

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.
WAYNE T. DONER, ET AL.,

Relators,

v.

SEAN D. LOGAN, DIRECTOR
OHIO DEPARTMENT OF
NATURAL RESOURCES, ET AL.,

Respondents.

Case No.: 2009-1292

Master Commissioner Campbell

**RELATORS' MOTION FOR AN ORDER FOR
STANTEC CONSULTING CORPORATION TO SHOW CAUSE WHY IT
SHOULD NOT BE HELD IN CONTEMPT**

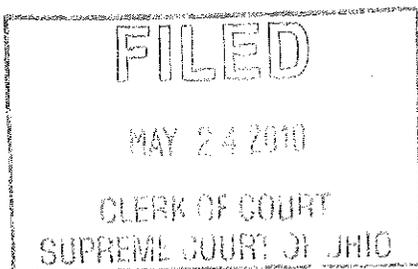
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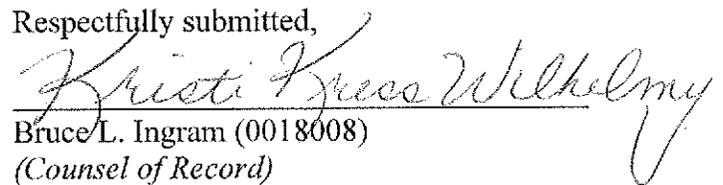
Attorneys for Respondents



Relators, by and through counsel, respectfully move this Court to order Stantec Consulting Corporation (“Stantec”), to show cause why it should not be held in contempt for failing to obey this Court’s subpoena, issued pursuant to Rule 45 of the Ohio Rules of Civil Procedure, ordering a corporate representative to attend a deposition and produce documents prior to the deposition. Relators further request that this Court order Stantec to produce documents responsive to the subpoena and listed in the attached privilege log – but wrongfully withheld under the guise of attorney client privilege and work product – at a time and place chosen by Relators, and to reimburse Relators the expenses incurred as a result of Stantec’s failure to comply with this Court’s subpoena. Alternatively, Relators move this Court to order Stantec to produce the responsive documents to this Court for an in camera inspection. Because the June 1, 2010 deadline for the submission of evidence is quickly approaching, Relators also request that should this Court order Stantec to produce certain documents and when those documents prove to be relevant to the credibility of Respondents’ expert, that Relators be granted leave to supplement Relators’ Presentation of Evidence.

The grounds for this motion are more particularly set forth in the Memorandum in Support submitted herewith.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Respondents are at it again. They did not want Relators to have the opportunity to submit rebuttal evidence to the flawed expert reports of Respondents' experts. This Court denied that obfuscation. Respondents did not want Relators to have the opportunity to submit evidence of the flooding of their property in March, 2010 by the actions of Respondents. This Court denied that obfuscation attempt as well. Now in concert with its testifying experts, Respondents are at it again trying to hide what must be information materially damaging to its position in this action. Thus, despite the fast-approaching deadline for the submission of evidence, Relators have no choice but to seek this Court's assistance in obtaining the compliance of Stantec Consulting Corporation ("Stantec") with a valid subpoena served upon Stantec by Relators.

Specifically, Stantec has failed to produce certain documents and communications responsive to the subpoena, claiming, via Respondents' counsel, the Ohio Attorney General's Office, that the items are protected from disclosure under several theories including the attorney-client privilege, work product doctrine, and the consulting expert exception. Stantec and Respondents have wrongfully refused disclosure of such documents because: 1) Rule 26(B)(5) provides for the disclosure of all materials given to and reviewed by a testifying expert, including trial preparation materials, opinion work product, and privileged materials; and 2) Stantec and Respondents have failed to identify a clear line of demarcation between Stantec's purported roles as consulting expert verses testifying expert. Accordingly, this Court should order Stantec to produce documents responsive to the subpoena and listed in the attached privilege log with great haste, and to reimburse Relators the expenses incurred as a result of Stantec's failure to comply with this Court's subpoena.

II. STATEMENT OF FACTS

On April 23, 2010, by personal service, Relators served a subpoena upon Stantec. *See* Notice of Filing Subpoena to Stantec Consulting Corporation at 4, attached as Ex. 1. That subpoena commanded Stantec to present a corporate representative for deposition on April 29, 2010 at 12:00 p.m. and produce documents at or before the deposition. *Id.* at Ex. A.

Stantec did not object to the subpoena, and on April 29, 2010, Stantec presented corporate representative Tadd Henson for deposition. During Mr. Henson's deposition, it quickly became apparent that despite the Relators' clear requests for the production of certain documents set forth in the subpoena, Stantec and Mr. Henson did not produce several categories of responsive documents. Counsel for Relators reiterated Relators' requests for certain documents during the deposition. *See, e.g.*, Dep. of Tadd Henson at 21:13-23:5; 95:9-96:10, attached as Ex. 2.

In follow-up, on May 3, 2010, counsel for Relators again asked counsel for Respondents to produce five categories of documents which Stantec failed to produce in response to the subpoena: 1) all agreements between ODNR and Stantec identified in the privilege log emailed by Jennifer Croskey to counsel for Relators on February 9, 2010, and any supplements to those agreements; 2) Stantec's invoices; 3) Stantec's emails with Dr. Philip DeGroot and/or Hydrosphere Engineering; 4) Stantec modeling/mapping of the July 2003 flooding with the old spillway in place; and 5) copies of any reports of Dr. Pressley Campbell in Mr. Henson's files. Correspondence dated May 3, 2010, attached as Ex. 3-A to Aff. of Thomas H. Fusonie.¹ Counsel for Relators reminded counsel for Respondents that all of these documents were responsive to the subpoena served on Stantec on April 23, 2010, and that Stantec did not object

¹ The Affidavit of Thomas H. Fusonie is attached hereto as Ex. 3.

to that subpoena. *Id.* Counsel for Relators' demanded production of all responsive documents by May 7, 2010. *Id.*

On May 7, 2010, counsel for Respondents informed counsel for Relators that Hydrosphere would be unable to comply with the document request by the May 7th deadline, but stated that they were "working" on a response. Correspondence dated May 7, 2010, attached as Ex. 3-B.

A week later, on May 14, 2010, counsel for Respondents informed counsel for Relators that responsive documents would be produced "early" the following week, but asserted that certain documents would not be produced on the basis of work product despite the fact that Mr. Henson was a "testifying expert." Correspondence dated May 14, 2010, attached as Ex. 3-C at 5. Counsel also refused Relators' request to remove the redaction from the supplemental agreement between ODNR and Stantec on the basis that the redacted portion was protected work-product material. *Id.* While counsel acknowledged that Mr. Henson testified about the scope of his work, counsel for Respondents claimed that he "only testified generally about the scope of Stantec's work . . ." and thus did not waive the privilege. *Id.*

That same day, counsel for Relators asked counsel for Respondents to provide authority to support Respondent's position that it could redact the portion of the supplemental agreement that describes the scope of Stantec's work when Stantec prepared a report and an affidavit pursuant to the supplemental agreement. Correspondence dated May 14, 2010, attached as Ex. 3-C at 4-5. Relators noted that this position was contrary to ODNR's stance in *ODNR v. Baucher* (Mercer County C.C.P Case No. 08-CIV-250), *ODNR v. Linn* (Mercer County C.C.P Case No. 08-CIV-251), *ODNR v. Minch* (Mercer County C.C.P Case No. 08-CIV-252), *ODNR v. Post* (Mercer County C.C.P Case No. 08-CIV-253), and *ODNR v. Zumberge* (Mercer County

C.C.P Case No. 08-CIV-254), all cases pending before the Mercer County Court of Common Pleas, and all cases in which ODNR produced its contracts with its expert in unredacted form. *Id.* Relators reminded Respondents that its position was contrary to its decision to not object when Relators asked Mr. Henson during the deposition to describe the scope of Stantec's work for ODNR in this action. *Id.* Relators demanded that Respondents produce authority to support its stance by the end of the day on May 18, 2010, and that in the absence of such authority, Relators would be forced to seek the assistance of this Court. *Id.*

On May 18, 2010, counsel for Respondents produced a few documents responsive to the subpoena, but withheld numerous emails on the basis of attorney-client privilege and/or attorney work-product. Correspondence dated May 18, 2010, attached as Ex. 3-C, p. 2-3. Respondents also refused to remove the redaction of the supplemental agreement that describes the scope of Stantec's work, on the basis of attorney work product. *Id.*

That same day, counsel for Relators responded, again reiterating their positions that Respondents' decision to withhold communications between Mr. Henson and Respondents on the basis of attorney work product or attorney/client privilege and Respondents' decision to withhold an unredacted version of the Stantec Supplemental Agreement, despite no objection by Stantec to the subpoena, lacked merit. Correspondence dated May 18, 2010, attached as Ex. 3-C, p. 1-2. In a last-ditch effort to avoid involving the Court, Relators gave Stantec until the end of business on May 19, 2010 to produce the communications and unredacted Supplemental Agreement. *Id.*

On May 19, 2010, counsel for Respondents responded that they would not be producing an unredacted version of Respondents' Supplemental Agreement with Stantec and would not be producing communications responsive to Relators' valid subpoena. Correspondence dated May

19, 2010, attached as Ex. 3-C, p. 1. Respondents refused to provide certain emails and documents purportedly on the basis that Mr. Henson did not rely on these documents in forming his opinion. *Id.* In that same correspondence, Respondents also claimed that Stantec was a consulting expert, that as such the communications between Stantec and Respondents were protected by the attorney-client privilege and work product doctrine, and thus for this additional reason Stantec would not be producing the responsive documents. *Id.*

True to Respondents' word, Stantec failed to produce the requested documents by the end of business on May 19, 2010. Respondents also never provided Relators with any authority to support the nondisclosure of such documents.

III. LAW AND ARGUMENT

A. **Ohio Civil Rule 45 Requires A Third Party To Comply With A Subpoena In The Absence Of A Proper Objection, Motion To Quash Or Other Adequate Excuse.**

A party to a civil action may subpoena a third party to "produce documents, electronically stored information, or tangible things at a ... deposition." See Ohio Civ. R. 45(A)(1)(b)(ii). The subpoenaed party may object to or move to quash the subpoena pursuant to Ohio Civ. R. 45(C)(2)(b). Otherwise, unless the subpoenaed party has an "adequate excuse," failure to obey the subpoena may be deemed contempt of court. See Ohio Civ. R. 45(E).

Stantec has refused to comply with Relators' subpoena, yet has not objected to or moved to quash the subpoena. Nor has Stantec's counsel or counsel for Respondents provided any authority to support Stantec's failure to produce the requested documents. Because Stantec has failed to object to or otherwise move to quash the subpoena, Stantec should be ordered to immediately produce the documents identified in the subpoena.

B. All Materials Reviewed By Stantec, Including Stantec's Agreement With Respondents And All Communications With Respondents Are Discoverable.

Stantec cannot withhold from discovery its agreement with Respondents or the communications it had with Respondents on the basis of attorney work product, attorney/client privilege, or dual status as a "consulting" expert.

1. Anything received, reviewed, read, or authored by Stantec, before or in connection with the forming of its opinion, must be disclosed.

Ohio Rule of Civil Procedure 26(B)(5) provides for the disclosure, if requested by the opposing party, of all material given to and reviewed by a testifying expert, including trial preparation materials, opinion work product, and privileged materials. Ohio Rule of Civil Procedure 26(B)(5)(b) provides in pertinent part:

[A] party by means of interrogatories may require any other party (i) to identify each person whom the other party expects to call as an expert witness at trial, and (ii) to state the subject matter on which the expert is expected to testify. Thereafter, any party may discover from the expert or the other party facts known or opinions held by the expert which are relevant to the stated subject matter. Discovery of the expert's opinions and the grounds therefor is restricted to those previously given to the other party or those to be given on direct examination at trial.

Ohio R. Civ. P. 26(B)(5)(b) (emphasis added). While the Ohio Rules of Civil Procedure also provide protection from discovery for work product materials, *see* Ohio R. Civ. P. 26(B)(3), the rule explicitly states that this protection is "[s]ubject to the provisions of subdivision (B)(5)" Though Ohio case law interpreting the relationship between these two provisions is yet to be developed, case law interpreting analogous rules from other states as well as case law interpreting the Federal Rules of Civil Procedure require the conclusion that because the rules permit a party to discover from the expert "facts known or opinions held" by the expert,

including the “grounds therefor”, a party is entitled to the discovery of all documents the expert reviewed in forming its opinions.

In this regard, the manner in which Missouri courts have interpreted their Rules of Civil Procedure, which are similar to the Ohio Rules of Civil Procedure, is particularly instructive. Like the Ohio Rules, while opinion work product is protected from discovery, it is subject to the provisions regarding expert discovery. Compare Ohio R. Civ. P. 26(B)(3) and Ohio R. Civ. P. 26(B)(5) with Mo. R. Civ. P. 56.01(b)(3) and Mo. R. Civ. P. 56.01(b)(4). Like Ohio Rule 26(b)(5), Missouri Rule 56.01(b)(4) provides for discovery of “facts known and opinion held” by experts retained for litigation once they have been designated as trial witnesses. *Edwards v. Mo. State Bd. of Chiropractic Examiners*, 85 S.W.3d 10, 27 (Mo. Ct. App. W.D. 2002) (citing *State ex rel. Tracy v. Dandurand*, 30 S.W.3d 831, 834 (Mo. banc 2000)). Missouri courts have interpreted these rules to “require an expert to produce at deposition the materials that the expert has reviewed in order that the opposing attorney be able to intelligently cross-examine the expert concerning what facts he used to formulate his opinion.” *Id.* (citing *Tracy*, 30 S.W.3d at 835) (quotation omitted). In other words, “Rule 56.01(b)(4) provides a ‘bright line’ rule that all material given to and reviewed by a testifying expert must, if requested, be disclosed[,]” including “both trial preparation materials and opinion work product.” *Id.*

Likewise, the analogous Federal Rules have been interpreted as providing for a similar bright line rule: a party is required to disclose “all data and information considered by testifying experts, including that otherwise privileged.” *Euclid Chem. Co. v. Vector Corrosion Tech., Inc.*, No. 1:05 CV 80, 2007 WL 1560277, at *3 (N.D. Ohio May 29, 2007) (citing *Reg'l Airport Auth. v. LFG, LLC*, 460 F.3d 697, 715-16 (6th Cir. 2006)). Indeed, the overwhelming majority of courts follow this approach and mandate disclosure of all documents, including attorney work

product, given to testifying experts. *Reg'l Airport Auth.*, 460 F.3d at 717 (noting that “the ‘overwhelming majority’ of courts . . . mandate[e] disclosure of all documents, including attorney opinion work product, given to testifying experts”).

This duty to disclose “prevails with equal force over claims of attorney-client, work product, and common interest privilege.” *Id.* (citing *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, No. 1:04-CV-477, 2007 WL 465444, at *3 (N.D. Ind. Feb. 7, 2007)). Thus, “whether any privilege otherwise attaches to the documents at issue makes no difference” because the rule is clear: “[i]f a testifying expert ‘considered’ a document in forming his opinion, then it must be produced.” *Id.* “Considered” is broadly defined to include “as anything received, reviewed, read, or authored by the expert, before or in connection with the forming of his opinion, if the subject matter relates to the facts or opinions expressed.” *Id.* at *4 (footnotes omitted). “All ambiguities must be resolved in favor of discovery.” *Id.*

For testifying experts, “[e]verything the expert so receives is discoverable, regardless of privilege and regardless of whether the expert found the data or information helpful in forming the opinion.” *Id.* (citation omitted). *See also In re Commercial Money Ctr., Inc., Equip. Lease Litig.*, 248 F.R.D. 532, 537 (N.D. Ohio 2008) (“Materials reviewed or generated by an expert must be disclosed, regardless of whether the expert actually relies on the material as a basis for his or her opinions.”) (quotation omitted). “If the expert maintains a file relating to his engagement, everything in that file is discoverable.” *Id.* “‘Marching orders’ from counsel are discoverable” as well as are “[d]ata or information received from a non-testifying expert . . .” *Id.* (footnotes omitted).

The reasoning behind this approach is simple. “Once an expert sees information . . . that information becomes part of the expert’s mental database, and the opposing party is entitled to

test how, if at all, knowing that information may have influenced the expert's opinion." *MVB Mortg. Corp. v. Fed. Deposit Ins. Corp.*, No. 2:08-cv-771, 2010 WL 582641, at *4 (S.D. Ohio Feb. 11, 2010)

Under this bright line rule, Stantec cannot withhold an unredacted copy of the Supplemental Agreement between Stantec and Respondents. According to the foregoing authorities, and contrary to Respondents' position, the agreement is not protected work product. Moreover, counsel for Relators specifically asked Mr. Henson regarding the scope of his work that led to Mr. Henson's affidavit. Henson Dep. at 19:15-20:19. Indeed, Mr. Henson was asked not only about his understanding of the scope of the potential project, but "ultimately, what was the scope of the project" that led to his affidavit. *Id.* at 19:22-24. Respondents did not object to that line of questioning. *Id.* at 19:22-20:19. Mr. Henson then answered that the scope of the project was described in his report. *Id.* at 20:1-15. If the scope of the project is all within his report as Mr. Henson testified, Respondents and Stantec have no basis to withhold the portion of the Supplemental Agreement that describes the scope of the work.

Likewise, as the foregoing authorities hold, communications between Stantec and Respondents are not protected by any privilege. Whether Stantec or Mr. Henson relied on these documents and emails is irrelevant; once Stantec saw the materials and information it became part of the expert's mental database. Under the bright line rule of Rule 26, these communications and materials must be disclosed.

2. Stantec's role as a consulting expert does not save from discovery Stantec's Supplemental Agreement with Respondents or its communications with Respondents.

Similarly, communications between Stantec and Respondents are not protected from discovery by Stantec's purported role as a "consulting" expert. When an expert serves as both a

litigation consultant and a testifying witness, in many cases, “the party relinquishes the privilege that would otherwise attach to the litigation consultant’s work.” *In re Commercial Money Ctr., Inc., Equipment Lease Litig.*, 248 F.R.D. 532, 537 (N.D. Ohio 2008). In such circumstances, “an expert’s proponent still may assert a privilege over such materials, but only over those materials generated or considered uniquely in the expert’s role as consultant.” *Id.*

Relators do not bear the burden of establishing that the requested communications and documents are related to the subject matter of Stantec’s report and not to Stantec’s role as a consultant. Rather, it is well-settled that the party asserting a privilege bears the burden of establishing it. *Id.* at 539 (citing *In re Columbia/HCA Healthcare Corp. Billing Practices Litig.*, 293 F.3d 289 (6th Cir. 2002)). Moreover, in light of the purpose behind Rule 26’s “disclosure requirement--to allow parties to reveal weaknesses in expert testimony offered by an adversary, the scope of the privilege must be narrowly construed against the expert’s proponent.” *Id.* at 538 (quotation omitted).

While here Respondents argue that disclosure of documents reviewed by a consulting expert is protected, the Ohio Attorney General took the opposite position in *Wilson v. Wilkinson*, No. 2:04-cv-00918, (S.D. Ohio May 19, 2006), attached hereto as Ex. 4. In *Wilson*, the Attorney General sought an order compelling the disclosure of certain documents by and compelling the testimony on certain issues of plaintiff’s expert. *Id.* at 1. Plaintiff claimed that plaintiff’s expert served a dual role: a consulting expert and testifying expert. *Id.* at 2. Plaintiff argued that its expert’s communications with counsel prior to June 2005 (i.e., the point at which plaintiff’s expert was retained as a testifying expert) constituted protected attorney work product, and that, before conducting the requested discovery, the Attorney General must establish exceptional circumstances requiring the discovery of such information. *Id.* Plaintiff also argued that in any

event, its litigation strategy or/and mental impressions were protected work product and not discoverable. *Id.* at 2-3.

The Court rejected the plaintiff's arguments and concluded that neither the "exceptional circumstances" of Federal Rule of Civil Procedure 26(b)(4), nor the work product doctrine of Federal Rule of Civil Procedure 26(b)(3) apply to a consulting expert who has been designated as an expert witness, particularly where . . . his role as a consultant is closely intertwined with his role and opinions as a testifying expert." *Id.* at 9. The Court noted that "[t]hough it is theoretically possible to distinguish between an expert testifying and consulting, in practice, the delineation between those roles . . . become[s] blurred" when an expert "review[s] documents in his role as an expert that he previously had reviewed in his role as consultant [.]" *Id.* at 5 (citing *Schwab v. Philip Morris USA, Inc.*, No. No. No. 04-CV-1945, 2006 WL 721368, at *3 (E.D.N.Y. March 20, 2006); *B.C.F. Oil Ref., Inc. v. Consol. Edison Co.*, 171 F.R.D. 57, 61 (S.D.N.Y. 1997)). Additionally, "any ambiguity as to the role played by the expert when reviewing or generating documents should be resolved in favor of the party seeking discovery." *Id.* (quoting *B.C.F. Oil Ref.*, 171 F.R.D. at 62). The Court reasoned that it was "impossible to clearly delineate [the expert's] service as a consultant from his service as a [testifying] expert witness" and indeed "appear[ed] to have consulted with plaintiff's counsel on the very same issues for which he has now been retained." *Id.* at 5.

Additionally, and consistent with the authorities discussed in § III.B.1, the Court in *Wilson* refused to limit the discovery to exclude counsel's mental impressions and trial strategy. *Id.* at 6. The Court adopted the position that "any material generated by the testifying expert in connection with the subject litigation" and "all communications by the expert to the attorneys was discoverable." *Id.* at 6 (quotation omitted). *See also id.* at 7 ("Rule 26 . . . require[es]

disclosure of material ‘considered,’” and thus “allows discovery of all communications between counsel and a retained testifying expert, even if those communications contain the attorneys’ mental impressions or trial strategy or is otherwise protected by the work product privilege.”)

Here, in light of the privilege log produced by Respondents, it is impossible to clearly delineate Stantec’s and Mr. Henson’s service as a consultant from Mr. Henson’s service as a testifying expert witness. Respondents’ simply described the purportedly protected documents as “emails” and did not bother to identify which emails were exchanged with Mr. Henson in his role as a consultant. *See generally* Respondents’ Privilege Log, attached as Ex. 3-D. **And interestingly, the majority of these emails were exchanged near the time Mr. Henson executed his affidavit and near the time Mr. Henson was deposed.** *Id.* Respondents redacted the entire scope of work section of the agreement between Stantec and Respondents; Respondents made no attempt to delineate Stantec’s work as a consultant verses its work as a testifying expert. Supplemental Agreement No. 12 at 2 attached as Ex. 3-E. Likewise, Stantec’s invoices make no effort to distinguish between work done on a consulting basis verses work done as a testifying witness. Stantec Invoices, attached as Ex. 3-F. Indeed, the individual time sheets reveal the work was directed at the preparation of its report and modeling. All the facts indicate that Stantec’s and Mr. Henson’s role as a consultant is closely intertwined with his role and opinions as a testifying expert.” As such, Respondents have relinquished the privilege that would otherwise attach to the litigation consultant’s work, and thus, these communications must be produced.

Further, it is obvious that Stantec and Respondents are desperate to hide information materially damaging to Respondents’ position in this action. Nothing illustrates Respondent’s desperation more than Respondents’ redaction of the entire scope of services in the Supplemental

Agreement – **even though the scope clearly covers Stantec’s services as a testifying expert.**

Supplemental Agreement No. 12 at 2, attached as Ex. 3-E.

C. Stantec Should Be Held In Contempt And Ordered To Pay Relators Attorneys’ Fees Incurred As A Result Of Its Failure To Comply With The Subpoena.

Ohio Rule of Civil Procedure 45(E) provides that “failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court.” Ohio Civ. R. 45(E). Moreover, a “subpoenaed person or that person’s attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney’s fees, of the party seeking the discovery.” *Id.* Stantec has repeatedly disregarded the subpoena issued under the authority of this Court and adopted positions contrary to the law (and contrary to the position adopted by Respondents in related litigation). Its actions constitute willful impediment to Relators’ efforts to obtain full and complete expert discovery. As a result, Relators have incurred otherwise unnecessary attorneys’ fees to obtain the subpoenaed documents.

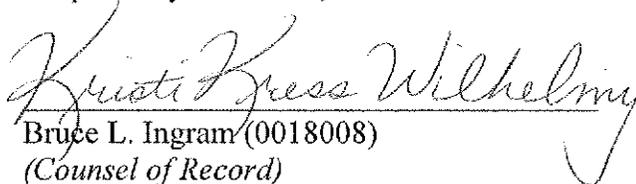
Therefore, Relators moves this Court for an Order requiring Stantec to answer and show cause why it should not be held in contempt of this Court and, upon a failure to show cause, to adjudge it in contempt of this Court for having disregarded the subpoena. Relators further move this Court to order that Stantec relieve itself of contempt by paying Relators’ reasonable attorneys’ fees incurred as a result of its failure to comply with the subpoena.

IV. CONCLUSION

For the reasons set forth above, Relators respectfully request that this Court order Stantec to show cause why it should not be held in contempt for failing to obey this Court’s subpoena. Relators further move this Court to order Stantec to produce the requested documents a time and

place specified by Relators, and to pay Relators' attorneys' fees incurred as a result of its failure to comply with the subpoena. Alternatively, Relators move this Court to order Stantec to produce the responsive documents to this Court for an in camera inspection. Last, because the June 1, 2010 deadline for the submission of evidence is quickly approaching, Relators also request that should this Court order Stantec to produce certain documents and those documents prove to be relevant to the credibility of Respondents' expert, that Relators be granted leave to supplement Relators' Presentation of Evidence.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon the following, via U.S. Mail postage prepaid, this 24th day of May, 2010:

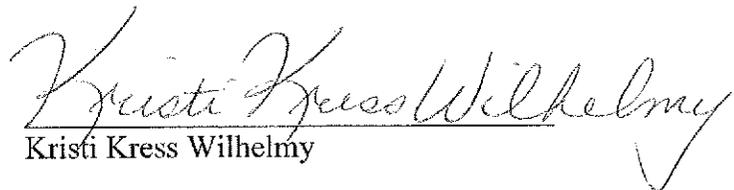
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Attorneys for Respondents

The undersigned hereby certifies that a true copy of the foregoing was served upon the following, via overnight delivery, postage prepaid, this 24th day of May, 2010:

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Columbus, Ohio 43204


Kristi Kress Wilhelmy
Kristi Kress Wilhelmy

IN THE SUPREME COURT OF OHIO

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Attorneys for Respondents

FILED
APR 26 2010
CLERK OF COURT
SUPREME COURT OF OHIO

EXHIBIT
1

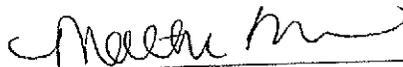
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon the following, via electronic mail and U.S. Mail postage prepaid, this 26th day of April, 2010:

William J. Cole
Mindy Worly
Jennifer S.M. Croskey
Assistant Attorneys General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

Dale T. Vitale
Daniel J. Martin
Rachel H. Stelzer
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Environmental Enforcement Section
2045 Morse Road # D-2
Columbus, Ohio 43229

Attorneys for Respondents



Martha C. Brewer

[[[CIVIL CASE SUBPOENA]]]

STATE OF OHIO EX REL. WAYNE T. DONER, ET AL.,

Case No. 2009-1292

Relators,

-vs-

FOR CLERK USE ONLY:

Receipt # _____ (cost) (deposit)

SEAN D. LOGAN, DIRECTOR OHIO DEPARTMENT OF NATURAL RESOURCES, ET AL.,

Respondents.

CLERK \$ _____ \$ _____
FR. CO. SHERIFF \$ _____ \$ _____
FOREIGN SHERIFF \$ _____

TO: Stantec Consulting Corporation
1500 Lake Shore Drive, Suite 100
Columbus, Ohio 43204

YOU ARE HEREBY COMMANDED TO:

X ATTEND AND GIVE TESTIMONY AT A (TRIAL) (HEARING) (DEPOSITION) ON THE DATE, TIME AND AT THE PLACE SPECIFIED BELOW.

X ATTEND AND PRODUCE (DOCUMENTS) (TANGIBLE THINGS) AT A (TRIAL) (HEARING) (DEPOSITION) ON THE DATE, TIME AND AT THE PLACE SPECIFIED BELOW.

PRODUCE, AND PERMIT INSPECTION AND COPYING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY DESIGNATED DOCUMENTS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.

PRODUCE AND PERMIT INSPECTION AND COPYING, TESTING OR SAMPLING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY TANGIBLE THINGS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.

PERMIT ENTRY UPON THE FOLLOWING DESCRIBED LAND OR OTHER PROPERTY, FOR THE PURPOSES DESCRIBED IN CIV. R. 34(A)(3), ON THE DATE AND AT THE TIME SPECIFIED BELOW.
DESCRIPTION OF LAND OR OTHER PREMISES :

Day Thursday DATE April 29, 2010 TIME 12:00 p.m.

PLACE Vorys Sater Seymour and Pease LLP, 52 E. Gay Street, Columbus, Ohio 43215

DESCRIPTION OF ITEMS TO BE PRODUCED: See Exhibit A attached.

THE STATE OF OHIO

Franklin County, ss:

To the Sheriff of N/A

County, Ohio Greetings :

YOU ARE HEREBY COMMANDED TO SUBPOENA THE ABOVE NAMED PERSON.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 30th DAY OF DECEMBER, 2009.

KRISTINA D. FROST, CLERK OF THE SUPREME COURT OF OHIO

BY: [Signature] SIGNATURE OF ATTORNEY FOR RELATORS

REQUESTING PARTY INFORMATION

NAME: Martha C. Brewer Attorney for Relators

ATTORNEY CODE 0083788 TELEPHONE NUMBER: (614) 464-5626

Civil rule 45(c) protection of persons subject to subpoenas

- (1) A PARTY OR AN ATTORNEY RESPONSIBLE FOR THE ISSUANCE AND SERVICE OF A SUBPOENA SHALL TAKE REASONABLE STEPS TO AVOID IMPOSING UNDUE BURDEN OR EXPENSE ON A PERSON SUBJECT TO THAT SUBPOENA.
- (2) (a) A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING OR DESIGNATED BOOKS, PAPERS, DOCUMENTS, OR TANGIBLE THINGS, OR INSPECTION OF PREMISES, NEED NOT APPEAR IN PERSON AT THE PLACE OF PRODUCTION OR INSPECTION UNLESS COMMANDED TO APPEAR FOR DEPOSITION, HEARING, OR TRIAL.
- (b) SUBJECT TO DIVISION (D)(2) OF THIS RULE, A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING MAY, WITHIN FOURTEEN DAYS AFTER SERVICE OF THE SUBPOENA OR BEFORE THE TIME SPECIFIED FOR COMPLIANCE IF SUCH TIME IS LESS THAN FOURTEEN DAYS AFTER SERVICE, SERVE UPON THE PARTY OR ATTORNEY DESIGNATED IN THE SUBPOENA WRITTEN OBJECTIONS TO INSPECTION AND COPYING OR ANY OR ALL OF THE DESIGNATED MATERIALS OR OF THE PREMISES. IF OBJECTION IS MADE, THE PARTY SERVING THE SUBPOENA SHALL NOT BE ENTITLED TO INSPECT AND COPY THE MATERIALS OR INSPECT THE PREMISES EXCEPT PURSUANT TO AN ORDER OF THE COURT BY WHICH THE SUBPOENA WAS ISSUED. IF OBJECTION HAS BEEN MADE, THE PARTY SERVING THE SUBPOENA, UPON NOTICE TO THE PERSON COMMANDED TO PRODUCE, MAY MOVE AT ANYTIME FOR AN ORDER TO COMPEL THE PRODUCTION. AN ORDER TO COMPEL PRODUCTION SHALL PROTECT ANY PERSON WHOSE IS NOT A PARTY OR AN OFFICER OF A PARTY FROM SIGNIFICANT EXPENSE RESULTING FROM THE INSPECTION AND COPYING COMMANDED.
- (3) ON TIMELY MOTION, THE COURT FROM WHICH THE SUBPOENA WAS ISSUED SHALL QUASH OR MODIFY THE SUBPOENA, OR ORDER APPEARANCE OR PRODUCTION ONLY UNDER SPECIFIED CONDITIONS, IF THE SUBPOENA DOES ANY OF THE FOLLOWING:
 - (a) FAILS TO ALLOW REASONABLE TIME TO COMPLY;
 - (b) REQUIRES DISCLOSURE OF PRIVILEGED OR OTHERWISE PROTECTED MATTER AND NO EXCEPTION OR WAIVER APPLIES;
 - (c) REQUIRES DISCLOSURE OF AN UNRETAINED EXPERT'S OPINION OR INFORMATION NOT DESCRIBING SPECIFIC EVENTS OR OCCURRENCES IN DISPUTE AND RESULTING FROM THE EXPERT'S DUTY MADE NOT AT THE REQUEST OF ANY PARTY;
 - (d) SUBJECTS A PERSON TO UNDUE BURDEN.
- (4) BEFORE FILING A MOTION PURSUANT TO DIVISION (C)(3)(d) OF THIS RULE, A PERSON RESISTING DISCOVERY UNDER THIS RULE SHALL ATTEMPT TO RESOLVE ANY CLAIM OF UNDUE BURDEN THROUGH DISCUSSIONS WITH THE ISSUING ATTORNEY. A MOTION FILED PURSUANT TO DIVISION (C)(3)(d) OF THIS RULE SHALL BE SUPPORTED BY AN AFFIDAVIT OR THE SUBPOENAED PERSON OR A CERTIFICATE OF THAT PERSON'S ATTORNEY OF THE EFFORTS MADE TO RESOLVE ANY CLAIM OF UNDUE BURDEN.
- (5) IN CASES UNDER DIVISION (C)(3)(c) OR (C)(3)(d) OF THIS RULE, THE COURT SHALL QUASH OR MODIFY THE SUBPOENA UNLESS THE PARTY IN WHOSE BEHALF THE SUBPOENA IS ISSUED SHOWS A SUBSTANTIAL NEED FOR THE TESTIMONY OR MATERIAL THAT CANNOT BE OTHERWISE MET WITHOUT UNDUE HARDSHIP AND ASSURES THAT THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED WILL BE REASONABLY COMPENSATED.

Civ. R. 45(D) Duties in responding to subpoena

- (1) A PERSON RESPONDING TO A SUBPOENA TO PRODUCE DOCUMENTS SHALL PRODUCE THEM AS THEY ARE KEPT IN THE USUAL COURSE OF BUSINESS OR SHALL ORGANIZE AND LABEL THEM TO CORRESPOND WITH THE CATEGORIES IN THE DEMAND. A PERSON PRODUCING DOCUMENT PURSUANT TO A SUBPOENA FOR THEM SHALL PERMIT THEIR INSPECTION AND COPYING BY ALL PARTIES PRESENT AT THE TIME AND PLACE SET IN THE SUBPOENA FOR INSPECTION AND COPYING.
- (2) WHEN INFORMATION SUBJECT TO A SUBPOENA IS WITHHELD ON A CLAIM THAT IT IS PRIVILEGED OR SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIALS, THE CLAIM SHALL BE MADE EXPRESSLY AND SHALL BE SUPPORTED BY A DESCRIPTION OF THE NATURE OF THE DOCUMENTS, COMMUNICATIONS, OR THINGS NOT PRODUCED THAT IS SUFFICIENT TO ENABLE THE DEMANDING PARTY TO CONSENT THE CLAIM.

Civ. R. 45(E) Sanctions

FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA ISSUE. A SUBPOENAED PERSON OR THAT PERSON'S ATTORNEY FRIVOLOUSLY RESISTING DISCOVERY UNDER THIS RULE MAY BE REQUIRED BY THE COURT TO PAY REASONABLE EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF THE PARTY SEEKING THE DISCOVERY. THE COURT FROM WHICH A SUBPOENA WAS ISSUED MAY IMPOSE UPON A PARTY OR ATTORNEY IN BREACH OF DUTY IMPOSED BY DIVISION (C)(1) OF THIS RULE AN APPROPRIATE SANCTION, WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, LOST EARNINGS AND REASONABLE ATTORNEY'S FEES.

**** RETURN OF SERVICE ****

I RECEIVED THIS SUBPOENA ON April 23, 2010 AND SERVED THE PARTY NAMED ON THE REVERSE HEREOF
 BY personal service ON April 23, 2010
 I WAS UNABLE TO COMPLETE SERVICE FOR THE FOLLOWING REASON: _____

Sheriff's Fees _____

Service _____
 Mileage _____
 Copy _____
 Total _____

Martin M...
 (Signature of Serving Party)

Circle One: Deputy Sheriff Attorney
 Process Server Deputy Clerk
 Other _____

EXHIBIT A

DOCUMENTS TO BE PRODUCED AND TESTIMONY TO BE GIVEN

Relators Wayne T. Doner, *et al.* ("Relators") hereby requests that a corporate representative of Stantec Consulting Corporation ("Stantec"), chosen by Stantec to testify as to matters known or available to Stantec. In addition, Stantec shall produce the following documents to counsel for Relators at or before Stantec's deposition on April 29, at 12:00 p.m. and offer testimony on the following areas during that deposition.

Definitions

1. "Documents" means all writings and things of any nature whatsoever, including originals and all non-identical copies and drafts thereof, in your possession, custody or control, regardless of where located, and includes, but is not limited to, contracts, agreements, memoranda, notes, correspondence, letters, electronic mail, telegrams, teletypes, telecopies, transmissions, messages (including, but not limited to, records, reports or memoranda of telephone calls and conversations), reports, studies, summaries, analyses, minutes, diaries, calendars, manuals, brochures, statements, books of account, ledgers, statistical, accounting and financial statements, forecasts, work papers, notebooks, data sheets, computer-stored information which can be retrieved or placed into reasonably usable form, written communications and written evidence of oral communications, and any other "document" from which information can be obtained or translated, if necessary, by you through detection devices into reasonably usable form. In all cases where originals and/or non-identical copies are not available, "documents" also means identical copies of original documents and copies of non-identical copies.

2. A document "relating to", "related to", or that "relates to" a given subject matter means a document or communication that constitutes, embodies, comprises, reflects, identifies, states, refers to, deals with, comments on, responds to, describes, analyzes, contains information concerning, or is in any way pertinent to that subject matter.

3. The term "you" or "your" means Stantec Consulting Corporation, and any other companies or entities with which you are associated and/or affiliated, and any employees, agents, representatives, attorneys, accountants, and any other persons or entities representing you and/or directly or indirectly employed by or connected with you.

4. "Respondent" means and refers to the Respondent in this action, the Ohio Department of Natural Resources, and includes any employee, agent, contractor, subcontractor, representative, surveyor, or attorney or other person acting on behalf of the Ohio Department of Natural Resources in this action.

5. "Lawsuit" means the case entitled State of Ohio Ex Rel. Wayne T. Doner, et al. v. Sean D. Logan, Director Ohio Department of Natural Resources, et al., Case No. 2009-1292, currently pending in the Supreme Court of Ohio, and any of the claims, factual allegations, or legal conclusions asserted therein.

6. "Hydrosphere" means Hydrosphere Engineering and any of its employees, including, but not limited to, Philip H. De Groot.

7. "Person" or "persons" includes natural persons, departments or agencies, corporations, companies, firms, partnerships, associations, joint ventures, or any other type or form of legal or governmental entity, whether formal or informal.

Instructions

1. If you contend that the contents of a writing herein requested to be produced for inspection and copying are protected from disclosure by virtue of a privilege, it is requested that you nevertheless provide the following with respect to each such writing:

- a. A description of the type of each such writing (e.g. letter, memoranda, etc.);
- b. The date of each such writing;
- c. The author of each such writing;
- d. The person to whom such writing was directed;
- e. The person who received a copy of each such writing; and
- f. The general subject matter of each such writing.

2. With respect to each writing which you claim is protected from disclosure by virtue of a privilege, as provided for in the foregoing instruction, it is requested that you provide as part of such description thereof:

- a. Each privilege whereby you contend the contents of such writing are protected from disclosure; and
- b. Each and every fact upon which you rely to support such claim of privilege.

Documents Requested

1. All documents that reflect, refer, or relate in any way to the Lawsuit.
2. All documents that reflect, refer, or relate in any way to hydrology or hydraulics review and analysis you have performed or rendered to Respondent from January 1, 1997 to the present.
3. In addition to those documents responsive to the foregoing requests, all reports, draft reports, draft documents of any kind, files or notes of any kind, and/or review documents of any kind that in any way reflect, refer, or relate to the Lawsuit or any hydrology or

hydraulics review and analysis you have performed or rendered to Respondent from January 1, 1997 to the present.

4. In addition to those documents responsive to the foregoing requests, all notes, correspondence, email, or other documents that reflect, refer, or relate in any way to communications between you and Respondent (including, but not limited to, counsel for Respondent) related to the Lawsuit or any hydrology or hydraulics review and analysis you have performed or rendered to Respondent from January 1, 1997 to the present.

5. In addition to those documents responsive to the foregoing requests, all documents given to Respondent (including, but not limited to, counsel for Respondent) by you or received by you from Respondent (including, but not limited to, counsel for Respondent) that reflect, refer, or relate in any way to communications between you and Respondent (including, but not limited to, counsel for Respondent) related to the Lawsuit or any hydrology or hydraulics review and analysis you have performed or rendered to Respondent from January 1, 1997 to the present.

6. All documents that reflect, refer, or relate in any way to any contracts or agreements between you and Respondent related in any way to the Lawsuit or any hydrology or hydraulics review and analysis you have performed or rendered to Respondent from January 1, 1997 to the present.

7. All documents that reflect your curriculum vitae, resume, professional or educational experience, credentials, qualifications, and/or identify or describe any and all instances and matters in which you have previously served or currently serve as an expert witness, including any and all instances and matters in which you have served or currently serve as an expert witness for Respondent.

Areas of Testimony for Deposition

1. Testimony regarding the search for and the content of the documents produced in response to Documents Requested Nos. 1 through 7.

2. The affidavit of Tadd Hanson, dated March 1, 2010.

3. The report entitled, "Grand Lake Saint Marys and Beaver Creek Hydrologic and Hydraulic Analysis," dated March 1, 2010.

4. The report entitled, "Grand Lake Saint Marys and Beaver Creek Hydrologic and Hydraulic Analysis – Discussion of Results and other Analysis," dated March 1, 2010.

5. Communications between Stantec and ODNR and/or the Ohio Attorney General's Office.

6. Communications between Stantec and Hydrosphere Engineering and/or Philip H. De Groot.

1 David Moore?
2 **A. Yes.**
3 Q. And what did Brian Ringley tell you?
4 **A. To the best of my recollection, they**
5 **wanted a meeting the following day to discuss**
6 **the project.**
7 Q. And what was the project as far as you
8 understood it at that time?
9 **A. At that time, we didn't know.**
10 Q. And did you meet the next day?
11 **A. I believe it was the next day or shortly**
12 **thereafter.**
13 Q. Do you remember who you met with?
14 **A. Dave Moore. Mark Ogden might have been**
15 **there. As best I can recall, Dave Moore,**
16 **possibly Mark Ogden, and there were two**
17 **Assistant AGs that worked for ODNR. Rachel, I**
18 **remember, and then Ray Studer, I believe.**
19 Q. Rachel Stelzer and Ray Studer?
20 **A. I believe that's correct.**
21 Q. And did they explain at all the issues
22 involved in the project?
23 **A. Yes.**
24 Q. What did they tell you?

1 MS. WORLY: Objection to the extent that
2 it calls for attorney work product, that would
3 be especially Corps work product, I think would
4 be privileged information.
5 MR. FUSONIE: Well, I think I'm entitled
6 to understand from him at least his
7 understanding as to the scope of his project in
8 which he then submitted an affidavit and report.
9 MS. WORLY: And I think he can tell you
10 his understanding. But I think it -- I don't --
11 I'm instructing him not to repeat specifically
12 what was told to you by either attorney.
13 MR. FUSONIE: Fair enough.
14 BY MR. FUSONIE:
15 Q. What was your understanding from that
16 meeting as to the scope of the potential
17 project?
18 **A. There was the desire to perform**
19 **hydrologic and hydraulic calculations for the**
20 **Grand Lake St. Mary's and the reach of Beaver**
21 **Creek and Wabash River to the state line.**
22 Q. And ultimately, what was the scope of
23 the project that led to the -- your affidavit in
24 this lawsuit?

1 **A. I believe it's described in the report.**
2 Q. Okay. I want your answer to my question
3 as you sit here today.
4 **A. Can we open up the report and I can read**
5 **it to you?**
6 Q. Sure. Just so the record's clear,
7 Mr. Henson is opening a binder that he has come
8 here with, which is the -- is that the technical
9 report?
10 **A. This is.**
11 **It was to perform hydrologic and**
12 **hydraulic analysis for the reach -- for the**
13 **Grand Lake St. Mary's, the spillway, and the**
14 **reach of Beaver Creek and Wabash River to the**
15 **state line.**
16 Q. Okay. Did they also ask you to -- was
17 part of your project also to review work done by
18 Dr. Campbell?
19 **A. Yes.**
20 Q. And were you provided any documents to
21 review prepared by Dr. Campbell?
22 **A. Yes.**
23 Q. And do you have any knowledge as to
24 whether -- what documents were you provided to

1 review?
2 **A. I believe there were several reports**
3 **from some previous litigation.**
4 Q. Are you -- do you have any knowledge as
5 to whether you were provided the full reports
6 from those litigations or not?
7 MS. WORLY: Objection. Do you want to
8 clarify what you mean by "full reports"?
9 Q. Mr. Henson, you have not come here today
10 with any reports of Dr. Campbell that are in
11 your files, have you?
12 **A. No.**
13 Q. Do you have reports of Dr. Campbell in
14 your files?
15 **A. Yes.**
16 MR. FUSONIE: I would ask for a copy of
17 those.
18 Q. Just so the record's clear, you also
19 have a written contract with ODNR, don't you, or
20 Stantec does?
21 **A. Yes.**
22 Q. And you have not come here today with a
23 copy of that contract?
24 **A. No.**

1 David Moore?
2 **A. Yes.**
3 Q. And what did Brian Ringley tell you?
4 **A. To the best of my recollection, they**
5 **wanted a meeting the following day to discuss**
6 **the project.**
7 Q. And what was the project as far as you
8 understood it at that time?
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11 **A. I believe it was the next day or shortly**
12 **thereafter.**
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23 the project that led to the -- your affidavit in
24 this lawsuit?

1 **A. I believe it's described in the report.**
2 Q. Okay. I want your answer to my question
3 as you sit here today.
4 **A. Can we open up the report and I can read**
5 **it to you?**
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14 **reach of Beaver Creek and Wabash River to the**
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18 Dr. Campbell?
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21 review prepared by Dr. Campbell?
22 **A. Yes.**
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24 whether -- what documents were you provided to

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3 **from some previous litigation.**
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6 from those litigations or not?
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10 with any reports of Dr. Campbell that are in
11 your files, have you?
12 **A. No.**
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14 your files?
15 **A. Yes.**
16 MR. FUSONIE: I would ask for a copy of
17 those.
18 Q. Just so the record's clear, you also
19 have a written contract with ODNR, don't you, or
20 Stantec does?
21 **A. Yes.**
22 Q. And you have not come here today with a
23 copy of that contract?
24 **A. No.**

1 Q. Are there any supplements to that
2 contract?
3 **A. I am not involved in the contracting,**
4 **but to the best of my knowledge, yes, there**
5 **were.**
6 Q. And you haven't come here as the Stantec
7 representative today with any of those?
8 **A. Correct.**
9 Q. Has Stantec invoiced either ODNR or the
10 Attorney General's office for any of its work
11 performed?
12 **A. Yes.**
13 Q. And you haven't come here today with any
14 of those invoices, have you?
15 **A. No.**
16 MR. FUSONIE: I'd ask for a copy of
17 those supplements and a copy of the invoices.
18 MS. WORLY: Can I ask that you send us
19 an e-mail with regard to specifically those
20 documents that you want from us that you've not
21 yet received?
22 MR. FUSONIE: Sure. I would state that
23 he was served -- Mr. Henson specifically was
24 served with a subpoena for documents to be

1 Q. Were you -- I want to turn -- at the
2 back of Exhibit D, there's a Tab B. Do you see
3 that?
4 **A. Yes.**
5 Q. And then it's stated on the next page,
6 Appendix B, lake elevation data.
7 **A. Yes.**
8 Q. Were you ever provided Appendix B?
9 **A. Yes.**
10 Q. When were you provided Appendix B?
11 **A. Again, I do not recall the exact date.**
12 **I do recall that Rachel Stelzer brought over a**
13 **copy of a CD that had Appendix B on it to our**
14 **office.**
15 Q. And do you know if she did that before
16 you signed your affidavit on March 1, 2009?
17 **A. Yes.**
18 MS. WORLY: Off the record.
19 MR. FUSONIE: Sure.
20 (Discussion held off the record.)
21 MR. FUSONIE: We have his report on a
22 disk, which I'm trying to figure out the best
23 way to introduce it into the record. He's come
24 here with binders, which will be a lot easier to

1 produced today last Friday that would have
2 covered those documents that are now -- the
3 contract, supplemental agreements, invoices, and
4 he hasn't come here today with them. But I will
5 confirm my request again in an e-mail.
6 MS. WORLY: Thank you.
7 MR. COLE: Can we just go off the record
8 for a second?
9 MR. FUSONIE: Sure.
10 (Discussion held off the record.)
11 BY MR. FUSONIE:
12 Q. Mr. Henson, I'm going to show you what
13 has been previously marked as Relators'
14 Deposition Exhibit D, which I will represent to
15 you is a report by Dr. Campbell for the Case
16 Leasing property that is an addendum dated
17 November, 2006, which includes a number of
18 attachments to it.
19 **A. Uh-huh.**
20 Q. Have you seen this document before?
21 **A. Yes.**
22 Q. And when did you first see the document?
23 **A. I don't recall the exact date. Sometime**
24 **after October, 2009.**

1 use, of the report, during the deposition. The
2 disk is right -- I have a copy of it, March 1,
3 2010. Can I introduce -- I'll introduce this as
4 his report, but use the binders to mostly ask
5 him questions.
6 MS. WORLY: Why don't you ask on the
7 record -- we're off the record right now?
8 MR. FUSONIE: We're on the record. But
9 the issue is that to open this up for me to
10 confirm that this is his March 1, 2010 report is
11 going to be difficult and may crash our computer
12 because of the mapping that's on this disk.
13 MS. WORLY: Why don't you just ask him
14 to make a representation that they are both the
15 same.
16 MR. FUSONIE: I don't know how he can do
17 that. We can stipulate to --
18 MS. WORLY: Is that what --
19 MR. FUSONIE: I will represent that this
20 is a copy of what you provided to us on March
21 1st, 2010.
22 MR. COLE: Didn't I drop off one that
23 was supposed to be more user friendly? It was
24 the same thing.

1 **A. He attended a meeting at our office. I**
2 **don't remember the exact date.**
3 Q. Do you remember what month?
4 **A. I really do not remember the month. I**
5 **believe it was this year.**
6 Q. Was it before you signed your affidavit?
7 **A. Yes.**
8 Q. Was it before you finalized your
9 hydrology and hydraulic reports that you
10 attached to your March 1st affidavit?
11 **A. Yes.**
12 Q. Who else was present at that meeting?
13 **A. There were several Assistant Attorney**
14 **Generals. We've had, I believe, both Mindy**
15 **Worly, Bill Cole. I do not recall if Jenny**
16 **Croskey was at that one. Myself, Jay Dorsey,**
17 **Phil De Groot. I don't recall if Dave Moore**
18 **attended that one.**
19 Q. Can you tell me what was discussed
20 during that meeting.
21 MS. WORLY: Objection. To the extent
22 that you're asking him to recall information or
23 conversations or discussions that would be
24 protected by attorney work product, I would

1 instruct him not to answer.
2 Q. What did Dr. De Groot tell you?
3 **A. We generally discussed the work that**
4 **we've been working on. We looked at some**
5 **mapping.**
6 Q. What mapping did you look at?
7 **A. I believe it was the mapping that was**
8 **included in the report.**
9 Q. Were any of the maps included in the
10 report modified based on discussions with Dr. De
11 Groot?
12 **A. I don't recall any discussions with him**
13 **that directly modified those maps.**
14 Q. Did he make any suggestions about the
15 modeling used in your report?
16 **A. He did provide some information. Not at**
17 **that meeting.**
18 Q. He provided information to you at
19 another meeting?
20 **A. No.**
21 Q. By e-mail?
22 **A. Yes.**
23 Q. What information did he provide you by
24 e-mail?

1 **A. I believe it was some information about**
2 **the modeling that we had done.**
3 Q. Do you have a copy of that e-mail?
4 **A. Not with me.**
5 Q. But you have it at your office at
6 Stantec?
7 **A. Yes.**
8 MR. FUSONIE: I'd request that I get a
9 copy of that e-mail. I'll include that as part
10 of my e-mail summary.
11 Q. Do you recall any other documents he
12 provided you?
13 **A. Not that he provided me.**
14 Q. Did you provide him with any documents?
15 **A. I forwarded him some affidavits of some**
16 **of the respondents (sic) that talked about the**
17 **March flood event.**
18 Q. March of this year?
19 **A. Yes.**
20 MR. FUSONIE: I'd ask for a copy of that
21 e-mail.
22 Q. Why did you forward him a copy of those
23 affidavits?
24 **A. I thought it might be useful to him.**

1 Q. Did you obtain those from the Attorney
2 General's office?
3 **A. Yes.**
4 MR. COLE: I think he meant to say
5 relators rather than respondents.
6 MR. FUSONIE: Yeah.
7 Q. Have you -- do you recall any photos or
8 videos attached to those affidavits?
9 **A. Yes.**
10 Q. Have you reviewed any of those photos or
11 videos?
12 **A. Not all of them, but some of them, yes.**
13 Q. Okay. Mr. Henson, I'm going to show you
14 what's been previously marked as Exhibit E. I
15 know that this is a document you saw during
16 Dr. Campbell's deposition yesterday, but prior
17 to that, did you -- had you seen this document?
18 **A. Yes, I've seen this or some version of**
19 **this.**
20 Q. Did you help prepare this document?
21 **A. No.**
22 Q. Do you have an understanding as to why
23 it was prepared?
24 **A. I believe the intention was to show the**

1 to explain why it is.
 2 MR. COLE: The objection's on the
 3 record.
 4 MR. FUSONIE: Yes, it is.
 5 Q. So what you're saying is that the
 6 testimony of the landowners in this case as to
 7 increased flooding wasn't important to you?
 8 A. No, I did not say that.
 9 Q. You just skimmed it? Isn't that what
 10 you just said? You just read through them very
 11 quickly is what you testified, correct?
 12 A. Correct.
 13 MR. FUSONIE: Okay. That's all I have.
 14 Thank you.
 15 I know you're going to advise him on
 16 whether to read or not. While we're on the
 17 record, I know we talked about for these
 18 transcripts, they would be done within seven
 19 days, the ones from yesterday, and then that the
 20 deponent would read them within seven days.
 21 Just so we have that, as well, for these -- I
 22 forgot to do it for Dr. De Groot, but can we
 23 agree for this deposition and Dr. De Groot, it
 24 is a similar condition?

1 MS. WORLY: Yes.
 2 MR. COLE: We will agree, possibly with
 3 the -- if we get it in on late Friday, but
 4 whenever we get it, whether we get it five, 10
 5 days, the witness is -- the deponents will take
 6 no more than seven days to review and submit any
 7 errata.
 8 MR. FUSONIE: Okay. Thanks.
 9 MS. WORLY: You have the right to read
 10 and review and correct your deposition
 11 transcript. And I would suggest -- I can't tell
 12 you what to do, but I generally think that's a
 13 good idea. It's up to you to make the decision.
 14 THE WITNESS: I would like to.
 15 MS. WORLY: We call it read.
 16 THE WITNESS: I would like to read.
 17 --O==
 18 Thereupon, the testimony of April 29,
 19 2010, was concluded at 5:53 p.m.
 20 --O==
 21
 22
 23
 24

1 *Attach to the deposition of TADD HENSON, P.E.
 2 DONER, ET AL. V. ODNR, ET AL.
 3 Case No. 2009-1292
 4 STATE OF OHIO :
 5 SS: :
 6 COUNTY OF :
 7 I, TADD HENSON, P.E., do hereby
 8 certify that I have read the foregoing
 9 transcript of my deposition given on April 29,
 10 2010; that together with the correction page
 11 attached hereto noting changes in form or
 12 substance, if any, it is true and correct.
 13
 14 I do hereby certify that the foregoing
 15 transcript of TADD HENSON, P.E. was submitted
 16 for reading and signing; that after it was
 17 stated to the undersigned notary public that the
 18 deponent read and examined the deposition, the
 19 deponent signed the same in my presence on 8
 20 this day of , 2010.
 21
 22 NOTARY PUBLIC
 23 My commission expires:
 24

1 CERTIFICATE
 2 STATE OF OHIO :
 3 SS:
 4 COUNTY OF FRANKLIN :
 5 I, Sara S. Clark, RPR/CRR/CCP/CBC, a
 6 Notary Public in and for the State of Ohio, duly
 7 commissioned and qualified, do hereby certify
 8 that the within-named TADD HENSON, P.E. was
 9 first duly sworn to testify to the truth, the
 10 whole truth, and nothing but the truth in the
 11 cause aforesaid; that the testimony then given
 12 was reduced to stenotypy in the presence of said
 13 witness, afterwards transcribed; that the
 14 foregoing is a true and correct transcript of
 15 the testimony; that this deposition was taken at
 16 the time and place in the foregoing caption
 17 specified.
 18 I do further certify that I am not a
 19 relative, employee or attorney of any of the
 20 parties hereto; that I am not a relative or
 21 employee of any attorney or counsel employed by
 22 the parties hereto; that I am not financially
 23 interested in the action; and further, I am not,
 24 nor is the court reporting firm with which I am
 affiliated, under contract as defined in Civil
 Rule 28(D).
 In witness whereof, I have hereunto
 set my hand and affixed my seal of office at
 Columbus, Ohio, on this day
 of , 2010.
 Sara S. Clark, RPR/CRR/CCP/CBC
 Notary Public, State of Ohio.
 My commission expires: March 10, 2013

TADD HENSON, P.E.
APRIL 29, 2010

1 *Attach to the deposition of TADD HENSON, P.E.
2 DONER, ET AL. V. ODNR, ET AL.
3 Case No. 2009-1292

3 STATE OF OHIO :
4 COUNTY OF Franklin : SS:

5 I, TADD HENSON, P.E., do hereby
6 certify that I have read the foregoing
7 transcript of my deposition given on April 29,
8 2010; that together with the correction page
9 attached hereto noting changes in form or
10 substance, if any, it is true and correct.

11 Tadd Henson

12 I do hereby certify that the foregoing
13 transcript of TADD HENSON, P.E. was submitted
14 for reading and signing; that after it was
15 stated to the undersigned notary public that the
16 deponent read and examined the deposition, the
17 deponent signed the same in my presence on 8
18 this 12th day of May, 2010.

19 Julie F. Klusty
20 NOTARY PUBLIC
21 My commission expires: 8/6/2011

22  JULIE F. KLUSTY
23 Notary Public, State of Ohio
24 My Commission Expires 8-6-2011

AFFIDAVIT OF THOMAS H. FUSONIE

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

My name is Thomas H. Fusonie, 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 an associate attorney with the law firm of Vorys, Sater, Seymour and Pease LLP, counsel for the Relators in this action.
2. Attached as Exhibit 3-A is a true and accurate copy of correspondence dated May 3, 2010, from Martha C. Brewer, counsel for Relators, to William J. Cole and Mindy Worly, counsel for Respondents.
3. Attached as Exhibit 3-B is a true and accurate copy of correspondence dated May 7, 2010, from Jennifer Croskey, counsel for Respondents, to Martha C. Brewer, counsel for Relators.
4. Attached as Exhibit 3-C is a true and accurate copy of an email chain exchanged between counsel for Respondents and counsel for Relators. Page 5 of Exhibit 3-C is a true and accurate copy of correspondence dated May 14, 2010, from William J. Cole, counsel for Respondents, to Thomas H. Fusonie, Bruce L. Ingram, Joseph R. Miller, Kristi K. Wilhelmy, and Martha C. Brewer, counsel for Relators.
5. Page 4-5 of Exhibit 3-C is a true and accurate copy of correspondence dated May 14, 2010, from Thomas H. Fusonie, counsel for Relators, to William J. Cole, Dale T. Vitale, Mindy Worly, Jennifer Croskey, Rachel H. Stelzer, and Daniel J. Martin, counsel for Respondents.



6. Page 2-3 of Exhibit 3-C is a true and accurate copy of correspondence dated May 18, 2010, from William J. Cole, counsel for Respondents, to Thomas H. Fusonie, Bruce L. Ingram, Joseph R. Miller, Kristi K. Wilhelmy, and Martha C. Brewer, counsel for Relators.

7. Page 1-2 of Exhibit 3-C is a true and accurate copy of correspondence dated May 18, 2010, from Thomas H. Fusonie, counsel for Relators, to William J. Cole, counsel for Respondents.

8. Page 1 of Exhibit 3-C is a true and accurate copy of correspondence dated May 19, 2010, from William J. Cole, counsel for Respondents, to Thomas H. Fusonie, Bruce L. Ingram, Joseph R. Miller, Kristi K. Wilhelmy, and Martha C. Brewer, counsel for Relators.

9. Attached as Exhibit 3-D is a true and accurate copy of Respondents' Supplemental Privilege Log, dated April 27, 2010, produced by Respondents to Relators in this action on May 18, 2010.

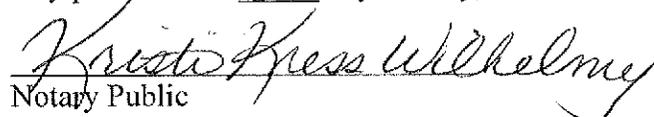
10. Attached as Exhibit 3-E is a true and accurate copy of a document titled Supplemental Agreement No. 12 which was provided to me on May 10, 2010, by Respondents purportedly on the behalf of Stantec Consulting Corporation.

11. Attached as Exhibit 3-F are true and accurate copies of Invoices from Stantec Consulting Corporation which were provided to me by Respondents purportedly on the behalf of Stantec Consulting Corporation.

FURTHER AFFIANT SAYETH NAUGHT.


Thomas H. Fusonie

Sworn to before me and subscribed in my presence this 24th day of May, 2010.


Notary Public

KRISTI KRESS WILHELMA
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 O.R.C.

Wilhelmy, Kristi K.

From: Brewer, Martha C.
Sent: Monday, May 03, 2010 8:32 AM
To: William J. Cole; Mindy Worly
Cc: Wilhelmy, Kristi K.; Fusonie, Thomas H.; Miller, Joseph R.; Ingram, Bruce L.
Subject: Doner, et al v. Logan, et al.

Mindy and Bill,

I confirm our request for the following documents from Stantec, as discussed during the April 29 deposition of Tadd Henson:

- 1) All agreements with Stantec identified in the privilege log emailed by Ms. Croskey to us on February 9, and any supplements to those agreements;
- 2) Stantec's invoices;
- 3) Stantec's emails with De Groot/Hydrosphere; and
- 4) Stantec modeling/mapping of the July, 2003 with the old spillway in place.

These documents fall squarely in the subpoena served on Stantec on April 23 and thus Mr. Henson had no excuse for failing to produce them at his deposition. As such, we demand their production by May 7, 2010.

Thanks,
Martha



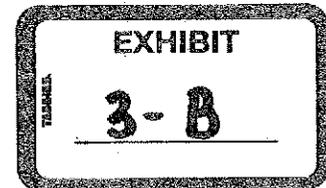
Brewer, Martha C.

From: Jennifer Croskey [Jennifer.Croskey@ohioattorneygeneral.gov]
Sent: Friday, May 07, 2010 4:19 PM
To: Brewer, Martha C.
Cc: William J. Cole; Mindy Worly; Dale T. Vitale; Daniel J. Martin; Rachel H. Stelzer
Subject: FW: Doner, et al v. Logan, et al.

Martha,

In response to your correspondence below, we are still working on this response.

Jennifer S. M. Croskey
Assistant Attorney General, Executive Agencies
Ohio Attorney General Richard Cordray
Phone 614.466.2980
Fax 866.803.9971
Email Jennifer.Croskey@OhioAttorneyGeneral.gov
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
OhioAttorneyGeneral.gov
SpeakOutOhio.gov



From: William J. Cole
Sent: Friday, May 07, 2010 12:18 PM
To: Jennifer Croskey
Subject: FW: Doner, et al v. Logan, et al.

From: Brewer, Martha C. [mcbrewer@vorys.com]
Sent: Monday, May 03, 2010 8:31 AM
To: William J. Cole; Mindy Worly
Cc: Wilhelmy, Kristi K.; Fusonie, Thomas H.; Miller, Joseph R.; Ingram, Bruce L.
Subject: Doner, et al v. Logan, et al.

Mindy and Bill,

I confirm our request for the following documents from Stantec, as discussed during the April 29 deposition of Tadd Henson:

- 1) All agreements with Stantec identified in the privilege log emailed by Ms. Croskey to us on February 9, and any supplements to those agreements;
- 2) Stantec's invoices;
- 3) Stantec's emails with De Groot/Hydrosphere; and
- 4) Stantec modeling/mapping of the July, 2003 with the old spillway in place.

These documents fall squarely in the subpoena served on Stantec on April 23 and thus Mr. Henson had no excuse for failing to produce them at his deposition. As such, we demand their production by May 7, 2010.

Wilhelmy, Kristi K.

From: William J. Cole [william.cole@ohioattorneygeneral.gov]
Sent: Wednesday, May 19, 2010 4:04 PM
To: Fusonie, Thomas H.; Ingram, Bruce L.; Miller, Joseph R.; Wilhelmy, Kristi K.; Brewer, Martha C.
Cc: Dale T. Vitale; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; Mindy Worly
Subject: RE: Doner, et al. v. Logan, et al.
Attachments: DeGroot Contract.pdf; DeGroot Invoice.pdf; DeGroot Comments.pdf

Tom:

Items 1 and 4 were inadvertently omitted from yesterday's production. See attached. However, the "scope of work" part of the De Groot contract is partially redacted on the basis of attorney work product. Also attached is item 3, which is also partially redacted on the basis of attorney work product. We do not agree that you are entitled to documents, emails, and other items that Stantec or Dr. De Groot had but did not consider or rely upon in forming their expert opinion. Therefore, we decline to provide you with items 2 and 5, since Dr. De Groot did not rely on either in forming his expert opinion in this case. We also disagree that you are entitled to email that is attorney-client privileged and/or protected attorney work product. The fact that Mr. Henson and Dr. De Groot are not clients of the Attorney General is immaterial, as both are consulting experts for the AG's Office and ODNR. And we do not agree that either Mr. Henson or Dr. De Groot testified to any instructions regarding the work to be performed, beyond their general understanding. Accordingly, we must decline your demand to provide you with every document identified in the privilege log.

William J. Cole

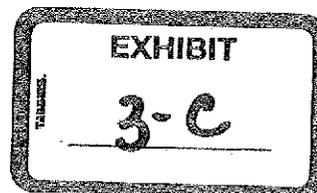
Senior Assistant Attorney General
Ohio Attorney General Richard Cordray's Office
Executive Agencies Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
614.466.2980 (phone), 866.354.4086 (fax)
william.cole@ohioattorneygeneral.gov

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Tuesday, May 18, 2010 5:25 PM
To: William J. Cole; Ingram, Bruce L.; Miller, Joseph R.; Wilhelmy, Kristi K.; Brewer, Martha C.
Cc: Dale T. Vitale; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; Mindy Worly
Subject: RE: Doner, et al. v. Logan, et al.

Bill,

I received the Stantec and Dr. De Groot files. I've yet to have a chance to review the Stantec documents. As for Dr. De Groot, I did not see the following requested documents:

- 1) copy of his contract;
- 2) copy of the Stantec preliminary report as he testified that he received;
- 3) his emails exchanged related to his expert testimony and review of Stantec work;
- 4) copy of his invoice;
- 5) the Stantec HEC-HMS & RAS CD he testified receiving



As such, Dr. De Groot has failed to comply with the subpoena. In a last effort to avoid involving the Court, we will give Stantec one more day, until the end of business tomorrow to produce the unredacted Supplemental Agreement.

ODNR/Stantec's decision to withhold an unredacted version of the Stantec Supplemental Agreement despite no objection by Stantec to the subpoena lacks merit. Ms. Worly did not object to the question about the scope of the project that led to Mr. Henson's affidavit. ODNR misreads Mr. Henson's deposition. Mr. Henson was asked not only about his understanding of the scope of the potential project, but "ultimately, what was the scope of the project" that led to his affidavit. ODNR did not object to that line of questioning. Mr. Henson then answered that the scope of the project was described in his report. If the scope of the project is all within his report as Mr. Henson testified, ODNR and Stantec have no basis to withhold the portion of the Supplemental Agreement that describes the scope of the work. As such, Stantec has not complied with the subpoena.

In a last effort to avoid involving the Court, we will give Stantec one more day, until the end of business tomorrow to produce the unredacted Supplemental Agreement.

Finally, Stantec and De Groot cannot withhold communications they had with ODNR on the basis of attorney work product or attorney/client. First, Stantec and Dr. De Groot are not clients of the Ohio Attorney General. Second, Relators are entitled to discovery of all documents that Stantec and Dr. De Groot considered in forming their opinions. We'll give Stantec and Dr. De Groot until the end of business tomorrow to produce every document identified in the privilege log provided to us today.

Tom Fusonie

From: William J. Cole [mailto:william.cole@ohioattorneygeneral.gov]
Sent: Tuesday, May 18, 2010 3:44 PM
To: Fusonie, Thomas H.; Ingram, Bruce L.; Miller, Joseph R.; Wilhelmy, Kristi K.; Brewer, Martha C.
Cc: Dale T. Vitale; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; Mindy Worly
Subject: RE: Doner, et al. v. Logan, et al.

Tom:

Our joint-submission coordinator will be Beth Eckersley, a paralegal in our Office. Ms. Weiss may contact her at 614-728-0467, or by email at beth.eckersley@ohioattorneygeneral.gov. In addition to the Relator depositions, are you agreeable to a joint submission of the supplemental affidavits of Relators who were not deposed? If so, these would also be conditioned upon Respondents' right to object to any of them in whole or in part. Considering the volume of jointly submitted material (affidavits, depositions, and exhibits), I still believe a joint request to reduce the number of copies of joint submissions (perhaps to 5) to the court is appropriate. If you agree, we should file such a request soon.

Stantec and Dr. De Groot have supplied us with their files responsive to your subpoenas. Copies will be delivered to your office today. Much of Stantec's production is on two DVDs, most of which should be directly accessible by office computer. However, you will need the appropriate HEC software to open the modeling files contained within the Hartman Reports folder, and you will need GIS software to open some of the files in the OneRain Gage Adjusted Radar folder.

We are withholding some emails that are attorney-client privileged and/or attorney work-product. A privilege/work-product log will be included. The email produced by Dr. De Groot was sent to me, which I then forwarded to Mary Ann Hunter (a legal secretary in our office) to copy. We did not withhold documents, such as a copy of the mandamus complaint and Relator affidavits, that are already in your possession. However, we stand by our redaction of the supplemental agreement that describes the scope of Stantec's work, on the basis of attorney work product. We do not believe Mr. Henson testified to any specifics of the scope of work in his

deposition. In fact, Mr. Henson testified only to his general understanding after attorney Mindy Worly objected on the basis of work product (see page 19 of Henson's deposition).

William J. Cole

Senior Assistant Attorney General
Ohio Attorney General Richard Cordray's Office
Executive Agencies Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
614.466.2980 (phone), 866.354.4086 (fax)
william.cole@ohioattorneygeneral.gov

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]

Sent: Monday, May 17, 2010 7:29 PM

To: William J. Cole; Ingram, Bruce L.; Miller, Joseph R.; Wilhelmy, Kristi K.; Brewer, Martha C.

Cc: Dale T. Vitale; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; Mindy Worly

Subject: RE: Doner, et al. v. Logan, et al.

Bill,

We agree to submit jointly all depositions taken in this action and their exhibits.

Tom

From: William J. Cole [mailto:william.cole@ohioattorneygeneral.gov]

Sent: Monday, May 17, 2010 7:19 PM

To: Fusonie, Thomas H.; Ingram, Bruce L.; Miller, Joseph R.; Wilhelmy, Kristi K.; Brewer, Martha C.

Cc: Dale T. Vitale; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; Mindy Worly

Subject: RE: Doner, et al. v. Logan, et al.

Tom:

We will get you a name shortly, probably tomorrow. Are you agreeing to a joint submission of all depositions + exhibits?

Bill

From: Fusonie, Thomas H. [thfusonie@vorys.com]

Sent: Monday, May 17, 2010 6:03 PM

To: William J. Cole; Ingram, Bruce L.; Miller, Joseph R.; Wilhelmy, Kristi K.; Brewer, Martha C.

Cc: Dale T. Vitale; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; Mindy Worly

Subject: RE: Doner, et al. v. Logan, et al.

Bill,

Who will be coordinating the preparation of the joint submission from ODNR's end? I'd like to have our paralegal on the case, Courtney Weiss start working out the logistics of gathering and preparing the joint submission.

We do intend to submit additional affidavits. We can't answer when yet, as we're still waiting on Dr. De Groot's compliance with the subpoena served on him.

Tom Fusonie

From: William J. Cole [mailto:william.cole@ohioattorneygeneral.gov]
Sent: Monday, May 17, 2010 11:58 AM
To: Fusonie, Thomas H.; Ingram, Bruce L.; Miller, Joseph R.; Wilhelmy, Kristi K.; Brewer, Martha C.
Cc: Dale T. Vitale; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; Mindy Worly
Subject: RE: Doner, et al. v. Logan, et al.

Tom:

We propose jointly submitting all (not just Relator) depositions with exhibits thereto, provided that Respondents (and presumably, Relators) reserve the right to object to any testimony and/or exhibit(s) therein. We also support a joint motion to reduce the number of submissions of any joint material.

Do you intend to submit any more affidavits? If so, when might we expect to receive a copy(s)?

Bill

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Friday, May 14, 2010 3:11 PM
To: William J. Cole; Dale T. Vitale; Mindy Worly; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin
Cc: Ingram, Bruce L.; Miller, Joseph R.; Wilhelmy, Kristi K.; Brewer, Martha C.
Subject: RE: Doner, et al. v. Logan, et al.

Bill,

Thank you for the email. As to the Relator Depositions, it is all or nothing. Either ODNR agrees to submit all of them jointly or none of them. We need to know Monday, May 17, 2010, which depositions the State is interested in submitting jointly. Given the number of depositions that need copying and that the deadline for submitting evidence is the day after Memorial Day, if we don't hear from ODNR by the end of the day Monday, May 17, 2010, we're just going to have to go ahead and copy and submit depositions separately.

We've already planned for having to submit an original and 12 copies so we cannot agree to a joint motion to reduce the number of copies of evidence. We might be able to agree to a joint motion to submit a reduced number of any joint submission of depositions.

On an agreed statement of facts, we'll get back to you.

On the issues related to the experts, how is it that the State of Ohio believes it can withhold copies of documents from Dr. De Groot's files on the basis that we already have copies of the complaint and Relator affidavits. Dr. De Groot was served a valid subpoena for his files, which would include the complaint and Relator affidavits in his files. He did not object to production of those documents. We're not aware of authority that a party can withhold a portion of an expert's files because the other party already has a copy of some of the documents in the file. In fact, ODNR has taken the exact opposite approach in ODNR v. Baucher.

Likewise, Dr. De Groot did not object to producing documents in his file he did not rely on. Again, we're not aware of a party refusing to turn over portions of an expert's files because the expert did not rely on that portion in preparing his affidavit or report. The absence of reliance on portions of an expert's files is certainly information likely to lead to the discovery of admissible evidence. Again, ODNR took the opposite approach in ODNR v. Baucher, ODNR v. Linn, ODNR v. Minch, ODNR v. Post and ODNR v. Zumberge.

Please advise Dr. De Groot that if we do not receive a complete production of the requested documents by the end of the day Tuesday, May 18, 2010, we'll have to seek the Court's assistance.

On Stantec, ODNR takes the position that despite having Stantec prepare a report and affidavit pursuant to the supplemental agreement, it can redact the portion of the supplemental agreement that describes the scope of Stantec's work. If you have authority to support ODNR's position, we'd appreciate it. Again, it is contrary to ODNR's stance in ODNR v. Baucher and in ODNR v. Linn, ODNR v. Minch, ODNR v. Post, and ODNR v. Zumberge. All cases in which ODNR produced its contracts with its expert in unredacted form. Finally, ODNR's position is contrary to its decision to not object when Relators asked Mr. Henson in deposition to describe the scope of Stantec's work for ODNR in this action. Unless we receive authority from ODNR to support its stance by the end of the day on May 18, 2010, we will be forced to seek the Court's assistance. Please advise Stantec accordingly.

Tom

From: William J. Cole [mailto:william.cole@ohioattorneygeneral.gov]
Sent: Friday, May 14, 2010 10:34 AM
To: Fusonie, Thomas H.; Ingram, Bruce L.; Miller, Joseph R.; Wilhelmy, Kristi K.; Brewer, Martha C.
Cc: Dale T. Vitale; Mindy Worly; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin
Subject: Doner, et al. v. Logan, et al.

Counsel:

Our side is meeting on Monday to discuss which, if any, depositions that we are interested in submitting jointly, and will get back to you. Whatever we decide, what are your thoughts regarding a joint motion to the court to reduce the number of required copies of evidence? The rule is original + 12 copies, and with what both sides have, that will be no small effort or cost. We should also think about an agreed statement of facts. While we obviously disagree significantly on key factual issues, there may be *some* facts we can agree upon which can make things easier on us and the court.

In addition to what Jennifer Croskey provided on Monday, we've received documents/material responsive to your subpoena to Philip De Groot, and will provide to you what is not protected work-product by early next week. While both Dr. De Groot and Mr. Henson are testifying experts, we do not agree that you are entitled to requested documents/material which they testified they did not rely upon in forming their expert opinions and reports. We also object to producing documents/material already in your possession, such as copies of the complaint and Relator affidavits. Finally, we do not agree to your request to remove the redaction from the supplemental agreement with Stantec, because the redacted portion is protected work-product material. Mr. Henson only testified generally about the scope of Stantec's work at GLSM during his deposition.

William J. Cole
Senior Assistant Attorney General
Ohio Attorney General Richard Cordray's Office
Executive Agencies Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
614.466.2980 (phone), 866.354.4086 (fax)
william.cole@ohioattorneygeneral.gov

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Monday, May 10, 2010 4:23 PM
To: Jennifer Croskey; William J. Cole; Mindy Worly; Rachel H. Stelzer; Daniel J. Martin; Dale T. Vitale

Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Wilhelmy, Kristi K.
Subject: RE: Doner, et al. v. Logan, et al.

I was not aware of any prior understanding to submit depositions jointly. I had mentioned previously to Rachel about splitting the cost of submitting the relator depositions, which then led to my below email. We are fine with submitting all depositions jointly. Who should our paralegal contact to coordinate the joint submission.

Tom Fusonie

From: Jennifer Croskey [mailto:Jennifer.Croskey@ohioattorneygeneral.gov]
Sent: Monday, May 10, 2010 7:33 AM
To: Fusonie, Thomas H.; William J. Cole; Mindy Worly; Rachel H. Stelzer; Daniel J. Martin; Dale T. Vitale
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Wilhelmy, Kristi K.
Subject: RE: Doner, et al. v. Logan, et al.

It was our understanding that all depositions would be submitted jointly. Are you now suggesting that only these depositions be submitted jointly?

Jennifer S. M. Croskey
Assistant Attorney General, Executive Agencies
Ohio Attorney General Richard Cordray
Phone 614.466.2980
Fax 866.803.9971
Email Jennifer.Croskey@OhioAttorneyGeneral.gov
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SpeakOutOhio.gov

From: Fusonie, Thomas H. [mailto:thfusonie@vorys.com]
Sent: Monday, May 03, 2010 1:55 PM
To: William J. Cole; Mindy Worly; Rachel H. Stelzer; Jennifer Croskey; Daniel J. Martin; Dale T. Vitale
Cc: Ingram, Bruce L.; Miller, Joseph R.; Brewer, Martha C.; Wilhelmy, Kristi K.
Subject: Doner, et al. v. Logan, et al.

Counsel,

Are you planning on submitting the depositions from Relators, Mike Post and Mike Highley? If so, we think it would make sense as a joint submission. That way each side could split the copying cost and avoid unnecessary duplication. Could you please let me know this week?

Tom Fusonie

From the law offices of Vorys, Sater, Seymour and Pease LLP.

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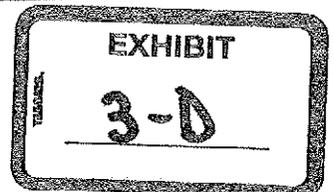
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State ex rel. Doner, et al. v. Logan, et al.
 Supplemental Privilege Log
 April 27, 2010

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01/26/10	Jennifer Croskey	Mohr, Dave	Ringley, Bryon; Henson, Tadd	E-mail	Attorney Work Product and Attorney Client Privilege
01/26/10	'Mohr, Dave'	Jennifer Croskey	Ringley, Bryon; Henson, Tadd	E-mail	Attorney Work Product and Attorney Client Privilege
01/26/10	Ringley, Bryon	Jennifer Croskey	Mohr, Dave; Henson, Tadd	E-mail	Attorney Work Product and Attorney Client Privilege
02/01/10	William J. Cole; Dale T. Vitale; Daniel J. Martin; Rachel H. Stelzer; Mindy Worly	Jennifer Croskey	Wells, Gene; Henson, Tadd	E-mail	Attorney Work Product and Attorney Client Privilege
02/02/10	William J. Cole; Daniel J. Martin; Mindy Worly; Dale T. Vitale; Rachel H. Stelzer	Jennifer Croskey	Wells, Gene; Henson, Tadd	E-mail	Attorney Work Product and Attorney Client Privilege
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02/02/10	Soites, Nicholas	Henson, Tadd		E-mail	Attorney Work Product
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02/09/10	Rachel H. Stelzer; 'Wells, Gene'; 'Mohr, Dave'; 'Dorsey, Jay'; Ringley, Bryon; 'keith.banachowski@dnr.state.oh.us'	Henson, Tadd	Daniel J. Martin	E-mail	Attorney Work Product and Attorney Client Privilege
02/09/10	Henson, Tadd; Ringley, Bryon	Mohr, Dave	Dorsey, Jay; Rowan, Charles; Martin, Daniel; Stelzer, Rachel; William J. Cole	E-mail	Attorney Work Product and Attorney Client Privilege
02/09/10	'Mohr, Dave; Ringley, Bryon	Henson, Tadd	Dorsey, Jay; Rowan, Charles; Martin, Daniel; Stelzer, Rachel; William J. Cole	E-mail	Attorney Work Product and Attorney Client Privilege
02/17/10	Philip De Groot; Mike Menoes	Jay Dorsey		E-mail	Attorney Work Product
02/17/10	William J. Cole; Stelzer, Rachel; Martin, Daniel; Rowan, Charles; Jennifer Croskey; Dale T. Vitale; Mindy Worly	Mohr, Dave	Dorsey, Jay; Henson, Tadd; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
02/17/10	'Mohr, Dave; William J. Cole; Stelzer, Rachel; Martin, Daniel; Rowan, Charles; Jennifer Croskey; Dale T. Vitale; Mindy Worly	Henson, Tadd	Dorsey, Jay; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
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02/25/10	Soletes, Nicholas	Henson, Tadd		E-mail	Attorney Work Product and Attorney Client Privilege
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02/26/10	Henson, Tadd; Ringley, Bryon	Jennifer Croskey	Daniel J. Martin; Dale T. Vitale; William J. Cole; Rachel H. Stelzer; Mindy Worthy; Mohr, Dave	E-mail	Attorney Work Product and Attorney Client Privilege
02/26/10	Jennifer Croskey; Ringley, Bryon	Henson, Tadd	Daniel J. Martin; Dale T. Vitale; William J. Cole; Rachel H. Stelzer; Mindy Worthy; Mohr, Dave	E-mail	Attorney Work Product and Attorney Client Privilege

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02/26/10	Henson, Tadd; William J. Cole; Dale T. Vitale; Mindy Worly; Jennifer Croskey; Stelzer, Rachel; Martin, Daniel; Rowan, Charles	Dorsey, Jay	Mohr, Dave; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
02/26/10	Henson, Tadd; William J. Cole; Dale T. Vitale; Mindy Worly; Jennifer Croskey; Stelzer, Rachel; Martin, Daniel; Rowan, Charles	Dorsey, Jay	Mohr, Dave; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
02/26/10	Dorsey, Jay; William J. Cole; Dale T. Vitale; Mindy Worly; Jennifer Croskey; Stelzer, Rachel; Martin, Daniel; Rowan, Charles	Henson, Tadd	Mohr, Dave; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
02/26/10	Dorsey, Jay; Henson, Tadd; William J. Cole; Mindy Worly; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; Rowan, Charles	Dale T. Vitale	Mohr, Dave; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
02/26/10	Henson, Tadd	Mohr, Dave		E-mail	Attorney Work Product
02/26/10	Henson, Tadd; Dorsey, Jay; William J. Cole; Dale T. Vitale; Mindy Worly; Jennifer Croskey; Stelzer, Rachel; Martin, Daniel	Rowan, Charles	Mohr, Dave; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
02/26/10	Rowan, Charles; Henson, Tadd; Dorsey, Jay; William J. Cole; Dale T. Vitale; Mindy Worly; Jennifer Croskey; Rachel H. Stelzer	Daniel J. Martin	Mohr, Dave; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
02/26/10	Dorsey, Jay; Henson, Tadd; William J. Cole; Mindy Worly; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; Rowan, Charles	Dale T. Vitale	Mohr, Dave; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege

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02/26/10	Daniel J. Martin; Rowan, Charles; Henson, Tadd; Dorsey, Jay; William J. Cole; Mindy Worly; Jennifer Croskey; Rachel H. Stelzer	Dale T. Vitale	Mohr, Dave; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
02/27/10	Dale T. Vitale; Daniel J. Martin; Rowan, Charles; Dorsey, Jay; William J. Cole; Mindy Worly; Jennifer Croskey; Rachel H. Stelzer	Henson, Tadd	Mohr, Dave; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
02/27/10	Dorsey, Jay	Henson, Tadd		E-mail	Attorney Work Product and Attorney Client Privilege
03/01/10	Jay Dorsey; Jennifer Croskey; Charles Rowan; Mindy Worly; William Cole; Dale Vitale; Daniel Martin	Rachel H. Stelzer	Dave Mohr; Philip De Groot; Mike Menceos	E-mail	Attorney Work Product and Attorney Client Privilege
03/01/10	Henson, Tadd	Jennifer Croskey	William J. Cole	E-mail	Attorney Work Product
03/01/10	Henson, Tadd	Dorsey, Jay	William J. Cole; Mindy Worly; Jennifer Croskey; Dale T. Vitale; Rowan, Charles; Martin, Daniel; Stelzer, Rachel; Mohr, Dave; Ringley, Bryon	E-mail	Attorney Work Product and Attorney Client Privilege
03/01/10	Dorsey, Jay; Henson, Tadd	Jennifer Croskey	William J. Cole	E-mail	Attorney Work Product and Attorney Client Privilege
03/01/10	Jennifer Croskey	Henson, Tadd	William J. Cole	E-mail	Attorney Work Product
03/01/10	Henson, Tadd	Jennifer Croskey	William J. Cole	E-mail	Attorney Work Product
03/01/10	Klusty, Julie	Henson, Tadd		E-mail	Attorney Work Product

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03/01/10	Henson, Tadd	Klusty, Julie		E-mail	Attorney Work Product
03/01/10	Dorsey, Jay	Henson, Tadd		E-mail	Attorney Work Product
03/02/10	Jennifer Croskey; William J. Cole	Henson, Tadd	Daniel J. Martin; Dale T. Vitale; Rachel H. Stelzer; Mindy Worthy; Mohr, Dave; Ringley, Bryon; Dorsey, Jay	E-mail	Attorney Work Product and Attorney Client Privilege
03/02/10	Henson, Tadd; Ringley, Bryon; 'Philip De Groot'; 'Dorsey, Jay'; Mohr, Dave	William J. Cole	Dale T. Vitale; Mindy Worthy; Daniel J. Martin; Jennifer Croskey; Rachel H. Stelzer; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
03/02/10	William J. Cole; Ringley, Bryon; 'Philip De Groot'; 'Dorsey, Jay'; Mohr, Dave	Henson, Tadd	Dale T. Vitale; Mindy Worthy; Daniel J. Martin; Jennifer Croskey; Rachel H. Stelzer; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
03/03/10	Henson, Tadd; 'Philip De Groot'	William J. Cole	Ringley, Bryon; Dale T. Vitale; Mindy Worthy; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; 'Rowan, Charles'	E-mail	Attorney Work Product and Attorney Client Privilege
03/03/10	William J. Cole; 'Philip De Groot'	Henson, Tadd	Ringley, Bryon; Dale T. Vitale; Mindy Worthy; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; 'Rowan, Charles'	E-mail	Attorney Work Product and Attorney Client Privilege
03/03/10	Henson, Tadd	William J. Cole	Ringley, Bryon; Dale T. Vitale; Mindy Worthy; Jennifer Croskey; Rachel H. Stelzer; Daniel J. Martin; Rowan, Charles; Philip De Groot	E-mail	Attorney Work Product and Attorney Client Privilege
03/03/10	Henson, Tadd	Jennifer Croskey	William J. Cole; Rachel H. Stelzer; Mindy Worthy; Dale T. Vitale; Daniel J. Martin; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
03/03/10	Jennifer Croskey	Henson, Tadd	William J. Cole; Rachel H. Stelzer; Mindy Worthy; Dale T. Vitale; Daniel J. Martin; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege

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03/03/10	Jennifer Croskey	Henson, Tadd	William J. Cole; Rachel H. Stelzer; Mindy Worthy; Dale T. Vitale; Daniel J. Martin; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
03/03/10	Henson, Tadd	Jennifer Croskey	William J. Cole; Rachel H. Stelzer; Mindy Worthy; Dale T. Vitale; Daniel J. Martin; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
03/09/10	Mike Menees	Jay Dorsey	Philip De Groot	E-mail	Attorney Work Product
03/09/10	William J. Cole; Mindy Worthy; Dale T. Vitale; Martin, Daniel; Stelzer, Rachel; Jennifer Croskey; Rowan, Charles	Dorsey, Jay	Henson, Tadd; Ringley, Bryon; Mohr, Dave	E-mail	Attorney Work Product and Attorney Client Privilege
03/09/10	Jay.Dorsey@dnr.state.oh.us	Henson, Tadd		E-mail	Attorney Work Product and Attorney Client Privilege
03/09/10	Henson, Tadd	Dorsey, Jay		E-mail	Attorney Work Product and Attorney Client Privilege
03/10/10	Henson, Tadd	Dorsey, Jay		E-mail	Attorney Work Product and Attorney Client Privilege
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03/12/10	William J. Cole; Ringley, Bryon	Henson, Tadd	'Dorsey, Jay'; Mohr, Dave; Mindy Worly	E-mail	Attorney Work Product and Attorney Client Privilege
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03/12/10	William J. Cole; Ringley, Bryon	Henson, Tadd	Dorsey, Jay; Mohr, Dave; Mindy Worly	E-mail	Attorney Work Product and Attorney Client Privilege
03/15/10	Henson, Tadd; Ringley, Bryon	William J. Cole	Dorsey, Jay; Mohr, Dave; Mindy Worly	E-mail	Attorney Work Product and Attorney Client Privilege
03/15/10	Mindy Worly; Jennifer Croskey; Martin, Daniel; William J. Cole; Dale T. Vitale; Stelzer, Rachel; Rowan, Charles	Dorsey, Jay	Mohr, Dave; Henson, Tadd	E-mail	Attorney Work Product and Attorney Client Privilege
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03/15/10	'Dorsey, Jay'; Jennifer Croskey; Daniel J. Martin; William J. Cole; Dale T. Vitale; Rachel H. Stelzer; Rowan, Charles	Mindy Worly	Mohr, Dave; Henson, Tadd	E-mail	Attorney Work Product and Attorney Client Privilege
03/16/10	Mindy Worly; 'Dorsey, Jay'; Jennifer Croskey; Daniel J. Martin; William J. Cole; Dale T. Vitale; Rachel H. Stelzer; Rowan, Charles	Henson, Tadd	Mohr, Dave	E-mail	Attorney Work Product and Attorney Client Privilege
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03/16/10	Henson, Tadd	Mindy Worfy		E-mail	Attorney Work Product
03/19/10	Henson, Tadd; Jay.Dorsey@dnr.state.oh.us	Jennifer Croskey	Mindy Worfy; Dale T. Vitale; Daniel J. Martin; Rachel H. Stelzer; William J. Cole	E-mail	Attorney Work Product and Attorney Client Privilege
03/19/10	Jennifer Croskey; Jay.Dorsey@dnr.state.oh.us	Henson, Tadd	Mindy Worfy; Dale T. Vitale; Daniel J. Martin; Rachel H. Stelzer; William J. Cole	E-mail	Attorney Work Product and Attorney Client Privilege
03/19/10	Jennifer Croskey	Dorsey, Jay	Mindy Worfy; Dale T. Vitale; Martin, Daniel; Stelzer, Rachel; William J. Cole; Henson, Tadd	E-mail	Attorney Work Product and Attorney Client Privilege
03/19/10	Dorsey, Jay	Jennifer Croskey	Mindy Worfy; Dale T. Vitale; Daniel J. Martin; Rachel H. Stelzer; William J. Cole; Henson, Tadd	E-mail	Attorney Work Product and Attorney Client Privilege
03/23/10	Mohr, Dave; Dorsey, Jay; Henson, Tadd; Ringley, Bryon; Philip De Groot	William J. Cole	Dale T. Vitale; Jennifer Croskey; Daniel J. Martin; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
03/23/10	William J. Cole; Mohr, Dave; Dorsey, Jay; Ringley, Bryon; Philip De Groot	Henson, Tadd	Dale T. Vitale; Jennifer Croskey; Daniel J. Martin; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
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03/24/10	Henson, Tadd	William J. Cole		E-mail	Attorney Work Product

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04/23/10	Philip De Groot; Henson, Tadd; Dorsey, Jay	Jennifer Croskey	Dale T. Vitale; William J. Cole; Daniel J. Martin; Rachel H. Stelzer; Mindy Worry	E-mail	Attorney Work Product and Attorney Client Privilege
04/23/10	Henson, Tadd; Ogden, Mark; Dorsten, Steven; Cobb, Glen	Dorsey, Jay	Dale T. Vitale; William J. Cole; Martin, Daniel; Stelzer, Rachel; Mindy Worry; Jennifer Croskey; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
04/23/10	Dorsey, Jay; Ogden, Mark; Dorsten, Steven; Cobb, Glen	Henson, Tadd	Dale T. Vitale; William J. Cole; Martin, Daniel; Stelzer, Rachel; Mindy Worry; Jennifer Croskey; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
04/23/10	Jennifer Croskey; Henson, Tadd; William J. Cole; Martin, Daniel; Stelzer, Rachel; Mindy Worry; Dale T. Vitale; Rowan, Charles	Dorsey, Jay	Philip De Groot; Mohr, Dave	E-mail	Attorney Work Product and Attorney Client Privilege
04/26/10	Jennifer Croskey; William J. Cole; Mindy Worry	Dorsey, Jay	Dale T. Vitale; Martin, Daniel; Stelzer, Rachel; Henson, Tadd; Mohr, Dave; Rowan, Charles; Dorsey, Jay	E-mail	Attorney Work Product and Attorney Client Privilege
04/26/10	Dorsey, Jay	Henson, Tadd	Jennifer Croskey; William J. Cole; Mindy Worry	E-mail	Attorney Work Product and Attorney Client Privilege
04/26/10	Dorsey, Jay; Henson, Tadd; Ogden, Mark; Dorsten, Steven; Cobb, Glen	Dorsey, Jay	Dale T. Vitale; William J. Cole; Martin, Daniel; Stelzer, Rachel; Mindy Worry; Jennifer Croskey; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
04/26/10	Dorsey, Jay; Henson, Tadd; Ogden, Mark; Cobb, Glen; Morton, Craig	Dorsten, Steven	Dale T. Vitale; William J. Cole; Martin, Daniel; Stelzer, Rachel; Mindy Worry; Jennifer Croskey; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege
04/26/10	Dorsten, Steven; Dorsey, Jay; Ogden, Mark; Cobb, Glen; Morton, Craig	Henson, Tadd	Dale T. Vitale; William J. Cole; Martin, Daniel; Stelzer, Rachel; Mindy Worry; Jennifer Croskey; Rowan, Charles	E-mail	Attorney Work Product and Attorney Client Privilege

State ex rel. Doner, et al. v. Logan, et al.
 Supplemental Privilege Log
 April 27, 2010

Received	To	From	CC	Description	Privilege
04/26/10	'Dorsten, Steven'; 'Dorsey, Jay'; 'Ogden, Mark'; 'Cobb, Glen'; 'Morton, Craig'	Henson, Tadd	'Dale T. Vitale'; 'William J. Cole'; 'Martin, Daniel'; 'Stelzer, Rachel'; 'Mindy Worly'; 'Jennifer Croskey'; 'Rowan, Charles'	E-mail	Attorney Work Product and Attorney Client Privilege
04/27/10	Jennifer Croskey; Jay Dorsey	Tadd Henson	William Cole; Mindy Worly; Dale Vitale; Daniel Martin; Rachel Stelzer; dave Mohr; Charles Rowan; Philip De Groot	E-mail	Attorney Work Product and Attorney Client Privilege

SUPPLEMENTAL AGREEMENT NO. 12

WHEREAS, a Contract was entered into on January 8, 1998, and amended by Supplemental Agreement No. 1 dated June 8, 1998, Supplemental Agreement No. 2 dated November 9, 1998, Supplemental Agreement No. 3 dated March 23, 2000, Supplemental Agreement No. 4 dated June 21, 2000, Supplemental Agreement No. 5 dated September 28, 2001, Supplemental Agreement No. 6 dated July 12, 2002, Supplemental Agreement No. 7 dated November 26, 2002, Supplemental Agreement No. 8 dated July 17, 2003, Supplemental Agreement No. 9 dated July 16, 2004, Supplemental Agreement No. 10 dated November 3, 2005, and Supplemental Agreement No. 11 dated March 31, 2008 between the State of Ohio and Stantec Consulting, Incorporated (formerly known as Fuller, Mossbarger, Scott and May Engineers, Incorporated) of 1500 Lake Shore Drive, Suite 100, Columbus, Ohio 43204 for professional engineering services in connection with the project known as:

**SOUTH FORK LICKING RIVER WATERSHED STUDY
FAIRFIELD, LICKING AND PERRY COUNTIES, OHIO
PROJECT NUMBER DNR-980011**

hereinafter referred to as the "Project," and

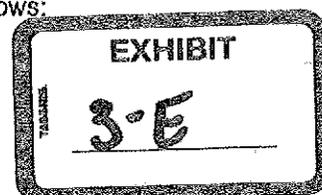
WHEREAS, the parties desire to amend said Contract of January 8, 1998, as supplemented, by revising the scope of services and time of performance under the said Contract, and

WHEREAS, the funds for paying fees for professional services included in the Contract, as supplemented, were previously released by the Controlling Board on December 15, 1997, October 19, 1998, March 20, 2000, September 24, 2001, November 18, 2002, June 16, 2003, July 12, 2004, and October 31, 2005, and encumbered by Contract Encumbrance Record Numbers 998L93, 999L40, 99L315, 99L560, 99L777, 99L841, 99A019, and 99A153, and were so certified by the Director of Budget and Management on February 4, 1998, December 21, 1998, April 4, 2000, September 28, 2001, December 3, 2002, July 10, 2003, July 27, 2004, and November 14, 2005 in the amounts of \$99,788.40 (Ninety Nine Thousand Seven Hundred Eighty Eight dollars and Forty cents), \$398,023.00 (Three Hundred Ninety Eight Thousand Twenty Three dollars and no cents), \$328,109.00 (Three Hundred Twenty Eight Thousand One Hundred Nine dollars and no cents), \$429,505.00 (Four Hundred Twenty Nine Thousand Five Hundred Five dollars and no cents), \$312,909.00 (Three Hundred Twelve Thousand Nine Hundred Nine dollars and no cents), \$59,385.00 (Fifty Nine Thousand Three Hundred Eighty Five dollars and no cents), \$158,255.00 (One Hundred Fifty Eight Thousand Two Hundred Fifty Five dollars and no cents), and \$363,000.00 (Three Hundred Sixty Three Thousand dollars and no cents), respectively. Obligations of the State are subject to the provisions of Section 126.07 of the Ohio Revised Code, and

NOW THEREFORE, it is mutually agreed between the State of Ohio, acting by and through the Director of the Department of Natural Resources, and

**Stantec Consulting, Incorporated
1500 Lake Shore Drive, Suite 100
Columbus, Ohio 43204**

that the Contract of January 8, 1998, as supplemented, is hereby amended as follows:



In Part I – SCOPE OF SERVICES, Section A. Project Description, add the following paragraph:

In addition to services provided for the South Fork Licking River watershed, the consultant shall provide:

[REDACTED]

In Part I – SCOPE OF SERVICES, Section B. Professional Services, add the following:

10.0 Additional Services – Grand Lake St. Marys Western Spillway Analysis

The Consultant shall provide the following services:

- 10.1 [REDACTED]
- 10.2 [REDACTED]
- 10.3 [REDACTED]
- 10.4 [REDACTED]
- 10.5 [REDACTED]

Specific tasks to be completed will be developed and discussed with ODNR as this effort progresses, however no item of work will be completed without the prior authorization of ODNR.

Replace Part III - SPECIAL PROVISIONS, with the following:

**PART III
SPECIAL PROVISIONS**

A. TIME OF PERFORMANCE

The Consultant agrees that work to be performed shall commence within ten days after the Authorization to Proceed is issued by ODNR for this Contract and similarly for any subsequent contract supplements.

Time of performance of each phase of the project or projects under this Contract shall conform to the following schedule, based on the Authorization to Proceed for the Contract and subsequent supplements:

1. Data Collection	<u>62 months</u>
2. Hydrology and Hydraulic Analyses	<u>68 months</u>
4. Results and Findings	<u>64 months</u>
5. Coordination of Steering Committee	<u>72 months</u>
6. Public Communications	<u>78 months</u>
7. Flood Management Alternatives	<u>78 months</u>
8. Right-of-Way Acquisition, Permitting, and Environmental Clearances	<u>66 months</u>
9. Construction Contract Bidding & Award	<u>3 months</u>
10. Construction Administration	<u>12 months</u>
11. Grand Lake St. Marys H&H Analysis	<u>6 months</u>

Total Time of Performance (From Original January 8, 1998 Contract Authorization to Proceed) 162 months

The time of performance for the individual phases shown above may occur simultaneously or sequentially, but all work under this Contract must be completed within the Total Time of Performance, and no later than **June 30, 2011**. The Total Time of Performance may be adjusted to reflect the actual length of time taken by ODNR to provide comments or approvals required at various points in the Contract. The Total Time of Performance may be adjusted by contract supplement upon mutual agreement between ODNR and the Consultant at any time. This Contract, as supplemented, remains in full effect unless terminated under provisions of PART III - B.

B. TERMINATION

1. If the Consultant fails to prosecute the work under this Contract and Supplements in accordance with the times of performance established under Section III - A, the State, within ten days after giving written notice of its intention to do so, may terminate this Contract and may take possession of the incomplete documents and prosecute them to completion by Contract or otherwise.
2. The State may terminate this Contract when in its judgment any representative of the Consultant is incompetent or is not rendering satisfactory service.
3. If at any time sufficient funds are not appropriated to continue funding the payments due under this Contract, this Contract will terminate without any further obligation of the State. This Contract shall terminate June 30, 2010 unless the State, at its sole discretion, renews the Contract and Supplements thereto on the same terms and conditions by providing written notification at least thirty (30) days prior to the date of termination, should sufficient funds be appropriated to continue funding payments.
4. This Contract and Supplements may be terminated by the State when the services to be provided under the Contract and Supplements are no longer required by the State. The Consultant shall be compensated for all services satisfactorily provided up to the date of termination.
5. This Contract may be terminated by the Consultant upon thirty (30) days written notice should the State fail to perform in accordance with the terms of this Contract; provided, however, that the Consultant shall not terminate this Contract for non-payment if the State initiates the payment process by preparing, executing and submitting a voucher for all reasonably undisputed amounts due to the Consultant within ten (10) days of receipt of the Consultant's written notice to terminate.

C. REVIEWS AND ACCEPTANCES

All preliminary and detailed designs, plans, specifications, estimates and other documents prepared by the Consultant shall be subject to review and acceptance by the State. No acceptance shall relieve the Consultant of the professional obligation to correct any defects or errors at Consultant's own expense.

The Consultant agrees to save the State of Ohio harmless from any and all damages to person or property arising out of or resulting from any

error, omission, or negligent act of the Consultant, or any person employed by the Consultant performing the services included in this agreement.

D. INTERPRETATION

The final determination of any and all questions arising with respect to the meaning and intent of drawings, specifications, reports or other documents shall rest with the State.

E. SPECIALISTS

The Consultant shall employ only Ohio registered professional engineers and Ohio registered architects in responsible charge of supervision, design and examination of the work, and shall employ only Ohio registered surveyors in responsible charge of any survey work.

F. TRANSFERS

The Consultant shall not assign, sublet or transfer any interest in the work covered by this Contract without the prior written consent of the State. In the event that a sub-consultant participates in any work involving additional payments to the Consultant, the estimated extent and the unit costs of the contemplated work must receive the prior written consent of the State. The approval or consent to assign or sublet any portion of work shall in no way relieve the Consultant from primary responsibility for the performance of this Contract.

G. PUBLIC UTILITIES

Where privately, publicly or cooperatively owned utility companies are affected by the proposed construction, the Consultant shall make the necessary contacts and confer with the owners regarding required revisions in their facilities or infrastructure, and inform the State of the results of all such contacts.

H. DOCUMENT OWNERSHIP, EXAMINATION, INSURANCE, PROPERTY RIGHTS

1. All photography, survey data, reports, studies, drawings, maps, computations, plans, specifications, estimates and other documented evidence of the services (including computer generated forms of the preceding), prepared by or for the consultant under the provisions of this agreement, shall become and remain the property of the State upon demand, completion or termination of the services provided. The Consultant further agrees that final payment may be withheld until all original photographic

negatives, survey notes and associated original mapping products have been received by the State.

In making copies of drawings and specifications available, the State does not confer a license or grant permission for use of such to members of the public.

2. The Consultant shall carry valuable papers insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data, relating to the work covered by this Contract, in the event of their loss or destruction, until such time as the Consultant has completely fulfilled all duties under this Contract and the State has indicated satisfaction therewith. Should it be necessary for the Consultant to make a claim against said policy, Consultant shall fully absorb all deductible fees or other costs and expenses associated therewith, including attorney fees, and shall diligently pursue relief as appropriate.
3. Pursuant to Section 153.70 of the Ohio Revised Code, the Consultant shall maintain Professional Liability Insurance to protect against claims arising from the performance of the Consultant while providing professional services that may be considered negligent acts, errors or omissions for which the Consultant is legally liable. Such Professional Liability Insurance shall be in an amount not less than \$1,000,000 per claim and in the annual aggregate. The Consultant shall keep such insurance in effect for so long as they are under contract for services for the project. If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the effective date of this Contract. The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best's Insurance Reports.
4. The Consultant shall provide the State with certificates of insurance evidencing the required coverage and amounts, including without limitation any certificates of renewal of insurance. The certificates of insurance shall contain a provision that the policy or policies will not be canceled without thirty (30) days prior written notice to the State. Failure to maintain the insurance requirements may be cause for termination under Part III - B.
5. If in the execution of this project, patentable material, ideas or concepts are developed, such shall be promptly disclosed to ODNR. If the Consultant developing such patentable material, ideas or concepts decides to pursue legal protection of such, it shall grant to the State of Ohio a paid-up, non-exclusive world-wide

license in the same. If the Consultant decides not to pursue such legal protection, it shall execute a release of said patentable material, ideas and concepts to the State of Ohio and agree to provide or secure the necessary releases, assignments and signatures of the inventor(s) to effect the complete transfer of all rights to said patentable material, ideas or concepts to the State of Ohio.

6. If in the execution of this project, the Consultant utilizes or proposes to utilize a proprietary, or patented or patentable design, process or apparatus, the Consultant shall agree to make such design, process or apparatus available to the State of Ohio for incorporation in other construction projects executed by other consultants subject to appropriate and reasonable non-disclosure and secrecy agreements at a royalty rate equivalent to the royalty rate included in this project. When applicable, the royalty rate shall be separately stated in the Contract Documents.

I. GOVERNING LAW

1. The Consultant shall comply with the provisions of applicable sections of the Revised Code of the State of Ohio, as if written herein.
2. This Contract and any claims arising in any way from the terms and conditions herein shall be governed by the laws of the State of Ohio. Any provision of this Contract prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Contract or the performance hereunder shall be brought only in the Courts of Ohio, and the Consultant hereby irrevocably consents to such jurisdiction.
3. In the event the amount of this Contract exceeds \$100,000, the Consultant agrees to comply with 31 U.S.C. § 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions."
4. The Consultant agrees to comply with all applicable State and Federal laws regarding drug-free workplace. The Consultant shall make a good faith effort to ensure that all Consultant employees, while working on State property, will not purchase, transfer, use or possess illegal drugs or abuse prescription drugs in any way.
5. The Consultant hereby affirms that as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling an

excess of \$1000.00 to the Governor or to his campaign committees.

6. The Consultant certifies that it is not a public employee under federal or state law for tax, workers' compensation or retirement deduction purposes, and that it carries workers' compensation coverage.
7. In accordance with Section 9.24 of the Revised Code, ODNR is prohibited from awarding a contract for goods, services, or construction, paid for in whole or in part with state funds, to a person or company against whom a finding for recovery has been issued by the auditor of state, if the finding for recovery is unresolved. Prior to execution of this Contract or subsequent agreements, ODNR shall verify each consultant's compliance with the requirements of Section 9.24.

The Consultant warrants that it is not subject to an unresolved finding for recovery under Section 9.24 of the Ohio Revised Code. If the warranty is deemed to be false, the supplemented Contract is void *ab initio* and the Consultant must immediately repay to the State any funds paid under this Contract.

8. Prior to execution of this Contract, the Consultant must submit to ODNR a fully completed and signed *Declaration Regarding Material Assistance/Nonassistance To A Terrorist Organization* form (HLS 0038), in accordance with Section 2909.33 of the Ohio Revised Code.
9. In accordance with Executive Order 2007-01S, the Consultant, by signature on this document, certifies that it: (1) has reviewed and understands Executive Order 2007-01S; (2) has reviewed and understands the Ohio ethics and conflict of interest laws; and (3) will take no action inconsistent with those laws and this order. The Consultant understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Contract and may result in the loss of other contracts or grants with the State of Ohio.
10. In accordance with Executive Order 2008-21S, the Consultant certifies that all facilities used for the production of the supplies or performance of services offered in the Contract are in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers and/or sub-consultants used by the Consultant in furnishing the supplies or services described in the Contract and awarded to the Consultant.

J. CONSULTANT PERFORMANCE EVALUATION

ODNR may evaluate the Consultant's performance under this Contract and consider the performance and the evaluation in decisions relating to the selection of Consultants for services in future contracts with ODNR.

K. STANDARD OF CARE

The Consultant shall perform the Consultant's services in accordance with professional standards of skill, care, and diligence in a timely manner in accordance with the schedule indicated in **Part III, Special Provisions**, and so that the project shall be completed as expeditiously and economically as possible within the construction budget approved by ODNR and in the best interests of ODNR.

L. INGRESS and EGRESS

The Consultant agrees to save the State of Ohio harmless from any and all damages to person or property arising out of any negligent act by the Consultant, or any person employed by the Consultant performing the services included in this Contract. With this understanding, it is hereby agreed that the State of Ohio shall acquire all rights of ingress, egress and access for the Consultant or his representative or employees and equipment, which rights are necessary for the Consultant to perform the services included in this Contract.

M. CONSTRUCTION MEANS and METHODS

It is hereby agreed that the Consultant shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures or scheduling used by a construction Contractor to comply with the Contractor's obligations under its Contract for the construction of the project or for the safety precautions and programs in connection with the work on the project. The Consultant shall not be responsible for or have control over the acts or omissions of the Contractors or Subcontractors or any of their agents or employees, or any other persons performing any work necessary to construct the project.

N. EDGE BUSINESS DEVELOPMENT PROGRAM PARTICIPATION

The Consultant shall support the Encouraging Diversity Growth and Equity (EDGE) Business Development Program (ref. Section 123.152 of the Ohio Revised Code, enacted by Am. H.B. 95, 125th General Assembly), by seeking and maintaining to the extent reasonable and appropriate, participation by properly certified EDGE Business Enterprise businesses for the Project and within the Consultant's Contract for the Project.

Upon the Department's request, the Consultant shall provide its policy(ies) regarding its support of EDGE and the procedures the Consultant has used in good faith to obtain or attempted to obtain the EDGE certified business participation goal percentage approved by the Director and indicated in the Request for Qualifications or the Request for Proposal, or both. In the absence of the Department's request for the policy(ies) and procedures, the Consultant shall provide them as a part of its response to the Department's Request for Fee Proposal, and they shall become a part of this Contract by attachment or reference.

The Consultant shall document and certify the actual percentage of the Consultant's final fee, inclusive of all Basic Services, Additional Services and Reimbursable Expenses, that it paid to certified EDGE Business Enterprises. The Consultant shall submit such documentation and certification with each invoice submitted for payment.

Replace **PART IV - PAYMENTS**, with the following:

**PART IV
PAYMENTS**

A. The State of Ohio agrees to pay to the Consultant as full compensation for the professional services specified in this Contract, and any and all expenses incurred in performing said services, a fee as follows:

1. Design Services:

a. Original Contract through and including Supplemental Agreement No. 9:
\$1,785,948.22 (One Million Seven Hundred Eighty Five Thousand Nine Hundred Forty Eight dollars and Twenty Two cents), Lump Sum.

b. Supplemental Agreement Number 10:
\$216,496.14 (Two Hundred Six Thousand Four Hundred Ninety Seven dollars and no cents), Lump Sum, with fees not to exceed the following amounts for the tasks specified below:

7.4.12 Additional Meetings	\$6,184.00
7.4.13 Additional Analyses	\$36,538.50
7.4.14 Endangered Species Protection	\$35,097.50
7.4.15 Easement Acquisition Services	\$24,075.00
7.4.16 Utility Coordination	\$47,880.00

7.4.17 ODOT Permitting	\$13,797.00
7.4.18 Public Presentations	\$27,769.14
7.4.19 SWP3 Notice of Intent	\$655.00
7.4.20 Progress Reports/Coordination	\$24,500.00

2. Construction Administration:

Fees for construction administration services (Project Manager, Project Representative, and Quality Control Testing) for the South Fork Licking River project, Phase II - Channel Widening (DNR-050056) are not included in this contract but may be added via Supplemental Agreement pending completion of easement acquisition(s) and successful award of a construction contract.

3. Grand Lake St. Marys Western Spillway Analysis:

Fees shall be based on actual man-hours expended to provide the services authorized by ODNR, to be paid at the hourly rates by discipline specified under Appendix A, with a total amount not to exceed \$124,311.51 (One Hundred Twenty Four Thousand Three Hundred Eleven dollars and Fifty One cents).

4. Contract Allowance:

\$22,218.53 (Twenty Two Thousand Two Hundred Eighteen dollars and Fifty Three cents), Lump Sum.

Total fees for all the Consultant's services rendered under the contract shall not exceed \$2,148,974.40 (Two Million One Hundred Forty Eight Thousand Nine Hundred Seventy Four dollars and Forty cents).

Upon request of the Consultant, partial payment for services rendered under Items 1 and 4 shall be made upon receipt of monthly invoices submitted as the work progresses. Amounts shall be based upon the Consultant's estimate of the percentage completion of the work involved in the Contract, certified by the Consultant to the State. The State may examine the work completed and determine the reasonableness of the partial payments requested.

For services rendered under Item 2, invoices shall be submitted for services performed during the previous month. Invoices for payment of per diem services shall include certified time sheets for the personnel assigned to the Project.

The decision to perform any service that is to be paid for under Item 4, Contract Allowance, is solely at the discretion of ODNR. In each case that the Contract Allowance is to be used, the Consultant and ODNR must determine a specific scope of work and negotiate a fee for the service. The Consultant shall obtain written approval from ODNR prior to proceeding with any service to be paid for under Item 4.

- B. Fees for architectural and engineering services listed or contained herein shall include costs for travel, subsistence, office supplies, materials, equipment, instruments and all other costs pertinent to the services to be provided under this contract. All travel costs must conform to the provisions of Rule 126-1-02 of the Ohio Administrative Code, the State Travel Rule.
- C. All partial payments shall be credited against the total fee, provided the services to be performed under this Contract are accepted as rendered and are carried on continuously to completion.
- D. The Director of the Department of Natural Resources may, at any time after execution of this Contract, terminate any portion or all of the work or services. In the event of such termination, the Consultant shall be paid a pro rata amount for services rendered up to the time of termination.

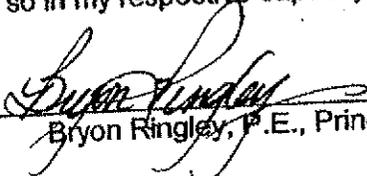
It is further mutually agreed that this Agreement is supplemental to the Contract of January 8, 1998 and amended by Supplemental Agreement No. 1, dated June 8, 1998, Supplemental Agreement No. 2 dated November 9, 1998, Supplemental Agreement No. 3 dated March 23, 2000, Supplemental Agreement No. 4 dated June 21, 2000, Supplemental Agreement No. 5 dated September 28, 2001, Supplemental Agreement No. 6 dated July 12, 2002, Supplemental Agreement No. 7 dated November 26, 2002, Supplemental Agreement No. 8 dated July 17, 2003, Supplemental Agreement No. 9 dated July 16, 2004, Supplemental Agreement No. 10 dated November 3, 2005, and Supplemental Agreement No. 11 dated March 31, 2008, and said Contract documents are by reference made a part hereof, and all items, conditions and provisions thereof not specifically modified herein are to apply hereto, and are made a part of this Supplemental Agreement No. 12 as if expressly rewritten and included herein.

In Witness Whereof, the parties hereto have hereunto set their hands as of the date aforesaid, the State of Ohio signing and sealing these presents through its Department of Natural Resources, by its Director.

As Principal

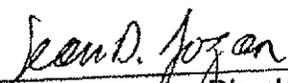
Of Stantec Consulting Services, Inc.

I have the authority to sign this contract and do so in my respective capacity:


Bryon Ringley, P.E., Principal

F.T.I. No. 61-0659421

STATE OF OHIO
Acting By
Department of Natural Resources

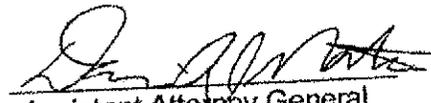
By 
Sean D. Logan, Director

Date March 1, 2010

APPROVAL BY ATTORNEY GENERAL

The above contract between the Department of Natural Resources, State of Ohio, and Stantec Consulting, Incorporated, is hereby approved as to form this 1st day of March, 2010.


Richard Cordray
Attorney General

By 
Assistant Attorney General

SOUTH FORK LICKING RIVER WATERSHED STUDY
 FAIRFIELD, LICKING AND PERRY COUNTIES, OHIO
 PROJECT NUMBER DNR-980011

APPENDIX A – SUPPLEMENTAL AGREEMENT NO. 12

**HOURLY RATES FOR ADDITIONAL SERVICES
 GRAND LAKE ST. MARYS WESTERN SPILLWAY ANALYSIS**

<u>Discipline</u>	<u>Staff Assigned</u>	<u>Hourly Rate</u>
<i>Principal</i>	Bryon Ringley, PE	\$155.00
<i>Senior Associate</i>	Tadd Henson, PE, CFM	\$148.00
	Brad Rodgers, PE, CHMM	\$155.00
	Darlene Scott, GISP	\$139.00
<i>Project Engineers</i>	Julie Pickerling, PE	\$109.00
	Mark Seidelmann, EI, GISP	\$100.00
	Anil Tangirala, PE	\$100.00
	Travis White, EI, SI	\$100.00
	Melissa Williams, PE	\$100.00
	Zach Whitten	\$77.00
<i>GIS Support</i>	James Laine, GISP	\$109.00
	Erick Lobao, GISP	\$118.00
	Brad Ziss, GISP	\$100.00
	Nick Soltes, GISP	\$77.00
	Ryan Branch	\$71.00
	Anthony Cuevas	\$64.00
<i>CAD Support</i>	Dan Gremling	\$92.00
	Rick Pirtle	\$92.00
<i>Environmental Scientists</i>	Michelle Kearns	\$100.00
	Cara Hardesty	\$92.00
	Kim Yoder	\$77.00
<i>Clerical Support</i>	All Clerical Staff	\$71.00

**HOURLY RATES FOR EXPERT WITNESS SERVICES
 GRAND LAKE ST. MARYS WESTERN SPILLWAY ANALYSIS**

<u>Discipline</u>	<u>Staff Assigned</u>	<u>Hourly Rate</u>
<i>Principal</i>	Bryon Ringley, PE	\$212.00
<i>Senior Associate</i>	Tadd Henson, PE, CFM	\$195.00

*Notes: Hourly rates include all overhead and profit.
 Expert Witness rates only apply when eligible staff are providing expert witness depositions or testifying at trial.*



Stantec

December 4, 2009

Invoice No. 173522007.367674

Mr. Dave Mohr, P.E., Chief Engineer
Division of Engineering
Ohio Department of Natural Resources
2045 Morse Road, Bldg. F-3
Columbus, Ohio 43229-6693

Re: Invoice for Professional Services
August 29, 2009 through November 6, 2009
Improvements to SFLR Channel
DNR-050056

Remit to: Stantec Consulting Services Inc.
13980 Collections Center Drive
Chicago, IL 60693

- INVOICE -

Task	Description	Task Budget	Percent Complete	Accrued Fee	Billed to Date	Amount Due This Invoice
7.1*	Final Analysis	\$ 157,755.00	100.0	\$ 157,755.00	\$ 157,755.00	\$ -
7.2	Preliminary Design	125,363.00	100.0	125,363.00	125,363.00	-
7.3	Final Design	79,772.00	100.0	79,772.00	79,772.00	-
7.4*	Additional Services	121,980.00	100.0	121,980.00	121,980.00	-
7.5	Bidding Services	5,679.00	0.0	-	-	-
SA#9	Allowance	40,000.00	100.0	39,973.82	39,973.82	-
Subtotal		\$ 530,549.00		\$ 524,843.82	\$ 524,843.82	\$ -

* Task 7.1 includes NRCS work. Task 7.4 includes work through Supp. Agmt. #9 (subtasks 1 through 11).

Supplemental Agreement #11 Tasks

Task	Description	Task Budget	Percent Complete	Accrued Fee	Billed to Date	Amount Due This Invoice
7.4.12	Additional Meetings	\$ 6,184.00	100.0	\$ 6,184.00	\$ 6,184.00	\$ -
7.4.13	Additional Analyses	36,538.50	100.0	36,538.50	36,538.50	-
7.4.14	Endangered Species	35,097.50	100.0	35,097.50	35,097.50	-
7.4.15	Addl. Easement Acquis.	24,075.00	100.0	24,075.00	24,075.00	-
7.4.16.1	Utility Coordination	7,240.00	100.0	7,240.00	7,240.00	-
7.4.16.2	Columbia Gas Relocate	36,820.00	86.0	31,665.20	31,665.20	-
7.4.16.3	Sprint Relocate	3,820.00	100.0	3,820.00	3,820.00	-
7.4.17	ODOT I-70 Permitting	13,797.00	100.0	13,797.00	13,797.00	-
7.4.18	Public Presentation	17,770.00	100.0	17,770.00	17,770.00	-
7.4.19	SWP3 NOI	655.00	23.0	150.65	150.65	-
7.4.20.1	Construction Admin.*	58,705.00	17.0	9,999.14	9,999.14	-
7.4.20.2	Constr. Obs. Labor **	65,000.00	66.3	42,285.89	-	42,285.89
7.4.20.3	Constr. Obs. Testing	9,570.00	0.0	-	-	-
7.4.21	Progress Rpts /Coord.	24,500.00	100.0	24,500.00	24,500.00	-
SA #10	Allowance	23,228.00	95.7	22,218.53	22,218.53	-
Subtotal		\$ 363,000.00		\$ 275,341.41	\$ 233,055.52	\$ 42,285.89

Project Totals \$ 893,549.00 \$ 800,185.23 \$ 757,899.34 \$ 42,285.89

* \$9,999.14 was used to cover December 2006 public presentation costs.

** Construction Observation Labor charges for this invoice are documented on the attached sheets, and are for work associated with the Grand Lake St. Marys Spillway H&H Study.



ODNR - Division of Engineering
December 4, 2009
Page 2

Total Invoiced to Date	\$ 800,185.23
Less Previously Invoiced	757,899.34
Total Balance Due	\$ 42,285.89

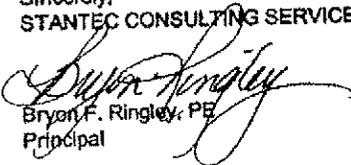
Total Project Progress: \$ 800,185.23 /\$893,549= 89.55%

Project Budget Summary:		
Total Contract Value	\$ 893,549.00	
Total Billing to Date	800,185.23	
Contract Amount Remaining after 89.55% Completion	\$ 93,363.77	

Fees for services rendered shall be due and payable within thirty (30) days of the date of the invoice. Invoice due date is on or before January 4, 2010. A service charge will be added to delinquent fees at the rate of one percent per month (12% per annum) from the due date.

Thank you for the opportunity to assist ODNR. If you have any questions, or need additional information, please contact our office.

Sincerely,
STANTEC CONSULTING SERVICES INC.


Bryan F. Ringley, PE
Principal

/jfk

Invoice for Professional Services Rendered
 Grand Lake St. Marys Spillway H&H Study
 through November 6, 2009
 DNR-050056

Itemized Charges

Grand Lake St. Marys Primary Spillway H&H Study

Employee	Task Description	Hours	Rate	Amount
		1.50	\$ 124.00	\$ 186.00
Roger Denick, PE, CFM	Hydrologic Analysis	100.00	\$ 132.00	13,200.00
Tadd Henson, PE, CFM	H&H; report; mtgs	20.00	\$ 100.00	2,000.00
Julle Pickering, PE	Hydraulic Model	19.00	\$ 154.00	2,928.00
Bryon Ringley, PE	PM; H&H; report; mtgs			
Mark Seldermann, EI	Hydrologic Analysis; Watershed Delineation	28.50	\$ 93.00	2,650.50
Nick Soites	Mapping	55.50	\$ 73.00	4,051.50
Anil Tangirala, PE	Hydraulic Model	111.50	\$ 93.00	10,369.50
Travis White, EI	Hydraulic Model	18.50	\$ 73.00	1,350.50
Melissa Williams, EI	Hydrologic Model	64.00	\$ 86.00	5,504.00
		418.50		\$ 42,238.00
Expenses				
Mercer County Engineer	Bridge Plans			\$ 37.89
Rainfall Data for Project				10.00
	Subtotal			\$ 42,285.89



Stantec

Invoice No. 173522007.373312

December 21, 2009

Mr. Dave Mohr, P.E., Chief Engineer
Division of Engineering
Ohio Department of Natural Resources
2045 Morse Road, Bldg. F-3
Columbus, Ohio 43229-6693

Remit to: Stantec Consulting Services Inc.
13980 Collections Center Drive
Chicago, IL 60693

Re: Invoice for Professional Services
November 7, 2009 through December 18, 2009
Improvements to SFLR Channel
DNR-050058

- INVOICE -

Task	Description	Task Budget	Percent Complete	Accrued Fee	Billed to Date	Amount Due This Invoice
7.1*	Final Analysts	\$ 157,755.00	100.0	\$ 157,755.00	\$ 157,755.00	\$ -
7.2	Preliminary Design	125,363.00	100.0	125,363.00	125,363.00	-
7.3	Final Design	79,772.00	100.0	79,772.00	79,772.00	-
7.4*	Additional Services	121,980.00	100.0	121,980.00	121,980.00	-
7.5	Bidding Services	5,679.00	0.0	-	-	-
SA#9	Allowance	40,000.00	100.0	39,973.82	39,973.82	-
Subtotal		\$ 530,549.00		\$ 524,843.82	\$ 524,843.82	\$ -

* Task 7.1 includes NRCS work. Task 7.4 includes work through Supp. Agmt. #9 (subtasks 1 through 11).

Supplemental Agreement #11 Tasks

Task	Description	Task Budget	Percent Complete	Accrued Fee	Billed to Date	Amount Due This Invoice
7.4.12	Additional Meetings	\$ 6,184.00	100.0	\$ 6,184.00	\$ 6,184.00	\$ -
7.4.13	Additional Analyses	36,538.50	100.0	36,538.50	36,538.50	-
7.4.14	Endangered Species	35,097.50	100.0	35,097.50	35,097.50	-
7.4.15	Addl. Easement Acquis.	24,075.00	100.0	24,075.00	24,075.00	-
7.4.16.1	Utility Coordination	7,240.00	100.0	7,240.00	7,240.00	-
7.4.16.2	Columbia Gas Relocate	36,820.00	86.0	31,665.20	31,665.20	-
7.4.16.3	Sprint Relocate	3,820.00	100.0	3,820.00	3,820.00	-
7.4.17	ODOT I-70 Permitting	13,797.00	100.0	13,797.00	13,797.00	-
7.4.18	Public Presentation	17,770.00	100.0	17,770.00	17,770.00	-
7.4.19	SWP3 NOI	655.00	23.0	150.65	150.65	-
7.4.20.1	Construction Admin.*	58,705.00	17.0	9,999.14	9,999.14	-
7.4.20.2	Constr. Obs. Labor **	65,000.00	88.7	56,348.24	42,285.89	14,062.35
7.4.20.3	Constr. Obs. Testing	9,570.00	0.0	-	-	-
7.4.21	Progress Rpts /Coord.	24,500.00	100.0	24,500.00	24,500.00	-
7.4.21	Progress Rpts /Coord.	23,228.00	95.7	22,218.53	22,218.53	-
SA #10	Allowance					
Subtotal		\$ 363,000.00		\$ 289,403.76	\$ 275,341.41	\$ 14,062.35
Project Totals		\$ 893,549.00		\$ 814,247.58	\$ 800,185.23	\$ 14,062.35

* \$9,999.14 was used to cover December 2006 public presentation costs.

** Construction Observation Labor charges for this invoice are documented on the attached sheets, and are for work associated with the Grand Lake St. Marys Spillway H&H Study.

Total Invoiced to Date	\$ 814,247.58
Less Previously Invoiced	800,185.23
Total Balance Due	\$ 14,062.35

Total Project Progress: \$ 814,247.58 /\$893,549= 91.13%

Project Budget Summary:	
Total Contract Value	\$ 893,549.00
Total Billing to Date	814,247.58
Contract Amount Remaining after 91.13% Completion	\$ 79,301.42

Fees for services rendered shall be due and payable within thirty (30) days of the date of the invoice. **Invoice due date is on or before January 21, 2010.** A service charge will be added to delinquent fees at the rate of one percent per month (12% per annum) from the due date.

Thank you for the opportunity to assist ODNR. If you have any questions, or need additional information, please contact our office.

Sincerely,
STANTEC CONSULTING SERVICES INC.


Byron F. Ringley, PE
Principal

/jfk

Invoice for Professional Services Rendered
Grand Lake St. Marys Spillway H&H Study
through December 18, 2009
DNR-050056

Itemized Charges

Grand Lake St. Marys Primary Spillway H&H Study

Employee	Task Description	Hours	Rate	Amount
Tadd Henson, PE, CFM	H&H; report; mtgs	34.50	\$ 132.00	\$ 4,554.00
Bryon Ringley, PE	PM; H&H; report; mtgs	16.00	\$ 154.00	2,464.00
Anthony Cuevas	Mapping	6.50	\$ 61.00	396.50
Nick Soites	Mapping	28.00	\$ 73.00	2,044.00
Anil Tangirala, PE	Hydraulic Model	29.50	\$ 93.00	2,743.50
Melissa Williams, EI	Hydrologic Model	20.50	\$ 86.00	1,763.00
		<u>135.00</u>		<u>\$ 13,965.00</u>
Expenses				
Direct Vehicle Mileage - 11/20/09 Tadd Henson Site Visit				\$ 97.35
	Subtotal			<u>\$ 14,062.35</u>



Stantec

Invoice No. 173520005.388279

March 4, 2010

Mr. Dave Mohr, P.E., Chief Engineer
 Division of Engineering
 Ohio Department of Natural Resources
 2045 Morse Road, Bldg. F-3
 Columbus, Ohio 43229-6693

Remit to: Stantec Consulting Services Inc.
 13980 Collections Center Drive
 Chicago, IL 60693

Re: Invoice for Professional Services
 December 19, 2009 through February 26, 2010
 Improvements to SFLR Channel
 DNR-050056

- INVOICE -

Task	Description	Task Budget	Percent Complete	Accrued Fee	Billed to Date	Amount Due This Invoice
7.1*	Final Analysis	\$ 157,755.00	100.0	\$ 157,755.00	\$ 157,755.00	\$ -
7.2	Preliminary Design	125,363.00	100.0	125,363.00	125,363.00	-
7.3	Final Design	79,772.00	100.0	79,772.00	79,772.00	-
7.4*	Additional Services	121,980.00	100.0	121,980.00	121,980.00	-
7.5	Bidding Services	6,679.00	0.0	-	-	-
SA#9	Allowance	40,000.00	100.0	39,973.82	39,973.82	-
Subtotal		\$ 530,549.00		\$ 524,843.82	\$ 524,843.82	\$ -

* Task 7.1 includes NRCS work. Task 7.4 includes work through Supp. Agmt. #9 (subtasks 1 through 11).

Supplemental Agreement #11 Tasks

Task	Description	Task Budget	Percent Complete	Accrued Fee	Billed to Date	Amount Due This Invoice
7.4.12	Additional Meetings	\$ 6,184.00	100.0	\$ 6,184.00	\$ 6,184.00	\$ -
7.4.13	Additional Analyses	36,538.50	100.0	36,538.50	36,538.50	-
7.4.14	Endangered Species	35,097.50	100.0	35,097.50	35,097.50	-
7.4.15	Addl. Easement Acquis.	24,075.00	100.0	24,075.00	24,075.00	-
7.4.16.1	Utility Coordination	7,240.00	100.0	7,240.00	7,240.00	-
7.4.16.2	Columbia Gas Relocate	36,820.00	86.0	31,665.20	31,665.20	-
7.4.16.3	Sprint Relocate	3,820.00	100.0	3,820.00	3,820.00	-
7.4.17	ODOT I-70 Permitting	13,797.00	100.0	13,797.00	13,797.00	-
7.4.18	Public Presentation	17,770.00	100.0	17,770.00	17,770.00	-
7.4.19	SWP3 NOI	655.00	23.0	150.65	150.65	-
7.4.20.1	Construction Admn.*	9,999.14	100.0	9,999.14	9,999.14	-
7.4.20.2	Constr. Obs. Labor **	-	0.0	-	-	-
7.4.20.3	Constr. Obs. Testing **	-	0.0	-	-	-
DNR-050056	Grand Lake St. Marys	124,285.33	75.7	93,672.52	56,348.24	37,324.28
7.4.21	Progress Rpts /Coord.	24,500.00	100.0	24,500.00	24,500.00	-
SA #10	Allowance **	22,218.53	100.0	22,218.53	22,218.53	-
Subtotal		\$ 363,000.00		\$ 326,728.04	\$ 289,403.76	\$ 37,324.28
Project Totals		\$ 893,549.00		\$ 851,571.86	\$ 814,247.58	\$ 37,324.28

* \$9,999.14 was used to cover December 2008 public presentation costs.

** Allowance, Construction Observation Labor and Testing budget was used for work associated with the Grand Lake St. Marys Spillway H&H Study.

ODNR - Division of Engineering
March 4, 2010
Page 2

Total Invoiced to Date	\$ 851,571.86
Less Previously Invoiced	814,247.58
Total Balance Due	\$ 37,324.28

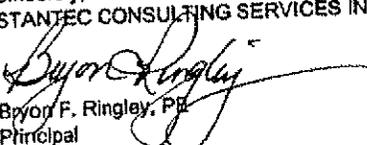
Total Project Progress: \$ 851,571.86 /\$893,549= 95.30%

Project Budget Summary:		
Total Contract Value		\$ 893,549.00
Total Billing to Date		851,571.86
Contract Amount Remaining after 95.30% Completion		<u>\$ 41,977.14</u>

Fees for services rendered shall be due and payable within thirty (30) days of the date of the invoice. **Invoice due date is on or before April 4, 2010.** A service charge will be added to delinquent fees at the rate of one percent per month (12% per annum) from the due date.

Thank you for the opportunity to assist ODNR. If you have any questions, or need additional information, please contact our office.

Sincerely,
STANTEC CONSULTING SERVICES INC.


Byron F. Ringley, PE
Principal

/jfk

Invoice for Professional Services Rendered
 Grand Lake St. Marys Spillway H&H Study
 December 19, 2009 through February 26, 2010
 DNR-050056

Itemized Charges

Grand Lake St. Marys Primary Spillway H&H Study

Employee	Task Description	Hours	Rate	Amount
Tadd Henson, PE, CFM	H&H; report; mtgs	135.50	\$ 148.00	\$ 20,054.00
Bryon Ringley, PE	PM; H&H; report; mtgs	32.00	\$ 155.00	4,960.00
Anthony Cuevas	Mapping	4.50	\$ 64.00	288.00
Nick Soltes	Mapping	61.00	\$ 77.00	4,697.00
Anil Tangirala, PE	Hydraulic Model	7.50	\$ 100.00	750.00
Travis White, EI	Hydraulic Model	14.00	\$ 100.00	1,400.00
Mary Murphy	Report	1.00	\$ 71.00	71.00
Kim Yoder	Report	2.00	\$ 77.00	154.00
Julle Klusty	Report	0.75	\$ 71.00	53.25
Michelle Kearns	Report	1.00	\$ 100.00	100.00
Melissa Williams, PE	Hydrologic Model	17.30	\$ 100.00	1,730.00
		<u>276.55</u>		\$ 34,257.25
Expenses				\$ 8.03
Direct Vehicle Expense (mileage)	Meeting with D. Mohr at ODNR			59.00
Direct Meals - B. Ringley	Working lunch w/ Stantec, Hydrosphere, ODNR			
				\$ 67.03
Subconsultants				\$ 3,000.00
OneRain Incorporated	Invoice # 2791			
	Subtotal			<u>\$ 37,324.28</u>

OneRain Incorporated

OneRain Incorporated
1531 Skyway Drive, Suite D
Longmont, CO 80504

(303)774-2033x120
brian.loflin@onerain.com

JAN 08 2010

Invoice

DATE	INVOICE#
12/18/2009	2791
TERMS	DUE DATE
Net 30	01/17/2010

BILL TO
Attn: Tadd henson, PE, CFM Stantec Consulting Inc. 1500 Lake Shore Drive Columbus, OH 43204

173522007
TASK 700
TRV 12/18/09

AMOUNT DUE	ENCLOSED
\$3,000.00	

Please detach top portion and return with your payment.

				PO/Contract#	State
				Agreement	OH
Date	Service	Activity	Quantity	Rate	Amount
12/18/2009	Historical Radar	QA/QC'd rainfall data for the specific time period of: July 4th 2003 - July 9th 2003	1	3,000.00	3,000.00
				TOTAL	\$3,000.00

RECEIVED
BY A/P
DEC 22 2009
Edmonton - AB

Save money! Pay Net 15 from the date of your invoice and take .5% off your total bill. We accept checks, EFT, MC and Visa payments.

Late payments will be assessed finance charges at an 18% per annum rate at 60 days past due, retroactive to 31 days past due.

17354924

Expense Report US688471

DEC 8 2009

Confirmation

Expense report number US688471 for 211.88 has been submitted to Tin, Mehmet B (Matt) for approval.

Expense Report US688471

- To send required receipts to Accounts Payable, print this page and attach all required receipts.
- Make a photocopy of this page and the receipts for your records.
- Place this page and the original receipts in an interoffice envelope, and send to Accounts Payable.

Your manager (or specified approver) will be notified requesting approval for this expense report. Once approved, notification will be sent to you and Accounts Payable. This expense report will be paid after it has been approved, and Accounts Payable will verify the receipts.

RECEIVED
BY AP

Hint: Use your browser Back button to exit the printable page view of the Confirmation page.

Expense Report Summary

Edmonton - AB

General Information

Name Ringley, Bryon F (81836)
 Expense Dates 12/07/2009 - 12/14/2009
 Cost Center 1735
 Purpose Licensure, expenses, etc.

Approver Tin, Mehmet B (Matt)
 Lines Requiring Receipt 5
 Submit Date 12/15/2009

Expense Details Expense Summary Approval Notes [0]

Cash and Other Expenses

Receipt-Based Expenses		Expense Location		Justification		Merchant Project		Task		Reimbursable Receipt	
Date	Amount	Receipt	Exchange Rate	Expense	Location	Justification	Name	Project Number	Task Number	Amount (USD)	Required Details

Expense Report US688471

Mileage Expenses

Start Date	End Date	Expense Type	Justification	Project Number	Task number	Trip Distance	Mileage Rate	Reimbursable Amount (USD)	Details
12/07/2009	12/07/2009	Direct Personal Vehicle Use	mtg w/ D. Mohr at ODNR	173522007	700	14.6(Miles)	0.55	8.03	

Expense Details Expense Summary Approval Notes [0]

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Stantec

April 20, 2010

Invoice No. 173520005.398680

Mr. Dave Mohr, P.E., Chief Engineer
 Division of Engineering
 Ohio Department of Natural Resources
 2045 Morse Road, Bldg. F-3
 Columbus, Ohio 43229-6693

Re: Invoice for Professional Services
 February 27, 2010 through April 16, 2010
 Improvements to SFLR Channel
 Original DNR-050056
 Supplemental Agreement No. 12 DNR-980011

Remit to: Stantec Consulting Services Inc.
 13980 Collections Center Drive
 Chicago, IL 60693

- INVOICE -

Task	Description	Task Budget	Percent Complete	Accrued Fee	Billed to Date	Amount Due This Invoice
7.1*	Final Analysis	\$ 157,755.00	100.0	\$ 157,755.00	\$ 157,755.00	\$ -
7.2	Preliminary Design	125,363.00	100.0	125,363.00	125,363.00	-
7.3	Final Design	79,772.00	100.0	79,772.00	79,772.00	-
7.4*	Additional Services	121,980.00	100.0	121,980.00	121,980.00	-
7.5	Bidding Services	5,679.00	0.0	-	-	-
SA#9	Allowance	40,000.00	100.0	39,973.82	39,973.82	-
	Subtotal	\$ 530,549.00		\$ 524,843.82	\$ 524,843.82	\$ -

* Task 7.1 includes NRCS work. Task 7.4 includes work through Supp. Agmt. #9 (subtasks 1 through 11).

Supplemental Agreement #11 and #12 Tasks

Task	Description	Task Budget	Percent Complete	Accrued Fee	Billed to Date	Amount Due This Invoice
7.4.12	Additional Meetings	\$ 6,184.00	100.0	\$ 6,184.00	\$ 6,184.00	\$ -
7.4.13	Additional Analyses	36,538.50	100.0	36,538.50	36,538.50	-
7.4.14	Endangered Species	35,097.50	100.0	35,097.50	35,097.50	-
7.4.15	Addl. Easement Acquis.	24,075.00	100.0	24,075.00	24,075.00	-
7.4.16.1	Utility Coordination	7,240.00	100.0	7,240.00	7,240.00	-
7.4.16.2	Columbia Gas Relocate	36,820.00	87.1	32,079.20	31,665.20	414.00
7.4.16.3	Sprint Relocate	3,820.00	100.0	3,820.00	3,820.00	-
7.4.17	ODOT I-70 Permitting	13,797.00	100.0	13,797.00	13,797.00	-
7.4.18	Public Presentation	17,770.00	100.0	17,770.00	17,770.00	-
7.4.19	SWP3 NOI	655.00	23.0	150.65	150.65	-
7.4.20.1	Construction Admin.*	9,999.14	100.0	9,999.14	9,999.14	-
7.4.20.2	Constr. Obs. Labor **	-	0.0	-	-	-
7.4.20.3	Constr. Obs. Testing **	-	0.0	-	-	-
DNR-050056	Grand Lake St. Marys	124,311.51	77.6	96,450.77	93,672.52	2,778.25
7.4.21	Progress Rpts /Coord.	24,500.00	100.0	24,500.00	24,500.00	-
SA #10	Allowance **	22,218.53	100.0	22,218.53	22,218.53	-
	Subtotal	\$ 363,026.18		\$ 329,920.29	\$ 326,728.04	\$ 3,192.25
	Project Totals	\$ 893,575.16		\$ 854,764.11	\$ 851,571.86	\$ 3,192.25

* \$9,999.14 was used to cover December 2006 public presentation costs.

** Allowance, Construction Observation Labor and Testing budget was used for work associated with the Grand Lake St. Marys Spillway H&H Study.

ODNR - Division of Engineering
April 20, 2010
Page 2

Total Invoiced to Date	\$ 854,764.11
Less Previously Invoiced	<u>851,571.86</u>
Total Balance Due	<u>\$ 3,192.25</u>

Total Project Progress: \$ 854,764.11 /\$893,575.18= 95.66%

Project Budget Summary:		
Total Contract Value	\$ 893,549.00	
Total Billing to Date	<u>854,764.11</u>	
Contract Amount Remaining after 95.66% Completion	\$ 38,784.89	

Fees for services rendered shall be due and payable within thirty (30) days of the date of the invoice. Invoice due date is on or before May 20, 2010. A service charge will be added to delinquent fees at the rate of one percent per month (12% per annum) from the due date.

Thank you for the opportunity to assist ODNR. If you have any questions, or need additional information, please contact our office.

Sincerely,
STANTEC CONSULTING SERVICES INC.


Bryon F. Ringley, PE
Principal

ljk

Invoice for Professional Services Rendered
Grand Lake St. Marys Spillway H&H Study
February 27, 2010 through April 16, 2010
DNR-050058

Itemized Charges

Grand Lake St. Marys Primary Spillway H&H Study

Employee	Task Description	Hours	Rate	Amount
Tadd Henson, PE, CFM	H&H; report; mtgs	13.00	\$ 148.00	\$ 1,924.00
Julie Pickering, PE	Hydraulic Model	2.75	\$ 109.00	299.75
Bryon Ringley, PE	PM; H&H; report; mtgs	0.50	\$ 155.00	77.50
Zach Whitten	Hydraulic Model	1.00	\$ 77.00	77.00
Travis White, EI	Hydraulic Model	4.00	\$ 100.00	400.00
		<u>21.25</u>		<u>\$ 2,778.25</u>
Expenses				
N/A				\$ -
				<u>\$ -</u>
Subconsultants				
N/A				\$ -
				<u>\$ -</u>
	Subtotal			<u><u>\$ 2,778.25</u></u>

173520005.398680 I50 Billing Backup

Date	Project	Task	Employee/Supplier	Quantity	Bill Rate	Bill Amount	Commitment	AP Ref.
03/16/2010	173520005	201	BAKER, TIMOTHY A (TIM)	2.00	\$118.00	\$236.00	GET ODNR EASEMENTS RECORDED IN LICKING COUNTY	
03/16/2010	173520005	201	RINGLEY, BRYON F	0.50	\$155.00	\$77.50	DEPALMO EASEMENT RECORDING ISSUE	US731342
03/16/2010	173520005	201	BAKER, TIMOTHY A (TIM)			\$48.50	MILEAGE	
03/17/2010	173520005	201	SEAN CASSADY			\$52.00	EASEMENT RECORDING FEES	PETTYCASH MARRI210
Total SubTask 201				2.50		\$414.00		
Total Top Task 201				2.50		\$414.00		
03/11/2010	173520005	203	HENSON, TADD H	2.00	\$148.00	\$296.00		
03/12/2010	173520005	203	HENSON, TADD H	4.00	\$148.00	\$592.00		
03/15/2010	173520005	203	HENSON, TADD H	2.00	\$148.00	\$296.00		
03/17/2010	173520005	203	HENSON, TADD H	2.00	\$148.00	\$296.00		
03/24/2010	173520005	203	HENSON, TADD H	2.00	\$148.00	\$296.00		
03/31/2010	173520005	203	HENSON, TADD H	1.00	\$148.00	\$148.00		
03/01/2010	173520005	203	PICKERING, JULIE L	2.50	\$109.00	\$272.50		
03/16/2010	173520005	203	PICKERING, JULIE L	0.25	\$109.00	\$27.25		
04/16/2010	173520005	203	RINGLEY, BRYON F	0.50	\$155.00	\$77.50	INVOICING AND PROGRESS REPORT	
03/15/2010	173520005	203	WHITE, TRAVIS E	2.50	\$100.00	\$250.00		
03/18/2010	173520005	203	WHITE, TRAVIS E	1.50	\$100.00	\$150.00	BURN CDS, DELIVER TO ATTORNEY GENERALS OFFICE	
03/16/2010	173520005	203	WHITTEN, ZACHARY N (ZACH)	1.00	\$77.00	\$77.00		
Total SubTask 203				21.25		\$2,778.25		
Total Top Task 203				21.25		\$2,778.25		

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ANTOINE D. WILSON,

Plaintiff,

v.

REGINALD WILKINSON, *et al.*,

Defendants.

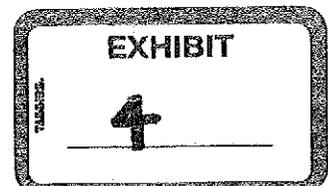
CASE NO. 2:04-cv-00918

MAGISTRATE JUDGE KING

OPINION AND ORDER

Plaintiff, an inmate at the Ross Correctional Institution, brings this action pursuant to 42 U.S.C. §1983 alleging that his rights were violated when defendants compelled him to provide a DNA sample by swabbing the inside of his mouth for collection of buccal cells pursuant to the Ohio DNA Act, O.R.C. §2901.07. This matter is now before the Court on defendants' motion for an order compelling disclosure by and answering of questions by plaintiff's expert, *Defendants' Motion to Compel*, Doc. No. 46, and plaintiff's motion for a protective order limiting the deposition of plaintiff's expert, *Plaintiff's Motion for a Protective Order*, Doc. No. 48. For the reasons that follow, *Defendants' Motion to Compel*, Doc. No. 46, is **GRANTED** and *Plaintiff's Motion for a Protective Order*, Doc. No. 48, is **DENIED**.

At the March 23, 2006, deposition of Dan E. Krane, Ph.D., identified by plaintiff as an expert witness who may testify at trial, *see Plaintiff's Disclosure of Expert Testimony*, Doc. No. 28, counsel for plaintiff objected to inquiry into Dr. Krane's communications with plaintiff's counsel prior to June 2005, *i.e.*, the point at which Dr. Krane was retained as a testifying expert on plaintiff's behalf. *See Deposition of Dan E. Krane, Ph.D.*, March 23, 2006, at 97-99, Doc. No. 50 (filed under



seal)[hereinafter "*Krane Depo.*"].¹ Plaintiff argues that Dr. Krane's communications with counsel prior to June 2005 constitute protected attorney work product within the meaning of Federal Rule of Civil Procedure 26(b)(3),² and that, before conducting the requested discovery, defendants must establish exceptional circumstances requiring the discovery of such information under Federal Rule of Civil Procedure 26(b)(4)(B).³ *Plaintiff's Motion for Protective Order*, at 4. Plaintiff therefore seeks a protective order prohibiting defendants from questioning Dr. Krane regarding any communications with Plaintiff prior to June 2005 absent a showing of exceptional circumstances, and in any event limiting Dr. Krane's deposition to prohibit inquiry into matters related to counsel's

¹The parties conferred with the Court by telephone, and were directed to brief the issue. *Order* (March 23, 2006), Doc. No. 43.

² Federal Rule of Civil Procedure 26(b)(3) provides:

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

³ Federal Rule of Civil Procedure 26(b)(4) provides in relevant part:

Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under subdivision (a)(2)(B), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

litigation strategy or mental impressions as protected work product under Federal Rule of Civil Procedure 26(b)(3). *Plaintiff's Motion for a Protective Order*, Doc. No. 48. In support of his motion, plaintiff's counsel, Thomas H. Fusonie, has submitted an affidavit stating in relevant part:

On May 7, 2005, Dr. Krane's consultation included discussion of other attorneys who understood DNA profiling, and who were involved in similar litigation; litigation strategy; possible expert witnesses; and the protocol and practices of Defendant Jone Monce, Superintendent of the Bureau of Criminal Investigation ("BCI") in preparation for Plaintiff's Motion to Compel Discovery to allow inspection of BCI's London, Ohio, facilities.

On or about June 6, 2005, Plaintiff's counsel concluded it was necessary to obtain an expert witness report from Dr. Krane regarding the impact of including the DNA profile of African Americans into Ohio's DNA database.

Affidavit of Thomas H. Fusonie, attached as exhibit to *Plaintiff's Motion for Protective Order*, Doc. No. 48.

This Court concludes that Dr. Krane's testimony must be available to defendants without the restrictions proposed by plaintiff.

Generally, non-testifying experts are protected from discovery so as to allow a party to feel free to hire and consult with such experts without risking exposing certain information to the opposing party. *See Fed.R.Civ.P. 26(b)(4)(B)*.

Zolensky v. Ametek, Inc., 142 F.3d 438, unpublished, 1998 WL 124047 (6th Cir. March 12, 1998). However, "[a] party may depose any person who had been identified as an expert witness whose opinions may be presented at trial." Federal Rule of Civil Procedure 26(b)(4)(A). Moreover, a testifying expert is required to disclose all information considered by him in forming his opinion:

A *testifying expert* is required to file a report that must contain "a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information *considered* by the

witness in forming the opinions; [and] any exhibits to be used as a summary of or support for the opinions....” Fed.R.Civ.P. 26(a)(2)(B) (emphasis supplied). Under Rule 26(a)(2)(B), the requirement of disclosure applies not only to information actually relied upon by a testifying expert, but also to information that was not relied upon, but considered by the expert. *See Constr. Indus. Servs. Corp. v. Hanover Ins. Co.*, 206 F.R.D. 43, 50 (E.D.N.Y.2001)... The advisory committee notes to the rule explain the lack of a reliance requirement:

The [expert] report is to disclose the data and other information considered by the expert and any exhibits or charts that summarize or support the expert's opinions. Given this obligation of disclosure, litigants should no longer be able to argue that material furnished to their experts to be used in forming their opinions- *whether or not ultimately relied upon by the expert*-are privileged or otherwise protected from disclosure when such persons are testifying or being deposed.

Fed.R.Civ.P. 26(a)(2) advisory committee's note (emphasis supplied)....

Schwab v. Philip Morris USA, Inc., 2006 WL 721368 (E.D.N.Y. March 20, 2006)[emphasis in the original]. Some courts have concluded that it may be possible to discovery of even a testifying expert where that expert's role as a consultant clearly differs from his role as a witness:

A single expert can be both a testifying expert, subject to the disclosure requirements of Rule 26(a)(2)(B) regarding some issues, and a consulting expert, not subject to discovery regarding other issues. *See B.C.F. Oil Ref., Inc. v. Consol. Edison Co.*, 171 F.R.D. 57, 61 (S.D.N.Y.1997) (“It is conceivable that an expert could be retained to testify and in addition to advise counsel outside of the subject of his testimony. Under such a circumstance it might be possible to claim a work product privilege if this delineation were clearly made.” (quoting *Beverage Market v. Ogilvy & Mather*, 563 F.Supp. 1013, 1014 (S.D.N.Y.1983))).

Id. However, that is not the case here. Dr. Krane testified at his deposition to his history of service to this litigation. According to Dr. Krane, he was contacted in the summer of 2004 and asked if he

would serve as a consultant on plaintiff's claim. *Deposition of Dan E. Krane, Ph.D.*, March 23, 2006, at 86, Doc. No. 50 (filed under seal). After about a year, he was asked if he would be willing to serve as an expert witness, and was advised that he would be required to prepare a report. *Id.*, at 87. Two to three months later, he produced the August 2005 expert report that has now been produced to defendants. *Id.* See also *Exhibit A*, attached to *Plaintiff's Disclosure of Expert Testimony*, Doc. No. 28. As a consultant, Dr. Krane discussed general issues about database searches and testimony and reports previously provided by him. He also discussed research conducted by him that was subsequently published in the *Journal of Forensic Sciences* and the *Journal of Jurimetrics*. *Krane Depo.*, at 89-93. Dr. Krane advised plaintiff's counsel of other attorneys who might be helpful to plaintiff's case "because I was either impressed with those attorneys' knowledge and understanding of DNA profiling or knew they were also involved in litigation involving databases...." *Id.*, at 90.

In light of Dr. Krane's testimony, it is impossible to clearly delineate his service as a consultant from his service as an expert witness.

Though it is theoretically possible to distinguish between an expert testifying and consulting, in practice, "the delineation between those roles ... become[s] blurred" when an expert "review[s] documents in his role as an expert that he previously had reviewed in his role as consultant [.]" *B.C.F. Oil*, 171 F.R.D. at 61.

Schwab v. Philip Morris USA, Inc., *supra*. Additionally, "any ambiguity as to the role played by the expert when reviewing or generating documents should be resolved in favor of the party seeking discovery." *B.C.F. Oil Refining, Inc. v. Consolidated Edison Co. Of New York, Inc.*, *supra*, 171 F.R.D. at 62. Contrary to plaintiff's characterization of Dr. Krane's roles, this expert appears to have consulted with plaintiff's counsel on the very same issues for which he has now been retained

as an expert witness. See *Plaintiff's Disclosure of Expert Testimony*, Doc. No. 28. Under these circumstances, defendants are entitled to depose Dr. Krane regarding the period prior to June 2005 when he was retained as a testifying expert.

Moreover, Dr. Krane's testimony will not be limited to exclude counsel's mental impressions and trial strategy, if those impressions and that strategy were considered by Dr. Krane in forming his expert opinions. Although authority on this issue is not unsettled, most courts faced with the issue have opted in favor of greater discovery of experts. For example, in *TV-3 v. Royal Ins. Co. Of America*, 193 F.R.D. 490, 491-92 (S.D. Miss. 2000), the court concluded that "any material generated by the testifying expert in connection with the subject litigation" and that all "communications by the expert to the attorneys" was discoverable:

At issue is whether Rule 26(a)(2) requires that a party produce communications of any kind by and between its attorneys and its testifying experts, regardless of whether a claim of attorney work product would ordinarily protect the communications from disclosure. Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure was amended in 1993 to require that reports be prepared for each testifying expert containing, among other things, "the data or other information *considered* by the witness in forming the opinions." (Emphasis added.) The Advisory Committee Notes to the 1993 Amendment, explain this requirement as follows:

The [expert] report is to disclose the data and other information considered by the expert and any other exhibits or charts that summarize or support the expert's opinions. **Given this obligation of disclosure, litigants should no longer be able to argue that materials furnished to their experts to be used in forming their opinions--whether or not ultimately relied upon by the expert--are privileged or otherwise protected from disclosure when such persons are testifying or being deposed.**

Advisory Committee Notes Fed.R.Civ.P. 26(A)(2), P. 149 (emphasis added).

The undersigned recognizes that the authorities differ as to this issue....

...[see] *Magee v. Paul Revere Life Insurance Co.*, 172 F.R.D. 627 (E.D.N.Y.1997); *Haworth, Inc. v. Herman Miller, Inc.*, 162 F.R.D. 289 (W.D.Mich.1995); *All West Pet Supply Co. v. Hill's Pet Products Division*, 152 F.R.D. 634 (D.Kan.1993). The Defendants cite these cases, as well as *Nexus Prods. Co. v. CVS New York, Inc.*, 188 F.R.D. 7, 9 (D.Mass.1999), and cases which predate the 1993 amendments....

We.. . instead adopt the opposite approach... that is that Rule 26, requiring disclosure of material "considered," allows discovery of all communications between counsel and a retained testifying expert, **even if those communications contain the attorneys' mental impressions or trial strategy or is otherwise protected by the work product privilege.** Authorities supporting this position... include *Karn v. Rand*, 168 F.R.D. 633, 635 (N.D.Ind.1996) (the expert disclosure requirements of 26(a)(2) "trump" any assertion of work product or privilege"); *B.C.F. Oil Refining v. Consol. Edison Co. of N.Y.*, 171 F.R.D. 57 (S.D.N.Y.1997) (holding that all material considered by a testifying expert, including communications from counsel containing attorney work product, must be disclosed); *Lamonds v. General Motors, Corp.*, 180 F.R.D. 302 (W.D.Va.1998) (same); *Furniture World, Inc. v. D.A.V. Thrift Stores*, 168 F.R.D. 61 (D.N.M.1996) (same); *Culbertson v. Shelter Mut. Ins. Co.*, No. 97-1609, 1999 WL 109566 (E.D.La. March 2, 1999) (same); *Johnson v. Gmeinder*, 191 F.R.D. 638 (D.Kan.2000) (same); *Barna v. United States*, No. 95 C 6552, 1997 WL 417847 (N.D.Ill. July 28, 1997) (same); *Musselman v. Phillips*, 176 F.R.D. 194, 202 (D.Md.1997) ("[W]hen an attorney furnishes work product--either factual or containing the attorney's impressions--to [a testifying expert witness], an opposing party is entitle to discovery of such a communication"); *Baxter Diagnostics, Inc. v. AVL Scientific Corp.*, No. CV91-4178-RG, 1993 WL 360674 (C.D.Cal., August 6, 1993) (citing the amendments to Rule 26(a)(2) as requiring "automatic disclosure of all information considered by the trial experts" in forming their opinions).

Id. See also *Western Resources, Inc., v. Union Pacific Railroad*, unpublished, 181494 (D.Kansas, January 31, 2002):

[A]ny type of work product or other privileged information lose their privileged status when disclosed to, and considered by, a testifying expert. *Johnson v. Gmeinder*, 191 F.R.D. 638, 645-47 (D.Kan. 2000) (holding investigative report and other materials prepared by a non-testifying expert in connection with investigation of an automobile accident loses privileged status when disclosed to testifying expert) (citing Fed.R.Civ.P. 26(a)(2)(B) and advisory committee notes appended thereto; *Lamonds v. General Motors Corp.*, 180 F.R.D. 302, 305 (W.D.Va. 1998) (applying rule to opinion work product); *Musselman v. Phillips*, 176 F.R.D. 194, 202 (D.Md. 1997) (same); *B.C.F. Oil Refining, Inc. v. Consolidated Edison Co.*, 171 F.R.D. 57, 66 (S.D.N.Y. 1997) (same); *Karn v. Ingersoll-Rand Co.*, 168 F.R.D. 633, 639-40 (N.D.Ind.1996) (same); *Barna v. United States*, No. 95 C 6552, 1997 WL 417847 (N.D.Ill. July 28, 1997) (same); 8 Charles A. Wright, Arthur R. Miller, & Richard L. Marcus, *Federal Practice and Procedure* § 2016.2 at 250-52 (1994) (“[W]ith respect to experts who testify at trial, the disclosure requirements of Rule 26(a)(2), adopted in 1993, were intended to pretermitt further discussion and mandate disclosure despite privilege”); Lee Mickus, *Discovery of Work Product Disclosed to a Testifying Expert Under the 1993 Amendments to the Federal Rules of Civil Procedure*, 27 *Creighton L.Rev.* 773, 808 (1994)).FN11

FN11. See, also, *In re Air Crash at Dubrovnik*, No. MDL 1180, 3:98:CV-2464 (AVC), 2001 WL 777433, at *3 (D. Conn. June 4, 2001); *QST Energy, Inc. v. Mervyn's and Target Corp.*, No. C-00-1699MJJ (EDL), 2001 WL 777489, at *3-5 (N.D.Cal. May 14, 2001) (in naming former consultant as witness, party waives attorney client privilege in regard to all subjects on which expert likely to offer testimony); *Vaughan Furniture Co. v. Featureline Mfg., Inc.*, 156 F.R.D. 123, 128 (M.D.N.C.1994) (waiver of privilege resulting from designation of attorney as expert witness applies to those documents expert reviewed at any time and that would be relevant to formulation of expert opinion) (emphasis added); *Chemical Bank v. Affiliated FM Ins. Co.*, No. 87-Civ-0150 (SHS), 1996 WL 445362 (S.D.N.Y. Aug. 7, 1996); *Douglas v. Univ. Hosp.*, 150 F.R.D. 165, 168 (E.D.Mo.1993) (once non-testifying expert is designated as testifying expert, non-testifying expert subject to cross-examination); *County of Suffolk v. Long Island Lighting Co.*, 122 F.R.D. 120, 123

(E.D.N.Y.1988) (Party cannot proffer consultant as disinterested expert and at same time shield his major role in formulation of case.).

Id.

In view of the Advisory Committee Notes to the 1993 Amendments to Federal Rule of Civil Procedure 26, *see supra*, this Court agrees with those courts that have concluded that neither the “exceptional circumstances” of Federal Rule of Civil Procedure 26(b)(4), nor the work product doctrine of Federal Rule of Civil Procedure 26(b)(3) apply to a consulting expert who has been designated as an expert witness, particularly where, as here, his role as a consultant is closely intertwined with his role and opinions as a testifying expert

For all the foregoing reasons, *Defendants’ Motion to Compel*, Doc. No. 46, is **GRANTED**.
Plaintiff’s Motion for a Protective Order, Doc. No. 48, is **DENIED**.

IT IS SO ORDERED.

s/ Norah McCann King

Norah McCann King
United States Magistrate Judge

May 19, 2006