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SUPREME COURT OF  
THE STATE OF WASHINGTON

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KITTITAS COUNTY,

Respondent,

v.

SKY ALLPHIN, et al.,

Petitioners,

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**SUPPLEMENTAL BRIEF OF  
RESPONDENT KITTITAS COUNTY**

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## I. INTRODUCTION

Washington's Public Records Act stands for openness in agency records in order to assure the sovereignty of the people and the accountability of public officials and institutions. The work product doctrine promotes the efficient administration of justice by creating a qualified privilege for attorneys to prepare cases zealously in the service of their clients.

The main arguments of Chem-Safe sow discord where none need be found. The values embodied in the PRA and the work product doctrine intersect in this case but are not in conflict. The decision of the Court of Appeals shows that existing law is adequate for reconciling the tension between litigation privileges and openness in agency records. It is neither necessary nor appropriate to elevate either principle over the other. The Court of Appeals applied an orthodox view of the work product doctrine to the records at issue. Its decision should be affirmed.

The underlying dispute arose because of evidence of violations of laws governing hazardous waste at the Chem-Safe facility. After attempting to gain Chem-Safe's voluntary compliance for years, the County issued an administrative notice and order of violation.

A year after the NOVA was issued, and while it was being actively litigated in the courts, Chem-Safe filed its PRA request. The

request sought communications of the Kittitas County Prosecuting Attorney's office.

The withheld records at issue<sup>1</sup> were properly deemed work product by the trial court and the Court of Appeals. The emails did not merely arise from the underlying dispute over hazardous waste, but were created during -- and because of -- litigation of the NOVA.

This Court should affirm that the qualified protection for work product poses no existential threat to the PRA. Even-handedness in litigation between agencies and private parties was furthered by the rulings below.

## **II. ISSUE ACCEPTED FOR REVIEW**

Whether the emails exchanged between County prosecuting attorneys and Department of Ecology employees relating to the Chem-Safe NOVA litigation are exempt from public records production as attorney work product under the "common interest doctrine."

## **III. STATEMENT OF THE CASE**

Chem-Safe evaded compliance with Washington hazardous waste management laws at its facility in rural Kittitas, Washington. CP 2002-2009. The County learned from Ecology that Chem-Safe lacked a permit from Ecology's hazardous waste and toxics reduction program. CP

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<sup>1</sup> Tens of thousands of responsive records were produced. Op. at 19-20.

2002. Chem-Safe officials had previously told County personnel that Chem-Safe had a permit.<sup>2</sup> CP 2002. Despite repeated requests of the County, Chem-Safe refused to properly support an application for a moderate risk waste handling permit. CP 2002. The County's efforts to obtain Chem-Safe's compliance with moderate risk waste regulations originated in 2009, but were hindered by Chem-Safe's foot-dragging throughout 2010. CP 2002.

During a site visit occurring in December 2009, representatives from the County and Ecology met with Chem-Safe officials but Chem-Safe cut the meeting short. CP 2002. The aborted inspection identified violations of solid waste handling regulations, Ch. 173-350 WAC, and Kittitas County's local ordinances governing the same. CP 2002.

Later in December 2009, County personnel were able to complete the site visit. CP 2003. Violations continued to exist. CP 2003. In early 2010, Chem-Safe was notified that continued operation in the absence of a permit could result in civil penalties and criminal charges. CP 2003. During 2010, Chem-Safe provided information to the County in support of a moderate risk waste permit application. CP 2004-2005.

Deficiencies in Chem-Safe's draft facilities operations plan were

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<sup>2</sup> Chem-Safe later admitted that it operated without the required moderate risk waste permit. *See* CP 1276; *ABC Holdings, Inc. v. Kittitas County*, 187 Wn. App. 275, 280, 348 P.3d 1222 (2015).

discussed between representatives of the County and Chem-Safe. CP 2005-2006.

In November 2010, the County set a deadline for Chem-Safe to submit a complete moderate risk waste permit application or suspend operations at the facility. CP 2007. Instead, County officials received another non-compliant engineering and operations plan from Chem-Safe. CP 2010. The County also learned from the Idaho Department of Environmental Quality of a delivery of Chem-Safe's toxic waste to an incorrect disposal facility.<sup>3</sup> CP 1643-1644. During site visits in January 2011, violations were again observed. CP 2008. Labeling violations suggested improper handling of extremely hazardous and dangerous waste. CP 2008-2009.

Immediately following the site visit of January 27, 2011, County officials issued a notice of violation and abatement, a stop work order, and a health order (collectively the "NOVA"). CP 2009, 1265-1271. These decisions were appealed to the hearing examiner. CP 1275. At the hearing the County relied upon a detailed declaration of James Rivard, its environmental supervisor. CP 1275. Testimony on the County's behalf was also provided by Gary Bleeker, the facilities

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<sup>3</sup> The Idaho letter stated that Chem-Safe had "not responded to several attempts to resolve this issue." CP 1643.

specialist lead with Ecology's Waste to Resources Program. CP 1275-1276.

The hearing examiner affirmed the NOVA. CP 1273-1279. The hearing examiner's decision was affirmed by the trial court and on further appeal. CP 1281-1288; *ABC Holdings, Inc. v. Kittitas County*, 187 Wn. App. 275, 348 P.3d 1222 (2015), *review denied*, 184 Wn.2d 1014 (2015).

After the trial court upheld the NOVA in March 2012, the parties continued to litigate regarding Chem-Safe's failure to implement the NOVA's requirement of testing for spilled contamination at the site. CP 1268. The testing requirement was the subject of a motion to stay enforcement filed by Chem-Safe. CP 1313. The trial court found that Chem-Safe's motion did not present a debatable issue and that a stay of testing would compromise the public health, safety, and welfare. CP 2701-2703. Chem-Safe denied that any release of regulated waste had occurred but nevertheless refused to comply with the testing requirement.<sup>4</sup> CP 2788. In an email dated December 19, 2012, Chem-Safe argued to Ecology that Ecology staff were improperly "participating in an action that is subject to litigation between Chem-Safe and Kittitas County." CP 2788.

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<sup>4</sup> Chem-Safe was held in contempt over its refusal to perform testing. CP 1305-1306.

Against this backdrop, Chem-Safe filed its PRA request with the County on October 17, 2012. CP 70. The PRA request sought records from January 1, 2010, to the date of the request. CP 70. The request sought records "referencing any conversation between the Kittitas Civil Deputy" and Ecology. CP 70. A similar request was filed with Ecology. CP 71. This request also sought communications between County prosecutors and Ecology representatives. CP 71.

The trial court conducted in-camera review of eleven email chains. CP 781-789. The court concluded that "it is clear and there is no doubt that the emails were a product of litigation ongoing between Kittitas County and defendants and relate only to the facts, legal strategy, and issues involved in that litigation." CP 788. The court noted that release of the records would subvert the ability of "government attorneys to properly inform themselves of the specific circumstances existing in the world and deprive the public of the benefit of informed counsel." CP 789.

A second set of twenty-one emails was submitted for in-camera review. CP 2722-2724. In an order dated February 27, 2015, the trial court found the records to be work product and exempt under the PRA. CP 3006-3013.

The earliest records responsive to Chem-Safe's PRA request, which were produced, date to February 2011. CP 888-892, 2295. Other early responsive records, also produced, date to March 2011. CP 1712, 1718-1719. The earliest record withheld as exempt is dated July 15, 2011. CP 781.

#### **IV. ARGUMENT**

##### **A. Summary of argument.**

The Court of Appeals did not err in relying upon established precedent for several basic propositions. The PRA's controversy exemption includes records constituting work product. Op. at 10. The controversy exemption is based on the broad civil discovery rule found at CR 26(b)(4). Op. at 11 n.3. These conclusions are supported by *Sanders v. State*, 169 Wn.2d 827, 854-58, 240 P.3d 120 (2010) (common law of work product doctrine and PRA controversy exemption), *Soter v. Cowles Pub. Co.*, 162 Wn.2d 716, 743, 748, 174 P.3d 60 (2007) (affirming *Limstrom* as to "core" and "ordinary" work product), and *Limstrom v. Ladenburg*, 136 Wn.2d 595, 605, 963 P.2d 869 (1998) (discovery rule in civil cases applies to PRA request).

Chem-Safe offers no plausible alternative view of the jurisprudence of work product and the PRA.<sup>5</sup> Chem-Safe focuses its argument on the common interest doctrine. In so doing, Chem-Safe nearly concedes the preliminary point that the emails were work product pursuant to CR 26(b)(4) and the common law. Pet. at 12.

**B. The emails are work product.**

The withheld emails fall within the ambit of the work product doctrine. Work product immunity is not waived in the first place by disclosure to third persons unless there “is a significant likelihood that an adversary or potential adversary in anticipated litigation will obtain it.”

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<sup>5</sup> Arkansas stands alone in nullifying work product protection (and the attorney-client privilege) in its open record laws. *City of Fayetteville v. Edmark*, 304 Ark. 179, 192, 801 S.W.2d 275 (1990). Florida protects only core work product. Fla. Stat. § 119.071(1)(d)(1). Florida’s rule has led to calls for reform. Marion J. Radson, *Restoring the Attorney-Client and Work Product Privileges for Government Entities*, 82 Fla. B.J. 1 (2008). The experience of Massachusetts is instructive. The Massachusetts Supreme Court denied work product protection for agencies in *General Elec. Co. v. Dep’t of Env’t Prot.*, 429 Mass. 798, 801, 711 N.E.2d 589 (1999). The Court modified this stance in a 2007 decision in which it held that only the attorney client privilege was available as an exemption under the Massachusetts Public Records Act (“MPRA”). *Suffolk Const. Co., Inc. v. Div. of Capital Asset Mgmt.*, 449 Mass. 444, 461, 870 N.E.2d 33 (2007). Massachusetts later abrogated *General Elec.* and has now adopted the ordinary common law of work product for MPRA exemptions, with the exception of “reasonably completed factual studies or reports.” *DaRosa v. City of New Bedford*, 471 Mass. 446, 460, 30 N.E.3d 790 (2015). A thoughtful discussion of New Jersey’s view can be found in *O’Boyle v. Borough of Longport*, 218 N.J. 168, 94 A.3d 299 (2014), which relied on work product to exempt certain public records from disclosure. The United States Supreme Court has found work product protection to be incorporated into the federal Freedom of Information Act. *National Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 154-55, 95 S.Ct. 1504, 44 L.Ed.2d 29 (1975).

*Restatement (Third) of the Law Governing Lawyers* § 91(4) (2000). The non-waiver rule of the common interest doctrine is not an essential basis for the holding below. Op. at 17. The PRA is not threatened by a “vast” new exemption.<sup>6</sup> Pet. at 11.

On the other hand, requiring disclosure of work product material arising out of anticipated and ongoing litigation undermines both the PRA and the effective practice of law. This result would allow the PRA to subvert civil discovery rules and place an agency litigant at a marked disadvantage. The effect of such a rule would always be in favor of the agency’s litigation opponent. Because it could never use the PRA in this manner, the agency would be bound by the discovery rules. This predicament was averted when this Court recognized in 2001 that “[t]he Civil Rules do not conflict with the Public Records Act.” *O’Connor v. Dep’t of Soc. & Health Serv.*, 143 Wn.2d 895, 910, 25 P.3d 426 (2001); see also *Dep’t of Transp. v. Mendoza de Sugiyama*, 182 Wn. App. 588, 603, 330 P.3d 209 (2014) (harmonizing PRA and discovery rules). Likewise, when applying the work product rule of CR 26(b)(4) in the PRA context, this Court has acknowledged that it is “interpreting the

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<sup>6</sup> Chem-Safe is correct that the common interest doctrine is “not an independent exemption.” Pet. at 9. It need not be in order to find these emails exempt. The County has never claimed that the common interest doctrine itself is a privilege or a PRA exemption. It is a non-waiver rule.

civil discovery rule that applies to all civil cases" and that its interpretation "will impact *all* attorneys engaging in civil practice." *Soter*, 162 Wn.2d at 743 (emphasis in original). The protection of work product should not be diminished simply because a lawsuit involves a public agency. *Id.* at 742.

The work product doctrine is familiar but commonly misunderstood. It has one element based on the time and purpose of a document's creation. Another element is based on identity of authorship. Together, these factors are geared to prevent an adverse party from feeding on the industriousness of the party from whom discovery is sought. See Lewis H. Orland, *Observations on the Work Product Rule*, 29 Gonz. L. Rev. 281, 283 (1994). These factors focus on the interaction between the parties -- not the confidentiality conferred by attorney-client status -- and seek to determine whether the functional integrity of litigation-related work of the parties and their affiliates merits a qualified privilege. *United States v. American Tel. & Tel. Co.*, 642 F.2d 1285, 1299 (D.C. Cir. 1980).

Also unlike the attorney-client privilege, the work product doctrine is not an absolute bar to disclosure of the protected communication. Only documents revealing a lawyer's mental impressions receive near-complete protection. CR 26(b)(4). A lower

standard governs ordinary work product, i.e., documents and tangible things prepared or gathered in anticipation of litigation. *Id.* The privilege for ordinary work product will yield to a showing that substantially similar information could not have been obtained by other means without undue hardship. *Soter*, 162 Wn.2d at 748. Underlying facts are always accessible. *In re Firestorm 1991*, 129 Wn.2d 130, 160, 916 P.2d 411 (1996).

The ability of courts to tailor the degree of protection afforded documents under the work product rule helps assure against abuse. Litigants, judges, and agencies responding to PRA requests should be allowed to work from a predictable understanding of this basic area of law. *Limstrom*, 136 Wn.2d at 609.

**1. The temporal/purpose requirement of work product was met because the emails were prepared in anticipation of litigation.**

To be protected as work product, the material must be prepared in anticipation of litigation or for trial. *Id.* at 611. This protection encourages parties to prepare fully for litigation without fear of unwarranted disclosure. This interest does not arise for material not prepared in anticipation of litigation because such work does not implicate the adversary system. See Jeff A. Anderson et al., *The Work Product Doctrine*, 68 Cornell L. Rev. 760, 843-44 (1983). Documents

prepared with a focus on a specific regulatory violation by an identified target constitute litigation "sufficiently in mind" for protection.

*SafeCard Servs., Inc. v. S.E.C.*, 926 F.2d 1197, 1203 (D.C. Cir. 1991).

The determination does not depend on party status in a particular lawsuit.

*Harris v. Drake*, 152 Wn.2d 480, 492, 99 P.3d 872 (2004).

Involvement of counsel is not a guarantee that the rule will apply, but it may show that the documents were prompted by the prospect of litigation. 8 Charles A. Wright et al., *Fed. Practice and Procedure* § 2024 (2016). The foundation of work product is not strictly linked to the preparer's status as an attorney or non-attorney. *See Anderson, supra*, at 868-69. In all instances, the determination turns on the reason the records were prepared. *Caremark, Inc. v. Affiliated Computer Services, Inc.*, 195 F.R.D. 610, 615 (N.D. Ill. 2000).

Here, the record shows the involvement of legal counsel as either the author or the key intended recipient of the emails. The role of counsel acting in litigation was the basis of preparation of the material. The earliest of the withheld emails dates to July 15, 2011. CP 781. All emails prior to this date were produced. CP 781, 2724. By this time, the trial court had affirmed the hearing examiner (CP 1281-1288) and the parties were in the midst of litigation over the NOVA's site testing requirement. CP 2701. Emails exchanged between the County and

Ecology during 2011 and 2012 also almost invariably involved legal counsel.<sup>7</sup> These emails contain draft declarations, consultation on litigation-related technical, factual and regulatory issues, and analysis of risks regarding litigation positions. The "anticipation of litigation" aspect of the work product doctrine is met.

**2. The emails were created “by or for” the County or “by or for” the County's representative.**

The work product doctrine applies to documents created "by or for another party or by or for that other party's representative." CR 26(b)(4). The documents need not be prepared personally by counsel and can be the work of non-attorneys. *Heidebrink v. Moriwaki*, 104 Wn.2d 392, 396, 706 P.2d 212 (1985) (“[t]here is no distinction between attorney and non-attorney work product”); *Toensing v. United States Dep’t of Justice*, 999 F. Supp. 2d 50, 57 (D.D.C. 2013) (FOIA case).

Commentators emphasize that this element of the work product analysis is secondary. "Under [Federal] Rule 26(b)(3), it is clear that all documents and tangible things prepared by or for the attorney of the party from whom discovery is sought are within the qualified immunity given to work product, so long as they were prepared in anticipation of litigation or prepared for trial." Wright, *supra*, § 2024. "Whether a

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<sup>7</sup> One email chain that did not include an attorney was wrongly withheld for 98 days and then belatedly produced. Op. 27-28 n.10.

document is protected depends on the motivation behind its preparation, rather than on the person who prepared it." *Caremark, Inc.*, 195 F.R.D. at 615. Rule 26(b)(4) requires no more than that the material be prepared by or for any party or by or for any party's representative. The key is that the material must be prepared by a person assisting in, or acting in anticipation of, litigation. David M. Greenwald, et al. 1 *Testimonial Privileges* § 2:13 (2015).

Here, the withheld emails are consistently associated with either material prepared directly by legal counsel for the County or else prepared by Ecology representatives at the request of, and in support of, the County's legal counsel. Chem-Safe argues that Ecology was not the County's representative, agent, consultant, or legal expert. Pet. at 15. This misses the mark. Neither the text of the rule nor the function that it serves is dependent upon a contractual relationship as, for example, in the case of a retained expert witness. "The terms 'representative' and 'agent' are broad." *See Orland, supra*, 289 ("immaterial" what relationship existed with investigator; issue is whether documents were prepared in anticipation of litigation). Chem-Safe asserts limitations on the work product rule that simply are not contained in CR 26(b)(4).<sup>8</sup>

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<sup>8</sup> An insurance adjuster who prepares loss reserve information is not doing so as the litigation consultant of the insured or defense counsel, but the material is nevertheless prepared in anticipation of litigation and will be protected as work product. *See, e.g.*,

Chem-Safe cites no authority for its narrow view. Chem-Safe gives no consideration to the policy effect its interpretation would have on general civil litigation.

This Court has already considered the main thrust of Chem-Safe's argument. *Soter*, 162 Wn.2d at 749. In the ten years since *Soter* was issued, and the nearly 20 years since *Limstrom*, the legislature has not modified the controversy exemption.

**C. There was no waiver of work product by involvement of Ecology officials.**

The work product doctrine is based on preserving norms of fair relations between adversaries. *Orland, supra*, 283. This is unlike the confidentiality justification for the attorney-client privilege, which is deemed essential to protect the attorney-client relationship itself. *See* Paul F. Rothstein and Susan W. Crump, *Federal Testimonial Privileges* § 11:14 (2016). Because of these different rationales, voluntary disclosure of work product material to a third party does not waive the privilege unless the disclosure is inconsistent with protection of the material from an adversary. *Id.* The attorney client privilege is more fragile, and could be lost under similar circumstances.

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*Imperial Textiles Supplies, Inc. v. Hartford Fire Ins. Co.*, 2011 WL 1743751 (D.S.C. 2011).

Put differently, disclosure to a third party who has strong common interests in sharing the fruits of litigation efforts will not constitute waiver of the work product protection. *See In re Crazy Eddie Securities Litigation*, 131 F.R.D. 374, 379 (E.D. N.Y., 1990) (disclosure to adversary waives privilege); *U.S. ex rel. Purcell v. MWI Corp.*, 209 F.R.D. 21, 25 (D.D.C. 2002) (no waiver of work product by mere disclosure to a third party); *In re Bank One Securities Litigation*, 209 F.R.D. 418, 423 (N.D. Ill. 2002) ("[a] determination of whether documents have been made available to the adversary is . . . essential to assess whether the privilege has been waived."); Greenwald, *supra*, § 2:41 (collecting cases).

Attention to the purpose of the work product doctrine will show that there has been no waiver for the emails in this case. These materials were prepared by or for the County's use in anticipation of, or during the course of, specific litigation with Chem-Safe. Neither the County nor Ecology further disseminated anything to Chem-Safe, the County's adversary.

Chem-Safe argues that disclosure of protected materials to any third party results in a waiver of the protection, but this is not the law.<sup>9</sup>

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<sup>9</sup> Chem-Safe cites *Morgan v. City of Federal Way*, 166 Wn.2d 747, 213 P.3d 596 (2009)), as support. Pet. at 9. But *Morgan* discussed waiver in the attorney client

Chem-Safe also errs in claiming that the Court of Appeals grafted an independent exemption onto the PRA. Pet. at 9. The common interest doctrine is not a necessary element of maintaining work product protection for the challenged emails. Resort to the non-waiver rule of the common interest doctrine is not required because work product protection was not waived in the first instance.

**D. The County and Ecology had common legal interests as against Chem-Safe.**

The work product protection for these emails was not waived simply by the County sharing them with Ecology. Because this is the law of work product it is not necessary to turn to the non-waiver rule of the common interest doctrine, as might be the case if the attorney-client privilege supplied the initial justification for exemption. But, should the Court wish to address the matter, the common interest doctrine has been recognized in the PRA context. *Sanders*, 169 Wn.2d at 853-54.

In *Sanders*, the Court accepted that materials exchanged between assistant attorneys general and Snohomish County prosecutors were within the scope of the controversy exemption. These materials were a matter of common interest because they dealt with potential

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privilege context. *Id.* at 757. The waiver analysis of attorney client privilege stems from different goals and follows different rules.

consequences of Justice Sanders' visit to McNeil Island on pending criminal prosecutions.<sup>10</sup>

Here, the circumstances surrounding the communications between the County and Ecology are telling.

The earliest visit of County staff to the Chem-Safe facility, in 2008, included participation by Ecology official Gary Bleeker. CP 2002. Ecology supported the County's monitoring of moderate risk waste compliance from 2008 through 2010. CP 2003-2008. When a specific basis to issue the NOVA arose in January 2011, the common cause of County and Ecology personnel was firmly established. The joint participation of the County and Ecology was described in the NOVA and its cover letter. CP 1265. The letter and the NOVA were copied to key Ecology personnel. CP 1266.

In emails after the NOVA was issued and while it was being appealed, the County's counsel requested meetings with Ecology personnel under the subject line "Chem-Safe Hearing Prep". CP 1712-1714. Other emails around this time discussed settlement concepts. CP

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<sup>10</sup> These details are not obvious in *Sanders*, although they are an integral part of the Court's discussion. *Sanders*, 169 Wn.2d at 850-853 (discussing trial court's review of "Appendix A"). The matter is clearer in the appellate record. *See* Opening Brief of the Honorable Richard B. Sanders in *Sanders v. State*, Court of Appeals No. 35920-1-II, at Appendix II (June 30, 2008) (reproducing trial court opinion, Thurston County Superior Court No. 05-2-01439-1, at 13 (January 12, 2007)). In particular, see Judge McPhee's treatment of in-camera document nos. 9, 10, 27, 32, 33, 53, 55, 56, 57, 59, 60, and 64.

1715-1717. By March 2011 the two agencies were working towards defending the NOVA in litigation. CP 1712. Mr. Bleeker testified on the County's behalf. CP 1275-1276. Common litigation strategy, not merely cooperation between agencies, was the motive force behind the emails.

One indication of the existence of common cause between the agencies can ironically be found in the PRA request itself. Chem-Safe intentionally used its PRA request to reach the work of the County's counsel shared with Ecology during litigation. CP 70. As the trial court noted, "[t]his relationship is not now nor has it ever been a secret to anyone." CP 788. To suit its purposes in a different matter, Chem-Safe alleged precisely this cooperative relationship in seeking joint and several liability for damages against the County and Ecology. CP 1330-1332, 1339-1342.

County and Ecology personnel agreed to share confidential information in pursuit of their interest in litigation against Chem-Safe.<sup>11</sup> The emails they exchanged arose from the pursuit of that interest. The emails demonstrate that the County and Ecology in fact cooperated in developing common legal strategy. CP 368, 1412. No more is required

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<sup>11</sup> The common interest concept is not limited to defendants, but also encompasses plaintiffs. *U.S. ex rel. Purcell*, 209 F.R.D. at 25; *Prevue Pet Prods., Inc. v. Avian Adventures, Inc.*, 200 F.R.D. 413, 417 (N.D. Ill. 2001).

to establish the common interest doctrine. *See, e.g., Lugosch v. Congel*, 219 F.R.D. 220, 238 (N.D. N.Y. 2003) (joint defense should not be narrowly construed where shared legal bond and the anticipation of litigation is present); *In re Grand Jury Subpoenas, 89-3 and 89-4, John Doe 89-129*, 902 F.2d 244, 249, (4<sup>th</sup> Cir. 1990) (collecting cases); *In re LTV Securities Litigation*, 89 F.R.D. 595, 604 (N.D. Tex. 1981) (recognizing broad rule for sharing information among allied parties).

## V. CONCLUSION

The work product doctrine has remained largely stable since its restatement in *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947). It is essential that lawyers representing our public agencies be allowed to rely upon the work product doctrine. *Soter*, 162 Wn.2d at 748-49. The values of the PRA are not threatened by the result below. The legislature could alter this balance but has not done so. This Court should affirm the trial court and the Court of Appeals.

Respectfully submitted this 3<sup>rd</sup> day of February, 2017.

  
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*Attorneys for Respondent Kittitas County*



Julie Kihn  
JULIE KIHN

Signed and sworn to before me this 3<sup>rd</sup> day of February, 2017.

Kathy S. Lyczewski  
Notary public in and for the State of  
Washington, residing at 921 A St, WA  
My appointment expires: 4/27/18

