

Exhibit H

Exhibit H

Colgan, Beth A.-SEA

From: Hamilton, Kevin J.-SEA
Sent: Friday, December 03, 2004 9:44 AM
To: Colgan, Beth A.-SEA
Subject: FW: Response to November 30 letter

-----Original Message-----

From: Handy, Nick [mailto:nhandy@secstate.wa.gov]
Sent: Thursday, December 02, 2004 12:22 PM
To: Hamilton, Kevin J.-SEA
Cc: Tom Ahearne (ahearne@foster.com); Hugh Spitzer (SpitH@foster.com); 'Marco Magnano'; (richj@foster.com); (davidm@prestongates.com)
Subject: Response to November 30 letter

Kevin,
Here is my response to your November 30 letter and a prior document I developed on some of the recount variations we have experienced.

I am sending you under separate cover Mr. Miller's report on Whitman County.

I hope this information is helpful.

We wish you the best of luck in further recounts.
Nick Handy

December 2, 2004

Kevin Hamilton
Perkins Coie

Dear Mr. Hamilton,

This will respond to your letter of November 30, 2004.

Regarding your prior request to our office to delay the certification and Secretary Reed's public statements on that issue, I did provide some background to Mr. Burman in your office on this several days ago that I presume has been forwarded to you. If not, I would be happy to send you a copy. I was sorry to learn that the Secretary's comments caused some level of distress.

I do want you to know that the Secretary and I discussed your two letters prior to the certification, but perhaps not prior to his public statements, and your letters were fully considered prior to the Secretary's action certifying the election results.

We have had a full exchange on the Franklin and Adams County situations, and think we have explained those situations. I am not sure what more I can add other than to repeat what we've already said.

You express concerns about the signature verification procedures in the various counties. I appreciate that your campaign has concerns about the signature verification process in such a close election, but I am not aware of any administrative action or remedy at this point to address these issues. As your client knows from its longtime involvement in elections, the signature verification process is now complete. All signatures have been accepted or rejected in the various counties, and the ballots have been separated from the signature envelopes. Matching ballots with particular signatures is not possible at this point. Thus, even if a mistake could be established for verifying a particular signature (and we know of no such mistakes), matching the ballot to that signature is not possible.

You express concern about Whitman County. We asked Paul Miller in our office to look into the Whitman County situation and I am sending Mr. Miller's report on Whitman County to you under separate cover.

Finally, you have noted that some counties reported more ballots in the recount and other reported fewer ballots in the recount. These changes in totals are accounted for in a variety of ways. In some cases, a determination was made that operator error occurred in the original count and that some ballots were counted more than once. In other instances, a determination was made that some ballots were not included in the original count and were included in the machine recount. In others, the review of the ballots as part of the machine

recount revealed more information regarding voter intent and, pursuant to the statewide standards established under the WAC and RCW, votes were included or excluded on that basis.

I am attaching for you a copy of a memorandum I developed that reports on some of these differences between the ballot and vote numbers in the original count and those in the machine recount in this election.

I wish I could report to you that election processes are perfect. But in fact, elections are performed by people, and with machines that are operated by people. I expect that some level of human error occurred in every county in America in this last election. As our responses in this particular election have demonstrated, here in Washington, every effort is made to identify and rectify any human error that we can remedy. And, I believe that we are able to say in Washington that it appears that our current election is as accurate as humanly possible in the processing and counting of ballots.

I certainly understand and appreciate how agonizing each of these situations can be in an election separated by 42 votes.

I wish both campaigns the best of luck as further recounts move forward.

Sincerely,

Nick Handy
Director of Elections

Recount Variations
Secretary of State Elections Division
November 24, 2004

29 of the 39 counties reported numbers very close to the original count. 10 counties reported numbers with larger variations from the original count. These larger variations are summarized below.

King/Pierce/Spokane Counties. King, Pierce, and Spokane Counties each reported significantly more votes in the Governor's race than the original count. Each of these counties uses optical scan precinct counters. In these counties, poll site voters directly insert the ballot into a ballot counting machine at the poll site. As a result, these ballots were not visually inspected prior to the original count. In the recount, these counties conducted a visual inspection of over and under-voted ballots. These inspections produced additional information regarding voter intent that resulted in additional votes being tallied in the Governor's race.

The additional votes resulted in gains to each candidate in approximately the same proportion that votes were tallied from the original count in these counties.

Snohomish County. Snohomish County found 224 additional ballots in a mail tray in a secured ballot storage room. Many ballot trays were stacked in the room, and the ballots were at the bottom of one tray in the middle of the stack. The ballots were taken to the canvassing board and subsequently counted.

The recount in Snohomish resulted in a net gain to Gregoire of 1 vote.

Cowlitz County. Cowlitz County counted 99 fewer ballots in the recount. Cowlitz County reports that some ballots were tallied twice in the original count.

The recount in Cowlitz resulted in a net gain to Gregoire of 11 votes.

Kittitas County. Kittitas County discovered a tray of 34 ballots that were not included in the original count. The ballots had been processed through the canvassing board but were set aside and never made it to the tabulator.

The recount in Kittitas resulted in a net gain to Rossi of 7 votes.

Grant County. Grant County counted more ballots in the recount than in the original count. Because the extra votes were evenly distributed among all precincts, Grant County believes that an extra batch of absentee ballots may have been processed in the recount.

The recount in Grant resulted in a net gain to Rossi of 18 votes.

Adams County. Adams County counted 34 more votes in the recount than in the original count. Adams reports that these were undervotes in the original count and the recount picked them up as votes. This was probably due to the variations in the way the ballot reader processed the ballots.

The recount in Adams resulted in a net gain to Rossi of 15 votes.

Walla Walla County. Walla Walla County processed 100 more votes in the recount than in the original vote. We understand that these ballots may not have been pre-inspected prior to the original count. Pre-inspection resulted in additional information on voter intent that resulted in additional votes being counted in the Governor's race.

The recount in Walla Walla resulted in a net gain to Rossi of 22 votes.