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JENNIFER M. ZUMBERGE
6661 Gause Road, Celina, OH 45822

and

Z-FARMS INC.
6612 Meyer Road, Celina, OH 45822

Relators,

v.

SEAN D. LOGAN, DIRECTOR
OHIO DEPARTMENT OF
NATURAL RESOURCES
2045 Morse Road.
Columbus, Ohio 43229-6693

and

OHIO DEPARTMENT OF
NATURAL RESOURCES
2045 Morse Road.
Columbus, Ohio 43229-6693

Respondents.

COMPLAINT FOR A WRIT OF MANDAMUS

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COMPLAINT FOR A WRIT OF MANDAMUS

1. Respondents Sean D. Logan, Director, and the Ohio Department of Natural Resources (collectively “ODNR”) appropriated the Relators’ property without paying just compensation to Relators. Relators, who are identified in detail below, bring this mandamus action pursuant the Fifth and Fourteenth Amendments to the United States Constitution, Article I, § 19 of the Ohio Constitution, and Ohio Revised Code Chapter 163, to compel ODNR to honor its obligations under the Ohio and United States Constitutions and commence appropriation proceedings, within which Relators may obtain just compensation for ODNR’s unlawful taking of Relators’ property.

2. In *State ex rel. Post* (Ohio App. Dec. 4, 2006), 3rd Dist. No. 10-2006-001, 2006 WL 3477024, 2006-Ohio-6339 (“*Post*”) attached hereto as Exhibit A, the Court of Appeals for the Sixth Appellate District, sitting by designation, affirmed the trial court’s grant of a writ of mandamus compelling ODNR to initiate appropriation proceedings to compensate other Ohio citizens embroiled in the very same conflict with ODNR as the Relators herein. On the same operative principles of the *Post* decision, this Court should compel ODNR to fulfill its clear legal duty to initiate appropriation proceedings to satisfy Relators’ rights to a jury assessment of compensation and damages owed to them for the taking of their property interests without just compensation.

JURISDICTION

3. This Court has jurisdiction over this original action pursuant to Ohio Const. Art. IV, § 2 and Ohio Revised Code § 2731.01 *et seq.*

PARTIES

4. Relators are owners of land in Mercer County, Ohio which lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

5. Relators own lands which are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys as a direct result of ODNR's improper management of water levels in Grand Lake St. Marys and ODNR's replacement of the 39.4-foot western spillway of Grand Lake St. Marys' dam with a 500-foot spillway.

6. Relators own lands, which as a result of the continuing, persistent, frequent, and inevitable increased severe flooding, ODNR has unlawfully occupied, used, and possessed and over which ODNR has otherwise exercised dominion and control.

7. Specifically, Relator Wayne T. Doner is an owner of lands known as Mercer County 28-011700.0000, 28-011300.0000, 28-012200.0000, 28-012300.0000, and 28-010500.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

8. Relator Janet K. Doner is an owner of lands known as Mercer County Parcel Numbers 28-011700.0000, 28-011300.0000, 28-012200.0000, and 28-012300.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

9. Relator Richard L. Adams is an owner of lands known as Mercer County Parcel Numbers 42-003700.0000, 42-005800.0000, and 42-014900.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

10. Relator Nancy L. Adams is an owner of lands known as Mercer County Parcel Numbers 42-003700.0000, 42-005800.0000, and 42-014900.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

11. Relator Paul A. Agnello is an owner of lands known as Mercer County Parcel Numbers 28-010400.0000 and 42-014000.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

12. Relator Rhonda E. Powell, also known as Rhonda E. Agnello, is an owner of lands known as Mercer County Parcel Numbers 28-010400.0000 and 42-014000.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

13. Relator The Baucher Farms, Inc. owns lands known as Mercer County Parcel Numbers 26-043100.0000 and 42-017300.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement

spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

14. Relator David M. Doner is an owner of lands known as Mercer County Parcel Numbers 28-011700.0000, 28-011300.0000, and 28-012200.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

15. Relator Karen S. Doner is an owner of lands known as Mercer County Parcel Numbers 28-011700.0000 and 28-012200.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

16. Relator Lawrence J. Dwenger is an owner of land known as Mercer County Parcel Number 26-041200.0100, some of which is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

17. Relator Joyce A. Dwenger is an owner of land known as Mercer County Parcel Number 26-041200.0100, some of which is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

18. Relator Stanley M. Ebbing is an owner of lands known as Mercer County Parcel Numbers 03-005100.0000, 03-004400.0000, 03-025900.0000, 26-041000.0000, 26-047200.0100, 42-029500.0000, 42-031000.0000, 09-043400.0000, and 09-037100.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

19. Relator Vicki L. Ebbing is an owner of lands known as Mercer County Parcel Numbers 03-005100.0000, 03-004400.0000, 03-025900.0000, 26-041000.0000, 26-047200.0100, 42-029500.0000, 42-031000.0000, 09-043400.0000, and 09-037100.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

20. Relator Carman R. Ellis is an owner of land known as Mercer County Parcel Number 26-049300.0100, some of which is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

21. Relator Jill E. Ellis is an owner of land known as Mercer County Parcel Number 26-049300.0100, some of which is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

22. Relator H. Edward Gilbert is an owner of lands known as Mercer County Parcel Numbers 26-001600.0000 and 26-041200.0000, some of which are subject to continuing,

persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

23. Relator Mary E. Gilbert is an owner of lands known as Mercer County Parcel Numbers 26-001600.0000 and 26-041200.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

24. Relator, David L. Granger, is Trustee of the David L. and Esther L. Granger Living Trust dated May 22, 2007, which owns lands known as Mercer County Parcel Numbers 42-012600.0000 and 42-004100.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

25. Relator Robert E. Highley is an owner of lands known as Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, and 42-004500.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

26. Relator Patricia L. Highley is an owner of lands known as Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, and 42-005000.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as

a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

27. Relator Jason E. Hines is an owner of lands known as Mercer County Parcel Numbers 26-049300.0200 and 27-250700.0000, some of which, upon information and belief, are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

28. Relator Emily A. Hines is an owner of lands known as Mercer County Parcel Numbers 26-049300.0200 and 27-250700.0000, some of which, upon information and belief, are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

29. Relator Daniel W. Johnsman owns lands known as Mercer County Parcel Numbers 26-038300.0200 and 26-037900.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

30. Relator David A. Johnsman is an owner of lands known as Mercer County Parcel Numbers 26-029500.0100 and 26-048600.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR. Relator David A. Johnsman is Trustee of the Ruth M. Johnsman Irrevocable Trust dated September 14, 1988, which is an owner of lands known as Mercer

County Parcel Numbers 26-014600.0100, 26-024700.0000, and 26-038300.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR. Relator David A. Johnsman is also Trustee of the Leroy J. Johnsman Irrevocable Trust dated September 14, 1988, which is an owner of lands known as Mercer County Parcel Numbers 26-014600.0100, 26-024700.0000, 26-038300.0000, 26-015000.0000, and 26-012500.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

31. Relator Jean A. Karr is Trustee of the Jean A. Karr Revocable Trust dated October 9, 2001, which is an owner of lands known as Mercer County Parcel Numbers 28-013400.0000 and 28-013500.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

32. Relator Chad M. Knapke is an owner of lands known as Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 42-014500.0102, and 42-026700.0101, some of which, upon information and belief, are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

33. Andrea M. Knapke is an owner of lands known as Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, and 42-014500.0102, some of which, upon

information and belief, are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

34. Relator Mark L. Knapke is Trustee of the Mark L. Knapke Revocable Living Trust dated August 2, 1994, and amended July 7, 1997, which owns lands known as Mercer County Parcel Numbers 29-002400.0000 and 38-003400.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

35. Relator Timothy A. Knapke is an owner of lands known as Mercer County Parcel Numbers 43-003800.0000 and 29-003700.0000, some of which, upon information and belief, are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

36. Relator Thomas L. Krick is an owner of lands known as Mercer County Parcel Numbers 27-012600.0000, 27-013500.0000, and 27-032200.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

37. Relator Candace L. Krick is an owner of lands known as Mercer County Parcel Numbers 27-012600.0000, 27-013500.0000, and 27-032200.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the

replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

38. Relator Darrell D. Kuhn owns land known as Mercer County Parcel Number 42-001200.0000 and an interest in lands known as Mercer County Parcel Numbers 25-009900.0000 and 25-013400.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

39. Relator Marvin E. Kuhn owns lands known as Mercer County Parcel Numbers 30-023600.0000, 28-000100.0000, 28-017400.0100, and 30-022100.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

40. Relator Kuhn Farms, Inc. owns lands known as Mercer County Parcel Numbers 01-046900.0000, 30-001700.0000, 30-000900.0000, and 30-000900.0200, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

41. Relator Marilyn M. Kuhn is an owner of lands known as Mercer County Parcel Numbers 30-022900.0000, 30-022500.0000, 30-024200.0000, 42-000200.0000, 25-009900.0000, and 25-013400.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and

ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

42. Relator Linda B. Linn is an owner of lands known as Mercer County Parcel Numbers 29-001800.0000, 29-002200.0000, and 29-002300.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

43. Relator Lee A. Fennig is Trustee of the Calvin A. Fennig Trust dated March 20, 1993, which is an owner of lands known as Mercer County Parcel Numbers 29-001800.0000 and 29-002200.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

44. Relator David J. McDonough is an owner of lands known as Mercer County Parcel Numbers 09-062100.0124, 09-062100.0123, and 26-038100.0000, some of which, upon information and belief, are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

45. Relator Deborah A. McDonough is an owner of lands known as Mercer County Parcel Numbers 09-062100.0124, 09-062100.0123, and 26-038100.0000, some of which, upon information and belief, are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

46. Relator David J. McNeilan is an owner of lands known as Mercer County Parcel Numbers 26-027300.0500, 26-027400.0200, 26-027400.0000, 26-027400.0100, and 26-027500.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

47. Relator Laura B. McNeilan is an owner of land known as Mercer County Parcel Number 26-027500.0000, some of which, upon information and belief, is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

48. Relator Lois J. McNeilan is an owner of lands known as Mercer County Parcel Numbers 26-027200.0000, 30-031600.0000, 30-032500.0000, 30-020900.0000, 30-018900.0000, 30-033800.0000, 30-025000.0000, 30-031500.0000, 30-004900.0000, 30-004900.0100, 30-019900.0200, 30-019900.0100, and 30-026100.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

49. Relator Charles J. Meier is an owner of lands known as Mercer County Parcel Numbers 26-060000.0000, 26-052600.0000, 26-052700.0000 and 26-052700.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

50. Relator Mary K. Meier is an owner of land known as Mercer County Parcel Number 26-052700.0100, some of which, upon information and belief, is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

51. Relator Jerome L. Meyer is an owner of lands known as Mercer County Parcel Numbers 42-029600.0000, 42-001000.0000, 42-019700.0000, and 42-019800.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

52. Relator Amy L. Meyer is an owner of lands known as Mercer County Parcel Numbers 42-029600.0000, 42-001000.0000, 42-019700.0000, and 42-019800.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

53. Relator Matt J. Muhlenkamp is an owner of land known as Mercer County Parcel Number 43-000300.0100, some of which, upon information and belief, is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

54. Relator Lynette Muhlenkamp is an owner of land known as Mercer County Parcel Number 43-000300.0100, some of which, upon information and belief, is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement

spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

55. Relator William M. Muhlenkamp is an owner of lands known as Mercer County Parcel Numbers 30-030300.0200, 30-031700.0000, 29-002000.0000, 30-031800.0000, 30-032900.0000, 30-034200.0100, 30-016200.0000, 28-009500.0000, 29-000500.0000, 30-031000.0300, 29-003300.0000, 29-004400.0000, 30-031300.0000, 29-001700.0000, 30-030400.0000, and 30-032600.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

56. Relator Carolyn J. Pierstorff is an owner of lands known as Mercer County Parcel Numbers 24-012800.0100 and 42-001300.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

57. Relator Opal L. Post owns lands known as Mercer County Parcel Numbers 29-001500.0000, 28-011400.0000, and 29-004200.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

58. Relator Jerry W. Powell is a Trustee of The Powell Living Trust dated December 22, 2005 (the "Powell Trust"), which is an owner of lands known as Mercer County Parcel Numbers 28-010400.0000, 42-014000.0000, 42-024200.0000, and 42-016900.0000, some of

which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

59. Relator Betty L. Powell is a Trustee of the Powell Trust, which is an owner of lands known as Mercer County Parcel Numbers 28-010400.0000, 42-014000.0000, 42-024200.0000, and 42-016900.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

60. Relator M. Leone Powell is an owner of lands known as Mercer County Parcel Numbers 42-003800.0000, 42-003400.0000, and 42-003200.0100, some of which, upon information and belief, are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

61. Relator Thomas L. Powell is an owner of lands known as Mercer County Parcel Numbers 28-010400.0100, 42-016800.0100, and 42-014000.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

62. Relator Brends S. Powell is an owner of lands known as Mercer County Parcel Numbers 28-010400.0100, 42-016800.0100, and 42-014000.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the

replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

63. Relator Larry V. Pugsley is an owner of lands known as Mercer County Parcel Numbers 42-003800.0000, 42-003400.0000, and 42-003200.0100, some of which, upon information and belief, are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

64. Relator William J. Ransbottom is an owner of lands known as Mercer County Parcel Numbers 28-013400.0000 and 28-013500.0000, some of which, upon information and belief, are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

65. Relator Timothy Rasawehr is an owner of land known as Mercer County Parcel Number 42-001300.0000, some of which is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

66. Relator Thomas D. Rasawehr is an owner of lands known as Mercer County Parcel Numbers 42-001300.0000 and 27-286400.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

67. Relator Carl W. Rose is an owner of land known as Mercer County Parcel Number 42-018500.0000, some of which is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

68. Relator Lucile M. Rose is an owner of land known as Mercer County Parcel Number 42-018500.0000, some of which is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR.

69. Relator Dorothy K. Schroyer is an owner of lands known as Mercer County Parcel Numbers 42-005700.0000, 42-014700.0000, and 42-014800.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

70. Relator Robert E. Searight is an owner of lands known as Mercer County Parcel Numbers 06-015500.0000, 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

71. Relator Bonita S. Searight is an owner of lands known as Mercer County Parcel Numbers 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as

a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

72. Relator Duane R. Sheets is an owner of lands known as Mercer County Parcel Numbers 30-032200.0000, 28-012900.0000, 28-012900.0100, 28-010900.0000, 28-001600.0000, and 30-033200.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

73. Relator Rodney E. Sheets is an owner of lands known as Mercer County Parcel Numbers 28-001600.0000, 30-033200.0000, 28-011100.0000, 28-001800.0000, 28-001900.0000, 28-011000.0000, 28-015000.0000, 28-008300.0000, and 07-061000.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

74. Relator Linda J. Sheets is an owner of lands known as Mercer County Parcel Numbers 28-011000.0000, 28-015000.0000, 28-008300.0000, and 07-061000.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

75. Relator Jeff A. Siefring owns lands known as Mercer County Parcel Numbers 26-044100.0200, 26-044100.0100, 26-044100.0300, and 26-044100.0000, some of which, upon information and belief, are subject to continuing, persistent, frequent, and inevitable increased

severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

76. Relator Mark A. Siefring is an owner of lands known as Mercer County Parcel Numbers 42-001000.0100, 43-013100.0000, 44-015100.0000, and 42-020000.0000 and owns an interest in land known as Mercer County Parcel Number 43-012400.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

77. Relator Neil J. Siefring is an owner of lands known as Mercer County Parcel Numbers 02-005000.0000, 03-027600.0000, 02-004900.0200, 03-030800.0000, 03-032500.0000, 26-041500.0000, 44-015000.0000, and 43-012400.0000 and owns an interest in land known as Mercer County Parcel Number 43-012400.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

78. Relator Mary K. Siefring is an owner of lands known as Mercer County Parcel Numbers 03-027600.0000, 02-004900.0200, 26-041500.0000, 44-015000.0000, and 43-012400.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

79. Relator Ronald J. Siefring is an owner of lands known as Mercer County Parcel Numbers 42-000100.0000, 44-015100.0000, and 42-020000.0000, and owns an interest in land known as Mercer County Parcel Number 43-012400.0100, some of which are subject to

continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

80. Realtor Carol L. Siefring is an owner of lands known as Mercer County Parcel Numbers 42-000100.0000 and 42-001000.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

81. Relator David J. Suhr is an owner of lands known as Mercer County Parcel Numbers 26-040900.0000, 26-003700.0000, 26-039200.0200, 26-000900.0000, and 28-018600.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

82. Relator Rita K. Suhr is an owner of lands known as Mercer County Parcel Numbers 26-040900.0000, 26-003700.0000, 26-039200.0200, 26-004200.0101, and 26-039100.0500, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

83. Relator Carl A. Sutter is an owner of lands known as Mercer County Parcel Numbers 24-010300.0200, 27-015000.0402, 28-015300.0000, 28-016900.0000, 28-017100.0000, 28-018000.0000, and 28-016200.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement

spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

84. Relator Judith A. Sutter is an owner of lands known as Mercer County Parcel Numbers 24-010300.0200, 27-015000.0402, 28-015300.0000, 28-016900.0000, 28-017100.0000, 28-018000.0000, and 28-016200.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

85. Relator Gale A. Thomas is an owner of lands known as Mercer County Parcel Numbers 28-008000.0000, 28-001300.0000, 28-002100.0000, 30-004100.0000, 28-013800.0000, 28-002100.0100, 30-025300.0000, 30-018700.0000, 30-017200.0200, 30-025800.0100, 30-002300.0000, and 30-001800.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

86. Relator Nelda G. Thomas is an owner of lands known as Mercer County Parcel Numbers 01-041300.0100, 28-008000.0000, 30-004100.0000, 28-013800.0000, 28-002100.0100, 30-017200.0200, 30-025800.0100, 30-002300.0000, and 30-001800.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

87. Relator Marilyn L. Uhlenhake is an owner of lands known as Mercer County Parcel Numbers 03-057700.0200, 03-057700.0000, 03-057900.0000, 26-043300.0000, and 26-

042900.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

88. Relator Jerry Weisman is an owner of lands known as Mercer County Parcel Numbers 24-036600.0000 and 42-000300.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

89. Relator Vicki L. Weisman is an owner of lands known as Mercer County Parcel Numbers 24-036600.0000 and 42-000300.0100, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

90. Relator Charles F. Zumberge is a Trustee of the Virginia L. Zumberge Trust dated January 31, 1990 (the "V. Zumberge Trust") which is an owner of lands known as Mercer County Parcel Numbers 26-022600.0000, 26-051000.0000, and 26-052900.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR. Relator Charles F. Zumberge is also a Trustee of the John H. Zumberge Trust dated January 31, 1990 (the "J. Zumberge Trust") which is an owner of lands known as Mercer County Parcel Numbers 26-022600.0000, 26-051000.0000, 26-052900.0000, and 26-050600.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement

spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

91. Relator Jennifer M. Zumberge owns land known as Mercer County Parcel Number 26-042800.0000, some of which, upon information and belief, is subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which is thus subject to an unlawful taking by ODNR. Relator Jennifer M. Zumberge is a Trustee of the V. Zumberge Trust which is an owner of lands known as Mercer County Parcel Numbers 26-022600.0000, 26-051000.0000, and 26-052900.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR. Relator Jennifer M. Zumberge is also a Trustee of the J. Zumberge Trust, which is an owner of lands known as Mercer County Parcel Numbers 26-022600.0000, 26-051000.0000, 26-052900.0000, and 26-050600.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

92. Relator Z-Farms Inc. owns lands known as Mercer County Parcel Numbers 26-051400.0000 and 26-049500.0000, some of which are subject to continuing, persistent, frequent, and inevitable increased severe flooding as a direct result of the replacement spillway and ODNR's lake level water management practices and which are thus subject to an unlawful taking by ODNR.

93. Relators also own certain personal property and fixtures, including but not limited to crops, trees, shrubs, bushes, vines, saplings, drainage tile, buildings, homes, livestock, and equipment, which ODNR has damaged and destroyed in connection with the continuing, persistent, frequent, and inevitable increased severe flooding and resulting unlawful taking of Relators' land.

94. Respondent ODNR is an agency of the State of Ohio duly created under R.C. § 121.02 and R.C. § 1501.01 *et seq.* and charged with, among other things, regulating the flow of water out of Grand Lake St. Marys in Mercer County, Ohio.

95. ODNR has the authority to appropriate property in the State of Ohio for public use pursuant to R.C. § 1501.01.

BACKGROUND FACTS

96. Relators' property is located downstream from the western spillway of Grand Lake St. Marys.

97. Grand Lake St. Marys is a man-made lake which was built between 1837-1845 as a water source for the Miami-Erie Canal.

98. Grand Lake St. Marys was created by damming the headwaters of the Wabash and St. Marys rivers and flooding the area between. *Post*, 2006-Ohio-6339 at ¶ 8.

99. During construction, trees and other debris were not removed. Accordingly, Grand Lake St. Marys is very shallow. *Id.*

100. Grand Lake St. Marys discharges water from a western spillway into Beaver Creek, which in turn discharges into the Wabash River. *Id.*

101. The Wabash River generally flows in a westerly direction through Ohio into Indiana. *Id.*

102. A gate also exists at the eastern end of Grand Lake St. Marys, but this gate has limited discharge capabilities. *Id.*

103. By the early twentieth century, use of the Miami-Erie Canal had declined. At that time, the primary use of Grand Lake St. Marys became recreational. *Id.* at ¶ 9.

104. In 1949, the State of Ohio designated Grand Lake St. Marys as a state park and placed it under the authority of the ODNR. *Id.*

105. Grand Lake St. Marys is 8.2 miles long and has a surface area of approximately 13,500 acres. *State of Ohio ex rel. Post v. Speck*, No. 01-CIV-091, December 14, 2005 Judgment Entry of the Common Pleas Court for Mercer County at 3, attached hereto as Exhibit B.

106. The dam at Grand Lake St. Marys is an earthen embankment that measures 5,540 feet long and 22 feet high. *Post*, 2006-Ohio-6339 at ¶ 11.

107. The elevation level of the top of the dam is 877 feet. *Id.*

108. Normal pool of the lake is at 870.6 feet. *Id.*

109. Prior to 1997, the dam had a curved 39.4-foot-long concrete overflow spillway with four 30-inch diameter gated outlet conduits. *Id.*

110. Between 1981-1997, only two of the four gates were operational. *Id.*

111. In 1978, an inspection of the dam revealed that the western spillway could not sustain a probable maximum flood without overtopping, a situation which would result in the eventual failure of the dam. *Id.* at ¶ 12.

112. ODNR determined that the spillway needed to be replaced, but ODNR did not have the funding to replace the western spillway until 1990. *Id.* at ¶¶ 12-13.

113. In 1990, ODNR determined that the 39.4-foot spillway at Grand Lake St. Marys needed to be replaced with a 500-foot spillway to pass the probable maximum flood test. *Id.* at ¶ 12.

114. From the outset of the spillway replacement project, federal and local agencies as well as numerous landowners expressed concern that the replacement project would result in greater flooding downstream. *Id.* at ¶¶ 13-14, 17-18. *See also Case Leasing & Rental, Inc. v. Ohio Dep't. of Natural Res.* (Ohio Ct. Cl. June 19, 2008), No. 2005-08034, 2008-Ohio 3411 at ¶¶ 15-17, 19, attached hereto as Exhibit C.

115. Landowners also suggested that ODNR divert a portion of the runoff to the St. Marys River through the east gate to more closely model the flow conditions prior to the construction of Grand Lake St. Marys. *Post*, 2006-Ohio-6339 at ¶ 15

116. ODNR altered the spillway design to include a 50-foot notch that was 0.9 feet lower, but rejected the landowners' suggestion to discharge some of the flow through the east gate. *Id.* at ¶¶ 13, 15.

117. From the time it obtained control of Grand Lake St. Marys in 1945, ODNR has used the western spillway as the outlet for virtually all water flow out of the lake. *Case Leasing*, 2008-Ohio 3411, at ¶ 3.

118. In 1987-88, ODNR modified the eastern outlet with a structure that had no flood management capacity, despite recommendations that the outlet and the canal into which it discharged be modified to permit the discharge of flood waters during significant storms. *Id.* at ¶ 14.

119. ODNR was concerned with flooding of the south shore of Grand Lake St. Marys during periods of high lake levels. *Post*, 2006-Ohio-6339 at ¶ 16.

120. ODNR concluded that the longer spillway would relieve some of the south shore flooding through greater discharge of water. *Id.*

121. ODNR approved the design for, and directed and oversaw the construction of the replacement spillway. *Case Leasing*, 2008-Ohio 3411, at ¶ 4.

122. ODNR began construction of the new spillway in 1996 and completed construction by 1997. *Post*, 2006-Ohio-6339 at ¶ 19.

123. The proposed new spillway permanently established a four-inch increase in the lake level which ODNR had previously and temporarily achieved by placing stop logs across the spillway for purposes of increasing recreational value to boaters. *Id.*

124. Prior to 1997, ODNR regulated Grand Lake St. Marys by periodically lowering lake levels, thereby minimizing the frequency and severity of flooding that Grand Lake St. Marys could otherwise cause. *Case Leasing*, 2008-Ohio 3411, at ¶ 23.

125. The redesigned spillway includes two 60-inch diameter outlets near the bottom of the structure which can be opened to lower the level of Grand Lake St. Marys by releasing water into Beaver Creek. *Id.* at ¶ 22.

126. Since 1997, however, despite its continued control of lake water levels, ODNR has not opened the 60-inch diameter outlets for management of lake levels. *Id.* at ¶ 23.

127. Since ODNR redesigned the spillway and changed its water level management practices, Relators have experienced and continue to experience increased and severe flooding to their lands, in terms of both extent and duration. In particular, Relators have experienced and continue to experience severe flooding of lands which had never before flooded, and severe flooding of their lands for longer periods of time.

128. As a direct result of ODNR's replacement of the spillway and ODNR's ongoing lake level management practices, Relators have suffered damage to their real and personal property including, but not limited to, erosion, soil compaction, the deposit of silt, sand, stones, and other debris on their lands, drainage tile failure, crop losses, the destruction of trees, bushes, shrubs, vines and saplings, the destruction of homes and buildings, equipment damage, and livestock losses.

129. The increased and severe flooding to Relators' lands is continuing, persistent and will frequently and inevitably recur and, as of the date of the filing of this action, has most recently recurred in the spring of 2009.

130. In 2001, five similarly situated landowners filed a mandamus action against ODNR in the Court of Common Pleas of Mercer County, *State of Ohio ex. rel. Post v. Speck*, No. 01-CIV-091.

131. The landowners alleged ODNR had effected a taking of their property and sought a writ of mandamus compelling ODNR to initiate appropriation proceedings.

132. The landowners based their taking claims on the severe flooding to their property as a result of the redesign of the west spillway of Grand Lake St. Marys and ODNR's improper management of lake water levels.

133. Ultimately, the trial court concluded "that the modification of the west spillway of Grand Lake St. Marys is burdensome and constitutes a taking of the property of the Plaintiffs." *Post*, No. 01-CIV-091, December 14, 2005 Judgment Entry at 10.

134. Based on that finding, the trial court granted the writ of mandamus compelling ODNR to institute appropriation proceedings. *Id.*

135. The Sixth District Court of Appeals, sitting by designation, affirmed the decision of the trial court, concluding that the trial court properly determined ODNR's duty, the trial court's factual findings were supported by sufficient, credible evidence, and the trial court's finding that a taking had occurred was not contrary to the manifest weight of the evidence. *Post*, 2006-Ohio-6339 at ¶¶ 56, 76.

136. Despite the trial court's issuance of a writ in December 2005, ODNR did not institute the required appropriation actions until three years later.

137. Like the landowners in *Post*, the Relators in this action have suffered and continue to suffer increased severe flooding as a direct result of the redesigned spillway and ODNR's lake level management practices.

138. And like the landowners in *Post*, the Relators in this action have suffered and continue to suffer damage from the increased severe flooding that constitutes a taking of the property of the Plaintiffs.

139. And like the landowners in *Post*, the flooding experienced by Relators in this action is continuing, persistent and will frequently and inevitably recur.

140. In 2005, another similarly situated landowner and business owner filed suit against ODNR in the Court of Claims asserting claims of negligence, nuisance, trespass, absolute nuisance/nuisance per se, and taking, *Case Leasing*, 2008-Ohio 3411.

141. At trial, the landowner contended that ODNR was negligent in the design and management of the 500-foot spillway that was completed in 1997, that it did not comply with accepted engineering practices, that it failed to consider other economically feasible designs, and that ODNR knew or should have known that the installation of the replacement spillway would result in more frequent and more severe flooding to downstream landowners. *Id.* at ¶ 5.

142. While the Court of Claims acknowledged the utility of ODNR's safety objective in redesigning the spillway, "balanced against the gravity of the foreseeable and avoidable harm caused," the Court concluded "that the manner in which ODNR implemented its objective was unreasonable and negligent." *Id.* at ¶ 26.

143. Specifically, the Court determined that ODNR's failure to "undertake a thorough investigation of the historical storm and lake-level data before designing and installing the replacement spillway . . . was unreasonable." *Id.* at ¶ 27.

144. The Court also concluded that ODNR's failure to conduct "a sensitivity analysis to determine the best spillway design . . . was unreasonable." *Id.*

145. Likewise, the Court determined that "ODNR's failure to adequately consider cost-effective alternative measures that would also have met its safety objectives was unreasonable in light of the known potential for increased flooding and significant property damage that could have been avoided had it done so." *Id.*

146. Further, the Court concluded "that ODNR's post-1997 management of lake levels was unreasonable in light of the foreseeable damage that could have been avoided had it utilized manual draw-down alternatives." *Id.*

147. In summary, the Court granted judgment against ODNR on the landowner's negligence claim, concluding: "[B]ased upon the data that was available to it at the time, ODNR knew or should have known that the installation of the replacement spillway as designed would result in more frequent and more severe flooding to downstream landowners. Therefore, its design choice and subsequent lake level management were unreasonable." *Id.* at ¶ 28.

148. In concluding ODNR was negligent, the Court determined that ODNR owed the landowner a duty, ODNR had breached that duty, and ODNR's breach proximately caused the landowner's injuries. *Id.* at ¶ 7.

149. In other words, the Court in *Case Leasing* determined that ODNR was negligent in redesigning the western spillway and was negligent in maintaining lake water levels and that ODNR's negligence proximately caused severe and increased flooding and extensive property damage.

150. For the same reasons ODNR was negligent in *Case Leasing*, ODNR was negligent in redesigning the western spillway and in maintaining lake water levels in this case.

151. And just as ODNR's negligence in *Case Leasing* proximately caused the landowner to suffer increased severe flooding and extensive property damage, ODNR's actions have caused Relators to suffer continuing, persistent, frequent, and inevitable increased severe flooding and extensive property damage.

152. As a result of this continuing, persistent, frequent, and inevitable increased severe flooding, ODNR presently exercises dominion and control over Relators' lands and denies Relators just compensation for ODNR's involuntary taking of their property that both the Ohio Constitution and the United States Constitution ensure them.

CLAIM FOR RELIEF

153. Relators reassert and incorporate each and every allegation contained in ¶ 1 through ¶ 152 above as if fully rewritten herein.

154. ODNR's confiscation, destruction, seizure, use and possession of Relators' property constitute unconstitutional takings. As a result, ODNR has violated Relators'

fundamental property rights and caused Relators to suffer substantial property damages and incur attorneys' fees and other costs in response to ODNR's wrongful actions.

155. Pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, Article I, § 19 of the Ohio Constitution, and Ohio Revised Code Chapter 163, ODNR has a clear legal duty to compensate Relators for property rights taken from them.

156. ODNR has failed to fulfill its statutory duty to commence an appropriation proceeding and to pay just compensation for its continuing invasion and seizure of Relators' properties.

157. Relators have no plain and adequate remedy in the ordinary course of the law to obtain a jury assessment of compensation and damages for its property taken by ODNR without just compensation.

158. Pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, Article I, § 19 of the Ohio Constitution, and Ohio Revised Code Chapter 163, ODNR is liable to Relators for the fair market value of the land taken from the date that compensation is first paid or secured by the Relators with interest thereon.

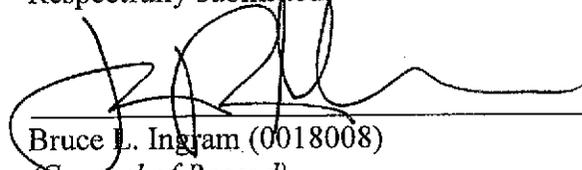
159. Pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, Article I, § 19 of the Ohio Constitution, Ohio Revised Code Chapter 2731, 42 U.S.C. § 1988(b), and 42 U.S.C. § 1983, ODNR is liable to the Relators for the attorneys' fees Relators incurred in vindicating their constitutional right to just compensation.

160. Pursuant to Supreme Court Practice Rule X, § 4(B), affidavits of Relators are attached hereto as Exhibits D-1 through D-85.

WHEREFORE, Relators request relief from this Court as follows:

- A. Issue a Peremptory Writ of Mandamus compelling ODNR to initiate appropriation proceedings pursuant to Ohio Revised Code Chapter 163; or
- B. Issue an Alternative Writ pursuant to Supreme Court Practice Rule X, § 6, to show cause why ODNR should not be compelled to initiate appropriation proceedings pursuant to Ohio Revised Code Chapter 163;
- C. Award Relators their attorneys' fees; and
- D. Issue such other and further relief as may be available either at law or in equity.

Respectfully submitted,



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EXHIBIT A

CHECK OHIO SUPREME COURT RULES FOR
REPORTING OF OPINIONS AND WEIGHT OF
LEGAL AUTHORITY.

Court of Appeals of Ohio,
Third District, Mercer County.
STATE of Ohio, ex rel. Leo POST et al., Appellees
v.
Samuel W. SPECK, Director, Ohio Department of
Natural Resources, Appellant.
No. 10-2006-001.

Decided Dec. 4, 2006.

Background: Property owners sought writ of mandamus compelling director of the Department of Natural Resources to initiate appropriation proceedings regarding the taking of properties due to intermittent flooding. The Court of Common Pleas, Mercer County, No. 01-CIV-091, granted writ. Director appealed.

Holdings: The Court of Appeals, Handwork, J., held that:

- (1) evidence was sufficient to support finding that there was an increase in flooding on properties due to installation of new spillway, as required for takings claim, and
(2) evidence was sufficient to support finding that property owners suffered damages as a result of increased flooding, as required for takings claim.

Affirmed.

West Headnotes

[1] Eminent Domain 148  300

148 Eminent Domain

148IV Remedies of Owners of Property; Inverse
Condemnation

148k294 Evidence

148k300 k. Weight and Sufficiency. Most
Cited Cases

Evidence was sufficient to support trial court's find-

ing that there was an increase in flooding on properties due to installation of new spillway, as was required for property owners' takings claim based on the intermittent flooding of property; testimony from property owners and photographic evidence established that there was excessive flooding since the spillway installation and expert testified that the new spillway increased downstream flooding. U.S.C.A. Const. Amend. 5; Const. Art. 1, § 19.

[2] Eminent Domain 148  300

148 Eminent Domain

148IV Remedies of Owners of Property; Inverse
Condemnation

148k294 Evidence

148k300 k. Weight and Sufficiency. Most
Cited Cases

Evidence was sufficient to support trial court's finding that property owners suffered damages as a result of increased flooding due to installation of new spillway, as was required for property owners' takings claim based on the intermittent flooding of property; owners testified that they had all suffered damages from the increased flooding, including an inability to plant crops, changing their farming operation to avoid lost crops due to flooding, a decrease in the value of farm, bank erosion, soil compaction, and damaged tiles and debris left after flooding. U.S.C.A. Const. Amend. 5; Const. Art. 1, § 19.

J. Anthony Logan, for appellees.

Nan Still, amicus curiae.

Jim Petro, Attorney General of Ohio, Joan I. Fishel
and Raymond J. Studer, Assistant Attorney Generals
for appellant.

DECISION AND JUDGMENT ENTRY

HANDWORK, J.

*1 {¶ 1} This appeal is from the December 14, 2005 judgment of the Mercer County Court of Common Pleas. The lower court granted appellees, Leo Post,

Richard Baucher, Jack Minch, Steve Zumberge, and Terry Linn, a writ of mandamus compelling appellant, Samuel Speck, Director of the Ohio Department of Natural Resources, to initiate appropriation proceedings regarding the taking of appellees' properties. Upon consideration of the assignments of error, we affirm the decision of the lower court. Appellant asserts the following assignments of error on appeal:

{¶ 2} "THE TRIAL COURT'S DETERMINATION THAT APPELLEE'S PROPERTY HAS BEEN TAKEN AS A RESULT OF INCREASED INTERMITTENT FLOODING WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 3} "THE TRIAL COURT ERRED IN APPLYING THE INCORRECT LEGAL STANDARD TO THE ACTION OF ODNR WHEN IT FAILED TO RULE THAT DIRECTOR SPECK'S ONLY DUTY WAS TO NOT RELEASE MORE WATER FROM THE DAM THAN THAT WHICH WOULD FLOW NATURALLY."

{¶ 4} Also before the court is an Amici Curiae brief filed by the Ohio Farm Bureau Federation, Inc. and Mercer County Farm Bureau.

{¶ 5} Appellees, Leo Post, Richard Baucher, Jack Minch, Steve Zumberge, and Terry Linn, brought a mandamus action against appellant, Samuel W. Speck, Director of the Ohio Department of Natural Resources, on May 18, 2001. Appellees all own land located in Jefferson, Washington, and Liberty Townships in Mercer County, Ohio. They alleged that their land has been subject to flooding from the west spillway of Grand Lake St. Marys because of the improper management of the water levels in Grand Lake St. Marys and a change in the spillway design. Appellant is the director of the governmental agency responsible for regulating the flow of water in and out of Grand Lake St. Marys in Mercer County.

{¶ 6} Appellees claimed that appellant and his predecessors in office either neglected or failed to perform their statutory duty to construct and maintain the west spillway in a manner consistent with the reasonable use doctrine governing surface waters. Appellees further claimed that appellant has a duty to initiate appropriation proceedings under R.C. 163.01, et seq.,

pursuant to Art. I, Sec. 19, of the Ohio Constitution for purposes of compensating individuals whose property rights have been adversely affected by operation of the water control facilities.

{¶ 7} The parties stipulated to the following facts prior to trial. Appellees each own farmland located in Mercer County, Ohio, with frontage on either the Wabash River or Beaver Creek. All of the property is located downstream from the western spillway of Grand Lake St. Marys. Baucher owns 78.5 acres of farmland with frontage on both sides of the Beaver Creek. Zumberge rents a 370 acre farm from the Zumberge Trust, which owns land with frontage on both banks of the Beaver Creek. Post owns 333 acres of farmland with frontage on the Wabash River. Minch owns 163 acres of farmland with frontage on the Wabash River. The Minch property is leased by Linn. Linn also owns 193 acres of farmland with frontage on the Wabash River.

*2 {¶ 8} Grand Lake St. Marys was originally constructed as a canal facility between 1837-1841 as a water supply source for the Miami-Erie Canal. It was created by damming the headwaters of the Wabash and St. Marys rivers and flooding the area between. Trees and other debris were not removed and the lake is very shallow. The lake discharges water from a western spillway first into Beaver Creek, which in turn discharges into the Wabash River. The Wabash River flows in a westerly direction from Ohio into Indiana. The western spillway of the dam at Grand Lake St. Marys has a 37-foot weir with four, thirty-inch gates. A gate exists at the eastern end of the lake for limited discharge.

{¶ 9} After the decline of the Miami-Erie Canal use in the early twentieth century, use of Grand Lake St. Marys changed to recreational purposes. The State of Ohio designated the lake as part of a state park in 1949 and placed it under the authority of several divisions of the Ohio Department of National Resources. The park is located in Mercer and Auglaize Counties and consists of the lake and 500 acres of surrounding land. Currently, the lake is approximately 8.2 miles long and has a surface area of 13,500 acres.

{¶ 10} Since 1963, the Division of Water enforces the dam safety statutes (R.C. 1521.06-1521.09).

Newly constructed and existing dams must meet the safety requirements set forth in Ohio Adm.Code 1501:21. These rules ensure the stability of the dam and its ability to withstand certain design floods. The dam at Grand Lake St. Marys is a Class I dam and, therefore, must be able to pass 100 percent of the probable maximum flood. To meet this standard, the rainwater must flow entirely through the spillway rather than over the top of the dam. The function of this requirement is to prevent destruction of the earthen dam and catastrophic flooding.

{¶ 11} The dam at Grand Lake St. Marys is an earthen embankment, about 5,540 feet long and 22 feet high. The elevation level of the top of the dam is 877 feet. Prior to 1997, the dam had a curved 39.4-foot-long concrete overflow spillway. The spillway had four 30-inch diameter gated outlet conduits, but only two of the gates were operational from 1985-1977. Normal pool of the lake is at 870.6 feet.

{¶ 12} In 1978, the dam was inspected pursuant to the federal Dam Inspection Act of 1972. The inspection disclosed that the western spillway could not pass the probable maximum flood without overtopping for 48 hours. This situation would result in eventual failure of the dam. While the spillway replacement project remained high on the priority list for dam repairs by the Division of Water, the department did not have the funding to complete the project.

{¶ 13} In 1990, the controlling board allocated funds for the replacement of the western spillway. The Division of Water determined that a 500-foot long spillway was needed to pass the probable maximum flood test. The department also studied how the amount of the flow over the spillway would affect Beaver Creek. Concern was expressed from the very beginning that the replacement project would result in the possibility of greater flooding downstream along Beaver Creek. Therefore, in the fall of 1990, the Ohio Department of Natural Resources changed the spillway design to include a 50-foot notch that was 0.9 feet lower.

*3 {¶ 14} In a September 1991 memorandum from Richard Goettemoeller, Chief of the Division of Water, to the Director, Frances Buchholzer, Goettemoel-

ler reported that the greatest number of people who raised concerns about potential flooding as a result of the size of the proposed replacement spillway came from farmers who owned land along Beaver Creek. They questioned whether the flooding problem along Beaver Creek would be exacerbated by the enlargement of the spillway. Goettemoeller noted that the department believed that by providing flood storage with the 50-foot notch in the weir, flooding of the agricultural land would be minimized. Goettemoeller dismissed the county engineer's concerns about the impact of the flooding on county bridges crossing Beaver Creek on the basis that the Department of Water calculations indicated that the modified spillway should not have a significant effect on the bridges.

{¶ 15} Goettemoeller also advised Buchholzer that the Beaver Creek owners suggested that a portion of the runoff be diverted to the St. Marys River to more closely model the flow conditions prior to construction of the lake. Goettemoeller stated that this was not feasible because the capacity of the gate and feeder canal at the east end of the lake and construction of a new spillway at the outlet channel would be economically infeasible.

{¶ 16} The second concern raised was the flooding of the south shore of the lake during periods of high lake levels. In 1988, the elevation of the lake was raised four inches by placing stop logs across the spillway to increase recreational value to boaters. The proposed new spillway would permanently establish the higher elevation. The department determined that the longer spillway length would relieve some of the longterm south shore flooding through greater discharge of the excess flood storage, which would return the elevation level to normal in a shorter period.

{¶ 17} Keith Earley, a Mercer County engineer, wrote to the Ohio Department of Natural Resources in November 1991 after reviewing the information supplied by the Ohio Department of Natural Resources and the 1981 "Survey Report for the Flood Control and Allied Purposes" prepared by the Louisville, Kentucky District of the Army Corps. of Engineers. Earley found that the two sources of data contained wide discrepancies and that this factor alone warranted additional detailed analysis. Earley was

most concerned with the Corps report indicating “ * * * an observed bankful flow of the Beaver Creek outlet being about 250 c.f.s. while the O.D.N.R. records indicated a capacity of over 700 c.f.s.” Furthermore, he stated, the Corps report “indicates peak stage lake levels for the ten-year through 100-year storms being approximately one foot higher than the O.D.N.R. based on 51 years of record measurements.” He concluded that “[i]f the Corps report is correct, larger outflow will pass uncontrolled for long periods over the proposed 40 percent enlarged spillway to an outletting stream of very limited capacity.” Even if the O.D.N.R.’s figures were correct, Earley opined that enlarging the spillway crest would cause more damage than good. He suggested that a study be done regarding the widening of the upper three miles of Beaver Creek by approximately six feet to accommodate the increased flows.

*4 {¶ 18} Again in February 1994, Earley wrote to the Ohio Department of Natural Resources expressing concerns that the study of Beaver Creek by the Army Corps of Engineers did not contemplate enlarging only the upper three miles nor the proposed conditions. He did not oppose the planned project, but suggested further study was necessary. Earley suggested that it would be worth studying the cost and benefits of enlarging the upper three miles to a 26 foot wide bottom width and enlarging the controlled outlet capacity of the structure. He questioned whether there would be increased flooding in the upper three miles of Beaver Creek after replacement of the spillway. His concern was not “at the three mile point but upstream from constrictions such as bridges in the upper three miles.” He based his opinion upon the fact that flooding is affected by the duration of the outflows above the capacity of the restrictions as well as the peak outflow. He also asserted that peak outflow upstream from the bikeway bridge would most certainly be significantly increased.

{¶ 19} Construction of the replacement spillway began in 1996 and was completed by 1997 as proposed by the Ohio Department of Natural Resources.

{¶ 20} The parties presented the following additional evidence at a hearing before the trial court. Zumberge testified that portions of his farm are located less than

a mile from the spillway along Beaver Creek. He has observed a significant increase in the flooding along Beaver Creek since the new spillway was installed. As a result of the increased flooding, Zumberge has systematically tilled 90 percent of the farmland that he owns at intervals of 40-45 feet. However, he has still lost crops due to flooding since 1997. He has also suffered from an inability to plant or a need to replant crops, bank erosion on Beaver Creek, soil compaction, a need to replace tile, and silk and other debris left after the flooding. He estimated that 80-to-85 acres of his 380 acres have been affected. Even in the years that he has not lost crops due to flooding, he has seen flooding along Beaver Creek for a short period of time. Prior to the new spillway, he had 30-35 acres that would occasionally be affected by flooding. For five years out of the last seven years since the new spillway was constructed, he has had water backing up on his land to the extent that he cannot use it.

{¶ 21} Baucher testified that his 80 acre farmland is located approximately five miles from the spillway. Beaver Creek splits his farm into two parcels. He testified that he has always had flooding on this property, with the worse flooding occurring in 1980. However, since the new spillway was installed, the frequency of the flooding has increased, the amount of water invading his land has increased, and the water remains on the land two-to-three days longer. His farm is not tilled systematically, but does contain tile. He has experienced tile failures, but does not believe that these were the cause of the flooding. Approximately 35 acres have been inundated with floodwater. He has changed his crops because of the late planting date. He believes that the value of his farm has decreased because of the flooding issues.

*5 {¶ 22} Post testified that his farmland is located on the Wabash River near the state line. Based upon his experience, he believes that the new spillway has caused more frequent flooding and more intense flooding (two and one-half feet higher). The water also remains on his land three-to-eight days longer. As a result, he has had to change his farming operation. He has also seen the Wabash Riverbanks erode to the extent that the river is now 12-15 feet wider in certain places. Most of his land is tilled systematically and some of the tile has failed because the river backs

up into the tile. He now experiences flooding of 10-12 acres a year resulting in crop losses. He believed that the value of his farm has decreased because of the known flooding. While he acknowledged that he has always had some flooding in the area because of constrictions in the Wabash River in Indiana, he believes that the increased flooding is due to the fact that the Wabash River cannot handle the excessive amount of water coming in from Beaver Creek, which joins the Wabash River just east of his property. The excess water from Beaver Creek overflows the Wabash River right at his property. Stones and sand from the river are washed onto his property, as well as stones from the road.

{¶ 23} Minch testified that his farm is located along the Wabash River near the state line, approximately 11 miles from the spillway. Since the new spillway was installed, Minch has observed a change in the flooding. The floodwater gets higher and even floods across the highway. He has not seen more frequent flooding, but the flooding is much more severe and does not recede as quickly. The water has remained twice as long since the new spillway was constructed. Approximately 113 acres of his land is inundated with water. He has always experienced field erosion during the large floods. He has changed his farming operation to handle the flooding better and believes that his land is not worth as much because of the recent flooding. While the clearing of Beaver Creek did not cause increased flooding on his property, he believes that the water flows more quickly now so that his property is flooded earlier in the day than it used to be. He also acknowledged that the condition of the Wabash River might be contributing to the flooding.

{¶ 24} Linn testified that he owns 300 acres of farmland and rents 128 acres of farmland that is located approximately 11 miles from the spillway. Some of the land is located on Beaver Creek, and some is about a quarter mile from the creek, near the confluence of Beaver Creek and the Wabash River. While his land is not systematically tiled, there is tile that was placed 10-15 years ago that is sufficient to drain the fields if the river is not overflowing. He did not notice more frequent flooding after the new spillway was installed, but he did observe that the flooding is occurring more quickly and remains longer. As a result, he has suffered damage to his

crops five out of the last six years. The flooding also decreases the value of his land and caused him to change his farming operation to accommodate the flooding. When Beaver Creek was cleaned in 1984-1985, he did not notice additional flooding afterward. It was only after the new spillway was constructed that Linn saw an increase in the flooding.

*6 {¶ 25} Padden, CEO of Mercer County Joint Township Community Hospital, testified that while the Community Medical Center he oversees was not built in an historic flood plain, the center experienced extensive flooding in 2003 and again in 2004. Even though the center is located just a couple miles northwest of the spillway, Padden testified that the center had never experienced flooding in the prior 18-20 years that the center has been in operation. The cost of flood recovery was in excess of \$1.25 million. In 2005, damage from the flooding was averted solely by sandbagging.

{¶ 26} William Ringo, president of the Lake Improvement Association, testified that the level of the lake affects the members of the association because they are unable to utilize the lake if the levels are too low. When the lake was 23 inches below the spillway, many people were experiencing damage to their boats.

{¶ 27} Two experts testified, one for appellees and one for appellant. John Warns, P.E., testified on behalf of appellees. Warns is currently employed as a professional engineer by the Poggemeyer Design Group specializing in civil engineering, hydrology, and open channel hydraulics. He began researching the hydrology of the area surrounding Grand Lake St. Marys in the fall of 2001 while he was self-employed. While Warns has considerable experience in the field of hydrology, he had never worked on a dam and reservoir project the size of Grand Lake St. Marys.

{¶ 28} Based upon his research, Warns prepared a report dated April 23, 2002, for appellees regarding his conclusions of the before and after conditions created by the spillway constructed at Grand Lake St. Marys. In conclusion, Warns found that under many different hypothetical scenarios for storms, there would be an increase in downstream flooding be-

cause of the new spillway design.

{¶ 29} Warns explained that while the height of the spillway was not significantly changed, the new spillway is significantly wider, 450 feet plus a 50 foot long notch that was slightly lower in elevation versus 39.4 feet. As a result, water is discharged significantly faster and the lake level does not rise. Warns testified that a spillway, in connection with other mitigating activities, could have been designed which would have operated more like the old spillway and discharged the water more slowly. Warns noted in his report that the Ohio Department of Natural Resources attempted to eliminate the impact of this increased discharge rate during the more frequent storm events by adding the 50-foot notch.

{¶ 30} Warns reviewed 20 years of data supplied by the Ohio Department of Natural Resources to determine whether the new spillway would adversely affect flooding along Beaver Creek and the Wabash River. He also visited the area, performed a field inspection, and reviewed historical documents concerning the previous spillway. A significant portion of the information used to prepare his report was compiled before construction of the new spillway.

*7 {¶ 31} He then prepared graphs depicting the amount of flooding that could be expected to occur under various hypothetical scenarios (a 10-, 25-, 50-, and 100-year rain event). He determined that because of the new spillway design, considerably more water would flow over the new spillway than under the old spillway. He had no doubt that under various scenarios significant longer-duration flooding can and may occur downstream because of the change in the spillway even where flooding had not occurred before under similar events.

{¶ 32} Warns explained that the charts he prepared represent precipitation frequencies, not flooding frequencies. Therefore, the charts show the increase in flow down Beaver Creek due to the new spillway, not necessarily the effect of the flow on downstream landowners. He recognized that the impact of other basins in the area masks the impact of the change in the flow over the spillway. Other variable factors such as flooding caused by the lack of proper tiling, moisture conditions, or flooding caused by the down-

stream watershed also affected the flooding in the area. Warns did not consider water from any other source also flowing into Beaver Creek because the confluence of Beaver Creek and the Wabash River occurs far enough downstream from the spillway that Warns did not believe that there was a backwater impact from the Wabash River.

{¶ 33} Nonetheless, he concluded the new spillway is contributing to the increased flooding and its increased duration regardless of what other type of regional flooding event occurs. Warns also evaluated the impact of lowering lake levels in the fall and determined that this would favorably affect the discharge from the spillway and ultimate the downstream flooding. Thus, Warns concluded that the change in the drawdown policy had also increased the flooding downstream.

{¶ 34} Warns acknowledged that he did not evaluate the specifics of how appellees were damaged by the flooding because the purpose of his report was to show the change in water flow over the spillway based solely upon the information supplied by the Ohio Department of Natural Resources. He acknowledged that for the hypothetical 100-year flood, appellees who lived along the Wabash River should not experience flooding due to the new spillway.

{¶ 35} Mark Ogden, the section administrator for the water management section of the Department of Natural Resources, Division of Water, testified that he reviewed Warns' report. Ogden found that the cases Warns looked at were not realistic because he did not consider the effect of a storm event over the entire watershed. Doyle Hartman, a civil engineer specializing in hydraulics who prepared a hydraulics analysis for appellant, testified that while he did not dispute Warns conclusions, Hartman believed that his analysis was more comprehensive.

{¶ 36} Hartman testified that he prepared an analysis of the flooding in the area in March 2004 on behalf of appellant. He also reviewed data supplied by the Ohio Department of Natural Resources. He used this information to analyze the overall hydrologic system of the area and create a model of the entire watershed of the downstream area. Since the prior studies focused on the water coming over the spillway and the

area surrounding Grand Lake St. Marys, he decided to expand his analysis to include the effect of the entire downstream watershed, including the entire area encompassed by the Beaver Creek and Wabash River watersheds. Hartman explained that in a dam safety study, the Ohio Department of Natural Resources would typically focus on rain events and how much water was coming into the lake and how it can be passed through without damaging the dam. The focus is on the amount of water generated and potentially stored, not the effect of the release. He also believed that it was possible to design a spillway that would not alter the overflow into Beaver Creek. However, such an option was not practical because it would also necessitate raising the height of the dam.

*8 ¶ 37} Following a similar process to Warns, Hartman, generated a model to determine the effect of certain rainfall conditions from all the little creeks and streams that flow into Beaver Creek and the Wabash River. The results of this model would show whether release of water under the new spillway alters the flooding along Beaver Creek and Wabash River. He was able to utilize the downstream watershed model previously generated for Beaver Creek but split it up differently so that he could get a better distribution of the inflow coming into Beaver Creek. He generated his own information for the Wabash River. He then created a composite of the two. He based his model on an average rainfall and average seasonal condition.

¶ 38} Hartman created three graphs based on his watershed study. These graphs show the flooding impact with the old spillway, with the new spillway, and without the presence of the lake and any spillway. He found that the presence of the lake reduced the amount of water flow because the lake temporarily stores some of the rainwater. Therefore, he concluded that the presence of the dam and lake significantly reduce the flooding in the area. However, he generally found no difference in the flooding based on the old or new spillway. With the exception of the 100-year storm, the peak effect and the duration of flood during more frequent storm events is the same before and after the new spillway. In the 100-year flood model, the new spillway resulted in one foot higher flooding for the first six miles of Beaver Creek.

¶ 39} Hartman also created a graph for the 2003 storm. The graph generated from that model revealed a three-foot increase in flooding at the point of the new spillway and increased flooding within the first six miles downstream from the spillway. The cause for the increase in flooding was a combination of the nature of the storm and the larger width of the new spillway.

¶ 40} Warns criticized Hartman's testimony because he failed to explain that the graph also depicted that, at the area near the spillway, the flood stage at day seven of the storm peaked at five feet higher than it would have under the old spillway. It also showed that the area remains at flood stage for 11 days, approximately seven days longer than under the old spillway. Warns also criticized Hartman's analysis because he only considered one set of conditions. Warns believed that there were many different conditions that could be considered when determining whether the new spillway altered the flooding in the area. Like Warns, Hartman considered one set of conditions. Warns also criticized Hartman's model because he assumed a stationary rainfall over the entire 300-square-mile basin at once; he assumed that the Wabash River would peak prior to the influx of water from the spillway; and he did not segregate all of the tributaries of the Wabash River in making his model.

¶ 41} In conclusion, Hartman testified that although the discharge rate for the new spillway design is always higher, the new design did not affect flooding during the more frequent flood events (one-to-two-year storm events). However, he also testified that if the lake's normal pool is at its maximum point, then any rainfall will result in flooding along the first several miles of Beaver Creek. For the less frequent events (such as the ten-year storm), there was no increase in the flooding depth because of the new spillway, but there was an increase in the duration of the flooding up to near the point of the Wabash River and Beaver Creek confluence. For the rare storm events (both the 100-year storm and the 2003 storm), there was an increase in flooding depth (an increase of three feet and five feet respectively at the point of the new spillway and decreasing to no affect near the confluence of the Wabash River and Beaver Creek).

There was also an increase in the duration of the flooding with the new spillway.

*9 ¶ 42} He explained that the volume of water going over the new spillway is the same as that which passed over the old spillway. However, because of a change in the timing of the water flow, the flow rate is incrementally greater. Hartman concluded, therefore, that the increased flow rate due to the new spillway causes more flooding than under the old spillway only during the larger storm events, but even then only as far as the confluence of Beaver Creek and the Wabash River. The further west from the spillway he considered, he found that the increase became incrementally smaller because of the increased flooding attributable to the watersheds. Under general circumstances, however, Hartman concluded that the peak flood levels downstream do not change because of the new spillway. Furthermore, he emphasized that under all storm events, the presence of the lake and dam substantially reduces the depth and duration of the flooding.

¶ 43} Mark Ogden, the section administrator for the water management section of the Department of Natural Resources, Division of Water, testified that he oversees the dam safety program, the floodplain management program, and the canal operations program for the state of Ohio. He became involved with the Grand Lake St. Marys in 1991 as the project engineer for the Division of Water. He reviewed the final calculations for the new spillway design and designed a notch to handle a ten-year precipitation event. He did not consider any data from the downstream watershed in determining how to design the notch. His focus was the safety of the dam.

¶ 44} Ogden met with the people in the area to discuss the need for the new spillway. He investigated the concerns of county engineers regarding the impact of the water flow over the new spillway on downstream county bridges. In doing so, he then took into consideration the impact of downstream watershed of Beaver Creek. His analysis revealed that the peak flood elevations in different areas would increase by increments of hundredths of a foot because of the new spillway. He did not consider seasonal differences, which he admitted could have altered the results.

¶ 45} Ogden also considered widening Beaver Creek, but he concluded that widening the creek would have little impact because the floodplain is extremely broad and very flat. Once the capacity of the channel was exceeded, any additional water flow would not alter the peak elevation levels. Because he addressed all of the concerns that different parties raised, the entire design process took six years, which was longer than usual. However, because of the broad base of interest around the lake, he had to balance all of the competing concerns.

¶ 46} He further testified that the east end gate of the lake releases water for use by neighboring cities and other entities under contract and for use in the canal. The gate does not and could not be used to release water as a spillway. The release of additional water through the east gate would flood the canal and cause it to fail.

*10 ¶ 47} Michelle Hoffer, the assistant to the director of special projects at the Ohio Department of Natural Resources, testified that she reviewed the draft of a letter sent by the department to Keith Earley in response to his letter raising concerns about the design of the new spillway. She believed that the department considered all of the issues in this case and resolved them in the best way possible for all parties concerned. If there was no storage in the lake, the peak discharge would be greater into Beaver Creek. Because the lake is there, however, the peak flow is decreased. The spillway had to be modified in this case to meet today's safety standards and avoid failure of the dam. The safety of the dam was the key issue for the department. The only way to decreased the amount of water released into Beaver Creek would have been to increase the size of the dam. The notch was added to contain the ten-year storm event and lessen the flow downstream. Up to that level of precipitation, the notch operates similar to the former spillway.

¶ 48} However, in her memorandum to Bruce Pickens, the chief engineer, she indicated that the department's draft of a letter to Keith Earley did not address his concerns that the duration of the flooding would increase from 30 hours to 110 hours. She suggested that his concerns should be evaluated based on the

type of property affected to determine if widening the channel would be justifiable. She did not believe that the water coming over the spillway would cause flooding ten miles away because by that point the runoff would have already peaked at a level higher than that caused by water coming over the spillway. The spillway flow would only contribute minimally to the overall flow (less than a foot). However, she agreed that the spillway flow would increase the duration of the flood. However, the lake was not designed as a flood control reservoir and cannot be used for that purpose. The level can be lowered, but it must be done slowly to prevent damage to the earthen banks.

{¶ 49} Glen Cobb testified that he was the park manager at Grand Lake St. Marys from 1991 through 1999. He kept daily records of the lake levels during that time. These daily logs were used by the assistant park manager to calculate a monthly average lake level. Before the new spillway was constructed, the lake levels would rise during a storm event and there was flooding in the area. The gates in the old spillway were sometimes opened during significant rain events to discharge some of the water more quickly. He also testified that there was a previous policy that the lake levels would be drawn down one foot in the fall and winter months for flood control, dock maintenance, and to prevent dock damage. However, the park does not have a policy to keep the lake at any set level. With a “draw down” in the fall, there was always a risk that the lake would not reach normal pool level during the next recreational season. The plan under the new spillway was to design a spillway to be self-regulating. Thus, a draw down policy is not necessary. In an emergency, however, it is still possible to manually release water.

*11 {¶ 50} Although Cobb had moved on to another position, he returned to the area in 2003 and 2005 to observe the significant flooding in the areas above and below the spillway. For the 2003 flood, 18 counties were declared disaster areas; for 2005, approximately 60 counties were affected.

{¶ 51} Following the trial, the trial court granted the writ of mandamus on May 24, 2005. The court found that Warms' expert testimony was more credible and that other evidence confirms that more water is pass-

ing over the new spillway. As a result, the court concluded that appellees are entitled to compensation for the flooding caused on their property. Appellant then sought an appeal to this court.

{¶ 52} The United States and Ohio Constitutions guarantee that public entities cannot take private property for public purposes without just compensation. Fifth and Fourteenth Amendments to the United States Constitution and Sec. 19, Art. I, Ohio Constitution. Appellant does not dispute that appellees were required to file a complaint for a writ of mandamus in order to compel the Ohio Department of Natural Resources to institute appropriation proceedings if an involuntary taking occurred. State ex rel. Levin v. City of Sheffield Lake, 70 Ohio St.3d 104, 108, 637 N.E.2d 319, 1994-Ohio-385. In Coles v. Granville, (C.A. 6, 2006), 448 F.3d 853, 861-863, the Sixth Circuit Court of Appeals held that pursuant to R.C. 163.01-163.62 and R.C. 2737.01, a party may seek a writ of mandamus to compel a public official to bring an appropriation action because of the taking of private property for a public purpose. To establish a taking, the landowner must prove that the state entity caused a “substantial or unreasonable interference with his property rights. State ex rel. OTR v. Columbus (1996), 76 Ohio St.3d 203, 206, 667 N.E.2d 8.

{¶ 53} A writ of mandamus is an order to a public officer or entity to perform an act that the law specifically imposes upon the officer or entity as a duty. R.C. 2731.01. The writ of mandamus is an extraordinary writ and, therefore, is only available where the court finds “that the relator has a clear legal right to the relief prayed for, that the respondent is under a clear legal duty to perform the requested act, and that relator has no plain and adequate remedy at law.” State ex rel. Bd. of Edn. of Middletown City School Dist. v. Butler Cty. Budget Comm. (1987), 31 Ohio St.3d 251, 253, 510 N.E.2d 383, quoting State ex rel. Westchester Estates, Inc. v. Bacon (1980), 61 Ohio St.2d 42, 399 N.E.2d 81, paragraph one of the syllabus. See, also, R.C. 2731.05. The court exercises judicial discretion, based upon all the facts and circumstances in the case and the justice to be done, when considering whether to allow or deny the writ. State ex rel. Pressley v. Industrial Comm. (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph seven of the syllabus.

{¶ 54} On appeal, the appellate court first considers as a matter of law whether the relator has proven the requirements for issuing the writ. If the court finds that the relator has proven the prerequisites for issuing the writ, the appellate court considers only whether the lower court abused its discretion by granting or denying the writ. State ex rel. Myers v. Chiaramonte (1976), 46 Ohio St.2d 230, 348 N.E.2d 323, paragraph three of the syllabus; State ex rel. Pressley v. Industrial Comm., supra at paragraph ten of the syllabus. The factual findings of the trial court are reviewed only insofar as determining whether there is competent and credible evidence to support them. C.E. Morris Co. v. Foley Construction Co. (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus.

*12 {¶ 55} In this case, appellant challenges in its first and second assignments of error whether the trial court properly determined appellant's duty and whether the manifest weight of the evidence supports a finding that appellant breached his duty to appellees. We begin by addressing the issue of the duty of appellant, the Ohio Department of Natural Resources.

{¶ 56} The cases cited by appellant discuss the concept of duty as it applies to negligence liability. However, the case at hand involves an appropriation proceeding, not a tort action. The duty at issue in this case is the duty of a public entity to initiate appropriation proceedings. The Ohio Department of Natural Resources has a duty under statutory law to initiate appropriation proceedings if a portion of the relators' properties were in fact appropriated by the action of department. As we stated previously, Coles v. Granville, supra held that pursuant to R.C. 163.01-163.62, a public agency must bring an appropriation action prior to taking private property. Thus, if the taking occurs, the property owner may seek a writ of mandamus to compel the public agency to comply with this statutory duty. Therefore, appellant's second assignment of error is not well-taken.

{¶ 57} The central issue in this case is whether the property was in fact physically appropriated by appellant. Federal law clearly holds that if " * * * the government by the construction of a dam or other public works so floods lands belonging to an individual as to substantially destroy their value, there is a

taking within the scope of the 5th Amendment." U.S. v. Lynah (1903), 188 U.S. 445, 470, 23 S.Ct. 349, 47 L.Ed. 539, reversed in part on other grounds by U.S. v. Chicago, M., St. P. & P.R. Co. (1941), 313 U.S. 543, 598, 61 S.Ct. 772, 85 L.Ed. 1064. The taking claim requires that " * * * a servitude must have been imposed upon the land, that is to say, a subjection of the land for a more or less definite time to a use inconsistent with the rights of the owner." North Counties Hydro-Electric Co. v. United States (1947), 108 Ct.Cl. 470, 485, 70 F.Supp., 900, 903. Anything less than this circumstance may give rise to an action for damages in a tort action, but the action of the government will not constitute a taking. Sanguinetti v. United States (1924), 264 U.S. 146, 147, 44 S.Ct. 264, 68 L.Ed. 608, and Barnes v. United States (1976), 210 Ct.Cl. 467, 538 F.2d 865, 870.

{¶ 58} The flooding servitude can arise either from constant flooding or from intermittent, frequent, and inevitably recurring flooding. In the latter case, the government has taken a flowage easement over the private land and must pay just compensation for the taking pursuant to the Constitution. Baird v. United States (1984), 5 Cl.Ct. 324, 328. While the flooding can be intermittent, it must still be an inevitable and recurring event caused by the natural and probable consequences of governmental action. Barnes v. United States, supra at 870-871, citing United States v. Cress (1917), 243 U.S. 316, 37 S.Ct. 380, 61 L.Ed. 746. The longer the time between the flooding episodes, the less likely the circumstances will result in a taking. Fromme v. United States (1969), 188 Ct.Cl. 1112, 412 F.2d 1192, 1197 (flooding every 15 years was not enough to establish a taking). The permanent or inevitably-recurring requirement satisfies the intent element of a taking. Turner v. United States (1989), 17 Cl.Ct. 832, 835-836, reversed on other grounds by (1990), 901 F.2d 1093.

*13 {¶ 59} Likewise, the Ohio Supreme Court held in Lake Erie & W.R. Co. v. Commrs. of Hancock Cty. (1900), 63 Ohio St. 23, 57 N.E. 1009, at paragraph 3 of the syllabus, and again later in City of Norwood v. Sheen (1933), 126 Ohio St. 482, 186 N.E. 102, paragraph one of the syllabus that "[a]ny direct encroachment upon land, which subjects it to a public use that excludes or restricts the dominion and control of the owner over it, is a taking of his property,

for which he is guaranteed a right of compensation by section 19 of the bill of rights."This right is applicable even when the owner is only partially deprived of the uses of his land. The rationale behind recognizing a pro tanto taking is that the act of depriving an owner of any valuable use of his land is the equivalent of depriving him of his land. State ex rel. OTR v. City of Columbus, 76 Ohio St.3d 203, at 207, 667 N.E.2d 8, 1996-Ohio411. The issue is not whether the public entity acted negligently or contrary to its authority. Rather, the issue is solely whether the landowner was deprived of an economically valuable use of his property because as a consequence of governmental action. Masely v. Lorain (1976), 48 Ohio St.2d 334, 341, 358 N.E.2d 596, and Lucas v. Carney (1958), 167 Ohio St. 416, 423, 149 N.E.2d 238.

{¶ 60} In conclusion, we find that appellees were required to prove that appellant, the Ohio Department of Natural Resources, caused an increase in the extent of and duration of the flooding by installing the new spillway, the flooding increase resulted in damage to appellees sufficient to establish a taking rather than tortious damages, and that the increased flooding is permanent or will frequently and inevitably recur.

{¶ 61} The trial court concluded that relators met this burden. On appeal, appellant argues that the trial court's finding on each of these elements was contrary to the manifest weight of the evidence. Whether the frequency and predictability of flooding results in a taking is a factual question that must be based in part on the character and use of the land. Baird v. United States, supra at 329. Flooding issues are very complex matters and therefore, generally, require the use of expert testimony to prove the cause and frequency of flooding. Compare, Baskett et al. v. United States (1985), 8 Cl.Ct. 201, 225-226. However, as an appellate court, we must accept the factual findings of the lower court if the findings are supported by sufficient credible, competent evidence. C.E. Morris v. Foley Construction Co. (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus.

[1]{¶ 62} Appellant first argues that there was no evidence to support a finding that there was an increase in flooding for each property. Appellant argues that appellees only presented non-expert evidence that flooding increased during two massive

storms. We disagree. There was evidence from the property owners themselves and photographs to establish that there was excessive flooding since the installation of the new spillway and especially during the 2003 and 2005 storms. While the cause of the flooding is a complex factual issue that must be proven through expert witnesses, the existence of flooding can certainly be proven through the testimony of the landowners and photographs.

*14 {¶ 63} Appellant also argues that appellees did not provide any competent and credible evidence that the flooding was caused by the new spillway design rather than just record levels of precipitation. Appellant contends that appellees' only expert witness based his opinion on a study of hypothetical storms over the lake and not over the entire watershed to determine the change in water flow over the spillway. Rather, appellant argues, the trial court should have focused on the expert testimony of Doyle Hartman, who analyzed the hydrologic system of the entire watershed to determine whether the increased flooding was the result of the massive amount of precipitation that occurred over the entire watershed or the changes in the water flow over the spillway during the storm.

{¶ 64} Appellant specifically challenges the trial court's factual finding No. 17: "Mr. Warns concluded from his review of the technical material that, in every scenario which he reviewed there was a substantial increase in the volume of water over the new spillway versus the old spillway. As such, after the installation of the new spillway, there are now a multitude of situations that can occur where flooding will result downstream, when flooding would not occur under the old spillway configuration." Appellant argues that this factual conclusion is an incomplete representation of Warns' testimony and does not address Warns' recognition of the value of Hartman's analysis. We disagree.

{¶ 65} Warns himself acknowledged that other variable factors could lessen the impact of the increased flow of water. However, even if there were other factors at play, Warns concluded that the amount of the increase in flow by itself (ranging from 164.47 percent up to 1,826 percent under different scenarios) is so significant that it will increase downstream flood-

ing and its duration. Therefore, we find that the trial court properly summarized Warns' testimony.

{¶ 66} Furthermore, appellees all testified that they had been experiencing increased flooding along Beaver Creek and the Wabash River in the recent years and had adjusted their farming operation because of the flooding pattern. Some of appellees testified that the increased flooding could have been caused by other factors such as: the development in the area; the decrease in the flow of the Wabash River due to a logjam further downstream; an increase in flow of Beaver Creek after it was cleaned out; a change in the lake management policy of the lake which eliminated a drawdown in the winter which enabled the lake to have the capacity to take on winter and spring rains; and unusual weather patterns in the prior few years. Nonetheless, all of the appellees testified that after the new spillway was constructed, that the flooding along Beaver Creek and the Wabash River was more frequent, more extensive, and did not recede as quickly. Such testimony, although not expert testimony, supports the hypothetical analysis that flooding will increase because of the new spillway. Appellees were not required to prove that every increased flooding event they had experienced was solely caused by the change in the spillway design.

*15 {¶ 67} Appellant also argues that Warns' testimony did not contain the necessary degree of certainty required of expert opinions. Appellant argues that Warns only testified that there were situations that could cause flooding. We find that this argument lacks merit. The very nature of what was involved in this case requires scientific, yet hypothetical, analysis based on actual data. Warns clearly concludes that in almost every hypothetical analysis he made, there was significantly more water passing over the spillway which would lead to flooding. He could not speculate as to how other variables would influence a specific instance of flooding. But, he did testify to a reasonable degree of scientific certainty that his models accurately projected potential future flooding events.

{¶ 68} Finally, appellant argues that Warns' testimony established that there was no link between the new spillway design and the flooding that three of the appellees experienced downstream from the conflu-

ence of Beaver Creek and the Wabash River. Appellant relies upon the testimony and graph prepared by Warns projecting that during a 100-year rain event, there would be no flooding along the Wabash River.

{¶ 69} Warns did not specifically testify as to where flooding would occur except for the hypothetical 100-year rain event. In that one case, Warns testified that the model did not project flooding along the Wabash River. But, Warns testified that there were other hypothetical events in which appellees would experience flooding where they had not prior to the installation of the new spillway. Furthermore, there was testimony from each of the appellees that they were experiencing an increase in flooding, including the farms adjacent to the Wabash River. While Post and Minch testified that the condition of the Wabash River has caused flooding in their area, they both experienced an increase in flooding after the installation of the new spillway to the extent that they can no longer work around the flooding. Such expert testimony, in conjunction with lay witnesses testimony regarding the actual events that were observed, is sufficient to establish that the increased extent and duration of flooding that all of the appellees experienced is attributable to the change in the spillway design.

[2]{¶ 70} Second, appellant argues that the trial court's finding of actual damage was not supported by competent and credible evidence. In factual finding No. 19, the court found that: " * * * In each instance, the Plaintiffs [appellees] detailed physical invasions to their property of water causing crop loss, soil erosion, loss of use, and diminishing value. * * *." Appellant argues that the testimony does not support this finding. He outlined all of the testimony that supported a finding that no damage had occurred. Furthermore, he argued that any crop loss was just as likely due to the massive rainfalls as a change in the spillway. Appellant equated this case with that of *Sanguinetti v. United States* (1924), 264 U.S. 146, 44 S.Ct. 264, 68 L.Ed. 608 and *United States v. Sponenbarger* (1939), 308 U.S. 256, 60 S.Ct. 225, 84 L.Ed. 230, which both involved a taking issue in an area historically subject to periodic flooding. He argues that there was no evidence that the increase in flooding caused substantial damage beyond what appellees typically experienced from flooding in the area. Ap-

pellant also argues that Warns admitted that he did not study whether appellees had been specifically damaged by the increase in the extent of and duration of flooding.

*16 {¶ 71} Warns acknowledged that he did not evaluate the specifics of how the plaintiffs were damaged because his report was based solely upon the information supplied by the Ohio Department of Natural Resources and the department did not include such specific information. However, each of the appellees did testify as to the effect of the increased flooding on their property.

{¶ 72} With one exception, all of the appellees experienced the worst flooding in July 2003 after a four-day rain. Again, in January 2005, the flooding was so extensive that the first five roads that cross Beaver Creek west of the spillway were flooded. None of the appellees could recall a time in the past where the flooding caused roads to be closed. All of the appellees testified that they had suffered in some way from the increased and excessive flooding; either an inability to plant or a need to replant crops, changing their farming operation to avoid lost crops due to the flooding, a decrease in the value of their farm, bank erosion on Beaver Creek and the Wabash River, soil compaction, damaged tiles, and silk and other debris left after the flooding.

{¶ 73} Based upon a review of this testimony, we find that there was detailed evidence from each of the appellees to support a finding that they had all experienced significant damages from the increased flooding.

{¶ 74} Finally, as to the last element, appellant argues that the record does not support the finding of the trial court that flooding would occur with regularity. Warns testified that his hypothetical models indicate that there will be increased flooding during the 25-, 50- and 100-year storms. He also concluded that for the more frequent storms, the new spillway design prevented increased flooding.

{¶ 75} However, each of the appellees testified that they have experienced an increase in the extent of flooding and its duration since the new spillway was replaced in 1997. The worse flooding most of them

had experienced was in 2003 and 2005. Appellant focuses much of its case on the fact that these two storms were uniquely massive and, therefore, cannot be used to prove that there was frequent, recurring flooding. All of the appellees testified that they have experienced an increase in flooding. There is no evidence that the every year since 1997 involved unusually large storms. Thus, even if these two large storms are not considered, there is sufficient evidence to establish that the extent of the flooding and its duration has increased since the new spillway was installed. We find that this evidence is sufficient to support the trial court's finding that the flooding is occurring with regularity.

{¶ 76} In conclusion, we find that the trial court's factual findings were supported by sufficient, credible evidence. We further find that the trial court's finding that a taking had occurred was not contrary to the manifest weight of the evidence. Therefore, appellant's first assignment of error is not well-taken.

*17 {¶ 77} Having found that the trial court did not commit error prejudicial to appellant and that substantial justice has been done, the judgment of the Mercer County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Mercer County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Judges PETER M. HANDWORK, MARK L. PIETRYKOWSKI and ARLENE SINGER, Sixth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.
Ohio App. 3 Dist., 2006.
State ex rel. Post v. Speck
Not Reported in N.E.2d, 2006 WL 3477024 (Ohio App. 3 Dist.), 2006 -Ohio- 6339

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(Cite as: 2006 WL 3477024 (Ohio App. 3 Dist.))

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EXHIBIT B

**IN THE COURT OF COMMON PLEAS OF MERCER COUNTY
CIVIL DIVISION**

STATE OF OHIO, ex rel., LEO POST,
et al.,

Plaintiff-Relators,

v.

SAMUEL W. SPECK, DIRECTOR
OHIO DEPARTMENT OF NATURAL
RESOURCES

Defendant-Respondent.

Case No.: 01-CIV-091

Judge Lawrence Grey, Visiting
(Sitting By Assignment)

FILED

DEC 14 2005

James J. Highley
MERCER CO. CLERK OF COURTS
CELINA, OHIO

JUDGMENT ENTRY GRANTING WRIT OF MANDAMUS

This matter is before the Court on Relators-Plaintiffs' (hereinafter "Plaintiffs") Complaint For A Writ of Mandamus. Trial in the above cause was held February 24 and February 25, 2005, after which time, the Court issued its Decision granting the Writ of Mandamus to Plaintiffs on May 24, 2005. Respondent-Defendant, Samuel Speck, Director, Ohio Department of Natural Resources (hereinafter "Defendant") moved the Court pursuant to Ohio Civil Rule 52 to adopt Findings of Facts and Conclusions of Law with respect to the Court's Decision. Plaintiffs and Defendant each filed proposed Findings of Facts and Conclusions of Law.

This is an action in mandamus. The Plaintiffs are farmers whose land lies along either the Beaver Creek or the Wabash River, downstream from Grand Lake St. Mary's. Defendant is Director of the Ohio Department of Natural Resources which agency is responsible for maintaining the dam which creates the lake. The Ohio Department of Natural Resources, ODNR, modified the spillway of the dam over which water from the lake flows into Beaver Creek. Plaintiffs contend that the modifications have caused erosion and increased flooding on their lands, and that this is a *pro tanto* taking of their property for which they are entitled to compensation. Plaintiffs seek a writ of mandamus ordering the Defendant to begin

condemnation proceedings. The Defendant contends that the spillway modifications have had no significant effect and that the flooding is due to normal natural causes.

The Court, having heard the testimony at trial and having reviewed the Stipulations of the Parties and the proposed Findings of Facts and Conclusions of Law of both the Plaintiffs and Defendant, issues the following Findings Of Fact:

FINDINGS OF FACT

1. Plaintiff-Relators Leo Post, Richard Baucher, Jack Minch¹, Terry Linn, and Steve Zumberge are owners of farm real estate in Mercer County, Ohio, each of whom own parcels along the Beaver Creek or along the Wabash River near its confluence with Beaver Creek.

2. Grand Lake St. Marys (hereinafter "GLSM") is a unique water resource in Ohio, insofar as it discharges from an eastern gate and a western spillway into separate watersheds. The lake was originally constructed as a water source for the canal. All five (5) Plaintiffs own property downstream of the western spillway of GLSM. The western spillway flows into Beaver Creek, which in turn flows into the Wabash River, which thereafter flows in a westerly direction from western Ohio into Indiana.

3. None of the five (5) Plaintiffs, their predecessors-in-interest, or families, have received compensation from the Ohio Department of Natural Resources for damages, if any, caused by alleged periodic flooding from flows over the west spillway of GLSM.

4. Grand Lake St. Marys is a man-made lake built between 1837-1841 by damming the headwaters of the Wabash and St. Mary's rivers and flooding the area between. Because it was to be used as a water supply source for the Miami-Erie Canal, trees and other debris were not removed. The lake is and has always been very shallow.

¹ Jack Minch, an original Relator/Plaintiff in the within action, died on August 21, 2005. The Executor of the Estate of Jack Minch will be substituted as a party herein.

5. Due to the decline of canal traffic, the primary use of the lake changed to recreation in the early part of the 20th century and GLSM formally became a State Park in 1949. The lake and its resources are administered by several divisions within ODNR. It is currently approximately 8.2 miles long with a surface area of approximately 13,500 acres.

6. Until it was replaced in 1997, the lake had a spillway on its west end that released water into Beaver Creek. The spillway was a 37-foot weir with four, thirty-inch gates.

7. Since 1963, Ohio has regulated the construction and maintenance of dams of a certain size. The Division of Water enforces the dam safety statutes codified at R.C. 1521.06-1521.99. The Division currently has jurisdiction over approximately 3500 dams in Ohio with approximately ten to fifteen new jurisdictional dams being built each year. Newly constructed and existing dams must meet the safety requirements set forth in the Administrative Rules of Chapter 1501:21. The Rules ensure the stability of the dam and its ability to withstand certain design floods. A dam the size of the one at Grand Lake St. Marys, with its proximity to homes, farms and other valuable property downstream, is considered a Class I Dam. These dams must be able to pass 100% of the PMF (probable maximum flood). This means that during the PMF water must flow through the spillway of the dam rather than over the top of the dam. Overtopping can potentially destroy the embankment of the dam resulting in catastrophic flooding.

8. The dam at GLSM has an earthen embankment about 5,540 feet long and 22 feet high. Until it was replaced in 1997, the dam had a curved, 39.4-foot-long concrete overflow spillway. The spillway included four 30-inch diameter gated outlet conduits. From 1985-1997 only two of these gates were operational. The spillway releases flows into Beaver Creek. The top of the dam is at elevation 877 feet. Normal pool is at 870.6 feet.

9. The 1978 GLSM report of Burgess & Niple to the Army Corps. of Engineers was prepared in response to the federal Dam Inspection Act of 1972. Their inspection showed that

the west spillway could not pass the Probable Maximum Flood without overtopping. The overtopping would last for 48 hours and likely result in the failure of the dam. This created a hazardous condition at an unacceptable level of risk for the people and property downstream of the spillway. Until the spillway replacement project got off the ground, remedying this unsafe condition as GLSM had been at or near the top of the repair project priority list for dams owned by the State of Ohio.

10. In 1990, the Controlling Board allocated funds for the replacement of the spillway at GLSM. The design firm was Jones/Stuckey of Columbus, Ohio. It subcontracted the hydrologic/hydraulic investigation to the firm BBC&M of Columbus. For the GLSM project, BBC&M determined how the amount of flow over the spillway would affect Beaver Creek.

11. For the GLSM spillway replacement project, the division of water reviewed the preliminary calculations submitted by BBC&M. BBC&M determined that a 500-foot spillway was needed to pass the required flood.

12. From the outset of the spillway replacement project, concern was expressed regarding the possibility of greater flooding downstream along Beaver Creek. In the fall of 1990, ODNR decided to change the BBC&M design of the 500-foot spillway to include a 50-foot notch that was 0.9 feet lower.

13. Construction of the replacement spillway began in 1996 and was completed by 1997.

14. Grand Lake St. Mary's State Park is located in Mercer and Auglaize Counties. The park consists of the lake, or reservoir, and 500 acres of land surrounding the lake.

15. Plaintiffs' expert engineer, John Warns, undertook a detailed technical study of ODNR, Corps. Of Engineer, and consultants studies, with respect to the hydrology of the Grand Lake St. Mary's West spillway before and after the replacement in 1997. Mr. Warns' analysis included a review of topographic maps of the area, a field reconnaissance of the area, and the

review of dozens of studies conducted on the basin over the last twenty (20) years, including reports by ODNR itself, the U.S. Army Corp. of Engineers, and consultants working for those agencies. More specifically, Mr. Warns reviewed the hydrologic analysis that was performed by ODNR and/or their consultants in terms of the hydrology and hydraulics of before-and-after conditions on Grand Lake St. Marys (before meaning with the old spillway in place and after meaning with the new spillway in place). Mr. Warns evaluated numerous computer simulation models which analyzed a variety of hypothetical rain events falling only over the lake and the volumes of water over the old spillway versus the new spillway, including a ten (10) year rain event, a twenty-five (25) year event, (50) year event and one hundred (100) year events.

16. A voluminous array of technical report, computer simulation models and spreadsheets were admitted into evidence providing a solid foundation for Mr. Warns' expert opinion.

17. Mr. Warns concluded from his review of the technical material that, in every scenario which he reviewed there was a substantial increase in the volume of water over the new spillway versus the old spillway. As such, after the installation of the new spillway, there are now a multitude of situations that can occur where flooding will result downstream, when flooding would not occur under the old spillway configuration.

18. Mr. Warns testified that the increase in volume over the new spillway is not nominal or inconsequential. In the case of ten (10) year rain event, volume over the new spillway represents 164.64 % of the old volume, and in a twenty-five (25) year event, the flow is 325.9 % of the old flow. With respect to one hundred (100) year rain events, the new flow exceeds ten (10) times the volume of the old flow.

19. Plaintiffs Leo Post, Steve Zumberge, Richard Baucher, Jack Minch, and Terry Linn, each testified in detail as to the frequency and severity of increased flooding now being inflicted upon them by flows from the new spillway. In each instance, the Plaintiffs detailed

physical invasions to their property of water causing crop loss, soil erosion, loss of use, and diminishing value. In each case, the Plaintiffs opined that the water levels and length of standing water on their property were much greater after the installation of the new spillway, in comparison with their historic recollection of flooding events under the old spillway configuration.

20. Plaintiffs Leo Post, Jack Minch and Terry Linn, farm approximately ten (10) to twelve (12) miles west of the spillway in an area beyond the confluence of the Beaver Creek and the Wabash River. They also testified that there was increased frequency, severity and longevity of flooding episodes under the new spillway configuration.

21. ODNR provided the expert testimony of their engineer, Doyle Hartman. Mr. Hartman was specifically asked whether he had had an opportunity to review the data provided by Mr. Warns on behalf of the Plaintiffs/Relators, including Plaintiffs' Exhibit 8, which detailed Mr. Warns' conclusion that the amount of increase in flow over the new spillway (versus the old spillway) increased 164% with a ten (10) year rain a ten-fold increase and 1826% with one hundred (100) year rain event. Mr. Hartman testified that he had no quarrel with the data. (TR 302)² Mr. Hartman also testified that, given the same lake elevation, the new spillway will always discharge at a higher rate than the old spillway. (TR 310).

22. The Plaintiffs are suffering and will continue to suffer severe, frequent and persistent increased flooding as a result of the modifications to the west spillway of Grand Lake St. Mary by the Ohio Department of Natural Resources and they have a clear legal right to be compensated for their lands taken for public use.

* * *

Both experts testified in great detail at trial about the data they considered and the methodology by which they reached their conclusions. Each expert, using much of the same

² References are to the transcript of proceedings in the trial conducted February 24, 25, 2005.

data such as prior hydrology studies, reached a conclusion that was almost exactly opposite of the other's conclusions. Since both experts cannot be right, the Court went to significant effort to carefully analyze the testimony of both experts. The Court finds that Mr. Warns' is more credible. His testimony both on direct and cross examination was more precise and internally consistent. The fact that the new spillway is substantially larger than the old one is not the only factor that tends to make his conclusion about the flow of water more credible.

Another factor, and a persuasive one, is the testimony of Mark Ogden, an ODNR engineer, about why the spillway was modified. The Grand Lake St. Marys dam is a very old earthen embankment dam. According to Ogden the new spillway was installed to protect this earthen embankment dam. Protect it from what? Ogden said that the greatest danger to earthen embankment dams is water going over the embankment, that is to protect it from the danger of too much water.

If too much water creates the danger, then the way to avoid that danger is by building a bigger spillway which would carry away a greater volume of water. This new 500 foot self regulating spillway with its 9 inch notch was designed to, when necessary, carry larger amounts of water out of the Lake into Beaver Creek, all to the detriment of downstream landowners, including the Plaintiffs.

Hartman conceded that there would be more water going over the spillway at times, but testified that except for a small area near Zumberge's most eastern property, it would not raise peak flood levels downstream. The court does not find this conclusion credible. Warns testified that the increased flow would, at times, cause flooding on each of the Plaintiff's property. The court finds this conclusion credible. Warns testified that the flooding would occur with regularity. The court finds it would occur with sufficient regularity to constitute a taking.

The court would point out here that it finds no fault with the action of ODNR in modifying the spillway. The modification appears necessary to achieve the greatest good for the

greatest number. The effect of modification on the Plaintiffs, however, is burdensome and constitutes a taking. In light of the foregoing, the Court adopts the following Conclusions of Law.

CONCLUSIONS OF LAW

A. The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation, as does Section 19, Article I of the Ohio Constitution. In Norwood v. Sheen (1933), 126 Ohio St. 482, the Ohio Supreme Court held that any direct encroachment upon land, which subjects it to a public use that restricts the property owner's dominion and control over it is a taking for which he has a right to compensation under Section 19.

B. Mandamus is the appropriate mechanism to compel appropriation proceedings when an involuntary taking of private property is alleged. State ex rel. Elsass v. Shelby Cty. Bd. Of Commrs., 92 Ohio St.3d 529. See also, State ex rel. Craig v. Luebbe, 2004-Ohio-6933; State ex rel. Preschool Dev., Ltd. v. Springboro, 99 Ohio St.3d 347, Cincinnati Entertainment Assn., Ltd. v. Hamilton Cty. Bd. Of Commrs. (2001), 141 Ohio Ap.3d 803, and Hatfield v. Wray (2000), 140 Ohio Ap.3d 623.

C. In order to be entitled to a writ of mandamus, the Plaintiffs must establish a clear legal right to the relief requested, a clear legal duty on the part of the Defendant to provide it, and the lack of an adequate remedy in the ordinary course of the law. State ex rel. N. Olmsted v. Cuyahoga Cty. Bd. Of Elections (2001), 93 Ohio St.3d 529, State ex rel. Sekermestrovich v. Akron (2001), 90 Ohio St.3d 536. The ODNR has a clear legal duty to avoid depriving a landowner of any value use of his land either through an outright taking or through a combination of factors which constitute a *pro tanto* taking of property, without just compensation. The frequent, severe and persistent flooding now being conflicted upon the

Plaintiffs is a violation of the clear legal duty of the Ohio Department of Natural Resources to compensate individual landowners for property taken for public purposes.

D. The Plaintiffs have the burden of proof of showing that they have a clear legal right to the relief requested. State, ex rel. Berger v. McMonagle (1983), 6 Ohio St.3d 28, 532, 757 N.E.2d 314. State ex rel. BSW Dev. Group v. Dayton (1998), 83 Ohio St.3d 338. Based on the evidence at trial and the Stipulations of the Parties, Plaintiffs have discharged their burden herein by clear and convincing evidence.

E. In order to constitute a physical "taking" under the constitution it is not essential that there be a permanent physical seizure of the property. Any actual and material interference with a private property right constitutes such a taking: Commissioners v. Gates (1902), 83 Ohio St. 19, 93 N.E. 255 (1902). As ordinarily understood, the term, "taking," as used in the Constitution, comprehends any direct encroachment upon land, which subjects it to a public use that excludes or restricts the dominion and control of the owner over it Lake Erie & Western Rd. Co. v. Commissioners of Hancock County (1900), 63 Ohio St. 23, third paragraph of the syllabus, 57 N. E. 1009. The loss of use of the Plaintiffs' property due to frequent and severe flooding from the new ODNR spillway, represents an actionable taking.

F. Assuming arguendo that the Ohio Court of Claims would review property losses on an annual basis, the loss of use of property under circumstances demonstrated in the record cannot be adequately remedied with a series of annual lawsuits against the State for negligently causing damage to Plaintiffs' property. See, State, Ex Rel. Levin v. Schremp (1995) 73 Ohio St.3d 733. In order for there to be an adequate remedy at law, the remedy must be complete, beneficial, and speedy. State, ex rel. Horwitz v. Cuyahoga County Court of Common Pleas (1992) 65 Ohio St.3d 323. Given that the Plaintiffs are experiencing significant and recurring loss of use of their property, diminishing value of their property, soil erosion and crop loss, the

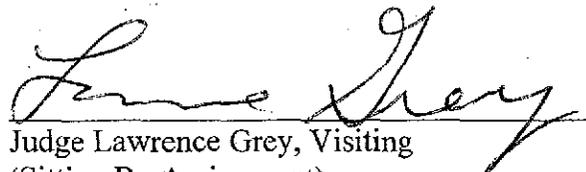
Court finds that the remedy of periodic crop damage lawsuits filed against ODNR in the Court of Claims of Ohio is not adequate.

* * *

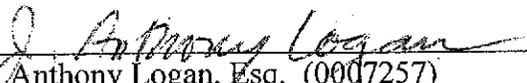
Under the facts set forth at trial, including the Stipulations Of Fact agreed to by the parties, the Court finds that the modification of the west spillway of Grand Lake St. Mary's is burdensome and constitutes a taking of the property of the Plaintiffs. Therefore, Plaintiffs are entitled to a Writ of Mandamus compelling the Director of the Ohio Department of Natural Resources to institute appropriation proceedings against the Plaintiffs.

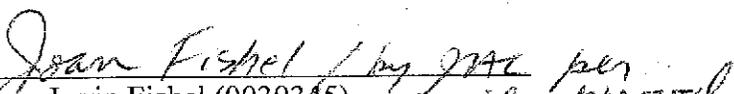
Based on the foregoing, the Court finds that the Plaintiffs have shown by clear and convincing evidence that they are entitled to relief, that the Director of ODNR has a clear legal duty to institute appropriation proceedings pursuant to R. C. 163.01-163.22 and R. C 1501.01, and that the Plaintiffs have no adequate remedy at law. The Court thereby grants the Writ of Mandamus. The Director of the Ohio Department of Natural Resources is hereby ordered to initiate appropriation proceedings in the Mercer County Court of Common Pleas.

Upon the signing of this Final Judgment Entry by the Court, the Clerk is directed to enter it upon the Journal of this court and within three days thereafter, serve same on the parties in the manner prescribed By Civ. R. 5(B) and note service in the appearance docket.


Judge Lawrence Grey, Visiting
(Sitting By Assignment)

APPROVALS:


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Approved as to form only
Objections Preserved

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EXHIBIT C

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

CASE LEASING & RENTAL, INC.

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL RESOURCES

Defendant

Case No. 2005-08034

Judge J. Craig Wright

DECISION

{¶ 1} Plaintiff filed this case alleging claims of negligence, nuisance, absolute nuisance/ nuisance per se, trespass, and unconstitutional taking without just compensation. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.¹

{¶ 2} Plaintiff, Case Leasing and Rental, Inc., is an Ohio corporation and owner of 21 acres of land in Mercer County, Celina, Ohio. The property is located adjacent to Beaver Creek and several hundred yards downstream from the intersection of Beaver Creek and the western shoreline of Grand Lake St. Marys (GLSM). In 1976, plaintiff completed construction of, and opened, the Lake Front Racquet and Health Club (RecPlex) on that property. The RecPlex was an 87,500 square foot facility that provided a wide variety of indoor and outdoor fitness and recreational activities for the

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general public. Plaintiff owned the RecPlex continuously, except for a period from October 2001 to September 2003.² In early July 2003, a severe storm passed through the GLSM area. As a result, an extensive amount of water was discharged from the lake into Beaver Creek, flooding plaintiff's property and thousands of other acres along the creek. The first floor of the RecPlex flooded to a depth of approximately three feet. The lower level facilities were completely submerged.

{¶ 3} Since 1949, both GLSM and approximately 500 surrounding acres have been owned and operated as a state park by defendant, the Ohio Department of Natural Resources (ODNR). The lake was created in the mid-1800s by damming the headwaters of the Wabash and St. Marys rivers and flooding the area between. The earthen dam is approximately 5,540 feet long and 22 feet high. GLSM is 8.2 miles long and has a surface area of approximately 13,500 acres extending through both Mercer and Auglaize Counties. The lake has two outlets for the discharge of water. One is a spillway discharging into Beaver Creek, which was constructed in 1914; it is located on the western shoreline. There is also an eastern-outlet structure that discharges into a feeder canal. From the time that it obtained control of the lake in 1945, ODNR has used the western spillway as the outlet for virtually all water flow out of GLSM.

{¶ 4} The central issue in this case involves the replacement of the 39.4-foot

¹The trial adjourned on the second day, then reconvened at a later date to allow the parties to re-depose their expert witnesses regarding lake-level data that was not revealed until the day of trial and to submit supplements to the expert reports.

²Defendant has argued that plaintiff lacks standing to assert its claims because it did not own the property at the time of the July 2003 flood. The court finds that argument to be without merit inasmuch as plaintiff financed the purchase and received a mortgage on the property as security. Ohio law permits mortgagees to sue third parties for damage to their security interest. *City of Toledo v. Brown* (1936), 130 Ohio St. 513, 519. See also *Trip Agency, Inc. v. R. G. Akkihal* (Nov. 4, 1991), Lawrence App. No. 1790; *RFC Capital Corp. v. Earthlink, Inc.*, Franklin App. No. 03AP-375, 2004-Ohio-7046. Moreover, at the time of the flood, the purchasers had made only one payment of \$100,000 on the \$3,000,000 they financed, and they had no insurance on the property. They threatened to file bankruptcy if plaintiff pursued them for the balance of the mortgage. Plaintiff never released the mortgage and the property was conveyed back to it on September 1, 2003.

western spillway with a 500-foot spillway that was completed in 1997. ODNR approved the design for, and both directed and oversaw the construction of, the replacement spillway.

{¶ 5} Plaintiff contends, among other things, that ODNR was negligent in the design and management of the 500-foot spillway, that it did not comply with accepted engineering practices, and that it failed to consider other economically feasible designs. Plaintiff further maintains that, based upon data that was available at the time, ODNR knew or should have known that the installation of the replacement spillway would result in more frequent and more severe flooding to downstream landowners, including plaintiff. Plaintiff asserts that the damage that occurred in July 2003 would not have happened if the 1914 spillway were still in existence. Although plaintiff has asserted other claims, the focus of its evidence and post-trial memorandum is upon its claim of negligence.

{¶ 6} In response, ODNR contends that the replacement spillway met with all applicable standards. Furthermore, ODNR argues that plaintiff's focus on the differences between the 1914 spillway and the 1997 spillway is misguided inasmuch as there is no dispute either that the old spillway structure did not meet prevailing safety standards, or that a failure of the dam could have had catastrophic consequences, including loss of life and flooding of the city of Celina. ODNR maintains that the 1997 spillway design was reasonable under the circumstances, and that its duty to prevent a dam failure outweighed any potential risk of increased flooding to downstream landowners.

{¶ 7} In order to prevail upon a claim of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed it a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused its injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573,

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citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶ 8} Upon review of the evidence, arguments, stipulations, and proposed findings of fact and conclusions of law, the court finds for the following reasons that plaintiff has proved its claim of negligence by a preponderance of the evidence.

{¶ 9} In resolving surface water disputes, Ohio courts apply the “reasonable use” rule. *McGlashan v. Spade Rockledge Terrace Condo Dev. Corp.* (1980), 62 Ohio St.2d 55, paragraph one of the syllabus. Thus, a breach of duty can be found only if defendant’s interference with surface water flow is unreasonable, which is determined by “balancing the gravity of the harm caused by the interference against the utility of the [defendant’s] conduct.” *Ringel v. Ohio Dept. of Transp., Ct. of Cl. No. 2006-02081AD, 2006-Ohio-7279* quoting *McGlashan, supra*, at 60, adopting 4 Restatement on Torts 2d (1979), 146, Section 833.

{¶ 10} ODNR’s Division of Water is charged with enforcement of Ohio’s dam safety statutes as set forth under R.C. 1521.06-1521.99. Both newly constructed and existing dams must conform to such law with the goal of ensuring the stability of dams and their ability to withstand certain design floods. The dam at GLSM is classified as a Class I dam and, as such, must be able to pass 100 percent of the volume of water generated by a “probable maximum flood (PMF).”

{¶ 11} A PMF is the flood that may be expected from the most severe combination of critical meteorological and hydrologic conditions that are reasonably possible in a particular drainage area. In order to meet the PMF standard, rainwater must flow entirely through a spillway rather than over the top of the dam. The purpose of such requirement is to prevent destruction of the earthen dam and catastrophic flooding.

{¶ 12} In 1978, the United States Army Corp of Engineers (ACE) performed an inspection of GLSM and determined that if a PMF were to occur, GLSM would likely overtop its western embankment and flood the city of Celina. The ACE issued a report recommending that ODNR develop and implement a plan to safely convey the PMF

through GLSM. (Plaintiff's Exhibit 44.)

{¶ 13} Funds for replacement of the western spillway were not allocated until the 1990s and construction did not begin until 1996.

{¶ 14} However, in 1987-1988, ODNR did receive a fund allocation and did make modifications to an eastern outlet structure. Although ODNR's consultant recommended that the structure and the feeder canal into which it discharged be modified to permit the discharge of flood waters during significant storms, ODNR opted for a structure that had no flood management capability. (Parties' Stipulations ¶11; Plaintiff's Exhibit 45.)

{¶ 15} In the early 1990s, ODNR's design plans for replacement of the western spillway became known to the public. From the outset of the project, concern was expressed by federal and local agencies, as well as local land owners, regarding the possibility of greater flooding downstream along Beaver Creek. (Parties' Stipulations ¶20, Plaintiff's Exhibits 6, 12, 23, 27.)

{¶ 16} Keith Earley, the Mercer County Engineer, was among the most strident of concerned parties. In addition to other activities, Earley sent letters dated November 19, 1991; February 12, 1992; September 24, 1993; and February 15, 1994 to ODNR warning that the proposed 500-foot spillway would cause increased and extensive flooding along Beaver Creek. (Plaintiff's Exhibits 7, 11, 17, 21.) At least two of those communications, the February 12, 1992 and September 24, 1993 letters mentioned plaintiff's RecPlex structure as one that would likely be flooded as a result of the new spillway.

{¶ 17} The Board of Supervisors for Mercer County Soil and Water Conservation District (MCSWCD) also expressed a number of concerns to ODNR, beginning November 1991. (Plaintiff's Exhibits 6 and 12.) In a November 1991 letter, the MCSWCD noted "much heated discussion on the proposed west bank spillway" and "[m]uch of the heat comes from the fact that the Division of Water has not had a good answer or any answer to questions the landowners along Beaver [Creek] have."

{¶ 18} The GLSM Lake Improvement Association also expressed concerns regarding the proposed spillway and ODNR's potential plans for lake level management. In a letter to ODNR dated August 15, 1994, the association questioned whether ODNR intended to lower lake levels to satisfy the concerns of property owners west of the spillway, to the detriment of local businesses such as marinas, restaurants, and lodging facilities that depended on sufficiently high lake levels to attract recreational users, boaters and sportsmen. (Plaintiff's Exhibit 23.)

{¶ 19} Shortly before construction began in 1996, the ACE communicated to ODNR that there were continuing concerns regarding the proposed spillway design and instructed ODNR that it needed "either calculations to show there would be no additional flooding in Beaver Creek or agreements from the property owners along the creek saying they accept additional flooding." (Plaintiff's Exhibit 26.) ODNR did not comply with either of those options.

{¶ 20} However, ODNR did respond to all of the public and private concerns expressed in connection with the proposed spillway. ODNR held public meetings, wrote response letters, and considered the input it received. Although ODNR did not deviate from its plans, it did consistently explain and support the reasons for its decisions and frequently reiterated that it had "attempted to balance the concerns of all the local interests in the planning and design for the spillway, but necessarily, dam safety [had] remained the most important concern." (See, e.g., Plaintiff's Exhibits 8, 13, 20.)

{¶ 21} With regard to plaintiff's property, ODNR stated in a December 10, 1992 memo that: "[a] tennis/racquetball business is in the floodplain downstream but there's not much justification to modify the design or our operations * * * just to satisfy this one business which knowingly built in a flood prone area * * *." (Plaintiff's Exhibit 15.) However, the evidence demonstrates that plaintiff's property was not identified as being situated in a designated floodplain until 2004, after the spillway was replaced, and after the 2003 flood. Rather, on March 18, 1986, plaintiff's property was designated as being within "Zone C, i.e., located in an area of minimal flooding." (Plaintiff's Exhibit 1,

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48.)

{¶ 22} In the end, ODNR considered only two potential replacement spillway designs, both 500-foot spillways. (Plaintiff's Exhibit 4.) The design that was ultimately selected was a 500-foot long spillway, at 450 feet of elevation and 871.5 feet above mean sea level (msl), with a 50-foot notch at the center at an elevation of 870.6 feet above msl, and two 60-inch diameter outlets near the bottom of the structure, which could be opened to lower the level of GLSM by releasing water into Beaver Creek. (Parties' Stipulations, ¶¶15, 17.)

{¶ 23} Prior to 1997, ODNR regulated GLSM by periodically lowering lake levels, thereby minimizing the frequency and severity of flooding that GLSM could otherwise cause. Since 1997, GLSM has been considered a "self-regulating lake"; neither of the 60-inch outlets has been opened for management of lake levels.³ (Parties' Stipulations ¶19.)

{¶ 24} Both parties presented expert testimony regarding ODNR's spillway design choice and lake-level maintenance decisions. Plaintiff presented the testimony of Pressley Campbell, PhD, P.E., with Conestoga Rovers & Associates (CRA). Defendant presented the testimony of Doyle Hartman, P.E. Both experts were highly qualified and presented detailed analyses of the issues. However, the court found the testimony of Dr. Campbell to be better reasoned. In addition, the court is persuaded by the data that Dr. Campbell relied upon as well as the conclusions set forth in his testimony and written reports. (Plaintiff's Exhibits 1, 1A.) Of significance were the following facts, which were established through Dr. Campbell's trial testimony and written analysis, and which were not contradicted by ODNR:

- 1) ODNR did not investigate, examine or evaluate historical storm events in the GLSM watershed to determine the potential flooding impact that

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- would be caused by a 500-foot spillway. (See Plaintiff's Exhibit 1.);
- 2) ODNR did not examine actual historical lake levels to determine the potential flooding impact of a 500-foot spillway design. (See Plaintiff's Exhibit 1.);
 - 3) ODNR conducted only simulations of the effect of the 500-foot spillway using hypothetical events, and did not use its model to predict the impact of the spillway during such hypothetical storms along the first several of miles of Beaver Creek. Had it done so, it would have learned that the effect was substantial. (Plaintiff's Exhibit 1A.);
 - 4) CRA's analysis of the historical lake levels and historical storm events demonstrated that, during the entire period of record for which data is available, the RecPlex would not have flooded had the 1914 spillway been in place, not even during the most severe historical-storm events. However, had the 500-foot spillway been in existence during that time, plaintiff's property and substantial additional areas would have flooded multiple times. (Plaintiff's Exhibit 1A.)

{¶ 25} As noted above, and as confirmed by Hartman's testimony, ODNR's primary objective was safely passing the PMF through GLSM so as to avoid the western embankment overtopping and the flooding of the city of Celina. However, there were several feasible alternatives available to achieve such objective without causing increased flooding of the RecPlex and other downstream property. For example: 1) by employing a different, less destructive, spillway design; 2) by modestly raising the height of the western embankment; 3) by instituting a manual lake level draw down policy; 4) by widening/deepening Beaver Creek near the spillway; and 5) by using the eastern outlet structure to discharge flood waters during significant storm events. According to

³The only exception is that, on several occasions after the replacement spillway was completed, the 60-inch outlets were opened in order to clear away masses of dead fish that had flowed over the

Dr. Campbell, each of those alternatives would have been cost-effective, but none was properly considered by ODNR. (Plaintiff's Exhibit 1.) Moreover, Dr. Campbell established that if any of those alternatives had been implemented, the RecPlex would not have flooded in July 2003.

{¶ 26} Applying the "reasonable use" analysis to the facts established in this case, the court does not dispute utility of ODNR's dam safety objective; however, balanced against the gravity of the foreseeable and avoidable harm caused, the court finds that the manner in which ODNR implemented its objective was unreasonable and negligent.

{¶ 27} Specifically, the court finds that standard hydrologic-engineering practices required that ODNR undertake a thorough investigation of the historical storm and lake-level data before designing and installing the replacement spillway. ODNR's failure to do so, or to require its consultants to do so was unreasonable. In addition, the court finds that standard hydrologic-engineering practices required that ODNR perform a sensitivity analysis to determine the best spillway design. ODNR's failure to conduct such an analysis was unreasonable. Further, the court finds that ODNR's failure to adequately consider cost-effective alternative measures that would also have met its safety objectives was unreasonable in light of the known potential for increased flooding and significant property damage that could have been avoided had it done so. Similarly, the court finds that ODNR's post-1997 management of lake levels was unreasonable in light of the foreseeable damage that could have been avoided had it utilized manual draw-down alternatives.

{¶ 28} In short, the court concludes that, based upon the data that was available to it at the time, ODNR knew or should have known that the installation of the replacement spillway as designed would result in more frequent and more severe flooding to downstream landowners. Therefore, its design choice and subsequent lake

spillway into Beaver Creek and had accumulated at the base, in water that lacked sufficient oxygenation.

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level management were unreasonable. Accordingly, judgment will be rendered in favor of plaintiff on its claim of negligence.



Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
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www.cco.state.oh.us

CASE LEASING & RENTAL, INC.

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL
RESOURCES

Defendant

Case No. 2005-08034

Judge J. Craig Wright

JUDGMENT ENTRY

[Cite as *Case Leasing & Rental, Inc. v. Ohio Dept. of Natural Resources*, 2008-Ohio-3411.]

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff. The case will be set for trial on the issue of damages.

J. CRAIG WRIGHT
Judge

cc:

Jeremy M. Grayem Matthew T. Green Stephen P. Samuels 250 West Street P.O. Box 165020 Columbus, Ohio 43216-5020	Randall W. Knutti Assistant Attorney General 150 East Gay Street, 23 rd Floor Columbus, Ohio 43215-3130
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LH/mdw/cmd
Filed June 19, 2008
To S.C. reporter June 30, 2008

EXHIBIT D

D1

AFFIDAVIT OF WAYNE T. DONER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Wayne T. Doner, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 28-011700.0000, 28-011300.0000, 28-012200.0000, 28-012300.0000, and 28-010500.0000.

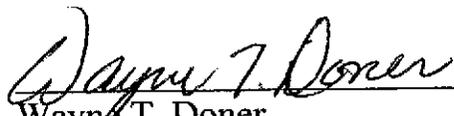
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

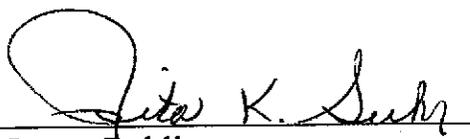
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Wayne T. Doner

Sworn in my presence and subscribed before me this 18th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D2

AFFIDAVIT OF JANET K. DONER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

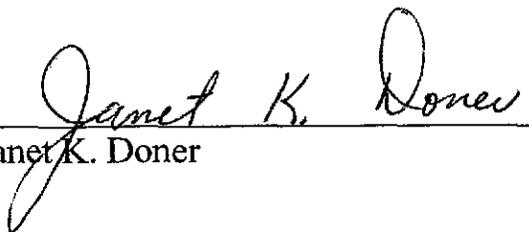
My name is Janet K. Doner, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 28-011700.0000, 28-011300.0000, 28-012200.0000, and 28-012300.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

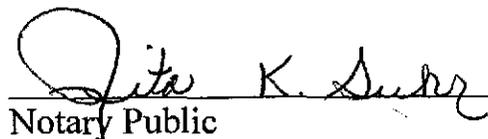
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Janet K. Doner

Sworn in my presence and subscribed before me this 13th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D3

AFFIDAVIT OF RICHARD L. ADAMS

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Richard L. Adams, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-003700.0000, 42-005800.0000, and 42-014900.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

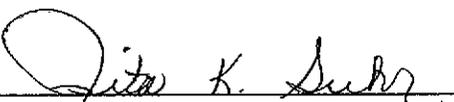
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Richard L. Adams

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public - State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D4

AFFIDAVIT OF NANCY L. ADAMS

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Nancy L. Adams, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-003700.0000, 42-005800.0000, and 42-014900.0000.

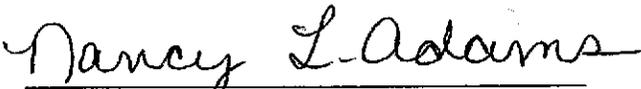
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

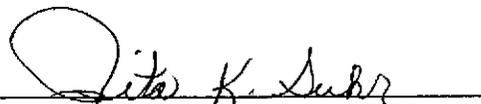
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Nancy L. Adams

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D5

AFFIDAVIT OF PAUL A. AGNELLO

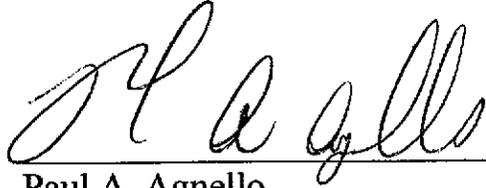
STATE OF MICHIGAN)
) ss:
COUNTY OF LIVINGSTON)

My name is Paul A. Agnello, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 28-010400.0000 and 42-014000.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

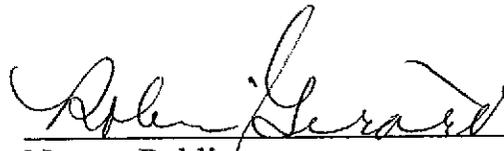
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Paul A. Agnello

Sworn in my presence and subscribed before me this 26th day of June, 2009.



Notary Public

ROBIN GIRARD
Notary Public, Shiawassee County, Michigan
Acting In Livingston County
My Commission Expires 7/31/2011

D6

Powell for

AFFIDAVIT OF RHONDA E. AGNELLO

STATE OF MICHIGAN)
) ss:
COUNTY OF LIVINGSTON)

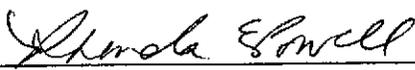
Powell for

My name is Rhonda E. Agnello, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 28-010400.0000 and 42-014000.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

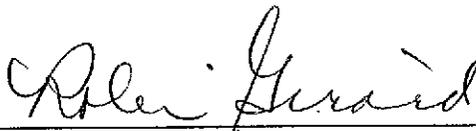
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Rhonda E. Agnelle
Powell/sep

Sworn in my presence and subscribed before me this 26TH day of June, 2009.



Notary Public

ROBIN GIRARD
Notary Public, Shiawassee County, Michigan
Acting in Livingston County
My Commission Expires 7/31/2011

D7

AFFIDAVIT OF WAYNE BAUCHER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Wayne Baucher, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am the President of The Baucher Farms, Inc. ("Baucher Farms"), a corporation organized under the laws of the state of Ohio.

2. Baucher Farms is a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").

3. Baucher Farms owns real estate described as Mercer County Parcel Numbers 26-043100.0000 and 42-017300.0000.

4. Baucher Farms owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

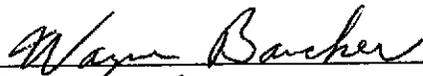
5. Baucher Farms owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent,

frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but Baucher Farms' property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

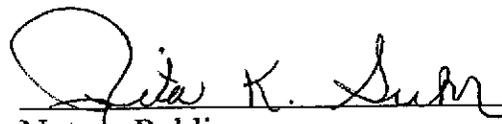
7. I have reviewed the Complaint and the facts relating to the real estate owned by Baucher Farms and the flooding of Baucher Farms' lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Wayne Baucher

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D8

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



David M. Doner

Sworn in my presence and subscribed before me this 23rd day of June, 2009.





Notary Public

D9

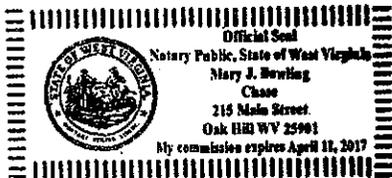
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

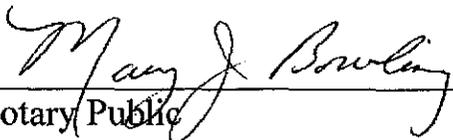
FURTHER AFFIANT SAYETH NAUGHT.



Karen S. Doner

Sworn in my presence and subscribed before me this 23rd day of June, 2009.





Notary Public

D10

AFFIDAVIT OF LAWRENCE J. DWENGER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Lawrence J. Dwenger, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

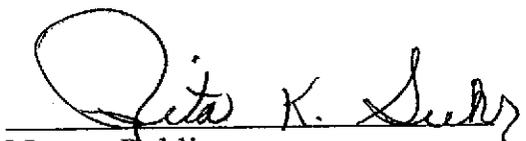
1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am the owner of real estate described as Mercer County Parcel Number 26-041200.0100.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Lawrence J. Dwenger

Sworn in my presence and subscribed before me this 22nd day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D11

AFFIDAVIT OF JOYCE A. DWENGER

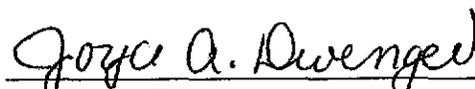
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Joyce A. Dwenger, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Number 26-041200.0100.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

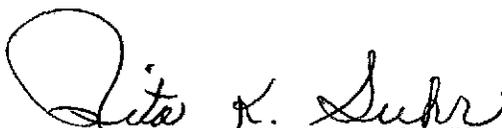
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Joyce A. Dwenger

Sworn in my presence and subscribed before me this 23rd day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D12

AFFIDAVIT OF STANLEY M. EBBING

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

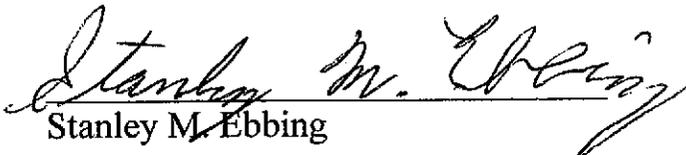
My name is Stanley M. Ebbing, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 03-005100.0000, 03-004400.0000, 03-025900.0000, 26-041000.0000, 26-047200.0100, 42-029500.0000, 42-031000.0000, 09-043400.0000, and 09-037100.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

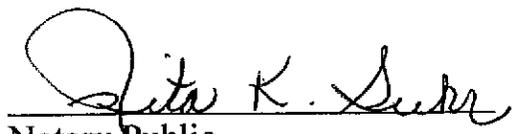
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Stanley M. Ebbing

Sworn in my presence and subscribed before me this 19th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D13

AFFIDAVIT OF VICKI L. EBBING

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

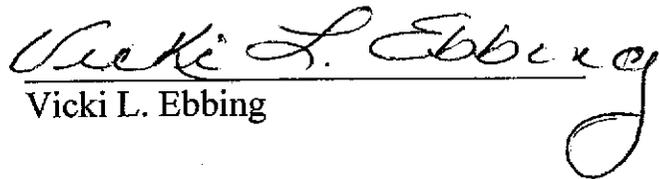
My name is Vicki L. Ebbing, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 03-005100.0000, 03-004400.0000, 03-025900.0000, 26-041000.0000, 26-047200.0100, 42-029500.0000, 42-031000.0000, 09-043400.0000, and 09-037100.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

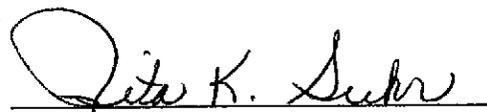
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Vicki L. Ebbing

Sworn in my presence and subscribed before me this 19th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D14

AFFIDAVIT OF CARMAN R. ELLIS

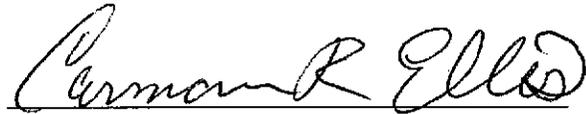
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Carman R. Ellis, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

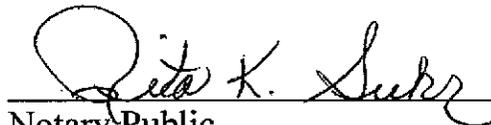
1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Number 26-049300.0100.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Carman R. Ellis

Sworn in my presence and subscribed before me this 15th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D15

AFFIDAVIT OF JILL E. ELLIS

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Jill E. Ellis, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Number 26-049300.0100.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

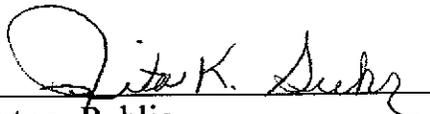
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Jill E. Ellis

Sworn in my presence and subscribed before me this 18th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D16

AFFIDAVIT OF H. EDWARD GILBERT

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is H. Edward Gilbert, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-001600.0000 and 26-041200.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

H Edward Gilbert
H. Edward Gilbert

Sworn in my presence and subscribed before me this 19th day of June, 2009.

Rita K. Suhr
Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D17

AFFIDAVIT OF MARY E. GILBERT

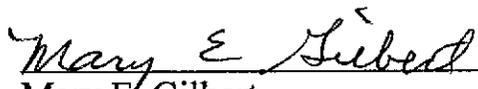
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Mary E. Gilbert, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-001600.0000 and 26-041200.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

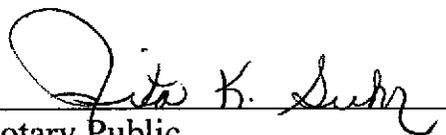
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Mary E. Gilbert

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D18

AFFIDAVIT OF DAVID L. GRANGER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is David L. Granger, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Trustee of the David L. and Esther L. Granger Living Trust dated May 22, 2007 (the "Granger Trust").

2. As a Trustee of the Granger Trust, I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").

3. The Granger Trust owns real estate described as Mercer County Parcel Numbers 42-012600.0000 and 42-004100.0000.

4. The Granger Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

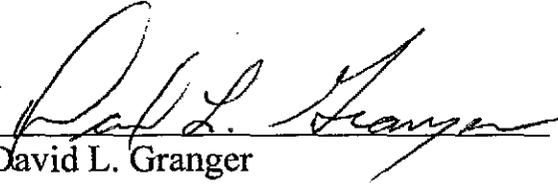
5. The Granger Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing,

persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

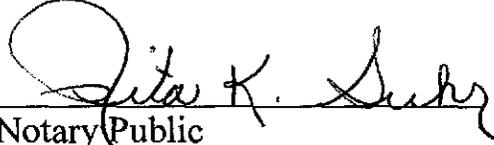
6. To date, the most invasive flood occurred in 2003, but the Granger Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

7. I have reviewed the Complaint and the facts relating to the real estate owned by the Granger Trust and the flooding of those lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


David L. Granger

Sworn in my presence and subscribed before me this 19th day of June, 2009.


Notary Public

D19

AFFIDAVIT OF ROBERT E. HIGHLEY

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Robert E. Highley, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, and 42-004500.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

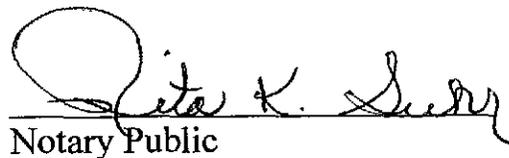
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Robert E. Highley

Sworn in my presence and subscribed before me this 22nd day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D20

AFFIDAVIT OF PATRICIA L. HIGHLEY

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

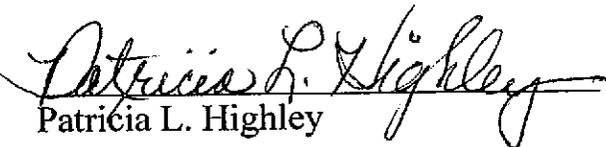
My name is Patricia L. Highley, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, and 42-005000.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

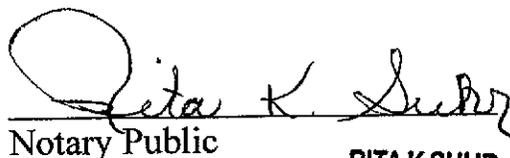
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Patricia L. Highley

Sworn in my presence and subscribed before me this 22nd day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D21

AFFIDAVIT OF JASON E. HINES

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Jason E. Hines, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-049300.0200 and 27-250700.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

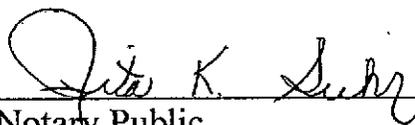
7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Jason E. Hines

Sworn in my presence and subscribed before me this 9th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D22

AFFIDAVIT OF EMILY A. HINES

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Emily A. Hines, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-049300.0200 and 27-250700.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

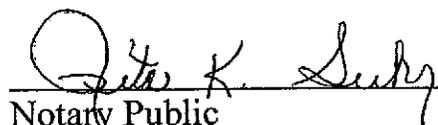
7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Emily A. Hines

Sworn in my presence and subscribed before me this 9th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D23

AFFIDAVIT OF DANIEL W. JOHNSMAN

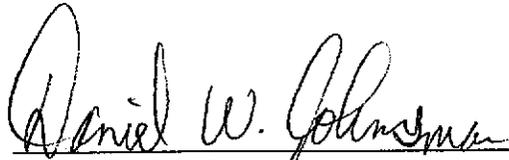
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Daniel W. Johnsman, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am the owner of real estate described as Mercer County Parcel Numbers 26-038300.0200 and 26-037900.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

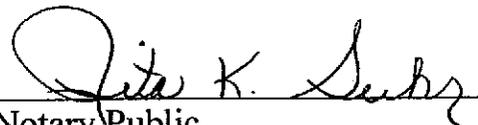
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Daniel W. Johnson

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D24

AFFIDAVIT OF DAVID A. JOHNSMAN

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is David A. Johnsman, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct.

I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-029500.0100 and 26-048600.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.
6. I am also a Trustee of the Ruth M. Johnsman Irrevocable Trust dated September 14, 1988 (the “R. Johnsman Trust”).
7. As a Trustee of the R. Johnsman Trust, I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

8. The R. Johnsman Trust owns real estate described as Mercer County Parcel Numbers 26-014600.0100, 26-024700.0000, and 26-038300.0000.

9. The R. Johnsman Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

10. The R. Johnsman Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

11. To date, the most invasive flood occurred in 2003, but the R. Johnsman Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

12. I am also a Trustee of the Leroy J. Johnsman Irrevocable Trust dated September 14, 1988 (the "L. Johnsman Trust").

13. As a Trustee of the L. Johnsman Trust, I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").

14. The L. Johnsman Trust owns real estate described as Mercer County Parcel Numbers 26-014600.0100, 26-024700.0000, 26-038300.0000, 26-015000.0000, and 26-012500.0000.

15. The L. Johnsman Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

16. The L. Johnsman Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

17. To date, the most invasive flood occurred in 2003, but the L. Johnsman Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

18. I have reviewed the Complaint, the facts relating to my real estate, the real estate owned by the R. Johnsman Trust, the real estate owned by the L. Johnsman Trust, and the flooding of these lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


David A. Johnsman

Sworn in my presence and subscribed before me this 23rd day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D25

AFFIDAVIT OF JEAN A. KARR

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

My name is Jean A. Karr, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am the Trustee of the Jean A. Karr Revocable Trust dated October 9, 2001 (the "Karr Trust").

2. As a Trustee of the Karr Trust, I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").

3. The Karr Trust is an owner of real estate described as Mercer County Parcel Numbers 28-013400.0000 and 28-013500.0000.

4. The Karr Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

5. The Karr Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent,

frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but the Karr Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

7. I have reviewed the Complaint, the facts relating to the real estate owned by the Karr Trust, and the flooding of those lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

Jean A. Karr
Jean A. Karr

Sworn in my presence and subscribed before me this 23 day of June, 2009.



Laura Buckingham
Notary Public

D26

AFFIDAVIT OF CHAD M. KNAPKE

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Chad M. Knapke, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

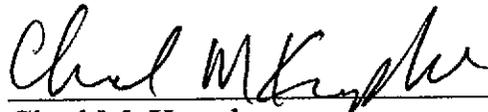
1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 42-014500.0102, and 42-026700.0101.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

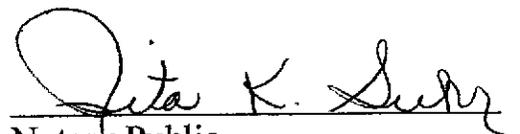
6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Chad M. Knapke

Sworn in my presence and subscribed before me this 22nd day of June, 2009.


Notary Public
RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D27

AFFIDAVIT OF ANDREA M. KNAPKE

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

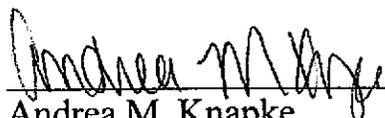
My name is Andrea M. Knapke, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, and 42-014500.0102.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

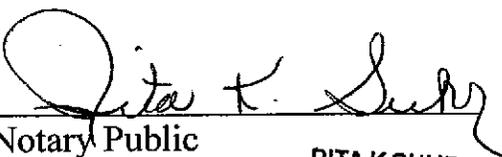
7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Andrea M. Knapke

Sworn in my presence and subscribed before me this 27th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D28

AFFIDAVIT OF MARK L. KNAPKE

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Mark L. Knapke, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

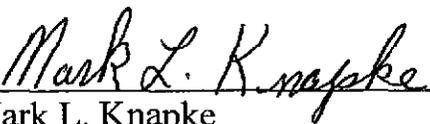
1. I am the Trustee of the Mark L. Knapke Revocable Living Trust dated August 2, 1994 and amended July 7, 1997 (the "Knapke Trust").
2. As a Trustee of the Knapke Trust, I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").
3. The Knapke Trust owns real estate described as Mercer County Parcel Numbers 29-002400.0000 and 38-003400.0100.
4. The Knapke Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
5. The Knapke Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing,

persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but the Knapke Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

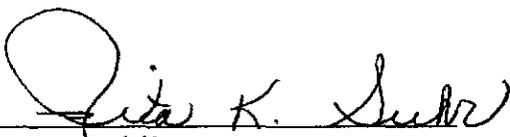
7. I have reviewed the Complaint, the facts relating to the real estate owned by the Knapke Trust, and the flooding of those lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Mark L. Knapke

Sworn in my presence and subscribed before me this 23rd day of June, 2009.



Notary Public

RITA K SUHR
Notary Public - State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D29

AFFIDAVIT OF TIMOTHY A. KNAPKE

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

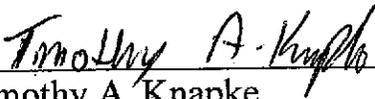
My name is Timothy A. Knapke, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 43-003800.0000 and 29-003700.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

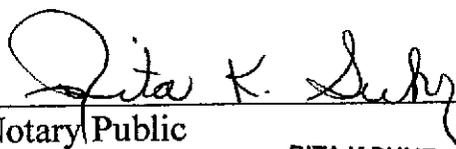
7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Timothy A. Knapke

Sworn in my presence and subscribed before me this 22nd day of June, 2009.



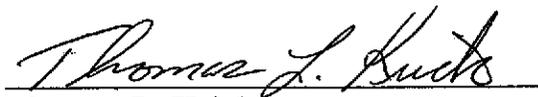
Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

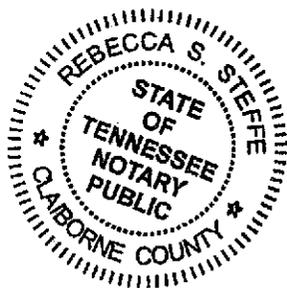
D30

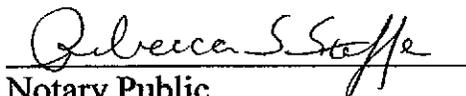
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Thomas L. Krick

Sworn in my presence and subscribed before me this 19th day of June, 2009.

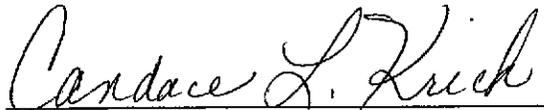



Notary Public

D31

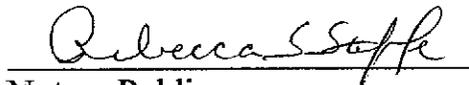
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Candace L. Krick

Sworn in my presence and subscribed before me this 19th day of June, 2009.




Notary Public

D32

AFFIDAVIT OF DARRELL D. KUHN

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

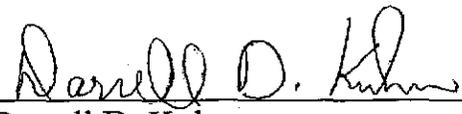
My name is Darrell D. Kuhn, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am the owner of real estate described as Mercer County Parcel Number 42-001200.0000.
3. I also own an interest in real estate described as Mercer County Parcel Numbers 25-009900.0000 and 25-013400.0000.
4. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
5. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

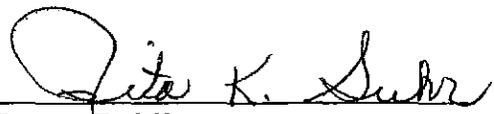
7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Darrell D. Kuhn

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D33

AFFIDAVIT OF MARVIN E. KUHN

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Marvin E. Kuhn, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am the owner of real estate described as Mercer County Parcel Numbers 30-023600.0000, 28-000100.0000, 28-017400.0100, and 30-022100.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I am also the Secretary and Treasurer of Kuhn Farms, Inc. ("Kuhn Farms"), a corporation organized under the laws of the state of Ohio.

7. Kuhn Farms is a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").

8. Kuhn Farms owns real estate described as Mercer County Parcel Numbers 01-046900.0000, 30-001700.0000, 30-000900.0000, and 30-000900.0200.

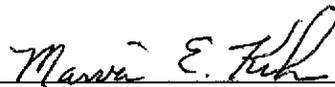
9. Kuhn Farms owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

10. Kuhn Farms owns lands which, since ODNR replaced the western spillway of Grand Lake St. Mary's in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

11. To date, the most invasive flood occurred in 2003, but Kuhn Farms' property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

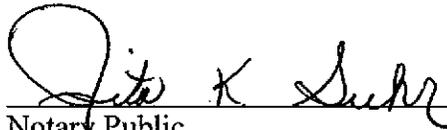
12. I have reviewed the Complaint and the facts relating to my real estate, the real estate owned by Kuhn Farms and the flooding of those lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Marvin E. Kuhn

Sworn in my presence and subscribed before me this 10th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D34

AFFIDAVIT OF MARILYN M. KUHN

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

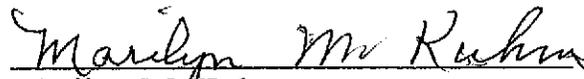
My name is Marilyn M. Kuhn, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 30-022900.0000, 30-022500.0000, 30-024200.0000, 42-000200.0000, 25-009900.0000, and 25-013400.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

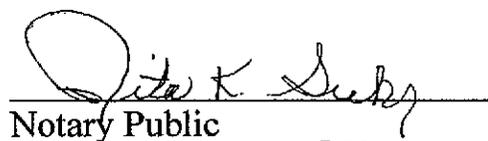
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Marilyn M. Kuhn

Sworn in my presence and subscribed before me this 25th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D35

AFFIDAVIT OF LINDA B. LINN

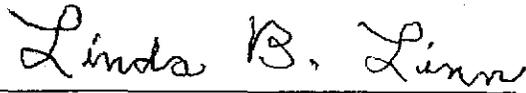
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Linda B. Linn, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 29-001800.0000, 29-002200.0000, and 29-002300.0100.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

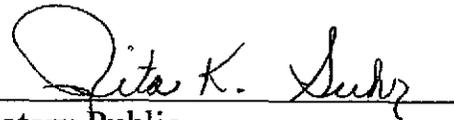
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Linda B. Linn

Sworn in my presence and subscribed before me this 11th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D36

AFFIDAVIT OF LEE A. FENNIG

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Lee A. Fennig, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am Trustee of the Calvin A. Fennig Trust dated March 20, 1993 (the "Fennig Trust").

2. As a Trustee of the Fennig Trust, I am a Relator in this mandamus action against ODNR.

3. The Fennig Trust is an owner of real estate described as Mercer County Parcel Numbers 29-001800.0000 and 29-002200.0000.

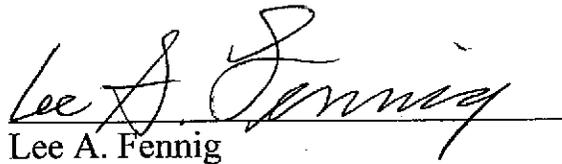
4. The Fennig Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

5. The Fennig Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

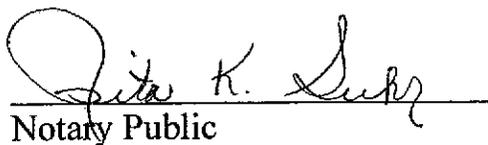
6. To date, the most invasive flood occurred in 2003, but the Fennig Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

7. I have reviewed the Complaint and the facts relating to the real estate of the Fennig Trust and the flooding of those lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Lee A. Fennig

Sworn in my presence and subscribed before me this 24~~th~~ day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D37

AFFIDAVIT OF DAVID J. MCDONOUGH

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

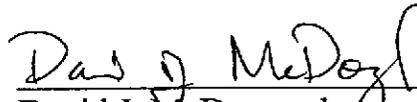
My name is David J. McDonough, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 09-062100.0124, 09-062100.0123, and 26-038100.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, I believe the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

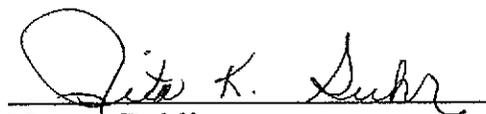
7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



David J. McDonough

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D38

AFFIDAVIT OF DEBORAH A. MCDONOUGH

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Deborah A. McDonough, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 09-062100.0124, 09-062100.0123, and 26-038100.0000.

3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

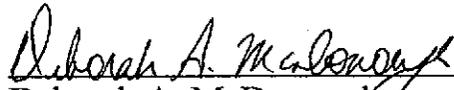
5. To date, I believe the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

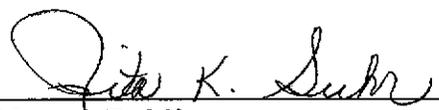
8.

FURTHER AFFIANT SAYETH NAUGHT.



Deborah A. McDonough

Sworn in my presence and subscribed before me this 17th day of June, 2009.



Notary Public RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D39

AFFIDAVIT OF DAVID J. MCNEILAN

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

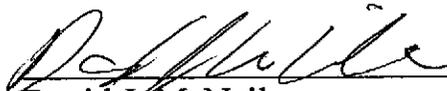
My name is David J. McNeilan, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-027300.0500, 26-027400.0200, 26-027400.0000, 26-027400.0100, and 26-027500.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

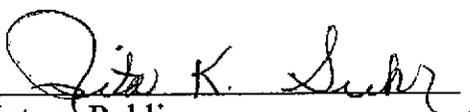
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



David J. McNeilan

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D40

AFFIDAVIT OF LAURA B. MCNEILAN

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Laura B. McNeilan, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct.

I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Number 26-027500.0000.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which I believe, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, I believe the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.
6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Laura B. McNeilan

Sworn in my presence and subscribed before me this 19th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D41

AFFIDAVIT OF LOIS J. MCNEILAN

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

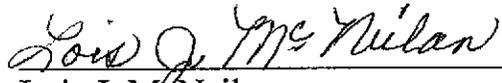
My name is Lois J. McNeilan, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-027200.0000, 30-031600.0000, 30-032500.0000, 30-020900.0000, 30-018900.0000, 30-033800.0000, 30-025000.0000, 30-031500.0000, 30-004900.0000, 30-004900.0100, 30-019900.0200, 30-019900.0100, and 30-026100.0100.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

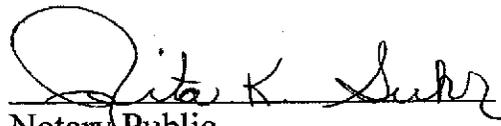
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Lois J. McNeilan

Sworn in my presence and subscribed before me this 22nd day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D42

AFFIDAVIT OF CHARLES J. MEIER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

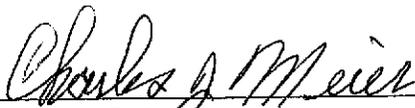
My name is Charles J. Meier, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-060000.0000, 26-052600.0000, 26-052700.0000 and 26-052700.0100.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

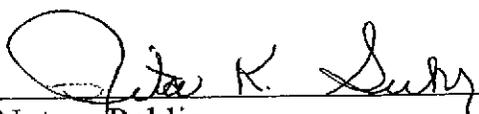
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Charles J. Meier

Sworn in my presence and subscribed before me this 7th day of July, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recordéd in Mercer County

D43

AFFIDAVIT OF MARY K. MEIER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Mary K. Meier, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

2. Specifically, I own real estate described as Mercer County Parcel Number 26-052700.0100.

3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

4. I own land which, I believe since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

Mary K. Meier
Mary K. Meier

Sworn in my presence and subscribed before me this 18th day of June, 2009.

Rita K. Suhr
Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D44

AFFIDAVIT OF JEROME L. MEYER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Jerome L. Meyer, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-029600.0000, 42-001000.0000, 42-019700.0000, and 42-019800.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

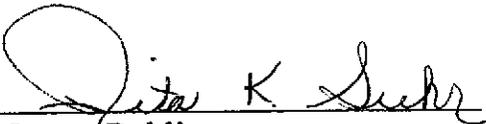
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Jerome L. Meyer

Sworn in my presence and subscribed before me this 22nd day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D45

AFFIDAVIT OF AMY L. MEYER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

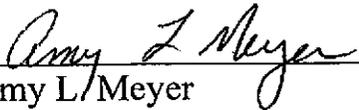
My name is Amy L. Meyer, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-029600.0000, 42-001000.0000, 42-019700.0000, and 42-019800.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

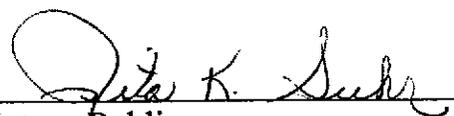
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Amy L. Meyer

Sworn in my presence and subscribed before me this 23rd day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D46

AFFIDAVIT OF MATT J. MUHLENKAMP

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

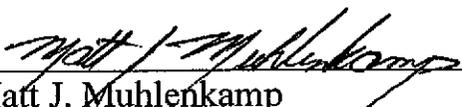
My name is Matt J. Muhlenkamp, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Number 43-000300.0100.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which I believe, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

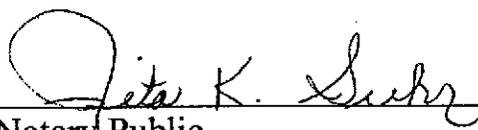
6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Matt J. Muhlenkamp

Sworn in my presence and subscribed before me this 19th day of June, 2009.


Notary Public

D47

AFFIDAVIT OF LYNETTE I. MUHLENKAMP

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Lynette I. Muhlenkamp, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

2. Specifically, I am an owner of real estate described as Mercer County Parcel Number 43-000300.0100.

3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

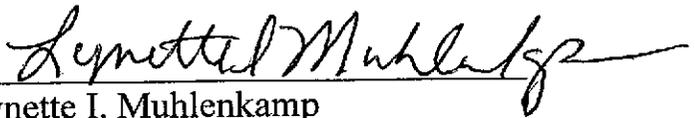
4. I own land which I believe, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

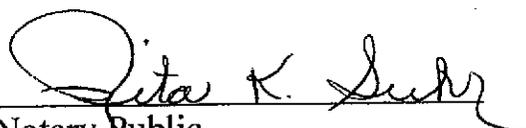
6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Lynette I. Muhlenkamp

Sworn in my presence and subscribed before me this 22nd day of June, 2009.


Notary Public
RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D48

AFFIDAVIT OF WILLIAM M. MUHLENKAMP

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is William M. Muhlenkamp, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 30-030300.0200, 30-031700.0000, 29-002000.0000, 30-031800.0000, 30-032900.0000, 30-034200.0100, 30-016200.0000, 28-009500.0000, 29-000500.0000, 30-031000.0300, 29-003300.0000, 29-004400.0000, 30-031300.0000, 29-001700.0000, 30-030400.0000, and 30-032600.0000.

3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and

inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

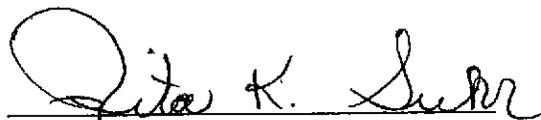
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


William M. Muhlenkamp

Sworn in my presence and subscribed before me this 22nd day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D49

AFFIDAVIT OF CAROLYN J. PIERSTORFF

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Carolyn J. Pierstorff, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 24-012800.0100 and 42-001300.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

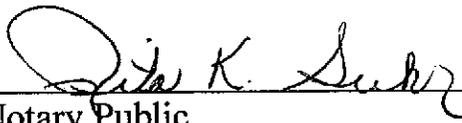
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Carolyn J. Pierstorff

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County ✓

D50

AFFIDAVIT OF JAMES A. POST

STATE OF INDIANA)
) ss:
COUNTY OF ADAMS)

My name is James A. Post, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am the Attorney-in-Fact for Opal L. Post pursuant to a Power of Attorney dated July 15, 2002.

2. Opal L. Post is a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").

3. Opal L. Post is the owner of real estate described as Mercer County Parcel Numbers 29-001500.0000, 28-011400.0000, and 29-004200.0000.

4. Opal L. Post owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

5. Opal L. Post own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but Opal L. Post's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

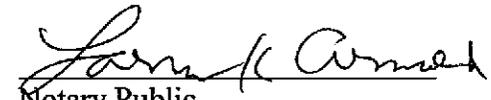
7. I have reviewed the Complaint on behalf of Opal L. Post and the facts relating to her real estate and the flooding of her lands caused by ODNR from the western spillway of

Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


James A. Post,
Power of Attorney for Opal L. Post

Sworn in my presence and subscribed before me this 22 day of June, 2009.


Notary Public
CO ADAMS
ST IR
COM EXPIRES 05-14-16

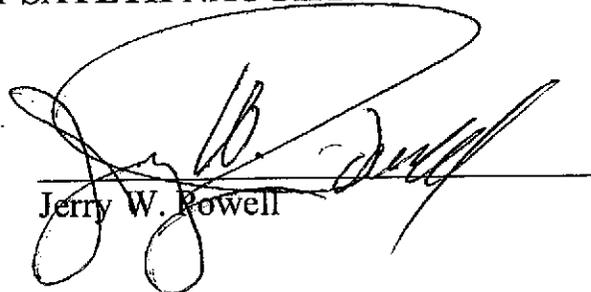
D51

persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but the Powell Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

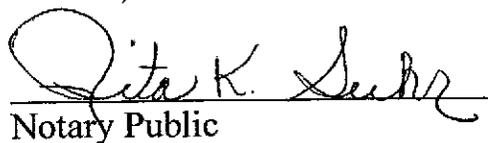
7. I have reviewed the Complaint and the facts relating to the Powell Trust's real estate and the flooding of those lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Jerry W. Powell

Sworn in my presence and subscribed before me this 22nd day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D52

AFFIDAVIT OF BETTY L. POWELL

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Betty L. Powell, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Trustee of The Powell Living Trust dated December 22, 2005 (the "Powell Trust").

2. As a Trustee of the Powell Trust, I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").

3. The Powell Trust owns real estate described as Mercer County Parcel Numbers 28-010400.0000, 42-014000.0000, 42-024200.0000, and 42-016900.0000.

4. The Powell Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

5. The Powell Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing,

persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

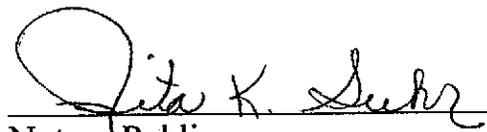
6. To date, the most invasive flood occurred in 2003, but the Powell Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

7. I have reviewed the Complaint and the facts relating to the Powell Trust's real estate and the flooding of those lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Betty L. Powell

Sworn in my presence and subscribed before me this 23rd day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D53

AFFIDAVIT OF M. LEONE POWELL

STATE OF OHIO)
) ss:
COUNTY OF ALLEN)

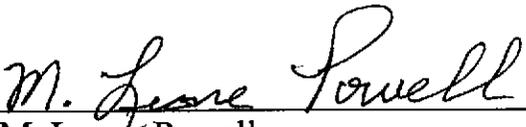
My name is M. Leone Powell, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-003800.0000, 42-003400.0000, and 42-003200.0100.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

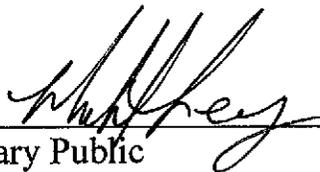


M. Leone Powell

Sworn in my presence and subscribed before me this 20th day of June, 2009.



MICHAEL LEY
Notary Public, State of Ohio
My Commission Expires Aug. 11, 2013



Notary Public

D54

AFFIDAVIT OF THOMAS L. POWELL

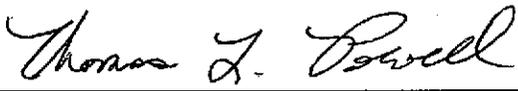
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Thomas L. Powell, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 28-010400.0100, 42-016800.0100, and 42-014000.0100.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

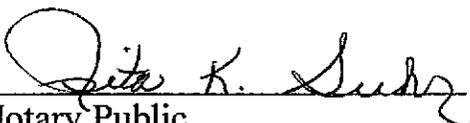
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Thomas L. Powell

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D55

AFFIDAVIT OF BRENDA S. POWELL

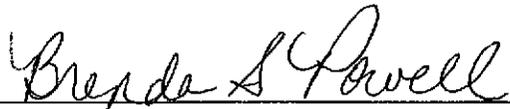
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Brenda S. Powell, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 28-010400.0100, 42-016800.0100, and 42-014000.0100.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

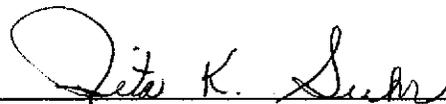
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Brenda S. Powell

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D56

AFFIDAVIT OF LARRY V. PUGSLEY

STATE OF OHIO)
) ss:
COUNTY OF HANCOCK)

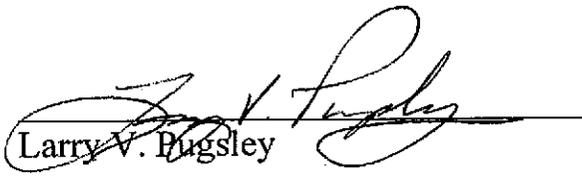
My name is Larry V. Pugsley, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-003800.0000, 42-003400.0000, and 42-003200.0100.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

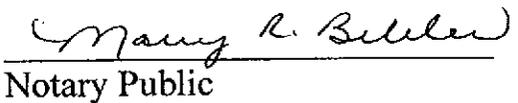
FURTHER AFFIANT SAYETH NAUGHT.


Larry V. Pugsley

Sworn in my presence and subscribed before me this 27th day of June, 2009.



MARCY R. BIBLER
Notary Public, State of Ohio
My Commission Expires Sept 11-2010


Notary Public

D57

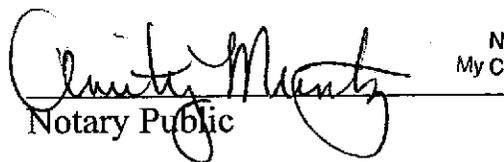
6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


William J. Ransbottom

Sworn in my presence and subscribed before me this 30th day of June, 2009.


Notary Public

AMITY MUNTZ
Notary Public, State of Ohio
My Commission Expires Mar. 4, 2013

D58

AFFIDAVIT OF TIMOTHY RASAWEHR

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Timothy Rasaweher, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Number 42-001300.0000.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Timothy Rasawehr

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D59

AFFIDAVIT OF THOMAS D. RASAWEHR

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Thomas D. Rasawehr, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

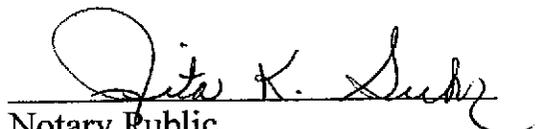
1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-001300.0000 and 27-286400.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Thomas D. Rasawehr

Sworn in my presence and subscribed before me this 19th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D60

AFFIDAVIT OF CARL W. ROSE

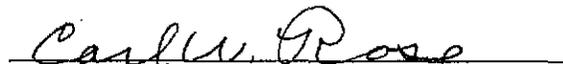
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Carl W. Rose, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

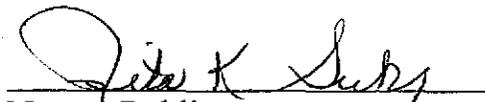
1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Number 42-018500.0000.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Carl W. Rose

Sworn in my presence and subscribed before me this 19th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recordéd in Mercer County

D61

AFFIDAVIT OF LUCILE M. ROSE

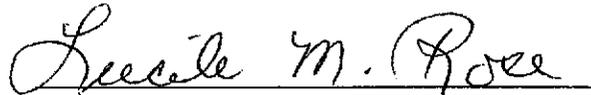
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Lucile M. Rose, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Number 42-018500.0000.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

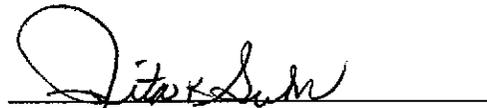
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Lucile M. Rose

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D62

AFFIDAVIT OF ELAINE K. FETT

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Elaine K. Fett, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

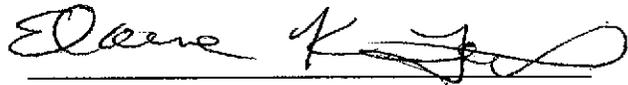
1. I am the Attorney-in-Fact for Dorothy K. Schroyer pursuant to a Power of Attorney dated February 5, 2005.
2. Dorothy K. Schroyer is a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
3. Specifically, Dorothy K. Schroyer is an owner of real estate described as Mercer County Parcel Numbers 42-005700.0000, 42-014700.0000, and 42-014800.0000.
4. Dorothy K. Schroyer owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
5. Dorothy K. Schroyer owns lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing,

persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but Dorothy K. Schroyer's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

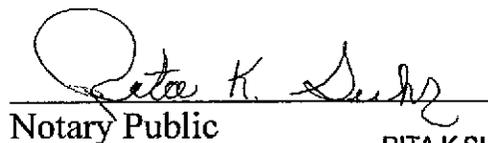
7. I have reviewed the Complaint and the facts relating to Dorothy K. Schroyer's real estate and the flooding of her lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Elaine K. Fett
Power of Attorney for Dorothy K. Schroyer

Sworn in my presence and subscribed before me this 25th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D63

AFFIDAVIT OF ROBERT E. SEARIGHT

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Robert E. Searight, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 06-015500.0000, 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

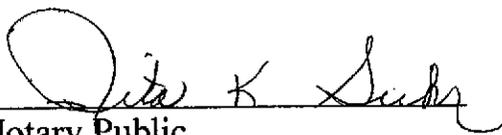
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Robert E. Searight

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recordéé in Mercer County

D64

AFFIDAVIT OF BONITA S. SEARIGHT

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Bonita S. Searight, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

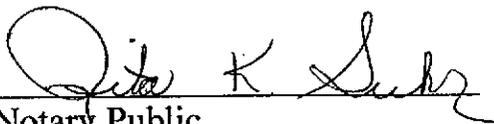
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Bonita S. Searight

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D65

AFFIDAVIT OF DUANE R. SHEETS

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Duane R. Sheets, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

2. Specifically, I am owner of real estate described as Mercer County Parcel Numbers 30-032200.0000, 28-012900.0000, 28-012900.0100, 28-010900.0000, 28-001600.0000, and 30-033200.0000.

3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

Duane R. Sheets
Duane R. Sheets

Sworn in my presence and subscribed before me this 22nd day of June, 2009.

Rita K. Suhr
Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D66

AFFIDAVIT OF RODNEY E. SHEETS

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

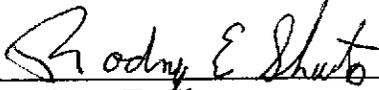
My name is Rodney E. Sheets, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 28-001600.0000, 30-033200.0000, 28-011100.0000, 28-001800.0000, 28-001900.0000, 28-011000.0000, 28-015000.0000, 28-008300.0000, and 07-061000.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

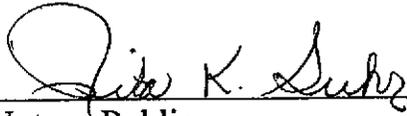
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Rodney E. Sheets

Sworn in my presence and subscribed before me this 22nd day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D67

AFFIDAVIT OF LINDA J. SHEETS

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Linda J. Sheets, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 28-011000.0000, 28-015000.0000, 28-008300.0000, and 07-061000.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

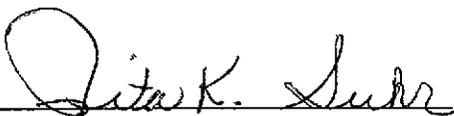
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Linda J. Sheets

Sworn in my presence and subscribed before me this 24th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D68

AFFIDAVIT OF JEFF A. SIEFRING

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Jeff A. Siefring, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

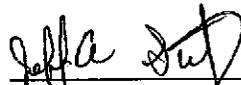
1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I own real estate described as Mercer County Parcel Numbers 26-044100.0200, 26-044100.0100, 26-044100.0300, and 26-044100.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, I believe the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

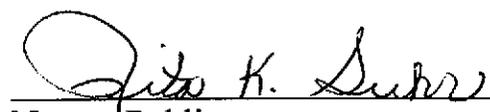
7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Jeff A. Siefring

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D69

AFFIDAVIT OF MARK A. SIEFRING

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

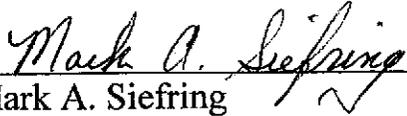
My name is Mark A. Siefring, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-001000.0100, 43-013100.0000, 44-015100.0000, and 42-020000.0000.
3. I also own an interest in real estate described as Mercer County Parcel Number 43-012400.0100.
4. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
5. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

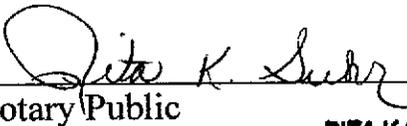
7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Mark A. Siefring

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D70

AFFIDAVIT OF NEIL J. SIEFRING

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Neil J. Siefring, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

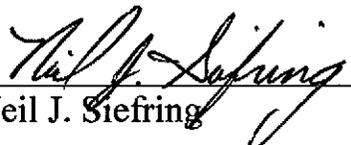
1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 02-005000.0000, 03-027600.0000, 02-004900.0200, 03-030800.0000, 03-032500.0000, 26-041500.0000, 44-015000.0000, and 43-012400.0000.
3. I also own an interest in real estate described as Mercer County Parcel Number 43-012400.0100.
4. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
5. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and

inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

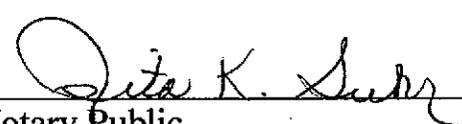
7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Neil J. Siefring

Sworn in my presence and subscribed before me this 19 day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D71

AFFIDAVIT OF MARY K. SIEFRING

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

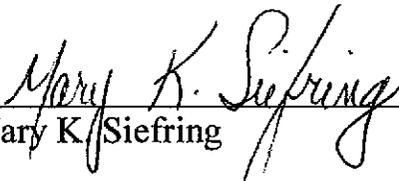
My name is Mary K. Siefring, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 03-027600.0000, 02-004900.0200, 26-041500.0000, 44-015000.0000, and 43-012400.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

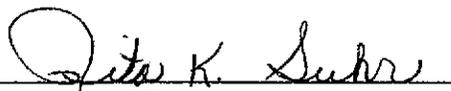
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Mary K. Siefring

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D72

AFFIDAVIT OF RONALD J. SIEFRING

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Ronald J. Siefring, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-000100.0000, 44-015100.0000, and 42-020000.0000.
3. I also own an interest in real estate described as Mercer County Parcel Number 43-012400.0100.
4. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
5. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

7. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Ronald J. Siefring

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D73

AFFIDAVIT OF CAROL L. SIEFRING

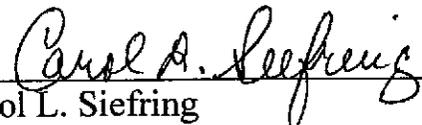
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Carol L. Siefring, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-000100.0000 and 42-001000.0100.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

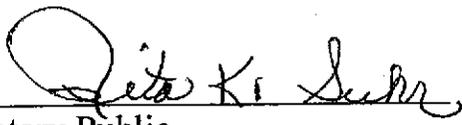
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Carol L. Siefring

Sworn in my presence and subscribed before me this 20th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D74

AFFIDAVIT OF DAVID J. SUHR

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

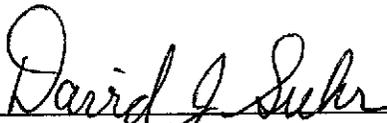
My name is David J. Suhr, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-040900.0000, 26-003700.0000, 26-039200.0200, 26-000900.0000, and 28-018600.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

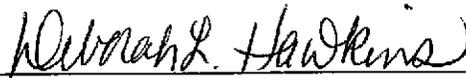


David J. Sulfr

Sworn in my presence and subscribed before me this 20th day of June, 2009.



Deborah L. Hawkins
Notary Public - State of Ohio
My Commission Expires January 2, 2012
Recorded in Mercer County



Notary Public

D75

AFFIDAVIT OF RITA K. SUHR

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

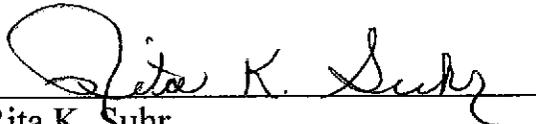
My name is Rita K. Suhr, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-040900.0000, 26-003700.0000, 26-039200.0200, 26-004200.0101, and 26-039100.0500.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

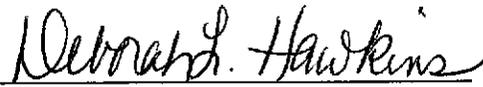
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Rita K. Suhr

Sworn in my presence and subscribed before me this 20th day of June, 2009.


Notary Public



Deborah L. Hawkins
Notary Public - State of Ohio
My Commission Expires January 2, 2012
Recorded in Mercer County

D76

AFFIDAVIT OF CARL A. SUTTER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Carl A. Sutter, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 24-010300.0200, 27-015000.0402, 28-015300.0000, 28-016900.0000, 28-017100.0000, 28-018000.0000, and 28-016200.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

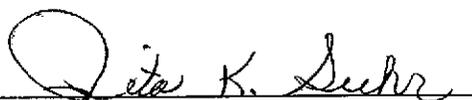
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Carl A. Sutter

Sworn in my presence and subscribed before me this 22nd day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D77

AFFIDAVIT OF JUDITH A. SUTTER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Judith A. Sutter, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 24-010300.0200, 27-015000.0402, 28-015300.0000, 28-016900.0000, 28-017100.0000, 28-018000.0000, and 28-016200.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

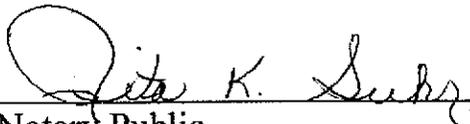
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Judith A. Sutter

Sworn in my presence and subscribed before me this 22nd day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D78

AFFIDAVIT OF GALE A. THOMAS

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Gale A. Thomas, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 28-008000.0000, 28-001300.0000, 28-002100.0000, 30-004100.0000, 28-013800.0000, 28-002100.0100, 30-025300.0000, 30-018700.0000, 30-017200.0200, 30-025800.0100, 30-002300.0000, and 30-001800.0000.

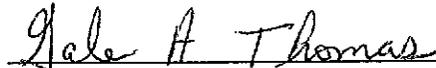
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

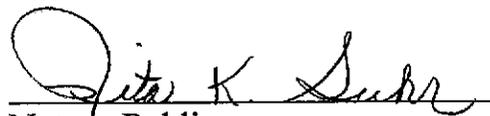
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Gale A. Thomas

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D79

AFFIDAVIT OF NELDA G. THOMAS

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Nelda G. Thomas, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 01-041300.0100, 28-008000.0000, 30-004100.0000, 28-013800.0000, 28-002100.0100, 30-017200.0200, 30-025800.0100, 30-002300.0000, and 30-001800.0000.

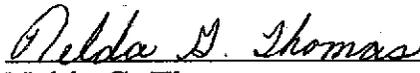
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Nelda G. Thomas

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D80

AFFIDAVIT OF MARILYN L. UHLENHAKE

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

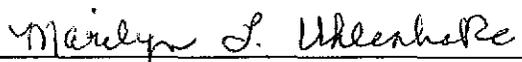
My name is Marilyn L. Uhlenhake, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 03-057700.0200, 03-057700.0000, 03-057900.0000, 26-043300.0000, and 26-042900.0100.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

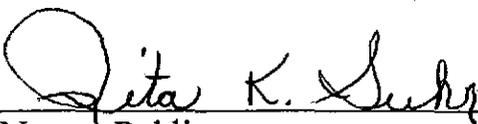
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Marilyn L. Uhlenhake

Sworn in my presence and subscribed before me this 22nd day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D81

AFFIDAVIT OF JERRY WEISMAN

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Jerry Weisman, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 24-036600.0000 and 42-000300.0100.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

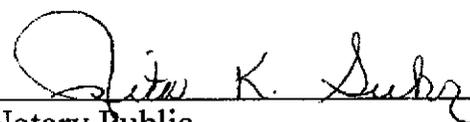
6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Jerry Weisman

Sworn in my presence and subscribed before me this 19th day of June, 2009.



Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D82

AFFIDAVIT OF VICKI L. WEISMAN

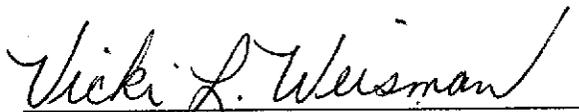
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Vicki L. Weisman, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

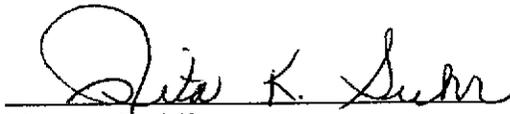
1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 24-036600.0000 and 42-000300.0100.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Vicki L. Weisman

Sworn in my presence and subscribed before me this 19th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D83

AFFIDAVIT OF CHARLES F. ZUMBERGE

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Charles F. Zumberge, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct.

I state as follows:

1. I am a Trustee of the Virginia L. Zumberge Trust dated January 31, 1990 (the "V. Zumberge Trust").

2. As a Trustee of the V. Zumberge Trust, I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").

3. The V. Zumberge Trust is an owner of real estate described as Mercer County Parcel Numbers 26-022600.0000, 26-051000.0000, and 26-052900.0000.

4. The V. Zumberge Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

5. The V. Zumberge Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

6. To date, the most invasive flood occurred in 2003, but the V. Zumberge Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

7. I am also a Trustee of the John H. Zumberge Trust dated January 31, 1990 (the "C. Zumberge Trust").

8. As a Trustee of the J. Zumberge Trust, I am a Relator in this mandamus action against ODNR.

9. The J. Zumberge Trust is an owner of real estate described as Mercer County Parcel Numbers 26-022600.0000, 26-051000.0000, 26-052900.0000, and 26-050600.0000

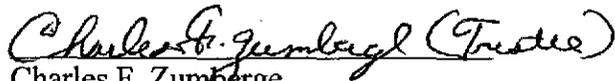
10. The J. Zumberge Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

11. The J. Zumberge Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

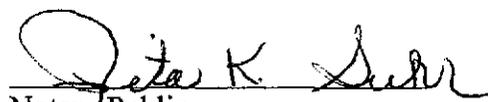
12. To date, the most invasive flood occurred in 2003, but the J. Zumberge Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

13. I have reviewed the Complaint and the facts relating to my real estate, the real estate of the V. Zumberge Trust, the real estate of the J. Zumberge Trust, and the flooding of those lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Charles F. Zumberge

Sworn in my presence and subscribed before me this 20th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D84

AFFIDAVIT OF JENNIFER M. ZUMBERGE

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Jennifer M. Zumberge, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct.

I state as follows:

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I am the owner of real estate described as Mercer County Parcel Number 26-042800.0000.
3. I own land that lies adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own land which I believe, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
5. To date, the most invasive flood occurred in 2003, but my property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.
6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
7. I am also a Trustee of the Virginia L. Zumberge Trust dated January 31, 1990 (the “V. Zumberge Trust”).

8. As a Trustee of the V. Zumberge Trust, I am a Relator in this mandamus action against ODNR.

9. The V. Zumberge Trust is an owner of real estate described as Mercer County Parcel Numbers 26-022600.0000, 26-051000.0000, and 26-052900.0000.

10. The V. Zumberge Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

11. The V. Zumberge Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

12. To date, the most invasive flood occurred in 2003, but the V. Zumberge Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

13. I am also a Trustee of the John H. Zumberge Trust dated January 31, 1990 (the "C. Zumberge Trust").

14. As a Trustee of the J. Zumberge Trust, I am a Relator in this mandamus action against ODNR.

15. The J. Zumberge Trust is an owner of real estate described as Mercer County Parcel Numbers 26-022600.0000, 26-051000.0000, 26-052900.0000, and 26-050600.0000

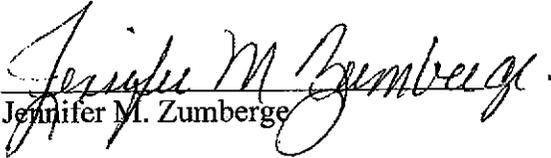
16. The J. Zumberge Trust owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.

17. The J. Zumberge Trust owns lands which, since ODNR replaced the western spillway of Grand Lake St. Marys in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

18. To date, the most invasive flood occurred in 2003, but the J. Zumberge Trust's property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

19. I have reviewed the Complaint and the facts relating to my real estate, the real estate of the V. Zumberge Trust, the real estate of the J. Zumberge Trust, and the flooding of those lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Jennifer M. Zumberge

Sworn in my presence and subscribed before me this 20th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County

D85

AFFIDAVIT OF MICHAEL A. ZUMBERGE

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is Michael A. Zumberge, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct.

I state as follows:

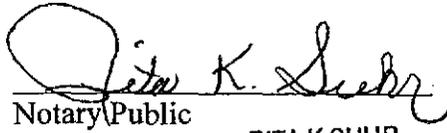
1. I am the President of Z - Farms Inc. ("Z - Farms"), a corporation organized under the laws of the state of Ohio.
2. Z - Farms is a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").
3. Z - Farms owns real estate described as Mercer County Parcel Numbers 26-051400.0000 and 26-049500.0000.
4. Z - Farms owns lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
5. Z - Farms owns lands which, since ODNR replaced the western spillway of Grand Lake St. Mary's in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.
6. To date, the most invasive flood occurred in 2003, but Z - Farms' property has been subject to continuing, persistent, frequent, and inevitable increased severe flooding since 1997.

7. I have reviewed the Complaint and the facts relating to the real estate of Z – Farms and the flooding of these lands caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.


Michael A. Zumberge

Sworn in my presence and subscribed before me this 17th day of June, 2009.


Notary Public

RITA K SUHR
Notary Public • State of Ohio
My Commission Expires May 13, 2011
Recorded in Mercer County