

Pursuant to S. Ct. Prac. R. X, Section 7, Relators, by and through their counsel, hereby submit Volume Seven of Relators' Presentation of Evidence, which consists of the following documents under the corresponding sequential tabs:

<u>Tab</u>	<u>Description</u>
116.	<u>ODNR v. Richard L. Baucher, et al.</u> , Case No. 08-CIV-250, Court of Common Pleas, Mercer County, Ohio, Petition To Appropriate Easement And To Fix Compensation
117.	<u>ODNR v. Terry L. Linn, et al.</u> , Case No. 08-CIV-251, Court of Common Pleas, Mercer County, Ohio, Petition To Appropriate Easement And To Fix Compensation
118.	<u>ODNR v. The Minch Family Trust, et al.</u> , Case No. 08-CIV-252, Court of Common Pleas, Mercer County, Ohio, Petition To Appropriate Easement And To Fix Compensation
119.	<u>ODNR v. Stephen J. Zumberge, Trustee, Stephen J. Zumberge Trust, et al.</u> , Case No. 08-CIV-254, Court of Common Pleas, Mercer County, Ohio, Petition To Appropriate Easement And To Fix Compensation
120.	<u>ODNR v. The Post Family Trust, Leo W. Post And Magdalene T. Post, Trustees, Trust Dated May 23, 1995</u> , Case No. 08-CIV-253, Court of Common Pleas, Mercer County, Ohio, Petition To Appropriate Easement And To Fix Compensation
121.	<u>ODNR v. Richard L. Baucher, et al.</u> , Case No. 08-CIV-251, Court of Common Pleas, Mercer County, Ohio, Deposition Transcript of James A. Garrett, ARA, ASA, November 9, 2009

Dated: May 28, 2010

Respectfully submitted,



Bruce L. Ingram (0018008) (*Counsel of Record*)

Joseph R. Miller (0068463)

Thomas H. Fusonie (0074201)

Kristi Kress Wilhelmy (0078090)

Martha C. Brewer (0083788)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street, P.O. Box 1008

Columbus, OH 43216-1008

Tel: (614) 464-6480 Fax: (614) 719-4775

blingram@vorys.com

jrmiller@vorys.com

thfusonie@vorys.com

kkwilhelmy@vorys.com

mcbrewer@vorys.com

Attorneys for Relators

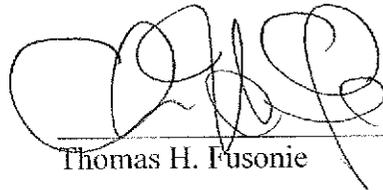
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon the following, via U.S. Mail postage prepaid, this 28th day of May, 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. Steitzer
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road # D-2
Columbus, Ohio 43229

Attorneys for Respondents



Thomas H. Fusonie

116

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

STATE OF OHIO,
DEPARTMENT OF NATURAL RESOURCES
2045 Morse Road
Building D-3
Columbus, Ohio 43229,

Plaintiff,

v.

RICHARD L. BAUCHER
3417 St. Route 29W
Celina, Ohio 45822

and

PATRICIA BAUCHER
3417 St. Route 29W
Celina, Ohio 45822,

and

MARK R. GEORGE
Mercer County Auditor
101 North Main Street, Room 105
Celina, Ohio 45822,

and

DORIS RUTSCHILLING
Mercer County Treasurer
101 North Main Street, Room 201
Celina, Ohio 45822,

and

CITIZENS NATIONAL BANK
OF BLUFFTON
709 North Main Street
Celina, Ohio 45822

Defendants.

Case No: 08-CIV-250

Judge:

PETITION TO
APPROPRIATE
EASEMENT AND TO
FIX COMPENSATION

Sup. R. 37 Statistical Report
Classification

A
H
cc

FILED
9:48
DEC 10 2008

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

XC: COURT ✓

In previous litigation, this Court ruled that certain property owners be compensated for the loss of some use of their property due to flooding caused by the actions of the State of Ohio to repair and improve the western spillway at Grand Lake St. Marys. Therefore, the State of Ohio, Department of Natural Resources, by and through its counsel, hereby petitions for appropriation of a flowage easement and alleges as follows:

1. The State of Ohio, Department of Natural Resources (hereinafter "the Department") is a public agency as defined in R. C. 163.01.
2. This petition to appropriate a permanent flowage easement is brought by the Department pursuant to its authority under R. C. 1501.01 and under the provisions of R. C. 163.01 et seq.
3. On December 14, 2005, this Court ordered the Department to institute appropriation proceedings against certain landowners, including Richard L. Baucher (hereinafter, "Baucher"), a defendant herein, for loss of use of certain property, resulting from flooding caused by changes to the Department's western spillway for Grand Lake St. Marys (*State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*).
4. On July 12, 2007, this Court, in a post-judgment entry filed in *State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*, established, contrary to the Department's position, that the date for property valuation purposes to be used in this appropriation case was December 14, 2005. While December 14, 2005 is to be used as the date of the taking, the Department expressly reserves and does not waive any objection it has to the use of this date in this case.

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DEC 10 2008

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

5. On December 14, 2005, Patricia Baucher (hereinafter, "Baucher"), a defendant herein, was also an owner of the property subject to this petition to appropriate a permanent flowage easement.

6. Baucher's loss of use of their property is not a permanent, complete conversion of private property for public use, which would require an appropriation of a fee simple interest in Baucher's property.

7. Any flooding of the Baucher property that does occur creates only a temporary loss of Baucher's use of the property, which would justify an appropriation of a flowage easement interest in their property.

8. The Department has been unable to agree on the terms for a conveyance of a permanent flowage easement with Baucher.

9. The properties which are the subject of this petition to appropriate a permanent flowage easement are located in Mercer County, and are identified by permanent parcel numbers 26-040800.0000 and 26-041100.0000 and by a map depicting the properties that is set forth in Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.

10. The purpose of this appropriation of the permanent flowage easement is the acquisition of the easement, free and clear of all liens, claims and encumbrances so as to acquire the easement in compliance with the December 14, 2005 Order of this Court in *State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*.

11. On December 14, 2005, the subject flowage easement had a fair market value of Seventy-two Thousand, Thirty-four Dollars and No Cents (\$72,034.00), as determined by appraisal.

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DEC 10 2008
James J. Highley
MERCER CO. CLERK OF COURTS
CELINA, OHIO

12. In the event that the appraised fair market value set forth in Paragraph 11 above is disputed by Baucher, the Department reserves the right to present evidence that factors other than changes to the Department's western spillway for Grand Lake St. Marys should be considered in determining the flowage easement acreage and the portion of appraised amount or other amount to be paid by the Department as just compensation.

13. Defendants are those persons and entities who have been identified by a preliminary title search or otherwise, as being the owners and/or persons and entities who have or may claim an interest in the property, upon which the permanent flowage easement will be acquired.

WHEREFORE, the Department prays the Court will:

A. Enter a judgment ordering the conveyance of a permanent flowage easement in the subject property to the State of Ohio, Department of Natural Resources.

B. Upon the failure of the owner to file an Answer, pursuant to R. C. 163.09, objecting to the valuation set forth in Paragraph 11 herein, declare the value of the permanent flowage easement appropriated to be Seventy-two Thousand, Thirty-four Dollars and No Cents (\$72,034.00), as determined by appraisal.

C. In the event that an Answer is filed, cause a jury to be impaneled to make inquiry into and assess compensation to be paid for the appropriation of the permanent flowage easement.

D. Grant the Department all such other relief to which the Department might be entitled.

FILED

DEC 10 2008

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

Sheryl Creed Maxfield
First Assistant Attorney General

By: *J. P. Bartley*
John P. Bartley (0039196)
Raymond J. Studer (0022913)
Rachel H. Stelzer (0083124)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6870 (phone)
(614) 268-8871 (fax)

CERTIFICATE OF COPY

THE STATE OF OHIO, MERCER, ss

I, James J. Highley, Clerk of the Court of Common Pleas and Court of Appeals, within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original Petition to

appropriate enforcement and
affidavit compensation

now on file in said Clerk's Office in the court,

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Celina, Ohio, this 2nd day of October A.D. 2009

Darlene Scott James J. Highley, Clerk
Deputy

SEAL

FILED

DEC 10 2008

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

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

State of Ohio,
Department of Natural Resources,

Plaintiff,

v.

Richard L. Baucher, et al.,

Defendants.

Case No: 08-CIV-250

Judge:

NOTICE OF DEPOSIT

Please take notice that, pursuant to R. C. 163.06, Plaintiff State of Ohio, Department of Natural Resources has deposited with the Clerk of Courts the sum of Eighty-two Thousand, Four Hundred, Ninety-nine Dollars and No Cents (\$82,499.00). This sum represents the value of the easement being appropriated, \$72,034.00, as of December 14, 2005 and the statutory interest that accrued on that amount, \$10,465.00, from December 14, 2005 to November 10, 2008.

FILED
9:48
DEC 10 2008

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

Respectfully submitted,

Sheryl Creed Maxfield
First Assistant Attorney General

By:

J. P. Bartley
John P. Bartley (0039190)
Raymond J. Studer (0022913)
Rachel H. Stelzer (0083124)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6870 (phone)
(614) 268-8871 (fax)

Certificate of Service

I hereby certify that a copy of the foregoing Notice of Deposit was served by ordinary U.S. mail upon the following this 10th day of December, 2008:

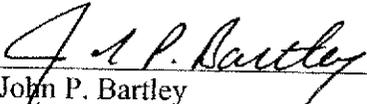
Bruce L. Ingram, Esq.
Joseph R. Miller, Esq.
Thomas H. Fusonie
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

Counsel for Defendants Richard L. Baucher
and Patricia Baucher

Mark R. George
Mercer County Auditor
101 North Main Street, Room 105
Celina, Ohio 45822,

Doris Rutschilling
Mercer County Treasurer
101 North Main Street, Room 201
Celina, Ohio 45822,

Citizens National Bank of Bluffton
709 North Main Street
Celina, Ohio 45822



John P. Bartley
Assistant Attorney General

FILED
DEC 10 2008
James J. Higley
MERCER CO. CLERK OF COURTS
CELINA, OHIO

117

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

STATE OF OHIO,
DEPARTMENT OF NATURAL RESOURCES
2045 Morse Road
Building D-3
Columbus, Ohio 43229,

Plaintiff,

v.

Terry L. Linn
7018 Indiana Ohio State Line Road
Celina, Ohio 45822

and

Theresa R. Linn
7018 Indiana Ohio State Line Road
Celina, Ohio 45822,

and

MARK R. GEORGE
Mercer County Auditor
101 North Main Street, Room 105
Celina, Ohio 45822,

and

DORIS RUTSCHILLING
Mercer County Treasurer
101 North Main Street, Room 201
Celina, Ohio 45822,

Defendants.

Case No: 08-CIV-251

Judge:

PETITION TO
APPROPRIATE
EASEMENT AND TO
FIX COMPENSATION

Sup. R. 37 Statistical Report
Classification

A
H₂

FILED

9:50
DEC 10 2008

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

In previous litigation, this Court ruled that certain property owners be compensated for the loss of some use of their property due to flooding caused by the actions of the State of Ohio to repair and improve the western spillway at Grand Lake St. Marys. Therefore, the State of Ohio, Department of Natural Resources, by and through its counsel, hereby petitions for appropriation of a flowage easement and alleges as follows:

1. The State of Ohio, Department of Natural Resources (hereinafter “the Department”) is a public agency as defined in R. C. 163.01.

2. This petition to appropriate a permanent flowage easement is brought by the Department pursuant to its authority under R. C. 1501.01 and under the provisions of R. C. 163.01 et seq.

3. On December 14, 2005, this Court ordered the Department to institute appropriation proceedings against certain landowners, including Terry L. Linn (hereinafter, “Linn”), defendant herein, for loss of use of his property, resulting from flooding caused by changes to the Department’s western spillway for Grand Lake St. Marys (*State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*).

4. On July 12, 2007, this Court, in a post-judgment entry filed in *State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*, established, contrary to the Department’s position, that the date for property valuation purposes to be used in this appropriation case was December 14, 2005. While December 14, 2005 is to be used as the date of the taking, the Department expressly reserves and does not waive any objection it has to the use of this date in this case.

FILED

DEC 10 2008

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

5. On December 14, 2005, Theresa R. Linn (hereinafter, "Linn"), a defendant herein, was also an owner of the property subject to this petition to appropriate a permanent flowage easement.

6. Linn's loss of use of their property is not a permanent, complete conversion of private property for public use, which would require an appropriation of a fee simple interest in Linn's property.

7. Any flooding of the Linn property that does occur creates a temporary loss of Linn's use of the property, which would justify an appropriation of a flowage easement interest in their property.

8. The Department has been unable to agree on the terms of a conveyance of a permanent flowage easement with Linn.

9. The properties which are the subject of this petition to appropriate a permanent flowage easement are located in Mercer County and are identified by permanent parcel numbers 28-010600.0000, 29-004300.0000, 28-010800.0000, 28-013100.0000 and 28-11900.0000 and by a map depicting the properties that is set forth in Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.

10. The purpose of this appropriation of the permanent flowage easement is the acquisition of the easement, free and clear of all liens, claims and encumbrances so as to acquire the easement in compliance with the December 14, 2005 Order of this Court in *State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*.

11. On December 14, 2005, the subject flowage easement had a fair market value of One Hundred Ninety-two Thousand Dollars and No Cents (\$192,000.00), as determined by appraisal.

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DEC 10 2008

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

12. In the event that the appraised fair market value set forth in Paragraph 11 above is disputed by Linn, the Department reserves the right to present evidence that factors other than changes to the Department's western spillway for Grand Lake St. Marys should be considered in determining the flowage easement acreage and the portion of appraised amount or other amount to be paid by the Department as just compensation.

13. Defendants are those persons and entities who have been identified by a preliminary title search or otherwise, as being the owners and/or persons and entities who have or may claim an interest in the property, upon which the permanent flowage easement will be acquired.

WHEREFORE, the Department prays the Court will:

A. Enter a judgment ordering the conveyance of a permanent flowage easement in the subject property to the State of Ohio, Department of Natural Resources.

B. Upon the failure of the owner to file an Answer, pursuant to R. C. 163.09, objecting to the valuation set forth in Paragraph 11, declare the value of the permanent flowage easement appropriated herein to be One Hundred Ninety-two Thousand Dollars and No Cents (\$192,000.00), as determined by appraisal.

C. In the event that an Answer is filed, cause a jury to be impaneled to make inquiry into and assess compensation to be paid for the appropriation of the permanent flowage easement.

D. Grant the Department all such other relief to which the Department might be entitled.

FILED

DEC 10 2008

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

Sheryl Creed Maxfield
First Assistant Attorney General

By: John P. Bartley
John P. Bartley (0039190)
Raymond J. Studer (0022913)
Rachel H. Stelzer (0083124)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6870 (phone)
(614) 268-8871 (fax)

FILED

DEC 10 2008

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

CERTIFICATE OF COPY

THE STATE OF OHIO, MERCER, ss

I, James J. Highley, Clerk of the Court of Common Pleas and Court of Appeals, within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original petition to

appoint escheat and to
file certificate

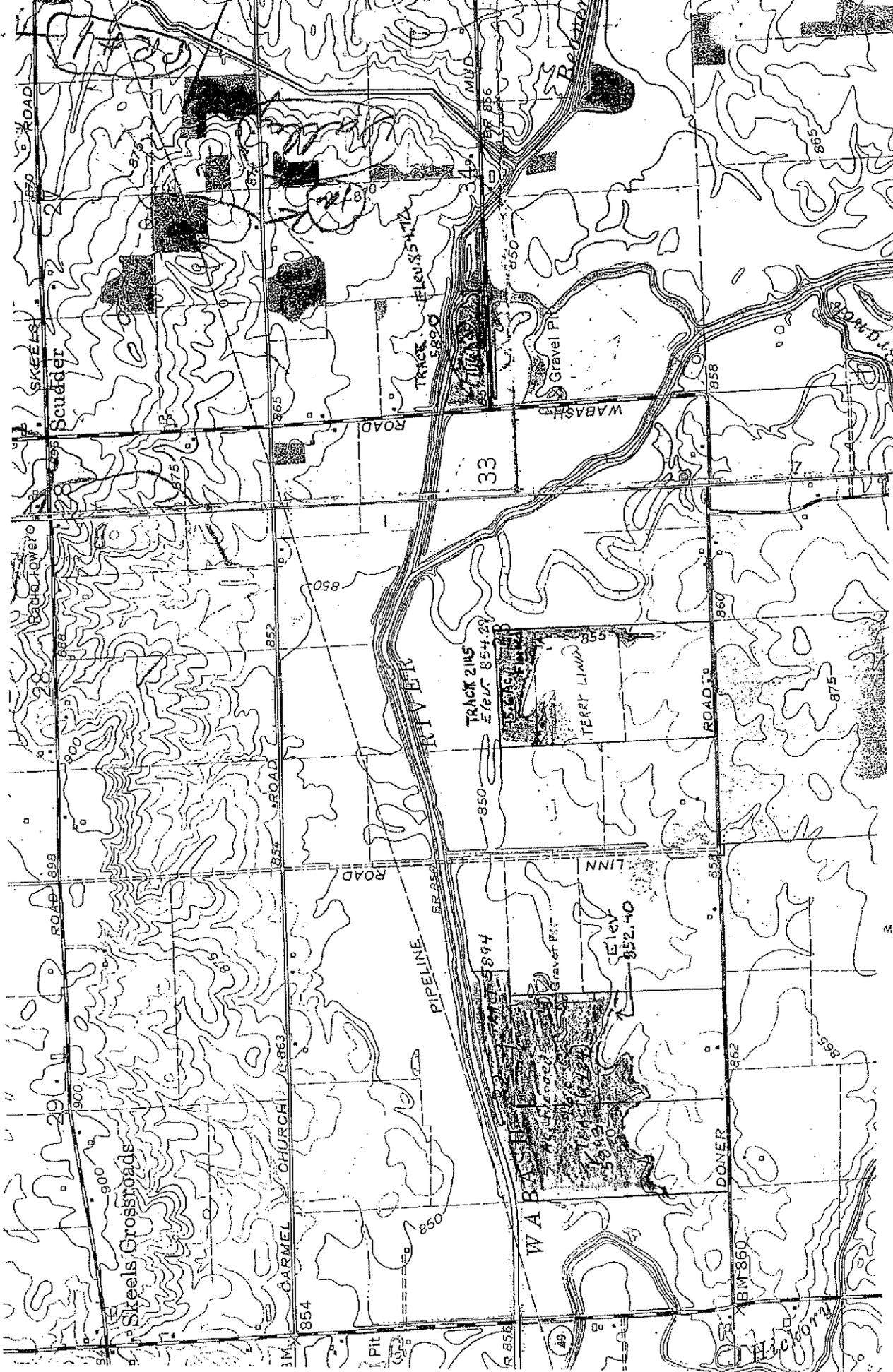
now on file in said Clerk's Office in the court,

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Celina, Ohio, this

2nd day of October A.D. 2009

Darlene Scott James J. Highley, Clerk
Deputy

SEAL



FILED

DEC 10 2008

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

EXHIBIT A
 Terry L. & Theresa R. Linn
 Acreage flooding calculations
 prepared by Mercer County
 Soil & Water Conservation District

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

State of Ohio,
Department of Natural Resources,

Plaintiff,

v.

Terry L. Linn, et al.,

Defendants.

Case No: 08-CIV-251

Judge:

NOTICE OF DEPOSIT

Please take notice that, pursuant to R. C. 163.06, Plaintiff State of Ohio, Department of Natural Resources has deposited with the Clerk of Courts the sum of Two Hundred Nineteen Thousand, Eight Hundred, Ninety-two Dollars and No Cents (\$219,892.00). This sum represents the value of the easement being appropriated, \$192,000.00, as of December 14, 2005 and the statutory interest that accrued on that amount, \$27,892.00, from December 14, 2005 to November 10, 2008.

FILED

DEC 10 2008

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

Respectfully submitted,

Sheryl Creed Maxfield
First Assistant Attorney General

By:

J. P. Bartley

John P. Bartley (0039190)
Raymond J. Studer (0022913)
Rachel H. Stelzer (0083124)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6870 (phone)
(614) 268-8871 (fax)

Certificate of Service

I hereby certify that a copy of the foregoing Notice of Deposit was served by ordinary U.S. mail upon the following this 10th day of December, 2008:

Bruce L. Ingram, Esq.
Joseph R. Miller, Esq.
Thomas H. Fusonie
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

Counsel for Defendants Terry L. Linn
and Theresa R. Linn

Mark R. George
Mercer County Auditor
101 North Main Street, Room 105
Celina, Ohio 45822,

Doris Rutschilling
Mercer County Treasurer
101 North Main Street, Room 201
Celina, Ohio 45822,

FILED

DEC 10 2008

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

John P. Bartley

John P. Bartley
Assistant Attorney General

118

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

STATE OF OHIO,
DEPARTMENT OF NATURAL RESOURCES
2045 Morse Road
Building D-3
Columbus, Ohio 43229,

Plaintiff,

v.

THE MINCH FAMILY TRUST,
EMILY V. MINCH, TRUSTEE,
TRUST DATED FEBRUARY 20, 1995
7135 State Route 49
Celina, Ohio 45822,

and

ESTATE OF JACK MINCH, DECEASED
7135 State Route 49
Celina, Ohio 45822,

and

MARK R. GEORGE
Mercer County Auditor
101 North Main Street, Room 105
Celina, Ohio 45822,

and

DORIS RUTSCHILLING
Mercer County Treasurer
101 North Main Street, Room 201
Celina, Ohio 45822,

Defendants.

Case No: 08-CIV-252

Judge:

PETITION TO
APPROPRIATE
EASEMENT AND TO
FIX COMPENSATION

Sup. R. 37 Statistical Report
Classification _____

A
cc

FILED

4:52

DEC 10 2008

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

XC: COURT

In previous litigation, this Court ruled that certain property owners be compensated for the loss of some use of their property due to flooding caused by the actions of the State of Ohio to repair and improve the western spillway at Grand Lake St. Marys. The State of Ohio, Department of Natural Resources, by and through its counsel, hereby petitions for appropriation of a permanent flowage easement and alleges as follows:

1. The State of Ohio, Department of Natural Resources (hereinafter "the Department") is a public agency as defined in R. C. 163.01.

2. This petition to appropriate a permanent flowage easement is brought by the Department pursuant to its authority under R. C. 1501.01 and under the provisions of R. C. 163.01 et seq.

3. On December 14, 2005, this Court ordered the Department to institute appropriation proceedings against certain parties, including the Estate of Jack Minch, deceased, a defendant herein, for loss of use of certain property, resulting from flooding caused by changes to the Department's western spillway for Grand Lake St. Marys (*State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*).

4. On July 12, 2007, this Court, in a post-judgment entry filed in *State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*, established, contrary to the Department's position, that the date for property valuation purposes to be used in this appropriation case was December 14, 2005. While December 14, 2005 is to be used as the date of the taking, the Department expressly reserves and does not waive any objection it has to the use of this date in this case.

5. On December 14, 2005, the Estate of Jack Minch, deceased, was not the owner of the property subject to this petition to appropriate a permanent flowage easement.

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DEC 10 2008

James J. Highley
MERGER CO. CLERK OF COURTS
GELINA, OHIO

6. On December 14, 2005, the Minch Family Trust, Emily V. Minch, Trustee (hereinafter, "the Minch Trust"), a defendant herein, was the owner of the property subject to this petition to appropriate a permanent flowage easement.

7. The Minch Trust's loss of use of its property is not a permanent, complete conversion of private property for public use, which would require an appropriation of a fee simple interest in the Minch Trust's property.

8. Any flooding of the Minch Trust property that does occur creates a temporary loss of the Minch Trust's use of the property, which would justify an appropriation of a flowage easement interest in its property.

9. The Department has been unable to agree on the terms for a conveyance of a permanent flowage easement with the Minch Trust.

10. The properties which are the subject of this petition to appropriate a permanent flowage easement are located in Mercer County and are identified by permanent parcel numbers 29-004000.0000 and 29-004600.0000, and by a map depicting the properties that is set forth in Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.

11. The purpose of this appropriation of the permanent flowage easement is the acquisition of the easement, free and clear of all liens, claims and encumbrances so as to acquire the easement in compliance with the December 14, 2005 Order of this Court in *State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*.

12. On December 14, 2005, the subject flowage easement had a fair market value of One Hundred Fifty-eight Thousand Dollars and No Cents (\$158,000.00), as determined by appraisal.

FILED

DEC 10 2008

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

13. In the event that the appraised fair market value set forth in Paragraph 12 above is disputed by the Minch Trust, the Department reserves the right to present evidence that factors other than changes to the Department's western spillway for Grand Lake St. Marys should be considered in determining the flowage easement acreage and the portion of appraised amount or other amount to be paid by the Department as just compensation.

14. Defendants are those persons and entities who have been identified by a preliminary title search or otherwise, as being the owners and/or persons and entities who have or may claim an interest in the property, upon which the permanent flowage easement will be acquired.

WHEREFORE, the Department prays the Court will:

A. Enter a judgment ordering the conveyance of a permanent flowage easement in the subject property to the State of Ohio, Department of Natural Resources.

B. Upon the failure of the owner to file an Answer, pursuant to R. C. 163.09, objecting to the valuation set forth in Paragraph 12 above, declare the value of the permanent flowage easement appropriated herein to be One Hundred Fifty-eight Thousand Dollars and No Cents (\$158,000.00), as determined by appraisal.

C. In the event that an Answer is filed, cause a jury to be impaneled to make inquiry into and assess compensation to be paid for the appropriation of the permanent flowage easement.

D. Grant the Department all such other relief to which the Department might be entitled.

FILED

DEC 10 2008

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

Sheryl Creed Maxfield
First Assistant Attorney General

By: J. P. Bartley
John P. Bartley (0039190)
Raymond J. Studer (0022913)
Rachel H. Stelzer (0083124)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6870 (phone)
(614) 268-8871 (fax)

CERTIFICATE OF COPY

THE STATE OF OHIO, MERCER, ss
I, James J. Hightley, Clerk of the Court of Common Pleas
and Court of Appeals, within and for the aforesaid County
and State, do hereby certify that the foregoing is a true and
correct copy of the original petition to
appropriate eminent domain and to
for compensation
now on file in said Clerk's Office in the court,

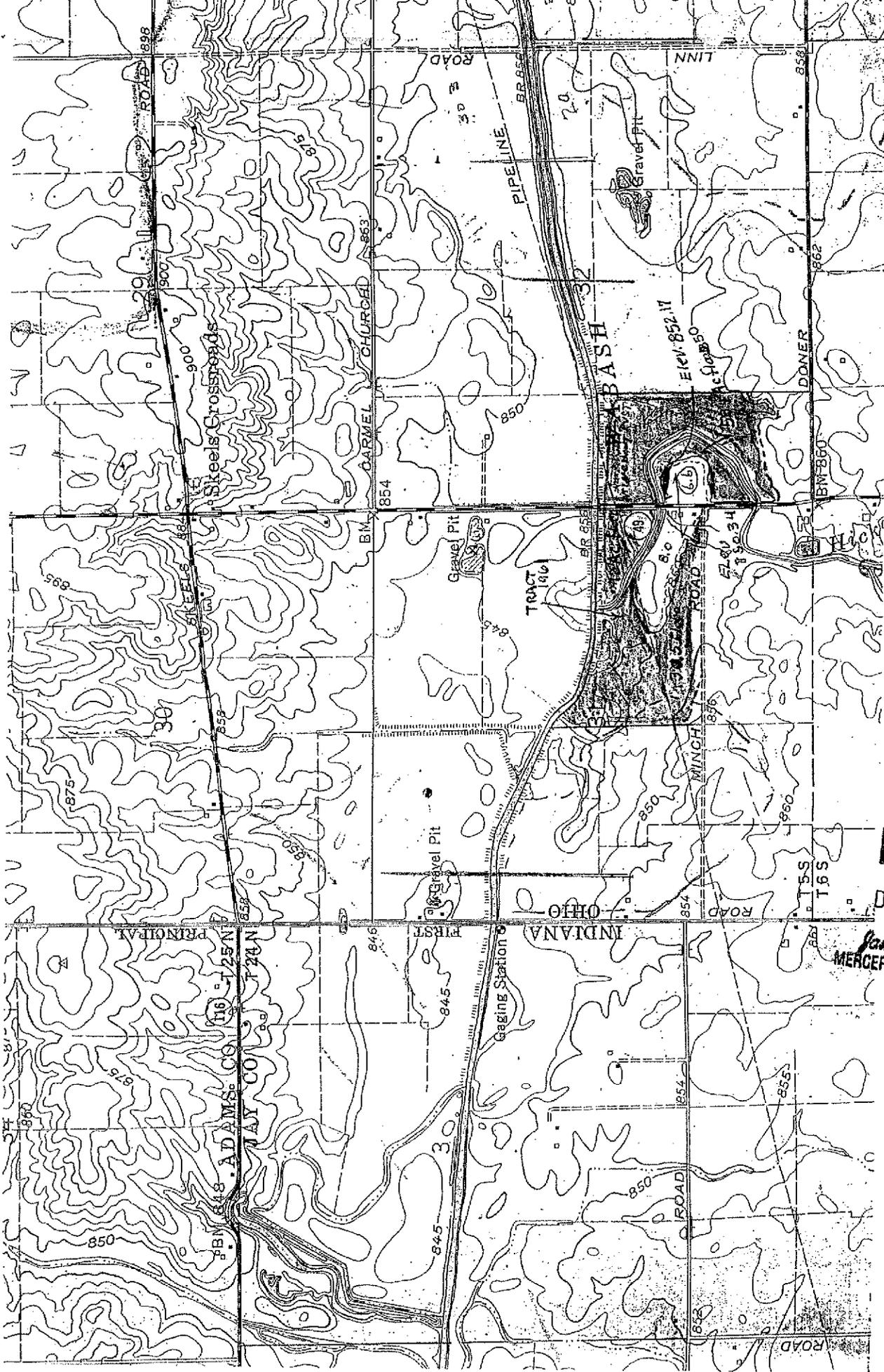
IN TESTIMONY WHEREOF, I have hereunto set my
hand and affixed the seal of said court, at Celina, Ohio, this
2nd day of October A.D. 2009
Darlene Scott James J. Hightley, Clerk
Deputy

SEAL

FILED

DEC 10 2008

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



FILED

DEC 10 2008

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

EXHIBIT A
 Minch Family Trust
 Acreage flooding calculations
 prepared by Mercer County
 Soil & Water Conservation District

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

State of Ohio,
Department of Natural Resources,

Plaintiff,

v.

The Minch Family Trust,
Emily V. Minch, Trustee,
Trust dated February 20, 1995, et al.,

Defendants.

Case No: 08-CIV-252

Judge:

NOTICE OF DEPOSIT

Please take notice that, pursuant to R. C. 163.06, Plaintiff State of Ohio, Department of Natural Resources has deposited with the Clerk of Courts the sum of One Hundred Eighty Thousand, Nine Hundred, Fifty-four Dollars and No Cents (\$180,954.00). This sum represents the value of the easement being appropriated, \$158,000.00, as of December 14, 2005 and the statutory interest that accrued on that amount, \$22,954.00, from December 14, 2005 to November 10, 2008.

FILED

DEC 10 2008

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

Respectfully submitted,

Sheryl Creed Maxfield
First Assistant Attorney General

By:

J. P. Bartley

John P. Bartley (0039190)
Raymond J. Studer (0022913)
Rachel H. Stelzer (0083124)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6870 (phone)
(614) 268-8871 (fax)

XC: COURT

Certificate of Service

I hereby certify that a copy of the foregoing Notice of Deposit was served by ordinary U.S. mail upon the following this 10th day of December, 2008:

Bruce L. Ingram, Esq.
Joseph R. Miller, Esq.
Thomas H. Fusonie
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

Counsel for Defendants The Minch Family Trust,
Emily V. Minch, Trustee, Trust dated February 20, 1995
and the Estate of Jack Minch, deceased

Mark R. George
Mercer County Auditor
101 North Main Street, Room 105
Celina, Ohio 45822,

Doris Rutschilling
Mercer County Treasurer
101 North Main Street, Room 201
Celina, Ohio 45822,

FILED

DEC 10 2008

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

John P. Bartley

John P. Bartley
Assistant Attorney General

119

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

STATE OF OHIO,
DEPARTMENT OF NATURAL RESOURCES
2045 Morse Road
Building D-3
Columbus, Ohio 43229,

Plaintiff,

v.

STEPHEN J. ZUMBERGE, TRUSTEE,
STEPHEN J. ZUMBERGE TRUST,
DATED JUNE 30, 1997
4422 State Route 29
Celina, Ohio 45822,

and

VIRGINIA A. ZUMBERGE, TRUSTEE,
VIRGINIA A. ZUMBERGE TRUST
DATED JUNE 30, 1997
4422 State Route 29
Celina, Ohio 45822,

and

STEVE ZUMBERGE
4422 State Route 29
Celina, Ohio 45822,

and

MARK R. GEORGE
Mercer County Auditor
101 North Main Street, Room 105
Celina, Ohio 45822,

and

DORIS RUTSCHILLING
Mercer County Treasurer
101 North Main Street, Room 201
Celina, Ohio 45822,

Defendants.

Case No: 08-CIV-254

Judge:

PETITION TO
APPROPRIATE
EASEMENT AND TO
FIX COMPENSATION

Sup. R. 37 Statistical Report
Classification

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ce

FILED

10:01
DEC 10 2008

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

In previous litigation, this Court ruled that certain property owners be compensated for the loss of some use of their property due to flooding caused by the actions of the State of Ohio to repair and improve the western spillway at Grand Lake St. Marys. The State of Ohio, Department of Natural Resources, by and through its counsel, hereby petitions for appropriation of a permanent flowage easement and alleges as follows:

1. The State of Ohio, Department of Natural Resources (hereinafter "the Department") is a public agency as defined in R. C. 163.01.

2. This petition to appropriate a permanent flowage easement is brought by the Department pursuant to its authority under R. C. 1501.01 and under the provisions of R. C. 163.01 et seq.

3. On December 14, 2005, this Court ordered the Department to institute appropriation proceedings against certain parties, including Steve Zumberge, a defendant herein, for loss of use of certain property, resulting from flooding caused by changes to the Department's western spillway for Grand Lake St. Marys (*State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*).

4. On July 12, 2007, this Court, in a post-judgment entry filed in *State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*, established, contrary to the Department's position, that the date for property valuation purposes to be used in this appropriation case was December 14, 2005. While December 14, 2005 is to be used as the date of the taking, the Department expressly reserves and does not waive any objection it has to the use of this date in this case.

5. On December 14, 2005, Steve Zumberge was not the owner of the property subject to this petition to appropriate a permanent flowage easement.

FILED

DEC 10 2008

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

6. On December 14, 2005, Stephen J. Zumberge, Trustee of the Stephen J. Zumberge Trust and Virginia A. Zumberge, Trustee of the Virginia A. Zumberge Trust (hereinafter, "the Zumberge Trusts"), defendants herein, were the owners of the property subject to this petition to appropriate a permanent flowage easement.

7. The Zumberge Trusts' loss of use of their property is not a permanent, complete conversion of private property for public use, which would require an appropriation of a fee simple interest in the Zumberge Trusts' property.

8. Any flooding of the Zumberge Trusts' property that does occur creates only a temporary loss of the Zumberge Trusts' use of the property, which would justify an appropriation of a flowage easement interest in their property.

9. The Department has been unable to agree on the terms for a conveyance of a flowage easement with the Zumberge Trusts.

10. The properties which are the subject of this petition to appropriate a permanent flowage easement are located in Mercer County and are identified by permanent parcel numbers 26-046800.0100, 26-051100.0100, 26-038500.0000, and 26-039000.0000, and by a map depicting the properties that is set forth in Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.

11. The purpose of this appropriation of a permanent flowage easement is the acquisition of the easement, free and clear of all liens, claims and encumbrances so as to acquire the easement in compliance with the December 14, 2005 Order of this Court in *State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*.

12. On December 14, 2005, the subject flowage easement had a fair market value of One Hundred Eighty-six Thousand, Eight Hundred Dollars and No Cents (\$178,800.00) as determined by appraisal.

13. In the event that the appraised fair market value set forth in Paragraph 12 above is disputed by the Zumberge Trusts, the Department reserves the right to present evidence that factors other than changes to the Department's western spillway for Grand Lake St. Marys should be considered in determining the flowage easement acreage and the portion of appraised amount or other amount to be paid by the Department as just compensation.

14. Defendants are those persons and entities who have been identified by a preliminary title search or otherwise, as being the owners and/or persons and entities who have or may claim an interest in the property, upon which the permanent flowage easement will be acquired.

WHEREFORE, the Department prays the Court will:

A. Enter a judgment ordering the conveyance of a permanent flowage easement in the subject property to the State of Ohio, Department of Natural Resources.

B. Upon the failure of the owner to file an Answer, pursuant to R. C. 163.09, objecting to the valuation set forth in Paragraph 12 above, declare the value of the permanent flowage easement appropriated herein to be One Hundred Eighty-six Thousand, Eight Hundred Dollars and No Cents (\$186,800.00), as determined by appraisal.

C. In the event that an Answer is filed, cause a jury to be impaneled to make inquiry into and assess compensation to be paid for the appropriation of the permanent flowage easement.

D. Grant the Department all such other relief to which the Department might be entitled.

FILED

DEC 10 2008

James J. Hightley
MERCER CO. CLERK OF COURTS
GELINA, OHIO

Sheryl Creed Maxfield
First Assistant Attorney General

By: John P. Bartley
John P. Bartley (0039190)
Raymond J. Studer (0022913)
Rachel H. Stelzer (0083124)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6870 (phone)
(614) 268-8871 (fax)

CERTIFICATE OF COPY
THE STATE OF OHIO, MERCER, ss

I, James J. Highley, Clerk of the Court of Common Pleas
and Court of Appeals, within and for the aforesaid County
and State, do hereby certify that the foregoing is a true and
correct copy of the original Petition to

Appropriate Agreement and
Attorney's Compensation
now on file in said Clerk's Office in the court,

IN TESTIMONY WHEREOF, I have hereunto set my
hand and affixed the seal of said court, at Celina, Ohio, this
2nd day of October, A.D. 2008.

Darlene Scott James J. Highley, Clerk
Deputy

SEAL

FILED

DEC 10 2008

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

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

State of Ohio,
Department of Natural Resources,

Plaintiff,

v.

Stephen J. Zumberge, Trustee,
Stephen J. Zumberge, Trust,
dated June 30, 1997, et al.,

Defendants.

Case No:08-CIV-254

Judge:

NOTICE OF DEPOSIT

Please take notice that, pursuant to R. C. 163.06, Plaintiff State of Ohio, Department of Natural Resources has deposited with the Clerk of Courts the sum of Two Hundred Thirteen Thousand, Nine Hundred, Thirty-eight Dollars and No Cents (\$213,938.00). This sum represents the value of the easement being appropriated, \$186,800.00, as of December 14, 2005 and the statutory interest that accrued on that amount, \$27,138.00, from December 14, 2005 to November 10, 2008.

FILED

DEC 10 2008

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

Respectfully submitted,

Sheryl Creed Maxfield
First Assistant Attorney General

By:

J. P. Bartley
John P. Bartley (0039190)
Raymond J. Studer (0022913)
Rachel H. Stelzer (0083124)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6870 (phone)
(614) 268-8871 (fax)

Certificate of Service

I hereby certify that a copy of the foregoing Notice of Deposit was served by ordinary U.S. mail upon the following this 10th day of December, 2008:

Bruce L. Ingram, Esq.
Joseph R. Miller, Esq.
Thomas H. Fusonie
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

Counsel for Defendants Stephen J. Zumberge, Trustee,
Stephen J. Zumberge, Trust, dated June 30, 1997,
Virginia A. Zumberge Trustee,
Virginia A. Zumberge, Trust, dated June 30, 1997
and Steve Zumberge

Mark R. George
Mercer County Auditor
101 North Main Street, Room 105
Celina, Ohio 45822,

Doris Rutschilling
Mercer County Treasurer
101 North Main Street, Room 201
Celina, Ohio 45822,

FILED

DEC 10 2008

James J. Hixley
MERGER CO. CLERK OF COURTS
CELINA, OHIO

John P. Bartley

John P. Bartley
Assistant Attorney General

120

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

STATE OF OHIO,
DEPARTMENT OF NATURAL RESOURCES
2045 Morse Road
Building D-3
Columbus, Ohio 43229,

Plaintiff,

v.

THE POST FAMILY TRUST,
LEO W. POST AND MAGDALENE T. POST,
TRUSTEES, TRUST DATED MAY 23, 1995
882 Carmel Church Road
Celina, Ohio 45822,

and

LEO W. POST
882 Carmel Church Road
Celina, Ohio 45822,

and

MARK R. GEORGE
Mercer County Auditor
101 North Main Street, Room 105
Celina, Ohio 45822,

and

DORIS RUTSCHILLING
Mercer County Treasurer
101 North Main Street, Room 201
Celina, Ohio 45822,

and

FARM CREDIT SERVICES
OF MID-AMERICA, FLCA
1601 UPS Drive
Louisville, Kentucky 40223,

Defendants.

Case No: 08-CIV-253

Judge:

PETITION TO
APPROPRIATE
EASEMENT AND TO
FIX COMPENSATION

Sup. R. 37 Statistical Report
Classification _____

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FILED

9:58
DEC 10 2008

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

XC: COURT

In previous litigation, this Court ruled that certain property owners be compensated for the loss of some use of their property due to flooding caused by the actions of the State of Ohio to repair and improve the western spillway at Grand Lake St. Marys. Therefore, the State of Ohio, Department of Natural Resources, by and through its counsel, hereby petitions for appropriation of a permanent flowage easement and alleges as follows:

1. The State of Ohio, Department of Natural Resources (hereinafter "the Department") is a public agency as defined in R.C. 163.01.

2. This petition to appropriate a permanent flowage easement is brought by the Department pursuant to its authority under R.C. 1501.01 and under the provisions of R.C. 163.01, et seq.

3. On December 14, 2005, this Court ordered the Department to institute appropriation proceedings against certain parties, including Leo W. Post, a defendant herein, for loss of use of certain property, resulting from flooding caused by changes to the Department's western spillway for Grand Lake St. Marys (*State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*).

4. On July 12, 2007, this Court, in a post-judgment entry filed in *State ex rel. Post v. Speck, Mercer County Common Pleas Court Case No. 01-CIV-091*, established, contrary to the Department's position, that the date for property valuation purposes to be used in this appropriation case was December 14, 2005. While December 14, 2005 is to be used as the date of the taking, the Department expressly reserves and does not waive any objection it has to the use of this date in this case.

FILED

DEC 10 2008

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

5. On December 14, 2005, Leo W. Post was not the owner of the property subject to this petition to appropriate a permanent flowage easement.

6. On December 14, 2005, the Post Family Trust, Leo W. Post and Magdalene T. Post, Trustees (hereinafter, "the Post Trust"), a defendant herein, was the owner of the property subject to this petition to appropriate a permanent flowage easement.

7. The Post Trust's loss of use of its property is not a permanent, complete conversion of private property for public use, which would require an appropriation of a fee simple interest in the Post Trust's property.

8. Any flooding of the Post Trust property that does occur creates only a temporary loss of the Post Trust's use of its property, which would justify an appropriation of a flowage easement interest in its property.

9. The Department has been unable to agree on the terms for a conveyance of a permanent flowage easement with the Post Trust.

10. The properties which are the subject of this petition to appropriate a permanent flowage easement are located in Mercer County and are identified by permanent parcel numbers 29-004100.0000, 29-003400.0000, and 28-011500.0000 and by a map depicting the properties that is set forth in Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.

11. The purpose of this appropriation of a permanent flowage easement is the acquisition of the easement, free and clear of all liens, claims and encumbrances, so as to acquire the easement in compliance with the December 14, 2005 Order of this Court in *State ex rel. Post v. Speck*, Mercer County Common Pleas Court Case No. 01-CIV-091.

FILED

DEC 10 2008

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

12. On December 14, 2005, the subject flowage easement had a fair market value of Two Hundred Ninety Thousand, Seven Hundred Dollars and No Cents (\$290,700.00), as determined by appraisal.

13. In the event that the appraised fair market value set forth in Paragraph 12 above is disputed by the Post Trust, the Department reserves the right to present evidence that factors other than changes to the Department's western spillway for Grand Lake St. Marys should be considered in determining the flowage easement acreage and the portion of appraised amount or other amount to be paid by the Department as just compensation.

14. Defendants are those persons and entities who have been identified by a preliminary title search, or otherwise, as being the owners and/or persons and entities who have or may claim an interest in the property upon which the permanent flowage easement will be acquired.

WHEREFORE, the Department prays the Court will:

A. Enter a judgment ordering the conveyance of a permanent flowage easement in the subject property to the State of Ohio, Department of Natural Resources.

B. Upon the failure of the owner to file an Answer, pursuant to R.C. 163.09, objecting to the valuation set forth in Paragraph 12 herein, declare the value of the permanent flowage easement appropriated to be Two Hundred Ninety Thousand, Seven Hundred Dollars and No Cents (\$290,700.00), as determined by appraisal.

C. In the event that an Answer is filed, cause a jury to be impaneled to make inquiry into and assess the compensation to be paid for the appropriation of the permanent flowage easement.

FILED

DEC 10 2008

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

D. Grant the Department all such other relief to which the Department might be entitled.

Sheryl Creed Maxfield
First Assistant Attorney General

By: John P. Bartley
John P. Bartley (0039190)
Raymond J. Studer (0022913)
Rachel H. Stelzer (0083124)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6870 (phone)
(614) 268-8871 (fax)

CERTIFICATE OF COPY
THE STATE OF OHIO, MERCER, ss
I, James J. Highley, Clerk of the Court of Common Pleas and Court of Appeals, within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original Petition to appropriate payment and to file compensation now on file in said Clerk's Office in the court,
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Celina, Ohio, this 2nd day of October A.D. 20 09
Darlene Scott James J. Highley, Clerk
Deputy

SEAL

FILED

DEC 10 2008

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

IN THE COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

State of Ohio,
Department of Natural Resources,

Plaintiff,

v.

The Post Family Trust,
Leo W. Post and Magdalene T. Post,
Trustees, Trust dated May 23, 1995, et al.,

Defendants.

Case No: 08-CV-253

Judge:

NOTICE OF DEPOSIT

Please take notice that, pursuant to R. C. 163.06, Plaintiff State of Ohio, Department of Natural Resources has deposited with the Clerk of Courts the sum of Three Hundred Thirty-two Thousand, Nine Hundred, Thirty-four Dollars and No Cents (\$332,934.00). This sum represents the value of the easement being appropriated, \$290,700.00, as of December 14, 2005 and the statutory interest that accrued on that amount, \$42,234.00, from December 14, 2005 to November 10, 2008.

FILED

9:58

DEC 10 2008

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

Respectfully submitted,

Sheryl Creed Maxfield
First Assistant Attorney General

By:

J. P. Bartley

John P. Bartley (0039190)
Raymond J. Studer (0022913)
Rachel H. Stelzer (0083124)
Assistant Attorneys General
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6870 (phone)
(614) 268-8871 (fax)

XC: COURT

Certificate of Service

I hereby certify that a copy of the foregoing Notice of Deposit was served by ordinary U.S. mail upon the following this 16th day of December, 2008:

Bruce L. Ingram, Esq.
Joseph R. Miller, Esq.
Thomas H. Fusonie
Vorys, Sater, Seymour and Pease, LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008

Counsel for Defendants The Post Family Trust,
Leo W. Post And Magdalene T. Post,
Trustees, Trust Dated May 23, 1995
and Leo W. Post

Mark R. George
Mercer County Auditor
101 North Main Street, Room 105
Celina, Ohio 45822,

Doris Rutschilling
Mercer County Treasurer
101 North Main Street, Room 201
Celina, Ohio 45822,

Farm Credit Services
of Mid-America, FLCA
1601 UPS Drive
Louisville, Kentucky, 40223

FILED

DEC 10 2008

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



John P. Bartley
Assistant Attorney General

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IN COURT OF COMMON PLEAS
MERCER COUNTY, OHIO

STATE OF OHIO)
DEPARTMENT OF NATURAL)
RESOURCES,)
Plaintiff,)
vs.) Case No.
RICHARD L. BAUCHER, ET) 08-CIV-250
AL.,)
Defendants.)

DEPOSITION

of JAMES A. GARRETT, ARA, ASA

Taken at the offices of
OFFICE OF THE OHIO ATTORNEY GENERAL
150 East Gay Street
22nd Floor
Columbus, Ohio 43215

on November 9, 2009, at 10:09 a.m.

Reported by: Carmen G. Maley, RPR

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APPEARANCES:

Robert L. Schlatter, Esq.
Senior Assistant Attorney General
Richard J. Makowski, Esq.
Section Chief, Transportation
OFFICE OF THE OHIO ATTORNEY GENERAL
150 East Gay Street, 22nd Floor
Columbus, Ohio 43215
(614) 466-4656

And

John P. Bartley, Esq.
Assistant Attorney General
OFFICE OF THE OHIO ATTORNEY GENERAL
2054 Morse Road, Building D-2
Columbus, Ohio 43229
(614) 265-6418

on behalf of the Plaintiff.

Joseph R. Miller, Esq.
Bruce L. Ingram, Esq.
Thomas H. Fusonie, Esq.
VORYS, SATER, SEYMOUR & PEASE, LLP
52 East Gay Street
Columbus, Ohio 43216
(614) 464-6400

on behalf of the Defendants,
Richard & Patricia Baucher.

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STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of JAMES A. GARRETT, ARA, ASA, the witness herein, called by the Defendants, under the applicable Rules of Federal Civil Court Procedure, may be taken at this time by the notary pursuant to notice and by agreement; that said deposition may be reduced to writing in stenotypy by the notary, whose notes thereafter may be transcribed out of the presence of the witness; and that the proof of the official character and qualification of the notary is waived.

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INDEX OF EXAMINATION

PAGE

MR. MILLER:

5

INDEX OF EXHIBITS

EXHIBIT

DESCRIPTION

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JAMES A. GARRETT, ARA, ASA

being first duly sworn, as hereinafter
certified, deposes and says as follows:

EXAMINATION

MR. MILLER: This is Joe Miller on
behalf of Richard and Patricia Baucher. Just
shortly, for the record, I would like to state
that we are taking the deposition of Mr. Garrett
today in anticipation of a court hearing on
Thursday in this matter related to the take, the
actual take itself, considered by ODNR. I am
not inquiring today fully as to any valuation
issues. And I need to hold the deposition open,
for that purpose, in preparation for trial.
Instead, I'll focus on the issues at issue for
Thursday's hearing.

BY MR. MILLER:

Q. Mr. Garrett, good morning.

A. Good morning.

Q. I know you've had your deposition taken
before, so I won't belabor any points related to
that.

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(Deposition Exhibit A marked.)

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Q. Let me show what we have had marked as Exhibits A and B.

MR. MILLER: Gentlemen, I have one copy of each of those for you. This is A, this is B, they are in black and white. The originals that the witness has do contain color.

Q. Mr. Garrett, take what time you need to review the exhibits. My first question for you, turning to Exhibit A, does that appear to be an appraisal report prepared by you?

A. Yes, it is.

Q. It was prepared for the Ohio Department of Natural Resources?

A. That's correct.

Q. In this matter related to Richard Baucher and his wife, Patricia Baucher?

A. That's correct.

Q. I may at times refer to this as your 2008 appraisal. Is that fair? Will you understand that reference?

A. Okay.

Q. It was prepared in 2008, was it not?

A. It was prepared in 2008.

1 Q. I recognize the date of value as
2 December 14, 2005.

3 A. Right.

4 ==0==

5 (Deposition Exhibit B marked.)

6 ==0==

7 Q. Take a look at what we marked as Exhibit
8 B.

9 Do you recognize this as an appraisal
10 report that you prepared for ODNR in this
11 matter, as well?

12 A. Yes, I do, except that there was an
13 addendum --

14 Q. I think it's all clipped together. I
15 apologize. The copy I intended to hand to you
16 had the addendum separated out. The addendum
17 pages are there, are they not?

18 A. No, they're not.

19 Q. Let me hand you these, then. If you
20 want to make that part of that exhibit, do those
21 appear to be your addendum pages?

22 A. Yes, they do.

23 Q. At times today, I'm going to ask you to
24 compare these exhibits side-by-side, and keep

1 them both close at hand, if you would. Let's
2 start our discussion with Exhibit A, your 2008
3 report.

4 A. Okay.

5 Q. You prepared this document?

6 A. Yes, I did.

7 Q. Do you receive any assistance in
8 preparing it?

9 A. My secretary helped. But otherwise, no.

10 Q. Approximately when did you prepare
11 Exhibit A?

12 A. Well, there would be a signature date.
13 I finished March 27, 2008.

14 Q. And you are referring to the
15 certification page, page 3 of the exhibit?

16 A. Yes, I am.

17 Q. You believe you finished the report on
18 or about that date?

19 A. Yes, I do.

20 Q. Approximately how many hours did you
21 spend preparing Exhibit A?

22 A. I have no idea. A lot.

23 Q. "A lot." What does a lot mean to you,
24 Mr. Garrett, in a relative sense? Are we

1 talking several days, several weeks?

2 Approximately how much time, if you know, did
3 you spend on this assignment?

4 A. I don't clock work by appraisal
5 assignments. You know, more than a week.

6 Q. Okay. You have been an appraiser for
7 how long?

8 A. 39 years.

9 Q. So based on your 39 years of experience,
10 you would say, in your words, you spent "a lot"
11 of time on this appraisal?

12 A. That's correct.

13 Q. Okay. When were you first engaged to
14 conduct this appraisal, if you recall?

15 A. I'm not sure.

16 Q. Sometime prior to March 27, 2008,
17 certainly.

18 A. Yes. I looked at the property December
19 13, 2007, prior to that.

20 Q. So you were engaged at least sometime
21 prior to December 13, 2007?

22 A. Correct.

23 Q. Do you recall what you charged for
24 preparing the appraisal report that is Exhibit

1 A?

2 A. \$4,500.

3 Q. Who engaged you to prepare this
4 appraisal report?

5 A. Well, formally, Jim Greenwood.

6 Q. Who is Mr. Greenwood?

7 A. He's with ODNR.

8 Q. Is he, himself, an appraiser, if you
9 know?

10 A. I think so.

11 Q. Was anyone else involved in your
12 retention?

13 A. I visited with John Bartley and Ray
14 Studer.

15 Q. Was there anyone else from the Attorney
16 General's office with whom you met related to
17 this report marked Exhibit A?

18 A. No.

19 Q. When did you -- strike that.

20 Who did you first have contact with
21 related to this assignment? Mr. Greenwood?

22 A. I don't remember whether it was
23 Mr. Greenwood or John Bartley.

24 Q. Okay. It was one or the other, between

1 those two gentlemen?

2 A. Yes.

3 Q. How was the assignment first described
4 to you in that initial contact?

5 A. That the state had changed the spillway,
6 and that the farmers had gone through the
7 effectively inverse condemnation lawsuit, had
8 won, and that the state had to come up with a
9 value to estimate what they were due.

10 Q. And was it described for you, in that
11 initial contact, what the area of the take would
12 be with regard to the Bauchers?

13 A. I think at the initial contact, I didn't
14 have any material about the area. It was a
15 general conversation.

16 Q. Was that initial contact by telephone or
17 in person?

18 A. At some point, Jim -- or John Bartley
19 and Ray Studer came down to my office, before we
20 really entered into doing of the appraisal work.
21 I think it was at that time, I don't think they
22 had those maps with them.

23 Q. To what maps are you referring?

24 A. The ones that the Soil & Water people

1 put together.

2 Q. Okay. You understand that Mercer County
3 Soil & Water prepared some maps depicting the
4 areas of inundation?

5 A. Correct.

6 Q. I want to talk about that in a moment.

7 But this meeting with Mr. Bartley and
8 Mr. Studer occurred in 2007?

9 A. Yes.

10 Q. Were you, in fact, retained to do five
11 appraisals at that time?

12 A. Yes.

13 Q. The Bauchers were one of them?

14 A. Right.

15 Q. What did you discuss in that meeting in
16 your office with Mr. Bartley and Mr. Studer?

17 A. That it would take a before-and-after
18 appraisal, that I had a farm background and was
19 used to that type of appraisal work.

20 Q. Had you actually ever performed an
21 appraisal of a flooded easement before?

22 A. I had.

23 Q. Okay. Approximately how many times?

24 A. Once.

1 Q. How long ago was that?

2 A. That was in the early '70s.

3 Q. Anything else you recall in this
4 discussion in your office with Mr. Bartley and
5 Mr. Studer?

6 MR. MAKOWSKI: Objection; attorney work
7 product. You can answer, I made the objection.

8 A. Not that I remember.

9 BY MR. MILLER:

10 Q. At that time, were you provided with any
11 map or suggestion of the area of take with
12 regard to any of these clients or -- excuse
13 me -- any of these landowners?

14 A. I don't think I had any maps when I met
15 with them.

16 Q. Okay. Did you have maps of the proposed
17 take before you began these assignments?

18 A. Yes.

19 Q. Okay. When were those provided to you?

20 A. Probably around the time that I went
21 under contract through Jim Greenwood.

22 Q. Were you paid \$4,500 for each of the
23 five appraisals prepared?

24 A. Yes, I was.

1 Q. You went into contract prior to visiting
2 the Baucher property on December 13, 2007.
3 Correct?

4 A. That's correct.

5 Q. You were provided with a map of the take
6 area prior to that date?

7 A. Yes.

8 Q. Who provided that map to you?

9 A. I received it from ODNR, I believe from
10 Jim Greenwood.

11 --0--

12 (Deposition Exhibit D marked.)

13 --0--

14 Q. Let me show you what we've had marked as
15 Exhibit D. I'm skipping over C for just a
16 moment. I have copies, Rob.

17 Do you recognize Exhibit D, Mr. Garrett?

18 A. Yes, I do.

19 Q. What is it, to your knowledge?

20 A. Well, that would have been what I
21 received from ODNR, basically describing the
22 take area, I'll call it. And this data was
23 really generated by Mercer Soil & Water and the
24 county engineer's office.

1 Q. This data was provided to you by
2 Mr. Greenwood?

3 A. Yes.

4 Q. Were you instructed to prepare an
5 appraisal report based upon the take described
6 in Exhibit D?

7 A. Yes.

8 Q. And is Exhibit A an appraisal prepared
9 by you to reflect the take described in Exhibit
10 D?

11 A. Yes.

12 Q. Exhibit D, do you understand this to be
13 the conclusions concerning the area of take by
14 Soil & Water?

15 A. Yes.

16 Q. And do you understand that those
17 conclusions were based upon their actual
18 observations and readings taken during a July
19 2003 flood event?

20 A. I believe the county engineers took the
21 flood readings.

22 Q. Did you understand that Soil & Water's
23 conclusion as to the areas of take were based
24 upon the readings taken by the county engineer

1 at that time?

2 A. Yes.

3 Q. Taking a look at Exhibit D for a moment,
4 this is specific to Mr. Baucher, is it not, and
5 the conclusions from soil & water related to his
6 property?

7 A. Yes, it is.

8 Q. In fact, they determined that 46 acres
9 of cropland had flooded.

10 A. That's correct.

11 Q. You understood, when you received
12 Exhibit D, that that was based upon a flood
13 elevation of 87 and a half feet?

14 A. You mean 857 and a half?

15 Q. Yes. I'm sorry if I misspoke, 857.5.

16 A. Yes.

17 Q. In fact, if you turn to the last page of
18 Exhibit D, what does this page reflect, to your
19 knowledge?

20 A. well, the area within the darker outline
21 was the easement area.

22 Q. This was the easement area over the
23 Baucher property that ODNR intended to take at
24 the time you were retained?

1 A. That's correct.

2 Q. To your understanding, at that time, it
3 reflected 46 acres of cropland or untillable
4 acres?

5 A. That's correct.

6 Q. What, if any, discussions did you have
7 with Mr. Greenwood, Mr. Bartley or Mr. Studer
8 specifically related to this area of take?

9 MR. MAKOWSKI: Objection.

10 A. I don't think I had any.

11 BY MR. MILLER:

12 Q. When they provided this document to you,
13 did you ask any questions about it?

14 MR. MAKOWSKI: Objection. He said
15 Mr. Greenwood did.

16 A. If I asked any questions, they didn't
17 have any answers, let's put it that way.

18 BY MR. MILLER:

19 Q. Do you remember any specific questions
20 you asked?

21 A. No, I don't.

22 Q. Okay. When you were preparing Exhibit
23 A, do you recall any further discussions or
24 meetings with representatives of ODNR or the

1 Attorney General's office that you haven't
2 described for me yet?

3 A. No.

4 Q. Mr. Garrett, this is Exhibit C.

5 ==0==

6 (Deposition Exhibit C marked.)

7 ==0==

8 Q. Do you recognize Exhibit C?

9 A. Yes, I do.

10 Q. What is it?

11 A. It must be my notes from when I met with
12 Ray Studer and John Bartley. I know I see Jim
13 Greenwood's name on there. But in my memory, I
14 haven't met Jim Greenwood.

15 Q. Do you believe this reflects an
16 in-person conference or a phone conference?

17 A. With those three names on it, I'm
18 guessing it was a phone conference.

19 Q. Okay. Apparently, held on March 4th,
20 2008, or is that a two? I could be reading that
21 wrong.

22 A. It's one of those two.

23 Q. It may be February 4th, it may be March
24 4th?

1 A. It may be February. The two looks
2 darker to me.

3 Q. Regardless, it appears it is prior to
4 your completion of Exhibit A on March 27, 2008.
5 Would you agree with that?

6 A. That's correct.

7 Q. Were these questions that you had of
8 these gentlemen, those notes, do they reflect
9 questions you had of them?

10 A. They must be my questions. I must have
11 been asking, what is the description of the land
12 taken? And the answer must have been soil
13 conservation service.

14 Q. You believe you were informed by
15 Mr. Greenwood, Mr. Studer and Mr. Bartley that
16 using the Soil & Water Conservation Services
17 determination of the take was okay?

18 A. Right.

19 Q. Okay. And, in fact, that's what they
20 instructed you to use in preparing Exhibit A?

21 A. That's true, correct.

22 Q. Your note there, Q, number 2, Baucher,
23 not sure. Do you see that?

24 A. Uh-huh.

1 Q. To your recollection, what does that
2 refer to?

3 A. No idea.

4 Q. Look down at the bottom of the page, if
5 you would, Mr. Garrett. Can you read to me the
6 last two lines on the page?

7 A. Baucher pink area versus hog finishing.

8 Q. What did that mean?

9 A. There must have been some questions
10 about the hog finishing barn at that time.

11 Q. Looking at Exhibit D, the last page of
12 it, which you testified a moment ago reflected
13 the areas of take on the Baucher farm --

14 A. Right.

15 Q. -- was that colored in pink on the copy
16 that was provided to you?

17 A. I didn't follow your question.

18 Q. Okay. The last page of Exhibit D, you
19 received this from ODNR. Correct?

20 A. Correct.

21 Q. You understood that to be the instructed
22 area that you were to appraise as the take on
23 the Baucher farm. Correct?

24 A. Right.

1 Q. The area outlined in dark on the last
2 page of Exhibit D, was that actually colored in
3 in pink on the copy given to you?

4 A. Yes, it was.

5 Q. For instance -- let me mark this as
6 Exhibit E.

7 --0--

8 (Deposition Exhibit E marked.)

9 --0--

10 Q. I recognize you may not have seen
11 Exhibit E before. It's the petition to
12 appropriate that was filed in this lawsuit. But
13 if you would, please turn to the third to the
14 last page from the end. From the last page of
15 the exhibit, take a look at the third page in.
16 Yes, right there.

17 Again, does this appear to be a map
18 prepared by soil & water depicting the area of
19 take on the Baucher property?

20 A. Yes, it does.

21 Q. And it's colored in in pink?

22 A. Yes.

23 Q. Is this substantially the same as the
24 map that was provided to you by ODNR for the

1 area of take?

2 A. Yes.

3 Q. Were you concerned, judging by your
4 notes in Exhibit C, that the pink area did not
5 appear to include the hog finishing barn, but
6 that the hog finishing barn actually flooded in
7 2003?

8 A. At the time of that conversation, I
9 don't remember -- I don't remember talking about
10 the hog finishing barn at all. I mean,
11 obviously it's on my note, but I don't remember
12 talking about it. Someone else must have
13 brought it up, because I wouldn't have at that
14 point in time, at all.

15 Q. Were you aware at that time whether or
16 not Mr. Baucher contended that the hog finishing
17 barn flooded in 2003?

18 A. I don't remember having any knowledge of
19 that at all at that time.

20 Q. Anything else you recall from this
21 conversation reflected in your notes on Exhibit
22 C related to the Bauchers or the take of their
23 property?

24 A. I was interested in the sixth question,

1 what was the easement draft, what the easement
2 was going to say.

3 Q. The actual instrument describing the
4 easement that would be taken?

5 A. Correct.

6 Q. Why were you interested in seeing or
7 learning about that document?

8 A. It can be very important in a valuation.

9 Q. Why?

10 A. Well, that's what formally describes the
11 legal rights taken.

12 Q. Had it been provided to you as of the
13 date of this conversation?

14 A. No, no.

15 Q. If you finished the 2008 appraisal on or
16 about March 27, 2008, do you recall when the
17 easement document was provided to you?

18 A. Okay, let me back up.

19 Q. Sure.

20 A. This conversation's in February of '08.
21 I was thinking it was '07. So by then -- so my
22 answer about the hog finishing barn was
23 incorrect.

24 Q. Okay. Let's go back. And please

1 correct for me, if you would, the inaccuracies.

2 A. By February of '08, yes, I had been to
3 the farm, and I knew that the hog finishing
4 manure pit flooded. Yeah, my question then was
5 whether it was in the pink area or not, because
6 the pink area was very vague, really.

7 Q. Did you express that concern to
8 Mr. Greenwood, Mr. Studer or Mr. Bartley, that
9 the pink area was, in your words, "vague"?

10 A. Well, I was asking was it in the pink or
11 not. So I don't know that I used the word
12 "vague."

13 Q. You clearly thought that the pink area,
14 as defined for you, was sufficiently definite to
15 prepare an appraisal report. Correct?

16 MR. SCHLATTER: Objection. I don't
17 think that was his testimony.

18 A. That was all that was available.

19 BY MR. MILLER:

20 Q. And you were able to prepare a
21 before-and-after appraisal report based on that
22 pink area, correct?

23 A. Correct.

24 Q. Do you recall any other conversations

1 that you had with Mr. Greenwood or anyone at
2 ODNR related to your appraisal report marked as
3 Exhibit A, beyond what we've discussed?

4 A. Well, you know, I had questions about
5 the -- after I had been there, the effect on the
6 hog finishing barn. And initially, the -- when
7 I contracted to do the appraisals, I didn't
8 think there was any effect on any buildings. I
9 didn't know there was any flooding in that
10 manure pit, or whatever.

11 Q. Were you told that there was no effect
12 on the buildings?

13 A. No, I wasn't told that. But it was
14 inferred that there wasn't. So when I was out
15 on the bunker, when I found that flooded, that
16 created another issue that I hadn't anticipated
17 when I started. So then, you know, I had a
18 conversation with them of dealing with the
19 building, whether there was depreciation, or
20 cost to cure, whatever.

21 Q. Who was involved in that conversation?

22 A. Mainly, John Bartley.

23 Q. Anyone else, to your recollection?

24 A. I don't think so.

1 Q. What was the determination made
2 concerning whether there should be depreciation
3 or cost to cure?

4 MR. SCHLATTER: I'm going to note a
5 continuing objection.

6 A. Basically, it was whatever I needed to
7 do, whatever, to do it right, to do that.

8 Q. You determined a cost to cure was
9 appropriate?

10 A. At that time, yes.

11 Q. Did you have any other conversations
12 with anyone from ODNR or the Attorney General's
13 office related to Exhibit A that we haven't
14 already discussed?

15 A. No.

16 Q. Anything else of substance that you
17 recall discussing with anyone from ODNR or the
18 Attorney General's Office related to the
19 appraisal report marked as Exhibit A that we
20 haven't already discussed?

21 A. Not that I remember.

22 Q. Take a look, if you would, Mr. Garrett,
23 at Exhibit B.

24 A. Do you want this back?

1 Q. Carmen certainly will. We'll start a
2 stack over here.

3 You prepared Exhibit B?

4 A. Yes, I did.

5 Q. Did you have any assistance in doing so?

6 A. Again, just my secretary.

7 Q. Okay. Is it largely your work product?

8 A. Yes, it is.

9 Q. Is Exhibit B a new appraisal report, or
10 simply an updated appraisal from Exhibit A?

11 A. Well, an updated appraisal is a new
12 appraisal.

13 Q. Exhibit B is an entirely new appraisal
14 of the Baucher property. Correct?

15 A. That's correct.

16 Q. And, in fact, changes were made in the
17 appraisal assignment beyond just the date of
18 take. Correct?

19 A. That's correct.

20 Q. The easement area in Exhibit B is
21 actually different in size and physical location
22 than the easement area in Exhibit A?

23 A. That's correct.

24 Q. So this, Exhibit B, represents a new

1 appraisal, both in terms of valuation of the
2 easement, as well as its scope. Is that fair to
3 say?

4 A. That's correct.

5 Q. Because the area and the scope of the
6 appraisal changed from 2008 to 2009?

7 A. The way it was measured, yes.

8 Q. When you say "the way it was measured,"
9 in fact, the actual area of the take changed,
10 did it not?

11 A. That's correct.

12 Q. And the location of the take actually
13 changed, did it not?

14 A. Somewhat, yes.

15 Q. And an entirely new appraisal was
16 required in order to appraise this new easement.
17 Correct?

18 A. That's correct.

19 Q. The second appraisal, Exhibit B, is
20 actually much longer than Exhibit A. Would you
21 agree with that?

22 A. Yes, it is.

23 Q. It's 135 pages, plus many more pages of
24 addenda?

1 A. That's correct.

2 Q. Approximately how much time did you
3 spend on this assignment?

4 A. Again, I don't measure, but a lot.

5 Q. In fact, even more than Exhibit A.
6 Correct?

7 A. Not necessarily.

8 Q. About the same?

9 A. Maybe, yes.

10 Q. And how much did you charge ODNR, or the
11 Attorney General's office, for preparing Exhibit
12 B?

13 A. \$3,500.

14 Q. Essentially, a new appraisal fee?

15 A. Yes.

16 Q. When were you first contacted regarding
17 preparation of Exhibit B, or what I'll call the
18 2009 report at times?

19 A. I don't have the exact date on that. It
20 might have been the middle of the year, June.

21 Q. Well, again, if we could, let's take a
22 look at your certification page as part of
23 Exhibit A. I note it was signed October 28,
24 2009. Do you see that?

1 A. Yes.

2 Q. You finished the appraisal report on or
3 about that date. Is that fair to say?

4 A. Yes.

5 Q. And you had expressed an opinion on page
6 3 of the value of the property as of September
7 9th, 2009. Correct?

8 A. That's correct.

9 Q. That's the day that you visited the
10 property?

11 A. Yes, it is.

12 Q. Clearly, prior to that date you had
13 already been engaged --

14 A. Yes.

15 Q. -- for this assignment.

16 A. Yes.

17 Q. And, in fact, if we look up above, on
18 the same certification, you also visited the
19 property on August 14, 2009. Is that correct?

20 A. That was one of the comparable sales I
21 looked at.

22 Q. I apologize, you are correct.

23 So you were engaged prior to September
24 9th, 2009 for this new assignment?

1 A. Yes.

2 Q. Who engaged you for that assignment?

3 A. Again, the contract was via Jim
4 Greenwood.

5 Q. Was it actually Mr. Greenwood, to your
6 recollection, that contacted you?

7 A. The contact? Probably John Bartley.

8 Q. Okay. Do you recall why you were
9 engaged to prepare a new appraisal?

10 A. In preparation for trial.

11 Q. Do you recall some discussion or mention
12 being made of a change in the date of take?

13 A. Yes.

14 Q. And what was your recollection of that
15 discussion?

16 A. It was to be a current date of take.

17 Q. Was that discussion with Mr. Bartley?

18 A. Yes.

19 Q. What do you recall discussing in that
20 regard?

21 A. That he just said that the trial judge
22 had said that the date of take was going to be a
23 current date.

24 Q. In that initial contact, anything else

1 you recall being discussed relating to this new
2 assignment?

3 A. No.

4 Q. Were you later told that the area to be
5 appraised was changed, as well?

6 A. Yes. At some point, you know, they said
7 they were going to have a survey made. I said,
8 you know, I wouldn't complete any appraisal
9 until I had the results of the survey.

10 Q. So your original understanding of the
11 assignment was, you were being engaged simply to
12 conduct a new appraisal based on a change in the
13 date of take?

14 A. Correct.

15 Q. And then thereafter, at some point, you
16 were informed it would also involve a different
17 area of easement. Is that correct?

18 A. That's correct.

19 Q. When were you first informed of that
20 fact?

21 MR. SCHLATTER: I want to pose an
22 objection. He didn't testify to that?

23 MR. MILLER: Don't testify for him.
24 What he testified to is on the record.

1 Is your objection as to the form of the
2 question?

3 MR. SCHLATTER: Yes.

4 MR. MILLER: Okay. It's noted.

5 BY MR. MILLER:

6 Q. Mr. Garrett, do you understand my
7 question?

8 A. Yeah.

9 I don't know when it was. Sometime
10 after they made a decision they were going to
11 have a survey made.

12 Q. Was it, in fact, after September 9,
13 2009?

14 A. It could have been. I'm not sure.

15 Q. Do you recall who informed you of that
16 fact?

17 A. I believe John Bartley did.

18 Q. Was anyone else involved in that
19 conversation?

20 A. I don't know. Maybe an e-mail from
21 Rachel -- whatever her name.

22 Q. Stelzer.

23 A. Someone from the AG's office.

24 Q. What, specifically, do you recall being

1 discussed, or you being informed of?

2 A. I was just informed that there was going
3 to be a survey made to determine the legal
4 description for the flowage easement.

5 Q. You said you would not begin to prepare
6 your appraisal report until you had that
7 information.

8 A. Once I knew they were going to do that,
9 I said I was not going to generate an appraisal
10 report until I had what the legal description
11 was going to be.

12 Q. Because it's critical to know the area
13 and location of the easement in order to
14 properly appraise it?

15 A. That's correct.

16 Q. What other discussions did you have with
17 anyone from ODNR or the Ohio Attorney General's
18 Office related to the assignment resulting in
19 Exhibit B being prepared?

20 A. I don't really remember specifics. You
21 know, as part of the contract time, it was that
22 the buildings' values could be stipulated, based
23 on a Mercer County auditor's records.

24 Q. Were you instructed to do that?

1 A. Basically, I think I requested to be
2 able to do that.

3 Q. Did you meet, personally, with anyone
4 related to this assignment?

5 A. You mean from ODNR?

6 Q. Or from the Attorney General's office,
7 yes. I apologize. Let me ask it again.

8 Did you meet, personally, with anyone
9 from ODNR or the Attorney General's office
10 related to this assignment that resulted in
11 Exhibit B being prepared?

12 A. I think John Bartley and Ray Studer came
13 down again sometime before I was under contract.

14 Q. So that would have been when you
15 understood the assignment to involve a new date
16 of take, but not necessarily a new description?

17 A. Correct.

18 Q. Okay. Any other meetings that you
19 believe you had prior to this morning related to
20 this assignment?

21 A. No.

22 Q. Did you do anything in preparation for
23 your deposition today, Mr. Garrett?

24 A. I did some calculations, or rechecked

1 calculations, and so on, on how I calculated the
2 tillable area in the take.

3 Q. When did you do that?

4 A. This morning.

5 Q. Did your calculations differ in any way
6 from prior calculations?

7 A. Oh, maybe a smidgen, but not really.

8 Q. Was it you who, as you put it a moment
9 ago, calculated the tillable area in the take?

10 A. Yes.

11 Q. Did the surveyor also do a calculation
12 of that?

13 A. Yes.

14 Q. Did your calculations agree with the
15 surveyor's calculations?

16 A. No.

17 Q. How much did they differ, or in what
18 ways did they differ, Mr. Garrett?

19 A. I don't remember the exact acre
20 difference, but his is smaller than mine.

21 Q. The tillable acres that the surveyor
22 determined are within the area of take are less
23 than what you determined?

24 A. Correct.

1 Q. Did the surveyor determine that there
2 was approximately 31 tillable areas within the
3 area of take?

4 A. That sounds approximately correct.

5 Q. And approximately how many tillable
6 acres did you determine were within the area of
7 take?

8 A. 34.84.

9 Q. When you prepared Exhibit A, your 2008
10 appraisal, you were capable at that time of
11 determining the amount of tillable acres within
12 the take, correct?

13 A. I didn't -- I didn't attempt to, they
14 clearly spelled out what it was. When I say
15 "they," the Mercer Soil & Water conservation
16 people.

17 Q. And their determination was 46 tillable
18 acres?

19 A. I didn't challenge that.

20 Q. You had no basis to challenge that?

21 A. Correct.

22 Q. And, in fact, in preparing Exhibit A,
23 your 2008 appraisal, you believe that the area
24 of take was actually greater than 46 acres.

1 Correct?

2 A. Well, my assumption was that if there
3 was 46 acres tillable, the total easement area
4 had to be bigger, because Beaver Creek, there
5 was wasteland -- or nontillable land.

6 Q. You can't till the creek?

7 A. Correct.

8 Q. And there's right-of-way within the area
9 of take presumably, correct?

10 A. Correct.

11 Q. There's wooded areas within the take.

12 Correct?

13 A. It really isn't wooded area.

14 Q. But presumably, when you prepared
15 Exhibit A, you were basing that appraisal upon
16 an area of take larger than 46 acres. Correct?

17 A. Correct.

18 Q. But based upon a determination, there
19 were 46 tillable acres within the take?

20 A. Correct.

21 Q. I apologize if I asked you this a moment
22 ago, Mr. Garrett: What, if any, other
23 conversations do you recall with anyone from the
24 ODNR or the Ohio Attorney General's office

1 related to your preparation of Exhibit B, other
2 than what we've discussed?

3 A. I don't remember any others.

4 Q. Was a survey document provided to you
5 concerning the Baucher property at some point in
6 time?

7 A. Yes, it was.

8 Q. Approximately when did you receive that?

9 A. I received it on a Friday before October
10 28.

11 Q. When you say "a Friday before," was it
12 literally the Friday before?

13 A. Yes, yes.

14 Q. And that was within sufficient enough
15 time for you to finalize your appraisal on or
16 about October 28, 2009?

17 A. Yes.

18 Q. Did you have any conversations with
19 anyone related to the survey documents you
20 received?

21 A. Yes, I did. Actually, I had received a,
22 what I'll call a rough copy of it before that
23 Friday.

24 Q. Approximately when?

1 A. Well, either about that Monday, or the
2 Monday before, and I don't remember which one.
3 The first survey stuff I got had no feet mark --
4 it had the elevation lines but no feet markings
5 on them. It showed the hog finishing barn and
6 no other buildings.

7 Q. That was the only building depicted on
8 the survey document?

9 A. Yes. And so then I requested that they
10 have foot markings everywhere, you know, on all
11 of them. I requested any building that was
12 close to or in the take area show up. And I
13 basically challenged and said I thought there
14 was supposed to be a flood area to the northeast
15 a little finger than stuck in. So I wanted to
16 make sure that was correct.

17 Q. When you say you challenged that point
18 about the finger in the northeast area of the
19 property, who did you challenge that point with?

20 A. I sent the e-mail to Rachel. But, you
21 know, effectively, the surveyor.

22 Q. Did you also copy the surveyor, or did
23 you just send an e-mail to Rachel on that point?

24 A. I sent it to Rachel.

1 Q. What did your e-mail to Rachel say in
2 that regard?

3 A. I don't remember everything it said.
4 But, one, I said, I think there was supposed to
5 be that area to the northeast. And I had
6 written on the survey where the elevations were,
7 and by that I thought the finger was in the
8 flood easement. But I had miscounted the feet
9 markers coming back down to the northeast.

10 Q. Were you provided any response back from
11 Rachel or the surveyor related to that finger in
12 the northeast?

13 A. Yeah, that, one, that I missed the foot
14 markers coming down, one of them, which -- and
15 that they had field checked out there in that
16 area, and there wasn't anything at 857 or under
17 on the Baucher property --

18 Q. On that --

19 A. -- in that finger.

20 Q. -- the northeast part of the property?

21 A. Correct.

22 Q. Had you previously had a conversation
23 with Mr. Baucher about the northeast portion of
24 the property?

1 A. No, I don't think I talked to him about
2 that, that I remember.

3 Q. There's no question, is there,
4 Mr. Garrett, that this finger in the northeast
5 portion of the property, that you appraised in
6 Exhibit A, your 2008 report, has flooded.
7 Correct?

8 A. That's correct.

9 Q. And there's no question, is there,
10 Mr. Garrett, that this finger in the northeast
11 portion of the property, that you appraised in
12 Exhibit B, you do not consider it to be flooded.
13 Correct?

14 A. Correct.

15 Q. You still have your working file and
16 each of the e-mails you exchanged with anyone
17 relating to your preparation of Exhibit B?

18 A. I still have the e-mails in the
19 computer. I don't have them in hard copy.

20 Q. But you are able to print them off?

21 A. Yes.

22 MR. MILLER: Rob, we can send you a
23 request, if you like, but we would ask for his
24 working file and communications related to

1 Exhibit B, the 2009 appraisal.

2 MR. SCHLATTER: All right.

3 BY MR. MILLER:

4 Q. Mr. Garrett, if it's not too cumbersome,
5 I would like to ask you questions comparing
6 Exhibits A and B. So I would ask that you put
7 those in front of you, and we may have to flip
8 back and forth a little bit. But it would
9 probably be most helpful if you unclip them and
10 have Exhibits A and B in front of you.

11 (Witness complies.)

12 Q. If I could, let me direct your
13 attention, first in both Exhibits A and B, if we
14 are able, Mr. Garrett, to page 2, which is your
15 estimated difference and before-and-after value
16 for each report.

17 If you don't mind, let me go ahead and
18 get that note. I didn't mean to leave it on
19 your copy.

20 A. Okay.

21 Q. The 2008 report, obviously, reflects
22 your appraisal of 46 tillable acres within the
23 flood easement area. Is that correct?

24 A. That's correct.

1 Q. Obviously, that doesn't include the area
2 within the creek, as we discussed a moment ago.

3 A. Correct.

4 Q. However, on page 2 of the 2009 report,
5 Exhibit B, you appraise only 34.84 acres
6 tillable?

7 A. That's correct.

8 Q. And the actual flowage easement, it had
9 decreased to 41.55 acres. Do you see that?

10 A. Yes.

11 Q. How did you value damage to the
12 difference between 41.55 and 34.84 in your 2009
13 report?

14 Do you understand my question,
15 Mr. Garrett?

16 A. Not really.

17 Q. Okay. If I understand your 2009 report
18 correctly, you valued damage to the 34.84
19 tillable acres at 40 percent of 7,000 an acre as
20 your before value. Is that correct?

21 A. Yes.

22 Q. In fact, is it true that the remainder,
23 that difference between 34.84 and 41.55 acres,
24 you ascribe no damage whatsoever to that land?

1 A. That's correct.

2 Q. Instead, any damages, and therefore any
3 compensation owed to the Bauchers, you
4 determined solely on the basis of whatever
5 amount of acres were tillable. Is that fair to
6 say?

7 A. Yes, it is.

8 Q. That 40 percent reduction in value of
9 the 34.84 acres tillable in your 2009 report, is
10 that the same percentage you used in preparation
11 of your 2008 report?

12 A. No, it's not.

13 Q. What was the percentage used in your
14 2008 report?

15 A. 35 percent.

16 Q. Why did that change?

17 A. There were several new -- what I'll call
18 new comparable sales on Beaver Creek since the
19 2005 valuation date for the first appraisal.
20 And they show an increase in the percent of
21 decrease in value for the tillable land that
22 floods.

23 Q. Likewise, in your 2009 appraisal, still
24 looking at page 2, it appears as though you

1 ascribe 40 percent functional obsolescence to
2 buildings 6, 5 and 4B?

3 A. That's correct.

4 Q. And you did not do so in your 2008
5 appraisal, Exhibit A. Is that correct?

6 A. That's correct.

7 Q. In fact, in your 2009 report, you
8 eliminate the cost to cure and instead ascribe
9 40 percent damage to those structures.

10 A. That's correct.

11 Q. Why the difference between the two
12 reports, Mr. Garrett?

13 A. One, when I was out there originally, I
14 didn't think the grain bins were touched by the
15 water. Mr. Baucher didn't describe that to me,
16 so I didn't deal with those in the first report.

17 The building 5, which was the farrowing
18 barn/nursery barn, when I was out there in 2005,
19 I did not realize that the manure from that barn
20 went into the manure pit near building number 6.
21 So when I was back out there this time, it was
22 described to me fully. So it was affected.

23 Then building number 6, which is the hog
24 finishing barn, you know, I felt that, the first

1 time around, that I did not compensate enough
2 for properly. So that's why I went to the
3 functional obsolescence.

4 Q. I notice in your 2009 report, still on
5 page 2, you note the functional obsolescence for
6 buildings 6 and 5 is because the manure pit
7 flooded. Is that correct?

8 A. Correct.

9 Q. Do you believe those buildings at grade
10 not to have been inundated with water?

11 A. That's what Mr. Baucher has always told
12 me.

13 Q. You get that from Mr. Baucher?

14 A. Correct.

15 Q. Turn, if you would, to the next page in
16 each of those reports, your 2008 and your 2009
17 report, page 3. This is the certificate of
18 appraiser for each.

19 A. Okay.

20 Q. Taking a look at the top right-hand
21 corner of Exhibit A first, your 2008 report, I
22 see you note that you are valuing a cropland
23 flood easement of 46 acres. Do you see that?

24 A. Yes.

1 Q. That comports with what we discussed
2 previously, that you were evaluating 46 acres
3 tillable. Correct?

4 A. Correct.

5 Q. On page 3 of your 2009 report, in the
6 same area of the certificate of appraiser, you
7 no longer say cropland flood easement. Do you
8 see that?

9 A. Yes.

10 Q. In fact, you note there's only 34.84
11 acres tillable.

12 A. Correct.

13 Q. You have changed what you are describing
14 as a flood easement to a flowage easement. Do
15 you see that?

16 A. Yes.

17 Q. Why did you make that change?

18 A. That's what the legal document said, so
19 I -- both -- well, both reports may
20 interchangeably say flood or flowage, but I
21 tried, in 2009, to say flowage.

22 Q. Were you instructed to refer to it as
23 flowage easement?

24 A. No.

1 Q. Between 2008 and 2009, your
2 appraisals -- strike that.

3 Your 2009 appraisal reflects
4 approximately a 25 percent decrease in the
5 cropland or tillable acres from your first
6 appraisal. Does it not?

7 A. Approximately.

8 Q. As we discussed a moment ago, tillable
9 acres are all under your valuation that are
10 actually damaged as part of your appraisals.
11 Correct?

12 A. That's correct.

13 Q. Turn, if you would, to page 6 of each
14 appraisal, Exhibit A and Exhibit B. Both of
15 these pages are entitled "Part One
16 Introductions."

17 Take a look, if you would, first, at
18 Exhibit A, your 2008 appraisal, at the bottom of
19 the page, the section entitled "Identification
20 of Plans Upon Which the Valuation was Made."

21 Do you see that?

22 A. Yes, I do.

23 Q. In fact, this reflects that you were
24 valuing, in 2008, a take based upon land area of

1 flooded data calculated and furnished by the
2 Mercer Soil & Water Conservation District. Do
3 you see that?

4 A. Yes.

5 Q. That was based on the flood elevation of
6 857.5 MSL from the July 2003 flood?

7 A. That's correct.

8 Q. And I apologize if I asked you this
9 previously, but just so I'm clear, that flood
10 data from July 2003 was based upon actual
11 observations and measurements in the field at
12 that time. Correct?

13 A. That's correct.

14 Q. Turning to your 2009 report, on that
15 same page, Exhibit B, you are basing the take
16 upon land area flooded based upon a survey
17 completed on October 26, 2009 by Robert Sneller.
18 Do you see that?

19 A. Yes.

20 Q. That was prepared, as you understand it,
21 using a 2003 flood elevation at 857 MSL, based
22 on NAV 1998 data. Do you see that?

23 A. Yes.

24 Q. In fact, the elevation that was used had

1 changed?

2 A. It's my understanding that the 857.5 is
3 based on some 1929 standard. And the 857 is
4 based on some 1988 standard.

5 Q. And what is that understanding based
6 upon, Mr. Garrett?

7 A. From Robert Sneller.

8 Q. He informed you of that?

9 A. Yes.

10 Q. Regardless, we can agree that the
11 elevation used for flooding, between your two
12 appraisals, changed from 857.5 to 857, can we
13 not?

14 A. Yes.

15 Q. What is your understanding of why this
16 change was made?

17 A. Apparently, there's about a 0.01
18 adjustment in the Mercer County area between
19 those two different standards.

20 Q. To your understanding, why was any
21 adjustment made at all?

22 A. When there's two different standards and
23 they don't measure out equal, there's
24 adjustments. Apparently, there's adjustments

1 all over the country between those two. And
2 they're not always .51.

3 Q. How was .51 determined in this instance,
4 to your understanding?

5 A. I don't know.

6 Q. Did you ever ask Mr. Sneller why he
7 wasn't preparing a survey based upon 1929 data?

8 A. No.

9 Q. Regardless, we can agree, as between
10 your 2008 survey and your 2009 -- your 2008
11 appraisal and your 2009 appraisal, a different
12 flood elevation was used. Is that fair to say?

13 A. Yes.

14 Q. Looking up above, on this same page of
15 each of these appraisals -- and let me direct
16 you, in particular, to Exhibit B, the 2009
17 appraisal. Under property type, there's a
18 paragraph in which you describe the subject
19 property. And in the second sentence of that
20 paragraph you write, There is approximately
21 76.87 acres tillable, based on FSA maps, and
22 approximately 34.84 acres of the tillable land
23 flooded in 2003.

24 Do you see that?

1 A. Yes.

2 Q. That's clearly far different than soil &
3 Water's determination in 2003. Correct?

4 A. Correct.

5 Q. Did you make that determination, that it
6 was 34.84 acres tillable that flooded in 2003?

7 A. Yes.

8 Q. How exactly did you make that
9 determination?

10 A. I looked at the aerial map with the
11 flood easement from Sneller and started with
12 that.

13 Q. You put aside Soil & Water's
14 observations and data. Correct?

15 A. Correct.

16 Q. And instead, determined that amount from
17 Mr. Sneller's survey of earlier this fall.
18 Correct?

19 A. Correct.

20 Q. Did you ever scale the acreage contained
21 within the soil & water map of the 2003 flood
22 event?

23 A. I did not.

24 Q. Did you ever attempt to make any

1 calculation independently of the acres tillable
2 within the 2003 Soil & Water map?

3 A. No, I did not.

4 Q. Is it fair to say you accepted at face
5 value Mr. Sneller's survey prepared earlier this
6 fall?

7 A. Yes.

8 Q. But you do disagree with him as to his
9 calculation of tillable acres?

10 A. Yes.

11 Q. Why does that disagreement exist, to
12 your understanding?

13 A. My reaction was that his measurements
14 probably are accurate, but I use FSA tillable
15 data for all my comparable sales, and I felt
16 like, then, I had to rely on it, primarily, to
17 come up with the tillable acres for Baucher in
18 the take.

19 And in particular, the tillable field to
20 the south on Baucher is 30, 31 acres, I'm not
21 sure exactly how much. And based on his survey,
22 almost all of it is in the flood easement. Not
23 quite all of it. There is a little bit that's
24 not. So as I calculated the tillable area, I

1 basically took the entire south field, less
2 about 0.25 acres.

3 Q. You say less 0.25 acres. why?

4 A. Because it wasn't in the flood area, and
5 based on Sneller's survey.

6 Q. In the southern field, did you also
7 exclude a certain right-of-way from the tillable
8 acres?

9 A. No.

10 Q. Do you know what a filter area is,
11 Mr. Garrett?

12 A. A filter strip, yes.

13 Q. What is a filter strip?

14 A. It's an area along the creek that helps
15 reduce erosion.

16 Q. Did you include the filter strip area in
17 your calculation of tillable acres on the
18 Baucher property?

19 A. Yes. And I believe Sneller did not.

20 Q. Can you describe for me specifically how
21 you calculate tillable acres, based upon the
22 survey provided to you by Mr. Sneller?

23 A. That 0.25 acres, I figured his -- once I
24 printed a map, I knew the longest dimension I

1 took to figure out what the scale on my printed
2 copy was.

3 Q. Do you use any tool in making these
4 calculations? Or how, exactly -- if you
5 understand my question -- do you look at the
6 drawing and then say it's 34.84?

7 A. Oh, well, and so far I had only been
8 able to answer how I came up with the .25 acres.
9 I had not been able to get to the north side of
10 the creek.

11 Q. Okay. I apologize.

12 A. I'll go to the north side of the creek.

13 I have a survey program -- I'm not a
14 surveyor, but I have a survey program. And I
15 put in a whole lot of his dimensions to
16 calculate the tillable area north of the creek.

17 Q. Do you recall earlier when you described
18 the pink area by soil & water as "very vague"?

19 A. Right.

20 Q. In fact, though, you have a survey that
21 indicates approximately 31 tillable acres.

22 Correct?

23 A. Correct.

24 Q. And you actually determined that it

1 includes 34.84 tillable acres. Correct?

2 A. Correct.

3 Q. Do you consider those determinations to
4 be very vague?

5 A. Which determinations?

6 Q. The determinations of Mr. Sneller and
7 you which differ by approximately three tillable
8 acres.

9 A. Well, they're less vague than the soil &
10 water.

11 Q. You still vary, between yourselves, by
12 approximately 10 percent. Is that fair to say?

13 A. Yes.

14 Q. Regardless of whether they're less vague
15 than soil & water, are they vague?

16 A. They're not the same, so yes.

17 Q. Could you turn to page 18 of both your
18 appraisals, Exhibits A and B.

19 Now that you have done that,
20 Mr. Garrett, I apologize, I would like you to
21 turn to page 23 of your appraisal, Exhibit B,
22 and that same page in Exhibit A. Pages 23 of
23 each.

24 Looking first at Exhibit A, your 2008

1 appraisal, section 27. You made determinations
2 as to amounts of acreage of the Baucher property
3 that are within certain categories of land use.
4 Correct?

5 A. That's correct.

6 Q. For instance, you recited there that
7 19.87 acres of the Baucher property was tillable
8 but nonflood.

9 A. Correct.

10 Q. And you also included there, 46 acre
11 tillable that floods. Correct?

12 A. Correct.

13 Q. That comports with what soil & water
14 concluded?

15 A. Correct.

16 Q. I apologize if I asked you this: Did
17 you make any independent verification of that 46
18 acres?

19 A. No.

20 Q. But you don't know here that you are
21 solely relying upon soil & water. Correct?

22 A. Correct.

23 Q. You have survey programming that allows
24 you to make a determination as to acreage?

1 A. The survey program requires metes and
2 bounds with precise angles, and so on. And
3 there was no way that I could do that without
4 being able to have his survey to be able to tie
5 some stuff down.

6 Q. Do you have an understanding as to
7 whether a survey could be prepared based upon
8 the elevation shot and actual measurements taken
9 by the Mercer County engineer during the 2003
10 flood event?

11 A. They could be, yes.

12 Q. But that was not done in this instance,
13 correct?

14 A. Correct.

15 Q. Instead, ODNR commissioned a new survey
16 based upon new data. Correct?

17 A. They requested a survey, yes.

18 Q. And chose, instead, to use 1989 and
19 NAVD. Correct?

20 A. Correct.

21 Q. Looking at your 2008 appraisal, still on
22 this page 23, you made a determination that
23 there were 6.4 acres of other. Do you see that?

24 A. Yes.

1 Q. Did you, yourself, calculate the 6.4
2 acres?

3 A. Yes.

4 Q. How did you do that?

5 A. In that case, it would have been a
6 residual after all the other areas.

7 Q. And what does other include?

8 A. What's your question?

9 Q. What types of land uses are included
10 within the category "other" for which you, in
11 your 2008 appraisal, ascribe 6.4 acres?

12 A. Beaver Creek, driveways, road
13 right-of-way, any other nontillable area that's
14 not woods.

15 Q. And if we look at your 2009 appraisal,
16 page 23, now you say the category of other
17 includes 7.7 acres. Correct?

18 A. Correct.

19 Q. Why did you make that change?

20 A. Because the -- once I had the survey
21 from Sneller, then I began to get a true handle
22 on what the other land area acreage was.

23 Q. In fact, between your 2008 and your 2009
24 survey, you changed each category of land use,

1 did you not, by area?

2 A. Except the home site.

3 Q. The home site remained at 1.0 acres.

4 A. Correct.

5 Q. But you dropped, as we discussed
6 previously, the acres tillable that floods by
7 approximately 25 percent. Correct?

8 A. Correct.

9 Q. The wooded area dropped from 4.1 acres
10 to 2.8?

11 A. Correct.

12 Q. What did you do to adjust that
13 calculation?

14 A. The -- well, basically, the -- in my
15 opinion, the FSA acres tillable on subject
16 property, on the Baucher property, are more than
17 what's really tillable, which is not unusual.
18 FSA tends to be generous to the farmers. But
19 once I had precise areas and all the different
20 pieces, I backed the woods off smaller than what
21 it is, because it -- the valuation of it, none
22 of it's in the take, so I could adjust it so
23 that I had enough area in the other.

24 so it makes no difference in the before

1 and after valuation, what area I've got in the
2 woods.

3 Q. Because you did not adjust upwards, for
4 instance, the tillable acres when you adjusted
5 the wooded acres?

6 A. Correct.

7 Q. So it made no difference to you, you
8 didn't give additional damage to the Bauchers
9 once you reduced the wooded acreage, because you
10 did not upwardly adjust the tillable acres.
11 Correct?

12 A. I used the same total tillable acres in
13 both appraisals, it's just the allocation
14 between the flood and nonflood.

15 Q. Absolutely. I apologize. That
16 distinction is, obviously, important. When you
17 reduced the acres wooded, you didn't add acreage
18 to the tillable that floods?

19 A. No, I did not.

20 Q. Your determination of 7.7 acres of other
21 in your 2009 appraisal is 1.3 acres greater than
22 you determined in 2008?

23 A. Correct.

24 Q. Did you consult with any county records

1 concerning classifications of these acres?

2 A. No, I did not.

3 Q. The county auditor keeps records
4 concerning what it considers to be tillable
5 acres or other acres. Correct?

6 A. Correct.

7 Q. But you did not refer to those records?

8 A. No.

9 Q. In fact, do you have any understanding
10 of where your 7.7 acres of "other" would compare
11 to those county records?

12 A. I do not.

13 Q. Is that not relevant, in your opinion?

14 A. No, I don't think it's relevant.

15 Q. You think the county data is flawed?

16 A. The county data is -- I don't think it's
17 as accurate as what I've got.

18 Q. And what you have got is a survey
19 commissioned by ODNR in 2009. Correct?

20 A. Correct.

21 Q. And your calculation is based upon that
22 survey?

23 A. Correct.

24 Q. Based upon a program you have at your

1 office?

2 A. Correct.

3 Q. But you, yourself, are not a licensed
4 surveyor?

5 A. Correct.

6 Q. Looking at pages 23 in each appraisal
7 open before you, the subject property is largely
8 rectangular, except for a home site on the north
9 at Bunker Hill Road that's carved out of it.
10 Correct?

11 A. Correct.

12 Q. As well as a triangular-shaped piece
13 that's carved out of it on the eastern side of
14 the property? Do you see that?

15 A. Correct.

16 Q. In each instance, you were valuing -- in
17 each instance -- meaning your 2008 and 2009
18 appraisals -- you were valuing the outlined
19 property depicted there. Correct?

20 A. Correct.

21 Q. And in neither case did you actually
22 consider value or appraise that triangular piece
23 of property to the east.

24 A. Correct.

1 Q. That does not reflect any difference
2 between your valuations, the property that you
3 considered in 2008 and 2009?

4 A. That's correct.

5 MR. MILLER: We've been going about an
6 hour. Let's just take five minutes off the
7 record, and then we'll keep plowing ahead.

8 (Recess Taken.)

9 BY MR. MILLER:

10 Q. Let's turn, if we could, to page 28 of
11 your 2009 report, Exhibit B, beginning on page
12 27 and continuing over to 28, you talk about
13 certain buildings on the Baucher's property.
14 Correct?

15 A. Yes.

16 Q. And in particular, building 4,
17 addressed, beginning on 27 and continuing onto
18 28; and building number 6, addressed on page 28,
19 you describe them as having a floor elevation of
20 857.13 MSL and a floor elevation of 857.26,
21 respectively. Do you see that?

22 A. Yes.

23 Q. Those are outside the flood elevation,
24 if 857 is used as the flood elevation. Correct?

1 A. Which -- okay. Repeat your first, or
2 start --

3 Q. I'll break it up. Building number 4 you
4 determined to have a concrete floor elevation of
5 857.13?

6 A. One of the bins did. And another bin
7 had 856.86 feet.

8 Q. Correct. Looking at the one that has
9 857.13 as the MSL, that was the concrete floor
10 elevation for at least one of the bins?

11 A. Correct.

12 Q. Building number 6, down below the hog
13 finishing barn, you determined it has a floor
14 elevation of 857.26 MSL?

15 A. Right, and those are based off of
16 sneller's survey.

17 Q. And obviously, both of those are above
18 857, but below 857.5 MSL?

19 A. Correct.

20 Q. In fact, that is a significant
21 distinction, in terms of the survey in your
22 appraisal, whether a flood elevation of 857 or
23 857.5 is used, is it not?

24 A. Correct.

1 Q. Turn, if you would, to page 64 of the
2 2009 appraisal, Exhibit B. Let me determine
3 what page I need you to turn to in Exhibit A.
4 Page 61, please, sir.

5 These are both within part 4 of your
6 appraisal report's analysis of the take. Is
7 that correct?

8 A. Correct.

9 Q. And in this section 40 of each report,
10 you seek to describe the take that you are
11 appraising. Is that fair to say?

12 A. Yes.

13 Q. Starting first with page 64 of your 2009
14 appraisal, Exhibit B, you say in the second --
15 strike that -- in the first sentence of section
16 40, the taking is a flood easement or flowage
17 easement on 41.55. Do you see that?

18 A. Yes.

19 Q. You go on to say, the surveyor measured
20 the tillable acreage in the flowage easement as
21 31.15 acres. Correct?

22 A. Correct.

23 Q. This is what ODNR contends is within the
24 take area, to your knowledge?

1 A. Yes.

2 Q. You go on to say the 31.15 acres
3 tillable is considered accurate. Do you see
4 that?

5 A. Yes.

6 Q. What's your basis for that conclusion?

7 A. Well, he was out on the field, I assume
8 that he could measure around what was being
9 farmed today. And that's probably what is being
10 farmed today.

11 Q. So that's simply your assumption,
12 correct?

13 A. Correct.

14 Q. Yet, for purposes of your appraisal you
15 actually considered it was inaccurate?

16 A. Correct.

17 Q. Instead, you used 34.84 acres tillable?

18 A. Correct.

19 Q. Were you ever told that the prior
20 determinations and calculations by Mercer County
21 Soil & Water were inaccurate?

22 A. No.

23 Q. Looking down below on that same page of
24 Exhibit B, 64, I would like to compare Exhibits

1 A and B for a moment.

2 Do you see the paragraph in Exhibit B on
3 page 64, near the bottom of the page, that
4 begins, it should be noted?

5 A. Yes.

6 Q. I would like you to find that same
7 paragraph on page 61, I believe it is, of
8 Exhibit A, it should be noted that the greater
9 discharge. Do you see those two paragraphs
10 between Exhibits A and B?

11 A. Yes.

12 Q. Exhibit A has a sentence that concludes
13 that paragraph, quote, in essence, before the
14 take, excess water was stored in the lake and
15 after the spillway changes, the excess water is
16 stored in the hundred-year flood plain along
17 Beaver Creek and the Wabash River. Do you see
18 that?

19 A. Yes.

20 Q. And you wrote that sentence in 2008?

21 A. Yes.

22 Q. You deleted that sentence in your 2009
23 report. Correct?

24 A. Correct.

1 Q. Why?

2 A. Because I felt like -- that it wasn't
3 technically correct.

4 Q. What about it is technically incorrect
5 in 2009?

6 A. Well, that the water is truly not stored
7 there. It does lay there enough time to cause
8 flooding, but it's not truly stored there.

9 Q. Were you asked to delete that sentence
10 in your 2009 report?

11 A. No.

12 Q. Were you asked to review your 2008
13 report by anyone to curtail references to the
14 extent or duration of the flooding within the
15 easement?

16 A. No.

17 Q. Not at any time, by any person?

18 A. Nobody.

19 Q. Looking back, again, at -- there's two
20 appraisals, I would ask, if you would, to turn
21 to page 65 of the new report, the 2009 report,
22 or Exhibit B, as it's been marked. And in
23 particular, section 41, description of the
24 taking. Do you see that section?

1 A. Yes.

2 Q. Looking at that section 41 in Exhibit B,
3 I would like to direct your attention to the
4 fourth paragraph down that begins, the surveyor
5 measured. Do you see that?

6 A. Yes.

7 Q. In fact, you set forth, in the second
8 sentence, there, the breakdown between tillable
9 nonflood and tillable flood is critical in this
10 appraisal. Do you see that?

11 A. Yes.

12 Q. And, in fact, any time the tillable
13 flood acreage is adjusted, it's significant, in
14 terms of your appraisal report, is it not?

15 A. Yes, it is.

16 Q. Because the landowner, in your opinion,
17 should receive no damages whatsoever, except for
18 acres that are tillable and flood?

19 A. Correct.

20 Q. You go on to write that, in the fourth
21 sentence, I believe, however, I'm going to use
22 34.84 acres tillable as being in the flowage
23 easement. Do you see that?

24 A. Correct.

1 Q. Just so I'm clear, that was your
2 determination of an acreage amount of tillable
3 flood acres. Correct?

4 A. Yes.

5 Q. That was not actually based upon an FSA
6 measurement of it?

7 A. Correct.

8 Q. I would like to direct your attention to
9 a sentence in the middle of that paragraph that
10 says, the local FSA offices, in general, are
11 very generous to farmers when they measure the
12 size of the tillable fields.

13 A. Yes.

14 Q. Do you see that?

15 A. Yes.

16 Q. What is your basis for that statement?

17 A. Well, I observe a lot of tillable acres,
18 maps, on farms, and there are times that I find
19 comparable sales that the FSA says there's more
20 tillable acres than there is acres on the farm
21 with a good legal description. And I think it's
22 general agreement by many people that observe
23 the FSA offices, that they measure the fields a
24 little bit big.

1 Q. Is this more or less your opinion,
2 rather than based on any flaw you know of in
3 their tillable calculations?

4 A. Yes.

5 Q. You have no reason to believe that the
6 46 acres tillable determined by Mercer County
7 soil & water is in any way based upon an FSA
8 calculation, do you?

9 A. No.

10 Q. Instead, that was their independent
11 determination based upon 2003 data. Correct?

12 A. Correct.

13 Q. Any other basis for your contention that
14 FSA is generous in determining tillable acres?

15 A. No.

16 Q. An area containing a filter strip is
17 tillable, is it not?

18 A. Yes, it is.

19 Q. The surveyor hired by ODNR ignored those
20 acres in determining the tillable acres.

21 A. It would appear to be that way.

22 Q. That was an error by the surveyor,
23 correct?

24 A. Compared to FSA maps, yes.

1 Q. No, it was an error by the surveyor in
2 determining the actual tillable acres, was it
3 not?

4 A. I don't know exactly what the
5 surveyor -- how he measures. I don't know that
6 for sure it's an error. I disagree with his
7 acres, but I'm not sure that --

8 Q. You do know, from the aerial depiction
9 prepared by the surveyor of the flood easement
10 area, that he excluded the filter strip from his
11 determination of tillable acres. Correct?

12 A. His survey doesn't show what he included
13 as tillable and didn't include as tillable.

14 Q. You believe his calculation of tillable
15 acres did not include filter strip areas,
16 correct?

17 A. I believe he didn't include the area I
18 put in the map on page 66, which could be
19 interpreted as filter strip, but goes clear to
20 the top of the bank.

21 Q. To exclude filter strip areas in
22 determining tillable acres is incorrect, in your
23 opinion, is it not?

24 A. It is.

1 Q. Take a look, if you would, at page 69 of
2 your 2009 appraisal -- that's Exhibit B -- and
3 page 63 of your 2008 appraisal. I believe they
4 each reflect the same section, section 48, site
5 plan illustrating residue property.

6 A. Yes.

7 Q. In your opinion, Mr. Garrett, why is it
8 inaccurate to exclude the filter strip in
9 calculating tillable acres?

10 A. Because FSA includes the filter strips
11 in their tillable acres. And in many cases --
12 not on the Baucher, but in many cases the
13 farmers are paid for the filter strip area.

14 Q. Could Mr. Baucher till and farm the
15 filter strip area?

16 A. Some of that area is very steep. I'm
17 not convinced he could.

18 Q. You are not convinced he could not
19 either, though?

20 A. No.

21 Q. In fact, it is possible that he could
22 till those acres.

23 A. It's maybe possible.

24 Q. The illustrations in section 48 of your

1 respective reports depict both the residue
2 property, as well as the areas considered within
3 the flowage easement. Correct?

4 A. Yes.

5 Q. In Exhibit A, section 48, what you
6 referred to earlier as the northeast finger is
7 depicted as being within the flood easement.
8 Correct?

9 A. Correct.

10 Q. And it's not in Exhibit B on page 69,
11 correct?

12 A. Correct.

13 Q. Likewise, if you look at the north side
14 of the creek on Exhibit A, you would agree with
15 me, would you not, that Exhibit A -- the 2008
16 appraisal -- includes significantly more
17 property within the flowage easement than page
18 69, Exhibit B, depicting what ODNR is now
19 claiming the take is. Correct?

20 A. Correct.

21 Q. How do you account for that difference?

22 A. The page 63 in the 2008 report, all
23 those blue lines in there are mine. And so they
24 are estimates of the best.

1 Q. You prepared that based upon the actual
2 information provided to you by ODNR from Mercer
3 County Soil & Water. Correct?

4 A. Correct. The information from Mercer
5 Soil & Water is very unprecise. They drew those
6 at 857 and a half by looking at five foot
7 interval topos between 855 and 860.

8 Q. Regardless, your understanding of soil &
9 Water's calculations is it's based upon 857 and
10 a half flood levels, and based upon actual
11 observations and data from the 2003 flood event.
12 Correct?

13 A. Current.

14 Q. The surveyor for ODNR didn't have any
15 such observations of the actual 2003 flood
16 event, correct?

17 A. Correct.

18 Q. Looking back at your site plan in
19 Exhibit A, the 2008 appraisal, there is
20 significantly more property within the flood
21 easement on both the west and the east side of
22 the property north of Beaver Creek. Correct?

23 A. Correct.

24 Q. In fact, the surveyor looking at your

1 2009 appraisal included next to no property
2 along the creek on the central and eastern part
3 of the property. Would you agree?

4 A. Correct.

5 Q. And that reflects a significant
6 difference from the 2008 calculations you were
7 provided and your 2008 appraisal?

8 A. Correct.

9 Q. And in these ways that we've been
10 discussing, your 2009 appraisal is of a
11 different easement, both in area and location.
12 Correct?

13 A. Correct.

14 Q. The survey that was prepared is not
15 simply a mirror image of the calculations done
16 by Soil & Water and depicted in their drawing or
17 on your page 63 of Exhibit A, is it?

18 A. No.

19 Q. There are differences between the two.
20 And in some instances, especially north of the
21 creek, those instances are significant in terms
22 of area, are they not?

23 A. Yes.

24 Q. How do you explain the surveyor's

1 failure to include any of the area north of the
2 creek -- immediately north of the creek in the
3 central and eastern part of the property?

4 A. Based on his topo measurements, that
5 area didn't flood.

6 Q. Did you in any way challenge his
7 calculations based upon what had been observed
8 in 2003 and charted by Soil & Water?

9 A. He's got his topo lines on there.

10 Q. My question for you, Mr. Garrett: Do
11 you in any way challenge his calculations, based
12 upon what was observed in 2003 and charted by
13 Mercer County Soil & Water?

14 A. No.

15 Q. Regardless, though, we can agree that
16 you recognize that the flood easement depicted
17 on page 64 of your 2008 appraisal is
18 significantly different than the flood
19 appraisal -- excuse me, the flood easement
20 depicted on page 69 of your 2009 appraisal.

21 A. Correct.

22 Q. Turn to page 84 of your 2009 appraisal,
23 please, Mr. Garrett. Do you see the section
24 entitled "Conclusion"?

1 A. Yes.

2 Q. And there, you are summing up after
3 sales that you looked up?

4 A. Yes.

5 Q. In the section entitled "Conclusion,"
6 the second sentence, you write, the sales are
7 considered similar to subject with tillable land
8 that flooded in 2003 and effectively have the
9 same flood easement as the subject residue. Do
10 you see that?

11 A. Yes.

12 Q. What do you mean by that statement?

13 A. They all flood because of the spillway
14 changes, effectively, the way subject floods
15 because of the spillway changes.

16 Q. You're aware that properties nearby or
17 neighboring to the Bauchers, would, quote,
18 effectively have the same flood easement, end
19 quote, as this property?

20 A. Yes.

21 Q. When there's a flood event, we can
22 agree, can we not, Mr. Garrett, that the flood
23 waters just don't stop at Mr. Baucher's property
24 line. Correct?

1 A. Correct.

2 Q. In fact, when there's a flood event,
3 Mr. Baucher's home site could be an island,
4 could it not?

5 A. Yes.

6 Q. Turn to page 38 of your addendum in the
7 2009 report -- excuse me, page 3 -- I apologize,
8 page 3 of your addendum. Could you describe for
9 me what the bottom drawing depicts.

10 A. That's the flood insurance maps for that
11 part of Mercer County.

12 Q. Specifically, this map is the
13 hundred-year flood event?

14 A. Yes.

15 Q. Included within that is that finger on
16 the northeast corner of the property, correct?

17 A. That's correct.

18 Q. All of the property immediately north of
19 Beaver Creek in the central and eastern part of
20 the Bauchers' property?

21 A. That's correct.

22 Q. All of that is excluded from the flood
23 easement that ODNR now seeks to take, as
24 contained in your 2009 appraisal?

1 A. That's correct.

2 Q. The home site for the Bauchers, there,
3 is an island, is it not?

4 A. Yes, it.

5 Q. And that could be true with regard to
6 the flood easement being sought by ODNR, as
7 well, could it not?

8 A. Yes.

9 Q. Turn, if you would, to page 134 of your
10 2009 appraisal. I merely want to ask you what I
11 think we've covered before.

12 But just so I'm clear, in section 61,
13 allocation of the difference between before and
14 after values, you calculate compensation for the
15 part taken, solely based upon the 34.84 acres
16 you determined to be tillable. Correct?

17 A. Correct.

18 Q. And so what really matters, in terms of
19 compensation to the landowners, is how many
20 acres within the flowage easement are determined
21 to be tillable. Correct?

22 A. Correct.

23 Q. Soil & water had one number, based upon
24 the 2003 flood data. Correct?

1 A. Correct.

2 Q. An ODNR surveyor had another number,
3 based on a survey he conducted this fall.
4 Correct?

5 A. Correct.

6 Q. You, yourself, came up with an entirely
7 different number. Is that correct?

8 A. Correct.

9 Q. Turn, if you would, to addendum page 18
10 in your 2009 appraisal.

11 When was this information provided to
12 you?

13 A. That -- well, I received that on the
14 Monday before October 28th, whatever date that
15 might be.

16 Q. Okay. Had you seen it before that time?

17 A. Well, I had seen the legal description,
18 but not with the official stamp.

19 Q. From whom did you receive this document?

20 A. From Rachel.

21 Q. Did you ask any questions about it?

22 A. No.

23 Q. Do you believe this description of the
24 flowage easement to be more accurate than what

1 Soil & water calculated -- strike that.

2 Do you believe this description of the
3 flowage easement to be more accurate of what
4 flooded in 2003 versus what soil & water
5 prepared?

6 A. Absolutely.

7 Q. Why?

8 A. The Soil & Water was based off five-foot
9 intervals off topo maps, which can't be
10 accurate. This is based off somebody that
11 should know what they are doing.

12 Q. Yet, you disagree with their calculation
13 of tillable acres. Correct?

14 A. I disagree with the tillable acres.

15 Q. In fact, Soil & Water charted it on a
16 five-foot interval map but, in fact, used actual
17 readings from the 2003 flood event. Correct?

18 A. Correct.

19 Q. You have never once picked up the phone
20 and asked soil & water about their calculations
21 and determinations of the acreages, have you?

22 A. No.

23 Q. You are assuming it is less precise than
24 what we see in your addendum, correct?

1 A. They state this is based on five-foot
2 interval topo maps, so it is less precise.

3 Q. And you are assuming that, because you
4 have never spoken with anyone at soil & water
5 concerning what went into their calculations?

6 A. They clearly, on what they provide, said
7 the elevations were placed on a USGS map with
8 five-foot contours.

9 Q. All you know about what Soil & Water did
10 is what you just read from Exhibit D. Correct?

11 A. Correct.

12 Q. Because you never picked up the phone
13 and asked them about their opinions concerning
14 there calculations. Correct?

15 A. Correct.

16 Q. You have never spoken to a gentleman
17 named Jerry Lynn about those calculations.
18 Correct?

19 A. Correct.

20 Q. Though you acknowledge that the decrease
21 ODNR now seeks in tillable acres makes a
22 significant difference to the landowners, both
23 in terms of the area and location of the flowage
24 easement and compensation to them, correct?

1 A. Correct.

2 Q. And, in fact, this flowage easement
3 being sought by ODNR is different than that
4 which it filed in 2008. Correct?

5 A. Correct.

6 Q. Can I show you what we're going to have
7 marked as Exhibit F?

8 --0--

9 (Deposition Exhibit F marked.)

10 --0--

11 Q. What is Exhibit F, to your knowledge?

12 A. Well, that's part of the Sneller survey
13 showing the take line around the buildings.

14 Q. Have you seen this document before?

15 A. Yes, I have.

16 Q. Specifically what buildings of the
17 Bauchers' are within the flowage easement
18 depicted on Exhibit F?

19 A. Well, the hog finishing barn, which is
20 the one farthest northeast; the
21 farrowing/nursery barn, which is kind of the
22 middle one.

23 Q. To help me identify the hog finishing
24 barn, is that depicted by a certain elevation?

1 A. Yeah, 856.31 feet. Well, that's the
2 cleanout, the elevation is 857.26 feet.

3 Q. In fact, the actual elevation of the
4 building at grade is above 857. Correct?

5 A. The first floor is, yes.

6 Q. And that's significant when you are
7 talking about changing the flood elevation from
8 857.5 to 857, is it not?

9 A. Yes.

10 Q. Likewise, there's another building
11 depicted with a finished floor elevation of
12 857.47. Do you see that?

13 A. Yes.

14 Q. What building is that, to your
15 knowledge?

16 A. That's the farrowing/nursery building.

17 Q. And again, it's significant that the
18 flood elevation was changed from 2008 to 2009
19 from 857.5 to 857. Correct?

20 A. Correct.

21 Q. Because now this building, at least at
22 its floor, is not considered to be inundated.
23 Correct?

24 A. Correct.

1 Q. What building is depicted as having a
2 concrete floor of elevation 857.13?

3 A. That's one of the two grain bins, the
4 5,000 bushel grain bin, I believe, building 4,
5 4B, maybe.

6 Q. Again, that, at its floor, under the new
7 flood easement elevation used, is not inundated.
8 Correct?

9 A. Correct.

10 Q. But it would be using a flood elevation
11 level of 857.5?

12 A. Correct.

13 Q. Mr. Garrett, this morning you described
14 yourself as having -- I don't want to
15 mischaracterize your testimony -- an extensive
16 farm background. Is that fair to say?

17 A. Yes.

18 Q. What exactly do you base that
19 characterization on?

20 A. I've been doing farm appraisals for 39
21 years. I have the ARA -- which is Accredited
22 Rural Appraiser -- designation from the American
23 Society of Farm Managers.

24 Q. Do you, yourself, farm?

1 A. No, I do not.

2 Q. Have you ever?

3 A. No.

4 Q. Anything else that goes into your
5 characterization of yourself as having an
6 extensive farm background characterization?

7 A. I was born and raised on a farm. I have
8 an agriculture economics degree from Ohio State
9 University.

10 Q. Anything else?

11 A. Not that I can think of.

12 Q. In your 39 years of peripheral
13 experience, however, you have only previously
14 appraised one flood easement?

15 A. Correct.

16 Q. And that was in the early 1970s?

17 A. Correct.

18 Q. Under what circumstances did you do
19 that?

20 A. It was for the Ceasers Creek Lake,
21 before it was a lake, when they put flowage
22 easements on stuff at the top end that was going
23 to flood occasionally.

24 Q. Whose property did you appraise?

1 A. I believe it was a Roger Beam.

2 Q. And you completed that appraisal in the
3 early 1970s?

4 A. Correct.

5 Q. Do you recall to what extent his
6 property was damaged by flowage easement on a
7 percentage or dollar basis?

8 A. I don't remember.

9 Q. What did you look into in order to
10 prepare that appraisal?

11 A. I don't remember very much about that
12 appraisal, since it was over 35 years ago.

13 Q. Given that this appraisal of the Baucher
14 property, and some other landowners involved in
15 this same matter, were your first appraisal of a
16 flowage easement in approximately 35 years,
17 what, if any, research did you do concerning the
18 nature of flowage easements in order to prepare
19 your appraisals?

20 A. I did some research on the Internet, and
21 talked to several different people about flowage
22 easements, several different farm appraisers.

23 Q. Who, in particular, do you recall
24 talking to?

1 A. I don't remember all the names, you
2 know, I talked to Jay Luce at some time. I
3 talked to the guy who does farm appraisals for
4 Schrader, the big auctioneer outfit. Those were
5 the two names that I do remember.

6 Q. What, specifically, did you discuss with
7 those gentlemen?

8 A. Just if they had any flood easement-type
9 sales, or any experience, or any ideas, or
10 whatever.

11 Q. Did you discuss with them what the
12 nature of a flood easement is?

13 A. Not specifically. I mean, no.

14 Q. Are you familiar with the term "bundle
15 of rights"?

16 A. Yes.

17 Q. Is it customary, in appraising an
18 easement upon a property, to consider what
19 bundle of rights are being acquired?

20 A. Yes.

21 Q. In this instance, with regard to the
22 Bauchers, what bundle of rights are being
23 acquired?

24 A. Flowage rights on -- I forget what the

1 right term is, in perpetuity --

2 Q. Perpetual flowage, right?

3 A. Yes.

4 Q. You reviewed the easement document that
5 reflects the interest to be acquired?

6 A. Yes.

7 Q. Do you recall any limitation in that
8 document upon the extent to which the property
9 can be flooded?

10 A. No, I don't believe there was any stated
11 limitation.

12 Q. Do you recall any limitation in that
13 document upon the duration for which the
14 property can be flooded?

15 A. I don't believe there was any.

16 Q. If several witnesses were to testify
17 under oath that in 2003 the northeast corner of
18 the Baucher property -- this finger that you
19 mentioned previously -- floods, would that raise
20 questions, in your mind, regarding the accuracy
21 of the rest of the survey prepared by ODNR?

22 A. It could. My reaction is that the
23 elevations, at some point, become fact rather
24 than -- become fact. And I would think that the

1 factual elevations, at some point, have to be
2 said as to what should be used, whatever they
3 are.

4 Q. Elevations can change over years, can
5 they not?

6 A. They can.

7 Q. And, in fact, elevations can differ
8 within even one-foot elevation drawings because
9 of the undulation of property. Correct?

10 A. I assume. I'm not a surveyor. I don't
11 measure elevations.

12 Q. Let's talk about the survey prepared in
13 2009 for ODNR. We can agree, can we not, that
14 it depicts none of the northeastern portion of
15 property as flooding?

16 A. That's correct.

17 Q. In fact, if several witnesses testified
18 under oath there was flooding on the northeast
19 finger, as we've been describing it, that, to
20 you, is the better evidence of whether there is
21 flooding on that property, is it not?

22 A. I guess I'm not convinced that it is.
23 You know, if it's -- you know, if that's above
24 857, and 857 was decided as being correct, you

1 know, I guess I would rather go with the exact
2 physical elevations, rather than observations.

3 Q. You say "exact physical elevations."

4 First of all, we've agreed they are not
5 exact, even between foot markers, are they,
6 because the property was undulated?

7 A. I'm not a surveyor. I don't know.

8 Q. In fact, by saying you would maybe go
9 with the survey instead, you are, of course,
10 assuming that 857 is correct.

11 A. Absolutely.

12 Q. Okay. You talked a moment ago about
13 inquiring of certain gentlemen whether there
14 were any flood easement sales that they knew of.
15 Is that correct?

16 A. Yes.

17 Q. Did you learn of any?

18 A. No, I did not. One of the guys I talked
19 to talked about some area in Indiana that had
20 flood easements on it. He said -- or flowages
21 on it. He said, historically, those farms did
22 not sell for any discount, even though they had
23 the flowage easement. But he went on to say, I
24 know they got flooded in this 2003 time frame.

1 He said, I don't know whether that has changed
2 now or not.

3 Q. You didn't follow up on any of those
4 sales?

5 A. I did not.

6 Q. You don't remember which gentleman told
7 you that?

8 A. I don't.

9 Q. When you appraised a flood easement 35
10 years ago, approximately, who was your client in
11 preparing that appraisal?

12 A. The landowner.

13 Q. Did you damage the property that was
14 affected by the flood easement 40 percent?

15 A. I don't remember what percent I did.

16 Q. Was it a greater percentage?

17 A. I don't know.

18 Q. Would you still have that appraisal,
19 Mr. Garrett?

20 A. No, I wouldn't.

21 Q. You are certain of that?

22 A. Yes.

23 Q. Was that prepared as part of a
24 condemnation action?

1 A. Yes, it was.

2 Q. Was a lawsuit actually filed?

3 A. Yes, I believe so.

4 Q. Did it go to trial?

5 A. My memory says it did, but I'm not 100
6 percent sure.

7 Q. Does your memory say you testified at
8 trial?

9 A. I believe I did.

10 Q. Where was that action pending?

11 A. Federal court. If I testified, it would
12 have been in Dayton.

13 Q. It was the United States District Court
14 in Dayton?

15 A. Yeah. I'm not 100 percent sure I
16 testified, but that's my vague memory.

17 Q. You believe it tried?

18 A. I believe it did.

19 Q. And your client, the landowner, his name
20 was what?

21 A. Robert Beam.

22 Q. Did he own that property in his name or
23 in a company or LLC?

24 A. It would have been in his name, or maybe

1 his and his wife's name.

2 MR. MILLER: Why don't we take a few
3 minutes off the record.

4 (Recess Taken.)

5 BY MR. MILLER:

6 Q. Mr. Garrett, we were talking a moment
7 ago about the lawsuit involving your client,
8 Robert Beam.

9 Do you know what appropriating authority
10 brought that lawsuit, if it was in federal
11 court?

12 A. Corps of Engineers.

13 Q. Do you recall who the judge was on that
14 case?

15 A. No.

16 Q. And I know you don't recall how much you
17 damaged the property within the flowage
18 easement; is that right?

19 A. Right.

20 Q. Do you recall whether you gentlemen
21 described any damage to the residue of
22 Mr. Beam's property?

23 A. I don't recall. My recollection would
24 be that I did not. But I don't really know.

1 MR. MILLER: Subject to my earlier
2 statement about holding the deposition open, I
3 have nothing further from Mr. Garrett at this
4 time.

5 MR. SCHLATTER: Okay. Mr. Garrett you
6 are not my client. But if you were, I would
7 tell you you have the right to read your
8 deposition. You have to sign the deposition.
9 When you do, it becomes your deposition. But
10 you have the right to read it before signing, or
11 you can waive signature. If you were my client,
12 I would tell you to read it first for accuracy.

13 THE WITNESS: Okay. I'll do that.

14 (Signature not waived.)

15 --O--

16 Thereupon, the testimony of November
17 9, 2009, was concluded at 12:14 p.m.

18 --O--

19
20
21
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24

IN RE: ODNR V. BAUCHER, ET AL.

1. ADDENDUM TO CERTIFICATE

I do hereby certify that JAMES A. GARRETT, ARA, ASA did not read or sign his deposition taken November 9, 2009; that the deponent was notified by letter and informed of Civil Rule 30(E), providing the number of days within which to read and sign the deposition or the deposition may be used without signature, and the witness did not do so.


Carmen G. Mailey, RPR

2. SIGNATURE

Please attach the enclosed sheet(s) to the transcript of JAMES A. GARRETT, ARA, ASA taken November 9, 2009.

Thank you,

Carmen G. Mailey, RPR

3. LATE SIGNATURE

Enclosed you will find the errata sheet(s) and/or signature page from the deposition of JAMES A. GARRETT, ARA, ASA. This was received after the time allowed for signature.

Thank you,

Carmen G. Mailey, RPR