settlement to be sufficiently large so that it would set a precedent for future cases.

G.K.: Oh, yes. Sure.

M.O'R.: Were you aware of that dynamic at the time?

G.K.: I wasn't specifically aware of that, but that was not that difficult to figure out after talking to a few attorneys, that

understandably they wanted to get the attention of the municipalities in the state as well as nationally that you cannot violate your permit and get away with it. That was a goal of theirs, and they certainly achieved that; there's no doubt about that. Yeah.

No, I wasn't closely aware of that at that time, but it made sense, especially after we started getting calls from around the nation about this lawsuit.

M.O'R.: Oh, yeah?

G.K.: Oh, my, yes. Oh, yes. That was an ongoing discussion at various conferences for probably three or four years after its settlement. "Boy, I've got to find out about - I'm from Nashville, Tennessee; I've got to find out about this lawsuit out in the Northwest." Oh, yes.

M.O'R.: So it did have a real national impact?

G.K.: It did. It really did. Yes. And probably rightfully so.

M.O'R.: And Jack sort of - the way he described some of the damages, too, was - and I think you maybe just touched on this, at least with respect to one aspect of the settlement - that some of the things that were included as damages in this lawsuit didn't really represent a change in the way USA would be using certain of their funds, that there were some things in there that you would have done anyway.

G.K.: Oh, yes. Right. Yeah, that's true.

M.O'R.: But it was characterized as part of the damage settlement.

G.K.: That's correct. Yeah. USA was doing its major capital improvements under a so-called facility plan, and that's a contin-

uing thing with an organization such as USA that you have long-term planning for capital improvements, and a number of those things that were in that plan also became a part of the settlement decree.

M.O'R.: And on that - did you have any face-to-face meetings with Jack or anybody from the other side during that period when you were in Eugene?

G.K.: Only after Judge Hogan brought us into the same room. The first day we spent apart from each other, plaintiff-defendant. The second day is when Judge Hogan brought us together. That was the first and the only time for the face-to-face participation.

M.O'R.: Okay. Well, Jack had mentioned something about getting together with somebody in the evening after one of these sessions.

G.K.: Well, knowing Jack, that may have occurred and I probably never heard about it. Well, I wouldn't be surprised that he might have gotten together with our lead attorney, because they knew each other very well, and that would not have surprised me if they had talked the evening before or sometime.

M.O'R.: He said that from his point that some of the things that were being thrown out as potentially part of the settlement seemed to be, you know, totally unrelated to the Tualatin itself or to the water quality issues, and that his opinion was that some of the attorneys from the two sides had sort of been discussing things and came up with ideas on their own that nobody from USA or from NEDC had proposed.

G.K.: That's highly possible. Highly possible.

M.O'R.: And that he thought that - well, the way he described it was that a meeting between himself and somebody from your side sort of helped to define that a little bit, so that ...

G.K.: I know that Jack and my person, Stan Lesuer, had - they were able to talk to each other really quite comfortably. And it's possible that they had a meeting because I relied quite a lot on Mr. Lesuer during the resolution of this suit in terms of "Can you do this, Stan?" "I can build it." "Can you meet these standards?" And I was constantly asking him that question, and he and Jack were able to talk readily to each other during this event.

M.O'R.: The only other thing in terms of the other side of this story that I heard was an interesting description of Judge Hogan's courtroom. Did it make any impression on you?

G.K.: Well, the courtroom itself was ...

M.O'R.: Or his chambers, I think, actually.

G.K.: Oh, the chambers. No, not the chambers as such, although he - I think he - he loved to fish, and he had a lot of items in his courtroom that reflected his deep interest in fishing. No question about that. Yeah, I think I remember correctly we did actually talk about steelhead fishing at one time while we were getting ready to go into settlement discussions. That's the only thing I can remember.

M.O'R.: Okay.

G.K.: Except the courtroom itself was huge.

M.O'R.: Okay. So the lawsuit was settled, and it was a precedent-setting case, I guess, around the country.

G.K.: Yes.

M.O'R.: And then USA decided that they could maybe recover some of their losses from their insurance company?

G.K.: That's correct.

M.O'R.: And what sort of policy did you have and why did you think that you could recover?

G.K.: During those times, or actually prior to those times, certain insurers such as Wausau and some of the larger insuring organizations wrote insurance to protect you against penalties that you might - might be levied on you through a court for, quote, pollution of the environment. Why they put those kinds of conditions in their policies, I don't know, except the only thing I can speculate is that nobody nationally had experienced a penalty being levied against them that exceeded the - what's the amount you pay up front and then the insurance pays the rest? - the deductible.

M.O'R.: Oh, the deductible, right.

G.K.: Yeah. And therefore the insurance companies felt secure in putting that kind of language in these doggone policies. Well, you don't see it in the policies anymore, by the way. But we had that insurance with Wausau, and we had that clause in our policy. So after the dust settled on the lawsuit - prior - I should say prior to the dust settling, when the suit was filed we notified all of our current insurer, our previous insurers, of this lawsuit. And in fact our - the person I had taking care of our insurance asked the insurers to assist in the defense of these, and they denied participating in the defense.

So after the dust settled we - again we hired an outside attorney to review and evaluate our policy and give us an opinion on whether they thought that Wausau, who happened to be the insurer

during this period, had some liability, and he came back and said, "Yeah, I think that they have some liability and responsibility here to assist you in this suit."

"So we approached them and pointed out the language to them, and they denied any request that we made for participation. So we went to the board of directors and advised them of the situation and asked them for authority to sue them, and the board said, "Yes, proceed." So we proceeded to file a lawsuit against Wausau, somewhere close to \$2 million in order to cover all the costs that we had in the suit against us. And Wausau hired their attorneys, we hired our attorneys, and we proceeded and ended up in federal court here in Portland, had a jury trial that went on for four or five days, a number of people testified, including myself, and ultimately that jury found in our favor to the tune of approximately \$1.2 million. They felt that there was not a hundred percent responsibility on behalf of the insurer, Wausau, but at least that amount.

* So that amount was determined.

Wausau appealed that suit, and a different federal judge examined the case, didn't hold any additional trial, of course, but examined the record and determined in his or her mind that the amount Wausau was found to be liable for was too great, so he reduced that to something slightly under \$500,000. And as I understand it today that USA disagrees with that and it will go to the next level of legal activity, whatever that might be.

So that suit is continuing on today, which just seems bizarre to me given the fact that the original lawsuit was settled in - when was it? - 1987 or '88 or something like that. But here we are in 1996 and there's still activity associated with that original

lawsuit. But anyway, USA will recover something, I'm sure, of this, but both parties will probably end up spending more money on attorneys than they will get out of it.

However, the river is improving and we're delighted that that USA has built major facilities to meet its new water quality standards requirements, and they are meeting those, and thank goodness the water quality in the Tualatin River is improving as we talk.

M.O'R.: In fact, that was definitely a note that was sounded at this conference, that there have been some real improvements.

G.K.: If I might speak to that, the article in the paper left me with the impression that all parties were pretty satisfied with the progress that had been made and were all really working together quite well to make further improvements. Is that a fair description of the conference?

M.O'R.: Yeah. That's probably a fair description. I think that, you know, there certainly was some discussion of, you know, some of the problems that remain.

G.K.: Yeah.

M.O'R.: And as I say, there was - as we talked about earlier there was a little bit of discussion about maybe modifying the TMDL, I guess it's called.

G.K.: Right. I would expect there's probably still some concern with certain agricultural activities. I don't know that for sure, but I suspect there is because there seems to me to be things that could be done additionally in the ag. community that wouldn't break them up in business that could help the situation.

M.O'R.: Well, you know, I didn't hear any of that at the conference.

G.K.: It's interesting.

M.O'R.: I talked to Mike Houck about this, and he echoed that sentiment even more strongly, probably.

G.K.: Probably. Right. If one just takes a drive today around the ag. community and observe the erosion, and I recognize we had a tremendous rain in the area, but there is severe erosion in certain areas of the ag. community that are quite obvious today, and I know some of that didn't have to occur. There could have been certain activities taken to at least minimize the erosion. And of course nutrients are part of the eroded soil, so they're a contributor.

M.O'R.: So what kinds of things can be done, do you think?

G.K.: Oh, planting of certain grasses that have a good strong root system in these known areas where erosion occurs. A simple example, farmers - certain farmers have a tendency to work the ground right up to the ditch line, and that's very loose soil, of course, along there, and then when you get a rain of any significance and get some runoff, you get soil eroding into the ditch, and eventually that soil will then wash out of the ditch and get into our streams and rivers.

If the farmer would leave two feet of undisturbed soil prior to the break-over of the ditch and allow some grasses to grow there, that would prevent that happening in most cases.

M.O'R.: Sounds pretty simple and straightforward.

G.K.: It sounds pretty simple, you know, and it isn't going to break the farmer up in business by losing two feet of ground to till and raise a crop on. Just things like that.

M.O'R.: Well ...

G.K.: And I - you know, you might find it odd that I would suggest that the farm community could do more than they are given I was raised on a farm, but doggone it, they can. They can. And they will. They just need a little nudging now and again.

M.O'R.: Well, that was - I've heard stories from the environmental side of the fence, too, that suggested to me that so far the farmers haven't picked up the challenge, or at least their organization out here apparently.

G.K.: Certainly they have done some things. The - as an example, some of the larger dairies have put in holding tanks to hold their dairy wastes as opposed to allowing it to run off. I know that's been done in a few cases. But we're - my brother and I saw these cattle grazing along the river, being allowed to access the river for drinking water. That just shouldn't - you know, if a farmer had any feeling of responsibility, they ought to on their own, you know, make the changes necessary to prevent that from happening. But not all people do that.

M.O'R.: It's probably partly an education question, too, they don't realize the ...

G.K.: And that's one thing that USA has spent a great deal on in the last ten years is education of the public in terms of what they ought and ought not do in order to minimize the amount of pollutants that come off in the storm drainage, you know. Don't dump your used oil down the storm drain. Gosh, that's a direct shot to the river. Things like that, you know, and with the dog waste, pick it up and throw it in the garbage that goes to Arlington, you know, and things like that.

So it's a big job educating the public, because that's where it starts, and that's where it's got to be dealt with. And it's an awful lot less costly if the individual public will deal with these things as opposed to asking the government to build these massive facilities to deal with it.

M.O'R.: That's right. Okay. Let me just pause here.

[end of tape]