

The parties to this action, by and through their respective attorneys, hereby jointly submit, for purposes of this action only, that each of the exhibits listed below are authentic for all purposes in this action:

<u>Tab</u>	<u>Description</u>
14	Deposition Transcript with Exhibits of Mary E. Gilbert taken February 3, 2010
15	Deposition Transcript with Exhibits of H. William Gilbert (court reporter error should be "H. Edward Gilbert") taken February 3, 2010
16	Deposition Transcript with Exhibits of David Lee Granger taken February 26, 2010
17	Deposition Transcript with Exhibits of Patricia Highley taken February 5, 2010
18	Deposition Transcript with Exhibits of Robert Highley taken February 5, 2010
19	Deposition Transcript with Exhibits of Daniel W. Johnsman taken February 2, 2010
20	Deposition Transcript with Exhibits of Andrea Knapke taken February 4, 2010

Dated: June 1st, 2010

Joint Exhibits Approved and Respectfully Submitted By:



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TAB 14

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO
EX REL., WAYNE T. DONER, et al.

vs. CASE NO. 09-1292

SEAN D. LOGAN, DIRECTOR
OHIO DEPARTMENT OF NATURAL RESOURCES
2045 MOSE ROAD
COLUMBUS, OHIO 43229-6693

and

OHIO DEPARTMENT OF NATURAL RESOURCES
2045 MORSE ROAD
COLUMBUS, OHIO 43229-6693

DEPOSITION of MARY E. GILBERT, was
taken by the Respondents as on cross-examination,
pursuant to the Ohio Rules of Civil Procedure, at the
Central Service Building, 220 West Livingston Street,
Celina, Ohio 45822, on Wednesday, February 3, 2010,
commencing at 4:04 a.m, before Edna M. Hawkins,
Professional Court Reporter and a Notary Public
within and for the State of Ohio.

HOLMES REPORTING & VIDEO
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On Behalf of Ohio Department of Natural Resources:

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I N D E X

WITNESS: H. EDWARD GILBERT

Examinations	DIRECT	CROSS
By Mr. Cole		4
By Ms. Brewer		43

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of Mary E. Gilbert	

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MARY E. GILBERT

of lawful age, a Relator herein, as upon
cross-examination, as hereinafter certified, was
examined and testified as follows:

CROSS-EXAMINATION

BY MR. COLE:

Mrs. Gilbert, my name is Bill Cole.

I'm representing the Department of Natural
Resources in this litigation. I just want
to go over a couple of ground rules here.
I'm going to ask you some questions. Give
me your answer to the best of your
knowledge. Please give verbal answers,
like yes, no, whatever the case might be.
Don't nod your head or give uh-huh or un-un
because she's transcribing it; okay?

THE WITNESS: Okay.

MR. COLE: If I ask you a question you
don't understand or it's confusing, let me
know or tell your attorney and I'll try to
rephrase, and I'm not here to try to trick
you on any questions; fair enough?

THE WITNESS: Yes.

MR. COLE: I will ask, if I'm asking a
question, let me finish. You may think you

1 know the answer and then I may change it at
2 the last minute; the question may go a
3 different way. Let me finish asking. And
4 on the same token, I will do my best not to
5 interrupt you when you're answering; fair
6 enough?

7 THE WITNESS: Fair enough.

8 MR. COLE: Finally, I don't think
9 we're going to be here too long. If you
10 feel you need to take a break, just let one
11 of us know. The only condition is if you
12 got a question posed to you, I'd like you
13 to go ahead and answer it before you take a
14 break; otherwise, that's fine; okay?

15 THE WITNESS: Okay.

16 Q. Can you tell me where you live, Mrs.
17 Gilbert?

18 A. Address --

19 Q. Yeah.

20 A. -- is 3003 Bunker Hill Road, Celina,
21 Ohio.

22 Q. And what is your educational
23 background?

24 A. Just high school.

25 Q. Did you graduate?

1 A. GED.

2 Q. Any formal education after that?

3 A. No.

4 Q. Okay. Do you have any education or
5 training in agriculture, take any classes or anything
6 like that?

7 A. No.

8 Q. How about engineering?

9 A. No.

10 Q. How about anything to do with water
11 drainage or hydraulics or water movement on land or
12 anything like that?

13 A. No.

14 Q. Okay. Are you employed currently?

15 A. Yes.

16 Q. And what do you do?

17 A. I weld.

18 Q. Okay. How long you been doing that?

19 A. Fifteen years at C-Tech's, in St.

20 Mary's.

21 Q. Okay. What did you do before that?

22 A. Worked another factory job.

23 Q. All right. What was that?

24 A. I built semi-trailers over at

25 Strick's, in Monroe, Indiana.

1 Q. All right. You say you've been
2 welding 15 years?

3 A. Been at C-Tech's for 15 years, yes.

4 Q. Did you weld somewhere else before
5 that?

6 A. No. I built semi-trailers then.

7 Q. You know I've already deposed your
8 husband in this case?

9 A. Yes.

10 (Xerographic Document, Affidavit of
11 Mary E. Gilbert, was marked for
identification Exhibit A.)

12 Q. And you are a party to this case. I
13 do have some questions. I'm going to show you what I
14 have marked as Exhibit A. Counsel. Why don't you
15 take a look at that. You don't have to try to
16 memorize it; just take a quick look at that,
17 including the attachment.

18 (Witness complying.)

19 Okay. Does that look familiar to you?

20 A. Yes.

21 Q. All right. That's an affidavit that
22 you filled out; correct.

23 A. Yes.

24 Q. You didn't type it up? Your lawyers
25 did it and you looked at; correct?

1 A. Correct.

2 Q. And then you signed that on the back
3 page back in August?

4 A. Yes.

5 Q. Did you review the Affidavit before
6 your deposition here today? Did you look at it last
7 night or a couple days ago?

8 A. Not really. When they typed it up, I
9 looked at it.

10 Q. All right. Did you check it for
11 accuracy? Did you read it?

12 A. Yes.

13 Q. Anything that's in this Affidavit that
14 may have changed any of the statements that may not
15 be true anymore that you know of?

16 A. Not that I know of.

17 Q. All right. I noticed in this
18 Affidavit you have two parcels that are indicated.
19 One is 21-016 (sic) and then 26-0421 and after
20 paragraph 2, you only talk about the 412 parcel. Am
21 I correct that you're not -- the 26-016 you're not
22 claiming any flooding damage from the State on it; is
23 that correct?

24 A. Correct.

25 Q. All right. So for purposes of this

1 case, you and your husband are maintaining it's the
2 26-0412 that's been damaged; correct?

3 A. Correct.

4 Q. All right. How long have you owned
5 this property?

6 A. Eighty-six, 1986.

7 Q. Okay. Did you occupy the property
8 before you owned it?

9 A. No.

10 Q. And do you know from whom you acquired
11 the property?

12 A. We went through a real estate, but
13 Lloyd Granger had owned it. I think it was like a
14 family deal.

15 Q. Do you know what you and your husband
16 paid for it?

17 A. Eleven hundred an acre.

18 Q. And when was that?

19 A. In 1986.

20 Q. And did you have any pre-existing
21 relationship with Mr. Granger; was he a family friend
22 or did you know him when you purchased the property?

23 MS. BREWER: Objection. Go ahead.

24 I'm sorry. To make it clear, when I
25 object, it just means that I disagree with

1 something about his question. It could be
2 a technical disagreement and since there's
3 not a judge here, I have to preserve my
4 disagreement for the record so that when we
5 get in front of a judge later, he can rule
6 on it. So unless I instruct you not to
7 answer, you can go ahead and answer if you
8 can.

9 A. No, we did not know him.

10 Q. Okay. So it was a sale on the market?

11 A. Yes. It was through real estate.

12 Q. Okay. Do you know how long Mr.

13 Granger had owned the property?

14 A. It was in his family. No, I don't
15 know.

16 Q. When you bought the property, did
17 anyone tell you, did Mr. Granger or anyone else tell
18 you that there was flooding on the property or that
19 the property could flood?

20 A. No.

21 Q. How many acres is this parcel?

22 A. 39.0 -- or 70, 39.70.

23 Q. Pretty good.

24 A. Something like 7-0-7, or something

25 like --

1 Q. That's exactly what we've got, yeah.
2 And if you can look at Exhibit 1, it's the last page
3 on -- When I say, "Exhibit 1," it's actually --

4 A. Okay.

5 Q. It's the last page of Exhibit A that I
6 had given you. Is that the parcel we're talking
7 about here?

8 A. Yes, it is.

9 Q. All right. And that is owned by you
10 and your husband?

11 A. Correct.

12 Q. All right. And I see that -- And your
13 Affidavit says that some of that is shaded dark. Did
14 you do that shading or did Mr. Gilbert?

15 A. I did.

16 Q. All right. And what does that
17 represent?

18 A. Flooding.

19 Q. All right. Is that flooding because
20 of the spillway, you believe?

21 A. Yes, that is.

22 Q. All right. And so the, kind of that
23 triangle portion on the left-hand side, you're not
24 claiming it was damaged by flooding; correct?

25 A. Correct.

1 Q. All right. Do you know how many acres
2 are in the area you claim is flooded?

3 A. We figured up around 27.

4 Q. Do you own any other property?

5 A. Yes.

6 Q. Real estate?

7 A. Yes, the other parcel.

8 Q. Okay. Other than those two?

9 A. No.

10 Q. Okay. Do you lease or rent any other
11 property?

12 A. We rent.

13 Q. Okay. And tell me about that.

14 MS. BREWER: Objection.

15 Q. Who do you rent from?

16 A. We -- Daryl Miller and -- Oh, shoot!
17 Seibert, Richard Seibert.

18 Q. Okay. And does that include your
19 residence?

20 A. No.

21 Q. Okay. Where is your residence?

22 A. 3003 Bunker Hill Road.

23 Q. Okay. Is it on one of these parcels?
24 Is it on the 016 parcel?

25 A. Yes.

1 Q. All right. What do you do with the
2 property that you rent or that you pay rent for?

3 A. He farms it. My husband farms it.

4 Q. Are you involved with farming at all?

5 A. No.

6 Q. Have you ever been?

7 A. No.

8 Q. You don't help him out at all?

9 A. I'm their go-getter.

10 Q. Okay.

11 A. Go get this for me; go get that for
12 me.

13 Q. But you're not actively involved,
14 getting on the land and tilling the soil or anything
15 like that?

16 A. No.

17 Q. All right. Do you know how long
18 you've had those leases or how long you've been
19 paying rent; I'm sorry.

20 A. I'm not sure on that.

21 Q. Do you have approximate.

22 A. I'm not sure. I'd have to guess and
23 I'm not real sure on that; I don't know.

24 Q. Well, don't guess if you don't know;
25 that's fine.

1 A. I don't know.

2 Q. Do you know what the terms of the
3 lease are, of your rent with these individuals?

4 MS. BREWER: Objection.

5 Q. How long it's -- Is it for a fixed
6 term? Is it year-to-year, month-to-month?

7 MS. BREWER: Objection.

8 A. Yeah-to-year.

9 Q. And what do you pay them? What's the
10 rent you pay?

11 A. \$60 an acre.

12 Q. Both of them?

13 A. Yes.

14 Q. Do you know the size, how many acres
15 are involved in those two parcels?

16 A. The one is 16-and-a-half and the other
17 one -- It's went down a little bit, 'cause he sold
18 some ground off of it, but it's 42 and a half,
19 approximately.

20 Q. Are either of those parcels impacted
21 by the flooding?

22 MS. BREWER: Objection.

23 A. No.

24 Q. And are those parcels that you rent
25 right now, are those exclusively used for farming?

1 A. Yes.

2 Q. Is this parcel, in Exhibit 1, the one
3 that we're talking about here, exclusively used for
4 farming?

5 A. Yes.

6 Q. Okay. Do you have any other interest
7 in land? Do you have any other leases or rights in
8 any other property --

9 MS. BREWER: Objection.

10 Q. -- other than the ones we've talked
11 about so far?

12 MS. BREWER: Objection.

13 Q. Do you understand my question?

14 A. No, not really.

15 Q. Okay. Do you own any other property
16 other than what we've talked about?

17 A. No.

18 Q. Okay. Do you lease any other property
19 from anyone?

20 A. Other than what we talked about, no.

21 Q. Do you lease any property to anyone?

22 A. No.

23 Q. Where is this property -- How far away
24 is this from the west bank of Grand Lake St. Marys?

25 A. About six-and-a-half miles.

1 Q. And that's from the west side, the
2 west edge --

3 A. Yes.

4 Q. -- six-and-a-half miles? How about
5 from Beaver Creek?

6 A. Beaver Creek lays right next, right
7 adjoint (sic) to it.

8 Q. Okay. That's the northern part then?

9 A. Yes.

10 Q. I'm saying the top part --

11 A. Yes, yes.

12 Q. -- I guess I should say.

13 A. Yes, sir.

14 Q. Okay. Do you know whether this parcel
15 is in flood plain land?

16 MS. BREWER: Objection.

17 A. I don't know.

18 Q. Can you describe your property?

19 MS. BREWER: Objection.

20 Q. What's it like? What is it?

21 MS. BREWER: Objection.

22 A. A piece of bare ground.

23 Q. Okay. Are there any man-made
24 structures on the property?

25 MS. BREWER: Objection.

1 A. No.

2 Q. What about the topography? Is it
3 level?

4 MS. BREWER: Objection.

5 A. I don't understand what you're --

6 Q. Is the property pretty much flat or is
7 it -- does it have hills and valleys on it or
8 ditches?

9 A. It's got a few dips I would say.

10 Q. For the most part would you say it's
11 flat?

12 MS. BREWER: Objection.

13 A. No. I would, you know, we got a hill
14 and it comes down like that, but I'd say it's not
15 straight across, no.

16 Q. Is all of the parcel farmable? Are
17 you able to farm every inch of it?

18 MS. BREWER: Objection.

19 A. No, because of the way the, way it's
20 set up. I think it's 39 acres and I think they
21 figure -- I'm guessing maybe 37 acres farmable or 35,
22 35 to 37, I think.

23 Q. Can you point to what part of your
24 parcel is not farmable?

25 A. Well, we own -- we own so much from

1 | the road and then, well, of course, you got the
2 | Beaver runnin' there and then we don't farm two acres
3 | in there because of a filter strip.

4 | Q. Okay. Is that up in the right-hand
5 | corner?

6 | A. The filter strip runs from the
7 | entrance. Let me find the entrance. Okay. I see
8 | that's the Little Beaver; right here (indicating), so
9 | it runs down, right through here.

10 | Q. All right. So it starts on Gause Road
11 | and then extends along that corner, along the river
12 | or -- yeah, along the creek; correct?

13 | A. Yes.

14 | Q. Okay. From Gause Road, which is the
15 | right-hand side, is the property at the same level or
16 | is there a dip? Is it at the same elevation as Gause
17 | Road?

18 | A. No.

19 | Q. Okay. Is it lower?

20 | A. Yes.

21 | Q. How much?

22 | A. I'd say there's probably a three foot

23 | --

24 | Q. Okay.

25 | A. -- drop from the road.

1 Q. How about on the top part, from the
2 creek, same level or different?

3 A. As the drive comin' in? No, I would
4 say it goes up.

5 Q. Oh, okay. So it's, on the top part
6 here, your land is higher than the creek?

7 A. Higher than the creek?

8 Q. Yeah.

9 A. It's level with the creek.

10 Q. It's level, okay. You said something
11 was higher, the drive --

12 A. Well, you know, as you come into the
13 drive, you go up, you know, back to the end of the
14 field. It, you know, it levels off, but you got that
15 dip coming in the drive, which is your driveway.

16 Q. That's in the upper right-hand corner?

17 A. Your drive comes in right here.

18 Q. Okay. So it's about midway on the
19 right-hand side on Gause Road?

20 A. Yeah, um-hum.

21 Q. All right. So along the river here,
22 though, on the very top part, otherwise it's level
23 with --

24 A. Yes.

25 Q. -- with the creek?

1 A. Yes.

2 Q. How about the left-hand side; is this
3 a road here?

4 A. No.

5 Q. That's not?

6 A. That's the fence line.

7 Q. How about the bottom? That's a road;
8 isn't it?

9 A. That's a road.

10 Q. What's the -- Is it level with that or
11 is it different elevation?

12 A. I'm thinkin' it's lower.

13 Q. Do you know how much?

14 A. Not very much because you can come off
15 the road into the field without goin' down any. It's
16 -- I wouldn't think it would be a foot less.

17 Q. Okay. But going back, I'm going to
18 take you back and I'm sorry. For the properties that
19 you pay rent on that you farm, do you get -- do you
20 get any benefit, financial benefit from that?

21 MS. BREWER: Objection.

22 Q. Let me clarify. Do you get the
23 proceeds from the crops you farm there?

24 A. Yes.

25 Q. What percent?

1 A. A hundred percent.

2 Q. Okay. Are there any rivers or streams
3 or other waterways on your property?

4 A. Now, I call it the Little Beaver. We
5 got one that runs right here (indicating).

6 Q. Okay. That's in the upper right-hand
7 corner there?

8 A. Yeah. I call it the Little Beaver.

9 Q. All right.

10 A. You got the Big Beaver and then the
11 Little Beaver.

12 Q. How deep is the Little Beaver?

13 A. I'm saying probably six foot.

14 Q. Okay.

15 A. Guessin'.

16 MS. BREWER: And I'm going to instruct
17 you not to guess.

18 THE WITNESS: Okay.

19 MS. BREWER: To the extent that you
20 can estimate, or make an approximate --

21 THE WITNESS: I'll say then.

22 MS. BREWER: -- that's okay.

23 Q. As far as you know, has this property
24 always been used for farming?

25 A. As far as I know.

1 Q. Even before you owned it?

2 A. Yes.

3 Q. Are the surrounding -- let's say
4 within a mile in all directions -- is that all
5 farmland, as well?

6 MS. BREWER: Objection.

7 Q. If you know?

8 A. I guess I'd say yes.

9 Q. You don't recall any wooded areas or
10 any housing subdivisions within, let's say, a mile of
11 this property in any direction?

12 A. No subdivisions.

13 Q. Some housing though?

14 A. Personal homes. I mean no apartments
15 or anything like that.

16 Q. These would be homes that might be on
17 farmland?

18 A. Yes.

19 Q. Anything else?

20 A. No.

21 Q. Okay. What crops do you plant on your
22 property?

23 A. He plants beans, wheat, sometimes
24 corn.

25 Q. Is it on a rotation basis?

1 A. Yes.

2 Q. Do you know whether all of your
3 property is tillable?

4 MS. BREWER: Objection.

5 A. No.

6 Q. Okay. And I think I asked you if some
7 of it you could not farm on, other than the two or
8 three acres otherwise?

9 A. Other than the filter strip, I'd say
10 and then what you got for road access and stuff, yes.

11 Q. Right-of-way, sure, okay. Do you know
12 what type of soil you have on your land?

13 MS. BREWER: Objection.

14 A. No.

15 Q. Do you know anything about the
16 drainage on the property?

17 A. No.

18 Q. Do you know whether you or, if you
19 know, if your husband has ever tried to do anything
20 to the land to alleviate the flooding, to decrease
21 the flooding?

22 MS. BREWER: Objection.

23 A. No.

24 Q. You don't know or he has not?

25 A. He has not done nothin'.

1 Q. Okay. Do you know whether there are
2 any easements on your property?

3 MS. BREWER: Objection.

4 Q. Do you know what an easement is?

5 A. No.

6 Q. It's, essentially, someone having a
7 right-of-way or an ability to go on or use the
8 property --

9 A. They had the right-of-way with that
10 Beaver Creek --

11 Q. All right.

12 A. -- to go up and down it to spray it.

13 Q. All right. Anyone else? Have you've
14 given easement to anyone to be able to go on your
15 property or use your property in a certain way?

16 MS. BREWER: Objection.

17 Q. On this property here?

18 A. No.

19 Q. Do you participate in the Federal
20 Program called the Conservation Reserve Program;
21 that's the filter strip?

22 A. Yes.

23 Q. All right. Where is the filter strip?

24 A. It lays right next to the Beaver.

25 Q. The length of the top end of your

1 property?

2 A. Well, it starts at the --

3 Q. Edge of that small Beaver, like you
4 say --

5 A. Yeah, and then back --

6 Q. That's your term. I'm going to call
7 it the Little Beaver.

8 A. Yeah. Well, yeah, it starts there and
9 goes back.

10 Q. To the edge --

11 A. Yes.

12 Q. -- where the property joins with
13 Beaver Creek? And then does the -- do you get some
14 reimbursement from the Federal Government for that?

15 A. Yes.

16 Q. Do you know what you get -- When did
17 you put that up or when did he put that up?

18 A. I just looked, 2006.

19 Q. Okay. Do you know what you get from
20 the government for that?

21 A. \$230 a year.

22 Q. Do you know if you participate in any
23 other Federal or State programs, agricultural or
24 wetlands programs?

25 MS. BREWER: Objection.

1 A. I don't know.

2 Q. Before the spillway was built, and the
3 spillway was built in '97, 1997; correct, as far as
4 you know?

5 A. Yes.

6 Q. Okay. I'm going to ask you some
7 questions. All these questions deal with before that
8 spillway was modified, okay?

9 A. Um-hum.

10 Q. Do you recall if your property ever
11 flooded before that?

12 A. Maybe a little bit.

13 Q. Okay. When you say, "a little bit,"
14 how deep would it get?

15 A. I don't know if it -- Maybe six
16 inches. You know, it's hard to say for sure.

17 Q. Do you know how long -- Again, before
18 the spillway, do you know when it did flood, how long
19 the water would stay there?

20 A. It'd be gone, I'd say, within a day.

21 Q. Do you know what caused that flooding?

22 MS. BREWER: Objection.

23 A. No.

24 Q. Did you know when it did flood, before
25 1997, did the Beaver Creek overtop necessarily --

1 A. No.

2 Q. Okay, Beaver Creek was not overtopped
3 when you got flooding. So you can say it wasn't
4 caused by Beaver Creek before 1997; is that right?

5 A. No, I can't say that --

6 Q. Okay.

7 A. -- because it could have been.

8 Q. Okay. You just didn't see it overtop?

9 A. No.

10 Q. Fair enough.

11 A. Not to my knowledge.

12 Q. Okay. So I don't mean to ask the same
13 question. There were times that your property was
14 flooded -- Your property did flood sometime before
15 1997, even though Beaver Creek did not overtop;
16 correct?

17 A. I don't know if you'd really call it
18 flooding. It mighta had water in it for maybe 10, 12
19 hours maybe.

20 Q. What's your understanding? What does
21 flooding mean to you?

22 MS. BREWER: Objection.

23 A. I would say where water is standing in
24 your -- on your ground.

25 Q. Okay. Do you know how often your

1 | property had standing water before 1997?

2 | A. No. It seemed like it was something
3 | you wouldn't remember because it was not that often.

4 | Q. More than once a year, maybe?

5 | A. I can't even say that.

6 | MR. COLE: Can you stop for a second.

7 | (Discussion off the record.)

8 | Q. Do you recall when you did have
9 | standing water before 1997 if it was a particular
10 | time of year?

11 | A. I don't remember.

12 | Q. When it did flood, did it damage your
13 | crops?

14 | A. Not -- I would say no because, you
15 | know, it was so light that, you know, it wouldn't --
16 | might get water on top of `em then it'd be off in a
17 | day or so.

18 | Q. Before 1997, did you ever go to get
19 | any help from any government due to any flooding?

20 | MS. BREWER: Objection.

21 | A. No.

22 | Q. Did you ever keep any records of any
23 | flooding on your property or do you know whether your
24 | husband did?

25 | A. No.

1 Q. Did anyone ever help you with the
2 farming?

3 A. No.

4 Q. Family?

5 A. No.

6 Q. Do you know if -- Do you or do you
7 know if your husband or both of you carried crop
8 insurance?

9 A. We do not carry it.

10 Q. Why not?

11 A. Too expensive, I guess.

12 Q. Do you have any idea what your crop
13 yields have been before flooding?

14 A. No, 'cause we put everything together,
15 so can't rule out that this one field done better
16 than the other.

17 Q. You don't do 'em per property?

18 A. No.

19 Q. You don't do any sort of records that
20 way?

21 A. No.

22 Q. Do you know if your property has ever
23 been appraised?

24 MS. BREWER: Objection.

25 A. Not since we've had it.

1 Q. Do you know if it was appraised when
2 you bought it?

3 A. No.

4 Q. It was not or you don't know?

5 A. I don't know.

6 Q. Okay. Do you have any idea what your
7 property is worth?

8 A. No.

9 Q. Have you ever looked at other nearby
10 sales or anything to try to determine what the value
11 of the property is?

12 A. No.

13 Q. You ever try to sell your property?

14 A. No.

15 Q. Let's talk about post-'97 now, after
16 the spillway was modified. Do you believe there is
17 anything that could have contributed to more water on
18 your land other than the spillway?

19 A. No.

20 Q. Why not?

21 A. Because the water was running from the
22 spillway down through the Beaver, which our ground
23 lays right next to Beaver and that's where the water
24 was coming from.

25 Q. How did you learn that? Did you

1 independently check that or did somebody tell you
2 that was going on?

3 MS. BREWER: Objection.

4 A. You can go right up there at the
5 spillway and see it runnin' out. I mean it's gonna
6 come your way; it's comin' west.

7 Q. Did you do that? Did you check the
8 spillway?

9 A. Oh, yes!

10 Q. Since 1997, do you know how many times
11 your property has been flooded, this property here?

12 A. Three times that I know of for sure.

13 Q. Okay. When were those three times for
14 sure?

15 A. 2003, 2005 and 2008.

16 Q. Okay. Let's go most recent and work
17 our way back. 2008, how many times did it flood that
18 year?

19 A. I would say three times. We replanted
20 three times.

21 Q. Do you remember when, in what months
22 or what seasons?

23 A. Possibly May and June.

24 Q. Three times in those months, late
25 spring, early summer?

1 A. Yes, plantin' season.

2 Q. And do you remember how deep the water
3 got those times?

4 A. Enough to cover the crops and kill
5 them and so you'd have to replant.

6 Q. Do you know if you measured how deep
7 that was?

8 A. No.

9 Q. How long on those -- There are three
10 separate floods; right? When you say it flooded
11 three times, it flooded, dried up, then flooded
12 again?

13 A. Yes.

14 Q. Do you remember how long the water
15 stayed standing on your land on each time in 2008?

16 A. I would say two-to-three days.

17 Q. On each of those?

18 A. Yes.

19 Q. That's enough to kill all the crops?
20 Did it kill all the crops underneath it?

21 A. It killed 'em and then you had -- Yes.

22 Q. How about 2005, how many times did
23 your land flood?

24 A. I'm not sure how many times. I'd say
25 one good one for sure because it probably took all

1 the crops that year.

2 Q. And how -- By the way -- I'm sorry to
3 go back. In 2008, this was for -- You shaded this.
4 This was for 2003; right?

5 A. Correct.

6 Q. How much of your parcel was flooded
7 the three times in 2008?

8 A. I'm not sure, but --

9 Q. Do you know how many acres about?

10 A. No. I don't know how much he
11 replanted on it.

12 Q. More than half, less than half?

13 A. I'd say more than half.

14 Q. Okay.

15 A. Right at a half.

16 Q. Can you identify or point out a
17 particular -- where you think the flooding occurred
18 or maybe where it didn't occur?

19 A. Well, it wouldn't a occurred up here
20 in this corner.

21 Q. Okay. So the unshaded area didn't
22 flood in 2008 -- 3; it didn't flood in 2008; right?

23 A. No.

24 Q. Would it be correct?

25 A. I would say that's pretty --

1 Q. By the way, is that corner there, is
2 that at a higher elevation?

3 A. Yes.

4 Q. You think that's why it didn't flood?

5 MS. BREWER: Objection.

6 A. Yes.

7 Q. Where else did it flood or not flood
8 in 2008?

9 A. I'm not real sure. I don't know. I'm
10 not gonna say.

11 Q. How about in 2005, how much -- You
12 said you had one big flood, maybe more in 2005.
13 Where -- Again, I assume this southwest corner, here,
14 wasn't flooded or the bottom, left?

15 A. Yes.

16 Q. Was that more than half your land in
17 2005, less than half?

18 A. More than half.

19 Q. Do you know, specifically, where?

20 A. It flooded?

21 Q. Yes.

22 A. Pretty much where the shaded areas is.

23 Q. Okay. So about the same amount as --
24 the same acreage as 2003?

25 A. Yes.

1 Q. How deep was the water in 2005?

2 A. I'm guessin' probably five, six foot.

3 Can't guess; sorry.

4 MS. BREWER: That's okay.

5 Q. To the best of your recollection.

6 A. I'd say five-to-six foot.

7 Q. So it was worse in 2005 than 2008?

8 A. Yes.

9 Q. Okay. And how long did the water stay
10 after the big one?

11 A. Probably a week, 10 days. I'd say a
12 week.

13 Q. All right. 2003, that's what this is,
14 the shaded part is for; correct? Although you said
15 it would also be 2005. That's where it flooded?

16 A. Yes.

17 Q. All right. Was that the worst
18 flooding since 1997 that you experienced?

19 A. That wouldn't be the only flooding. I
20 think -- The others, I wouldn't consider a flood.

21 Q. What would you consider `em?

22 A. Just, just a little water that, you
23 know --

24 Q. Okay.

25 MS. BREWER: I'm sorry. Hold on a

1 second. The time period you're talking
2 about is since 2007?

3 MR. COLE: Since 1997.

4 THE WITNESS: No, '97.

5 MS. BREWER: Since 1997, okay.

6 Q. In 2003, how deep was the water?

7 A. I'd say six foot.

8 Q. And do you know how long it was on
9 your land?

10 A. Probably a week, 10 days.

11 Q. Was that a one-time event in 2003?

12 MS. BREWER: Objection.

13 A. I don't know.

14 Q. In other words, after that, the flood
15 that lasted a week, was there flooding before and
16 after or was it just that one week or approximate
17 week that you had the flood up to six feet or so?

18 A. I don't know. I mean, it could have
19 been after, too, but --

20 Q. All right. And do you know in that,
21 in 2003, whether the Beaver Creek overtopped?

22 A. It did.

23 Q. Did it overtop in 2005?

24 A. Yes.

25 Q. How about in 2008?

1 A. I don't know.

2 Q. Do you know whether it's overtopped
3 since 2008?

4 A. No.

5 Q. You don't know or it has not?

6 A. It has not.

7 Q. What happened to your property as a
8 result of the flooding? What kind of damage did you
9 have?

10 A. A lot of soil damage, lot of debris,
11 erosion. I mean, you know, you walk around and the
12 banks are caving in.

13 Q. Did you have to do something as a
14 result of that or did your husband have to do
15 something to alleviate that?

16 A. We didn't do -- He didn't do nothin'.

17 Q. Or is any of your proper permanently
18 damaged from flooding?

19 MS. BREWER: Objection.

20 Q. In other words, today, is there a part
21 of your property you can't farm because of flooding
22 on it because of what you've indicated?

23 MS. BREWER: Objection.

24 A. I don't know.

25 Q. Did the depth, any of the times that

1 | it flooded, either in '08, '05 or '03, was it pretty
2 | consistent with the depth, consistent through this
3 | shaded area or was it more shallow or deeper in
4 | parts?

5 | A. I'd say it was pretty well even all
6 | the way across.

7 | Q. After 1997, did you ever go for any
8 | governmental assistance due to flooding?

9 | MS. BREWER: Objection.

10 | A. No.

11 | Q. Did you ever seek any assistance of
12 | any programs or anything?

13 | A. No.

14 | Q. Have you changed your land use because
15 | of flooding?

16 | MS. BREWER: Objection.

17 | A. No.

18 | Q. Have your crop yields been down
19 | because of flooding?

20 | MS. BREWER: Objection.

21 | A. I'd say yes.

22 | Q. And why do you say, "I'd say yes?"
23 | Are you sure or just a gut feeling?

24 | A. Well, you got a 40-acre field and
25 | gettin' a wagon-load of beans off of it, you lost a

1 crop.

2 Q. Have you ever compared your yield,
3 even your overall yield with pre-flooding versus the
4 way it is now?

5 A. Well, I've seen wagons some with not
6 being flooded, say three, four wagon-loads, compared
7 to the one, so you know that the flooding damaged
8 crops.

9 Q. You don't know -- Could the crops have
10 been damaged by some other cause?

11 MS. BREWER: Objection.

12 A. No.

13 Q. Why not?

14 MS. BREWER: Objection.

15 A. If you see the water layin' on it, you
16 would now that the water damaged it to lower your
17 yield.

18 Q. This year you said there was no
19 flooding; right -- or excuse me -- in 2009, last
20 year, no flooding, no serious flooding?

21 A. No. It was dry last year.

22 Q. All right. Was your crop yield good
23 that year, looked like it had been in other years
24 that wasn't flooded?

25 A. No, because it was dry, you're not

1 going to get the crop either.

2 Q. All right. Well, then, let me ask you
3 this: Did you have any dry periods in 2008?

4 A. I would say no.

5 Q. Do you know that, specifically, or is
6 that just sort of a guess?

7 A. Well, we had flooding.

8 Q. Right.

9 A. So I wouldn't think it would be a dry
10 year.

11 Q. Well, you had flooding during a couple
12 -- sometime in May and June. What about other times
13 in the year? Did you have a dry period?

14 A. The rest of the year?

15 Q. Yeah.

16 A. I don't know.

17 Q. Is it possible, then, that your crop
18 yield would have been affected besides flooding?

19 MS. BREWER: Objection.

20 A. I'm trying to think back.

21 MS. BREWER: And you can take your
22 time if you need to think.

23 A. We're talking 2008; correct?

24 Q. Correct.

25 A. I would say no. It was because of the

1 flooding.

2 Q. Do you have any opinion of what the
3 value of your property is today?

4 MS. BREWER: Objection.

5 A. No, I don't have an opinion.

6 Q. Have you looked at other sales?

7 MS. BREWER: Objection.

8 A. No.

9 Q. Has anyone told you what they think
10 the property is worth?

11 A. No.

12 Q. Has anyone ever tried to buy the
13 property off you?

14 A. No.

15 Q. Until this lawsuit, and I'm talking
16 about after 1997, did you ever -- or do you know if
17 your husband went to the State of Ohio or went to
18 anyone to complain or to get any help because of
19 this?

20 MS. BREWER: Objection.

21 A. No, I don't know if he did or not.

22 Q. You didn't bring any legal actions or
23 any formal written complaints to anyone because of
24 the spillway?

25 MS. BREWER: Objection.

1 A. No.

2 Q. How come?

3 MS. BREWER: Objection.

4 A. I don't know.

5 MR. COLE: Thank you.

6 MS. BREWER: I just have two follow-up
7 questions.

8 EXAMINATION

9 BY MS. BREWER:

10 Q. Back in 2003, 2005 and 2008, what did
11 you think was going to happen with the flooding?

12 MR. COLE: I'll object.

13 A. What do I think was going to happen?

14 Q. Um-hum. Did you think it was going to
15 continue?

16 A. Well, yes, because they're not doin'
17 nothin' with the spillway. I mean, they keep the
18 water up and then when it gets so full, it just keeps
19 running down to us and then you can't -- they won't
20 control, they won't control the spillway. They need
21 to keep the level down lower, so when we do get a
22 little bit of rain, it don't all wash out from us --
23 on us. If you get two or three inches of rain and
24 you already got the lake full and you got 13,000
25 acres of water comin' at you, you're gonna get

1 | flooded.

2 | Q. Okay.

3 | MS. BREWER: That's all the questions
4 | that I have.

5 | MR. COLE: And I have a follow-up.

6 | MS. BREWER: Okay.

7 | RE-CROSS-EXAMINATION

8 | BY MR. COLE:

9 | Q. You still farm the property today -- I
10 | have a couple. You still farm the property today;
11 | right?

12 | A. Yes.

13 | Q. Flooding hasn't completely destroyed
14 | the farming use of your property; has it?

15 | MS. BREWER: Objection.

16 | A. It hasn't stopped you from farming,
17 | but it's farm ground. You take your chances with it.

18 | Q. But today, you are still farming the
19 | property, selling your crops; correct?

20 | MS. BREWER: Objection.

21 | A. Yes.

22 | MR. COLE: That's all. Thank you.

23 | MS. BREWER: Okay. Well, I have one
24 | last question.

25 | RE-EXAMINATION

1 BY MS. BREWER:

2 Q. Has your flooding of your property
3 gotten worse before 2007 or after 2007 -- I mean 1997
4 or after 1997?

5 A. It's a lot worse after '99 when the
6 spillway was finished, so after that. I don't
7 remember any flooding before '97; that stands out in
8 your mind. Then after '97, '98, I mean you recall,
9 you know, the big flood, 2003, 5, 8, you know,
10 replantins' and all this, and it's gotta be, 'cause
11 you go to town and you see the water runnin' over the
12 spillway. You know where the water's comin' from.
13 They need to control the spillway more.

14 Q. Okay.

15 CONTINUED RECROSS-EXAMINATION

16 BY MR. COLE:

17 Q. And then -- Always getting the last
18 word. You don't know for sure that your property
19 never flooded before 1997?

20 MS. BREWER: Objection.

21 A. We lived out in that area since '69.
22 We'd drive by that -- Before we bought that farm, we
23 drove by that. I've never seen water in it.

24 Q. Okay. Do you know for sure since
25 before 1997, there was -- are you saying there was

1 never an instance where there might have been
2 standing water on the property --

3 MS. BREWER: Objection.

4 Q. -- for any length of time?

5 A. I can't say that, but I --

6 Q. Okay.

7 A. -- I'd say, you know, it's not as --
8 you don't see the big water stands like you do now.

9 Q. Okay. But there could have been
10 flooding beforehand then --

11 MS. BREWER: Objection.

12 Q. -- 'cause you wouldn't know -- you
13 weren't watching it all the time?

14 MS. BREWER: Objection.

15 A. I'd say no because that water didn't
16 run out of the lake like it does now.

17 Q. But you agree that flooding or
18 standing water can be caused by things other than the
19 spillway; could be a heavy rain, couldn't it? I'm
20 not saying it did; just it could.

21 A. I'd say a water stand is from the
22 rain. Flood is from a lot of water gushing out at
23 you.

24 Q. Okay. And that's your definition of a
25 flood is coming from the spillway?

1 A. I'd say a lot of water coming from --
2 It -- That much water is not gonna come out of the
3 sky.

4 Q. You sure?

5 A. I would think yes.

6 Q. Okay. I'm not going to beat a dead
7 horse.

8 MR. COLE: Thank you very much,
9 Mrs. Gilbert.

10 MS. BREWER: When the court reporter
11 is done today, she'll go back and type up the whole
12 conversation that we had and you have the right to
13 read over it and make sure there are no mistakes in
14 anything that you said or you can waive that right if
15 you don't want to do that. I can't tell you what you
16 should do, but I can recommend that most people do
17 read their transcript, so would you like to read your
18 transcript?

19 THE WITNESS: Yes, I would.

20 MR. COLE: Thank you very much.

21 Thanks for coming in.

22 - - -
23 (At 4:55 o'clock, PM, the deposition concluded.)
24 - - -

25 **MARTHA C. BREWER, Attorney At Law**
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.02 R.C.

Mary E. Gilbert
Mary E. Gilbert

Martha C. Brewer
Notary

date: 3/14/10



AFFIDAVIT OF MARY E. GILBERT

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

1. I am a Relator in this mandamus action seeking compensation for the property taken by Respondents Ohio Department of Natural Resources and Sean D. Logan, Director, Director (collectively "ODNR").

2. Specifically, I, with my husband H. Edward Gilbert, am the owner of real estate described as Mercer County Parcel Numbers 26-01600.0000 and 26-041200.0000.

3. I have owned Mercer County Parcel Numbers 26-01600.0000 since approximately 1978 and 26-041200.0000 since 1986.

4. Mercer County Parcel Number 26-041200.0000 lies on the south bank of Beaver Creek.

5. Since ODNr replaced the western spillway of Grand Lake St. Mary's in 1997 and undertook its current lake level management practices, which include maintaining increased lake levels and use of the western spillway for virtually all water flow out of Grand Lake St. Mary's, Mercer County Parcel Number 26-041200.0000 has been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

DON000192

6. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 26-041200.0000 has flooded at least 4 times. On each occasion, Mercer County Parcel Number 26-041200.0000 was inundated with water at depths varying from at least 2 to 6 feet.

7. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 26-041200.0000 floods more rapidly and remains flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Number 26-041200.0000 remained inundated with water for a period of at least 3 days to a week.

8. To my recollection, prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 26-041200.0000 did not flood.

9. To date, the most invasive flood occurred in 2003 with at least 27.8 acres of Mercer County Parcel Number 26-041200.0000 being flooded with at least 6 feet of water for at least a week. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Number 26-041200.0000 is attached hereto as Exhibit 1. I have shaded in the area of the parcel that was flooded in 2003.

10. Mercer County Parcel Number 26-041200.0000 also experienced severe flooding in 2005.

11. Mercer County Parcel Number 26-041200.0000 was again flooded at least twice in the Summer of 2008.

12. As a direct result of the flooding, Mercer County Parcel Number 26-041200.0000 has suffered damage in the form of loss of crops, field and bank erosion, the deposit of silt, sand, stones, and other debris such as wood, trees, trash cans and trash, and fish.

DON000193

13. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Number 26-041200.0000.

14. I believe that the intermittent, continuing, persistent, frequent, and increased severe flooding from the western spillway of Grand Lake St. Marys will inevitably recur as a result of ODNR's replacement of the western spillway and ODNR's current management practices.

FURTHER AFFIANT SAYETH NAUGHT.

Mary E. Gilbert
Mary E. Gilbert

Sworn in my presence and subscribed before me this 29th day of August, 2009.

Joseph R. Miller
Notary Public



JOSEPH R. MILLER
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

DON000194

EXHIBIT 1
TO
AFFIDAVIT OF MARY E. GILBERT

DON000195

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

Transportation

- State Highways
- US Highways

Water

- Lake
- Streams

EXHIBIT

1

tabbles



Scale: 1:3,673



40-32-55 N 40-32-50 N 40-32-45 N

84-40-40 W 84-40-35 W 84-40-30 W 84-40-25 W 84-40-20 W 84-40-15 W

Map center: 1364221, 328245



This map is a user-generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Harold Edward Gilbert and Mary E. Gilbert
-0- St. Rt. 29
Parcel No.: 26-041200.0000-39.707 acres

TAB 15

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO
EX REL., WAYNE T. DONER, et al.

vs. CASE NO. 09-1292

SEAN D. LOGAN, DIRECTOR
OHIO DEPARTMENT OF NATURAL RESOURCES
2045 MOSE ROAD
COLUMBUS, OHIO 43229-6693

and

OHIO DEPARTMENT OF NATURAL
RESOURCES
2045 MORSE ROAD
COLUMBUS, OHIO 43229-6693

DEPOSITION of H. WILLIAM GILBERT was
taken by the Respondents as on cross-examination,
pursuant to the Ohio Rules of Civil Procedure, at
Central Service Building, 220 West Livingston Street,
Celina, Ohio 45822, on Wednesday, February 3, 2010,
at 11:00 a.m. before Edna M. Hawkins, Professional
Court Reporter and a Notary Public within and for the
State of Ohio.

HOLMES REPORTING & VIDEO
982 Havensport Drive
Cincinnati, Ohio 45240
(513) 342-2088
(513) 342-1820
www.ohiodeposition.com

1 APPEARANCES:

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On Behalf of Ohio Department of Natural Resources:

William J. Cole, Esq.
Environmental Enforcement
30 East Broad Street, Floor 25
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On Behalf of the Respondent:

Thomas H. Fusonie, Esq.
Martha C. Brewer
Attorney at Law
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52 East Gay Street
Columbus Ohio 43216-1008

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I N D E X

WITNESS: H. EDWARD GILBERT

Examinations	DIRECT	CROSS
By Mr. Cole	4	
By Ms. Brewer		62

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of H. Edward Gilbert	9
B	A Deed	13

1 H. EDWARD GILBERT
2 of lawful age, a Relator herein, called as on
3 cross-examination, being first duly sworn, as
4 hereinafter certified, was examined and testified as
5 follows:

6 DIRECT EXAMINATION
7 BY MR. COLE:

8 We're here on the deposition of Edward
9 Gilbert. Mr. Gilbert, my name is William
10 Cole. I'm with the Ohio Attorney General's
11 Office and I representing the Department of
12 Ohio Natural Resources in this case.

13 Just a couple ground rules. I think
14 this is going to go pretty straightforward
15 today. If I ask you a question you don't
16 understand, feel free to ask me to clarify
17 it or you can ask your attorney. My job is
18 -- I'm not here to try to trip you up or
19 confuse you, so if you don't understand a
20 question, just ask me to rephrase it.

21 If I am asking you a question, I would
22 ask that you let me finish that question.
23 You may think you know the answer, but
24 something may happen at the last minute, so
25 please let me go ahead and finish the

1 H. EDWARD GILBERT
2 of lawful age, a Relator herein, called as on
3 cross-examination, being first duly sworn, as
4 hereinafter certified, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. COLE:

8 We're here on the deposition of Edward
9 Gilbert. Mr. Gilbert, my name is William
10 Cole. I'm with the Ohio Attorney General's
11 Office and I representing the Department of
12 Ohio Natural Resources in this case.

13 Just a couple ground rules. I think
14 this is going to go pretty straightforward
15 today. If I ask you a question you don't
16 understand, feel free to ask me to clarify
17 it or you can ask your attorney. My job is
18 -- I'm not here to try to trip you up or
19 confuse you, so if you don't understand a
20 question, just ask me to rephrase it.

21 If I am asking you a question, I would
22 ask that you let me finish that question.
23 You may think you know the answer, but
24 something may happen at the last minute, so
25 please let me go ahead and finish the

1 question. I, too, will do my best not to
2 interrupt you when you're answering.

3 I would ask you to give verbal
4 answers. The nod of the head or the
5 un-huh, un-un are sometimes tough to take
6 down, so please try to give verbal answers,
7 yes, no, whatever the case might be.

8 THE WITNESS: Yeah.

9 MR. COLE: And I don't think we're
10 going to take too long. If you need to
11 take a break, that's fine. The only thing
12 I would say is if there's a question
13 pending, go ahead and answer that question.
14 Let's not take a break while one is
15 pending, but -- Sound good to you, sir?

16 THE WITNESS: Yeah.

17 MR. COLE: Do you have any questions
18 before we begin?

19 THE WITNESS: No, not really.

20 MR. COLE: All right.

21 Q. Sir, can you tell me a little bit --
22 Can you state and spell you name and give us your
23 address.

24 A. My full name?

25 Q. Yes, sir.

1 A. It's Harold Edward Gilbert. It's
2 H-A-R-L-- O-L-D, E-D-W-A-R-D, G-I-L-B-E-R-T.

3 Q. And your address, sir?

4 A. 3003 Bunker Hill Road, Celina.

5 Q. Is that within Celina or is that -- is
6 that actually within the city limits?

7 A. No.

8 Q. Okay. How far outside of Celina is
9 it?

10 A. Six mile -- or about seven mile, seven
11 mile.

12 Q. And sir, what's your schooling?
13 What's your schooling background?

14 A. Not too good.

15 Q. That's all right. What is it?

16 A. About the ninth grade.

17 Q. Okay. You did not graduate high
18 school?

19 A. No.

20 Q. And you've had no education since
21 then, formal education?

22 A. No.

23 Q. All right. Have you ever had any
24 training or taken any classes or any courses in
25 agriculture?

1 A. No.

2 Q. How about engineering?

3 A. No.

4 Q. How about anything to do with water,

5 either hydrology or water movement or draining,

6 anything like that?

7 A. No.

8 Q. Okay. What do you do? What do you do

9 for a living?

10 A. Well, I'm retired now.

11 Q. All right. How long you been retired?

12 A. Since -- About a year and a half.

13 Q. And what did you do just before you

14 retired?

15 A. I done sandblasting or edging for sand

16 -- You know, it was sandblasting, just edging, signs

17 and things.

18 Q. How long did you do that?

19 A. Nine years.

20 Q. How about before then?

21 A. I used to work in a factory, making

22 tables --

23 Q. Um-hum.

24 A. -- for 29 years.

25 Q. And before that?

1 A. That was about it.

2 Q. Okay. All right, did you ever do any
3 farming?

4 A. Yeah.

5 Q. Okay. Tell me about that.

6 MS. BREWER: Objection.

7 Q. Just tell me about what you've done
8 with farming.

9 A. In farming?

10 Q. Yes.

11 A. Well, I started farming when I was
12 probably, oh, 20.

13 Q. Okay. And where have you farmed? Let
14 me rephrase. Do you farm your own land?

15 A. Yes.

16 Q. Okay. Did you farm anyone else's
17 land?

18 A. Yes.

19 Q. Okay. Tell me about that. Who have
20 you farmed for?

21 A. I farmed for a Dick Seiberd and a
22 Daryl Miller.

23 Q. Are they both in or near Celina?

24 A. Yes.

25 Q. And you say you farm your own

1 property?

2 A. Yeah.

3 Q. Okay. What did you farm, what kind of
4 crops?

5 A. Oh! Beans and wheat.

6 Q. What is your -- What does Mrs. Gilbert
7 do, your wife?

8 A. She works at a factory, factory
9 worker.

10 Q. What does she do there?

11 A. She welds.

12 Q. She still do that?

13 A. Yeah.

14 Q. All right. I'm going to ask you a
15 little bit about your property. So you have --

16 MR. COLE: Well, we'll go to your
17 affidavit. I'd just like to go ahead and
18 mark this as -- We've been doing these by
19 letters; right?

20 MS. BREWER: Right.

21 (Xerographic Document, Affidavit of H.
22 Edward Gilbert, was marked for
identification Exhibit A.)

23 Mr. Gilbert, I'm going to hand you
24 what I've marked as Exhibit A. Take that and look at
25 that for a second. Go ahead and look at the whole

1 document. I'm not going to quiz you on it, by the
2 way. I just want you to see if you're familiar with
3 it.

4 A. Yeah.

5 Q. You can look at the other pages, too.

6 A. Um-hum.

7 Q. All right. Sir -- Oh, on the last
8 page of this Affidavit, sir, is that your signature?
9 Did you sign that?

10 A. Yes.

11 Q. All right. Are you familiar with that
12 document?

13 A. Yes.

14 Q. Did you type it up and sign it or did
15 you -- Did you prepare the document at all?

16 A. What do you mean?

17 Q. Did you type this up and sign it?

18 A. No.

19 Q. Okay. Do you know who did? Was it
20 your lawyers?

21 A. I'd say it was my lawyers.

22 Q. Okay. Do you remember the first time
23 you saw this?

24 A. On the date? No, not really.

25 Q. Well, generally, do you remember it?

1 A. No.

2 Q. Let me ask you this: Do you recall,
3 did somebody from one of your lawyers or somebody
4 from their firm come to your house and you looked at
5 -- and you signed this. Do you recall if that's what
6 happened?

7 A. No.

8 Q. Did you go down to Columbus and do
9 that?

10 A. No.

11 Q. Do you remember how you saw this and
12 where you were when you signed it?

13 A. Forget what the place was now.

14 THE WITNESS TO HIS COUNSEL: Oh! Did
15 we do it at the Holiday Inn?

16 MS. BREWER: Um-hum.

17 A. Yeah, that's what -- I was trying to
18 think.

19 Q. Was that here or in Columbus?

20 A. Here.

21 Q. Okay. So it was prepared for you when
22 you -- Did you review it before you signed it?

23 A. Yeah.

24 Q. As far as you know, everything here
25 was accurate at the time to the best of your

1 | knowledge?

2 | A. Yes.

3 | Q. The information here. All right.

4 | Now, I notice and you can look at paragraph two
5 | there, sir. It says you and your wife own two
6 | parcels, two parcel numbers and that's the 26-016 and
7 | the 26-0412; do you see that?

8 | A. Yes.

9 | Q. Now, it appears that you're only
10 | claiming one of these parcels has been damaged or
11 | taken due to flooding from the spillway; is that
12 | correct?

13 | A. Yes.

14 | Q. So the 26-01600.0000, you're not
15 | claiming is damaged because of the spillway; are you?

16 | A. No.

17 | Q. All right. No -- You said, "no."
18 | That one you're claiming is not damaged; that one has
19 | not been harmed by the State?

20 | A. No.

21 | Q. All right. And as far as the parcel
22 | that you do talk about in this Affidavit that, if I'm
23 | correct, you've owned that since 1986; is that right?

24 | A. Right.

25 | Q. All right. From whom did you get that

1 property?

2 A. That was -- What was his name. I
3 don't -- I can't even think of his name now.

4 MR. COLE: I'll go ahead and mark this
5 as B and maybe this'll help you remember.

6 (Xerographic Document, a Deed, was
7 marked for identification Exhibit B.)
8 You go ahead and take a look at that,

9 sir, and does that refresh your memory on -- I'm
10 handing you a document that I've labeled as Exhibit
11 B. Is it Mr. Dreffer; is that who it was?

12 A. Dreffer?

13 Q. Or Bradford or Bonfiglio or Granger?

14 A. Granger.

15 Q. All right, all right.

16 A. Floyd Granger.

17 Q. Maybe Boyd?

18 A. Boyd? It was either Boyd or Floyd.

19 Q. Okay.

20 A. I only met him once.

21 Q. All right. And does this document
22 look familiar to you sir? And let me say this has
23 been supplied by your attorneys to us. That's were
24 we got it.

25 A. Yeah, yes.

Q. Okay. Can you tell me, how did you --

1 Did you know the prior owners, the people you bought
2 the property from?

3 A. No.

4 Q. Was this a sale on the open market?
5 Was it an arms-length transaction --

6 MS. BREWER: Objection.

7 A. No.

8 Q. -- if you can recall. If she objects,
9 you can still answer unless she tells you not to?

10 A. No; it wasn't.

11 Q. It wasn't what?

12 A. It wasn't on the market.

13 Q. Okay. Can you tell me, if you
14 remember -- I mean, it's been a while, but what were
15 the circumstances of this sale? How did you get the
16 property if it wasn't an arms-length sale, how did
17 you get it?

18 A. It was in a real estate. A guy was
19 selling it private, but a real estate owner owned it,
20 had the property and we talked to him.

21 Q. Do you recall what you paid for it,
22 what the value of it was per acre?

23 A. I think it was \$1100 an acre.

24 Q. Do you know how long those who sold it
25 to you had owned the property?

1 A. No.

2 Q. How many acres are in this parcel that
3 we're talking about; do you know?

4 A. There was 39.9/10th acres.

5 Q. And on that Exhibit A, sir, if you go
6 to the last page and it's -- Yeah, go to that last
7 page on that one. And if you look at the top there,
8 it has a premarked Exhibit 1 and it appears -- that
9 was --

10 A. Okay.

11 Q. -- that was provided to us by your
12 attorneys. Is that your parcel that's involved in
13 this case, sir? Do you recognize that?

14 A. Yes.

15 Q. All right. And I see some of that is
16 darkened. Can you tell me what that signifies?

17 A. Well, the darkness is where it's all
18 flooded.

19 Q. All right. And do I understand that
20 your wife, Mrs. Gilbert, did the shading on that?

21 A. Yes.

22 Q. All right. And do you know about how
23 many acres this is of the shaded area, the part that
24 was flooded?

25 A. I think it was 27-and-a-half acres,

1 something like that.

2 Q. Other than the two parcels we've
3 identified, do you own any other properties?

4 A. Just where I live.

5 Q. All right. Do you lease or rent any
6 property?

7 A. Yes.

8 Q. Okay. Tell me about that. Who do you
9 lease to?

10 A. No. I rent. I don't lease nothin'.

11 Q. All right. You don't lease to anyone

12 --

13 A. Right.

14 Q. -- but you lease. Is that your home?

15 A. Well, I rent ground; I don't lease to
16 nobody; I rent ground.

17 Q. All right.

18 A. I rent my neighbor's ground.

19 Q. Where is that located?

20 A. That would be on Township Line Road.

21 Q. Is that in Mercer County?

22 A. Yes.

23 Q. Who do you lease to -- or who do you
24 rent to?

25 A. Who do I rent from? Well, I got a --

1 Have I got it right?

2 Q. Well, it's my job. I gotta get it
3 right. It's not your fault, so let me go back. You
4 pay rent for land; right?

5 A. Right.

6 Q. All right. To whom -- Who rents you
7 land?

8 A. Dick Seiberd.

9 Q. Okay. And that is on the Township
10 Line Road?

11 A. Yeah.

12 Q. What kind of property is that?

13 A. It's kind of a rolling property.

14 Q. A what?

15 A. Rolling ground.

16 Q. Okay. Do you know how many acres it
17 is?

18 A. Forty-two acres and a half, I think,
19 in there.

20 Q. And what do you do with the property?

21 A. I put beans, wheat and corn on it,
22 rotation.

23 Q. Where is that property in relations to
24 -- in relation to the property that's in this case?

25 A. It's -- Let's see. It'd be, I'd say

1 half a mile west from here. Maybe a -- I'd say a
2 mile, maybe, west of this right here or north of it I
3 meant.

4 Q. Do you and your wife lease that
5 property or do you pay rent for that property?

6 A. Yeah.

7 Q. Does anyone else?

8 A. No, just me.

9 Q. How long have you leased that
10 property? How long have you leased that property or
11 how long have you had that -- been paying rent on
12 that property?

13 A. I probably rented that property,
14 probably 17 years.

15 Q. Has it been continuous?

16 A. Hum?

17 Q. You've had that property and you've
18 farmed that property and leased it for 17 continuous
19 years?

20 A. Yeah.

21 Q. What are the terms of that? How much
22 do you pay in rent? Do you pay it monthly or what's
23 the conditions for that?

24 MS. BREWER: Objection. Can you
25 restate the question?

1 Q. What are the terms of your rent and
2 your lease there?

3 MS. BREWER: Objection. If you know
4 you can answer the question.

5 A. What I pay him a year?

6 Q. Yeah.

7 A. I pay, like, two times a year \$60 an
8 acre.

9 Q. Is he a friend of yours?

10 A. Well, his -- He's -- His grandpa owned
11 it first and then the boy, he owns it now. Yeah,
12 he's a pretty nice guy.

13 Q. Do you know if he leases other
14 property out to other people?

15 A. Yeah, where he lives he leases.

16 Q. Do you know what he charges them?

17 MS. BREWER: Objection.

18 A. No.

19 Q. What do you get out of that? Are you
20 allowed to take any benefit from that property?

21 MS. BREWER: Objection.

22 Q. Let me ask you this: Do you get a
23 share of the crop, the proceeds from that?

24 A. From what I rent?

25 Q. Yes.

1 A. I get the whole hundred percent of it.

2 Q. Do you have any other, other than the
3 two parcels, the one parcel in this case, your
4 property and the property that you rent, is there any
5 other property that you have an interest in, either
6 own or lease?

7 MR. BREWER: Objection.

8 A. Yeah, I got another property I rent.

9 Q. Okay. Tell me about that.

10 A. It's 16 acres on there.

11 Q. And you say you rent. Do you rent to
12 someone or do you pay rent?

13 A. No. I pay rent.

14 Q. And where is that property?

15 A. It'd be just right north of that
16 property I just told you about.

17 Q. How far north?

18 A. Right across the road?

19 Q. And who do you rent from?

20 A. Daryl Miller.

21 Q. And how much do you pay him?

22 A. I pay him the same.

23 Q. Sixty acres -- \$60 an acre, twice a
24 year?

25 A. Yeah.

1 Q. And do you get a hundred percent of
2 the crop proceeds from it?

3 A. Yeah.

4 Q. Same conditions?

5 A. Yeah. I pay him once a year.

6 Q. So 120 a year, once a year?

7 A. Hum?

8 Q. Oh, oh, okay, all right. Sixty
9 dollars you pay once a year, all right. Any other
10 properties?

11 A. (No verbal response.)

12 MS. BREWER: You have to answer yes or
13 no.

14 A. Oh! No.

15 MS. BREWER: That's okay. Everyone
16 forgets to do that.

17 MR. COLE: That's right. That is
18 right.

19 Q. Where is your -- Oh! Let me ask you:
20 On those two properties that you pay rent and you
21 farm, do they ever flood?

22 A. No.

23 Q. How far are those properties from the
24 west side of Grand Lake St. Marys, if you know? Do
25 you know how far they are?

1 A. They'd be, probably, about six mile.

2 Q. And never had any flooding problems
3 with those properties?

4 A. No.

5 Q. All right. Let's go back to your
6 property here, the one that's involved in this case.
7 Where is that property in relation to -- well, let's
8 start with Grand Lake St. Marys; do you know how far
9 that is?

10 A. It would be six mile west of town.

11 Q. How about where is it in relationship
12 to Beaver Creek?

13 A. This property?

14 Q. Um-hum.

15 A. It lays right beside of it.

16 Q. It's adjacent to it?

17 MS. BREWER: Objection.

18 Q. It's right next to it?

19 A. Yes.

20 Q. All right. And where is Beaver Creek
21 on this; is that at the top part?

22 A. Yeah, it's right here.

23 (Witness indicating.)

24 Q. Okay. It's in the -- Okay. You're
25 pointing to the, basically, the northern -- or the

1 top part of this picture, where it curves down?

2 A. Right.

3 Q. All right. And how about the Wabash
4 River?

5 A. I'm about four miles from the Wabash
6 River.

7 Q. Tell me again -- I know you just
8 answered -- how far from the lake?

9 A. Six mile.

10 Q. When you purchased the -- this
11 property in 1986, do you know whether the -- did you
12 know whether the property was in a flood plane area?

13 MS. BREWER: Objection.

14 A. No.

15 Q. To your knowledge, is your property in
16 a flood plane area?

17 MS. BREWER: Yes.

18 A. Yes.

19 Q. All of it?

20 A. Just this property?

21 Q. Yes, sir.

22 A. I'd say yes.

23 MS. BREWER: Objection, and you don't
24 need to guess. Answer what you know.

25 A. Well --

1 Q. Let me ask you, sir: Are there any --
2 Tell me about the lay of the land on your property.

3 MS. BREWER: Objection.

4 A. I don't know what -- What do you mean?

5 Q. All right. Just describe your
6 property. Describe this parcel. I mean we've got a
7 picture of it. What's it like?

8 MS. BREWER: Objection.

9 Q. Is it flat land?

10 A. Yes.

11 Q. Are there any hills on it?

12 A. Yes.

13 Q. Okay. Do you know about how high
14 those hills are?

15 A. No, not really.

16 Q. Do you know how many hills there are
17 on your property?

18 A. One.

19 Q. Do you know -- Can you point,
20 approximately to, where that hill is?

21 A. Right here.

22 (Witness pointing.)

23 Q. Okay. It's in the -- So it's kind of
24 in the southwest corner of that?

25 A. Yes.

1 Q. All right, as shown on Exhibit 1.

2 MS. BREWER: And to be clear, he was
3 indicating the area that's not shaded as
4 the part that floods.

5 A. Right here is the hill.

6 Q. Right. You're talking about the area
7 there, sir, that that hill does not get -- it's not
8 in the shaded area; correct?

9 A. Yes, that's right.

10 Q. I am correct on that?

11 A. Yes.

12 Q. Okay. Do you have any --

13 MR. COLE: Off the record.

14 (Discussion held off the record.)

15 Q. On this parcel, sir, that's attached
16 to your Affidavit as Exhibit 1, are there any
17 man-made buildings or any structures on this
18 property?

19 A. No.

20 Q. Are there any rivers or streams on
21 your property?

22 A. Yes.

23 Q. Okay. Can you tell me about those?

24 A. There's just a little ditch right
25 here.

1 Q. Okay. And that's kind of that little
2 triangle in the upper right-hand corner?

3 A. Yes.

4 Q. Okay. Do you know how deep that ditch
5 is?

6 A. I'd say probably about eight foot
7 deep.

8 Q. How long has that ditch been on there?

9 A. As long as I ever knowed it.

10 Q. Okay. So that was, as far as you know
11 naturally -- Do you know if it was a
12 naturally-occurring ditch?

13 MS. BREWER: Objection. Go ahead.

14 A. I'd say it -- Yes.

15 Q. Okay. Is there any part -- Let's
16 presume that the parcel is not flooded. Do you farm
17 the entire property here? Is there any part that you
18 don't farm or can't farm?

19 A. No. I farm, I farm it all.

20 Q. It's all suitable for farming?

21 A. Yeah.

22 Q. Has it ever been used for anything
23 else other than farming as far as you?

24 A. No.

25 Q. You've farmed it as long as you've

1 | owned it?

2 | A. Yes.

3 | Q. And you may have answered: What, on
4 | this parcel, what crops do you farm?

5 | A. What crops I put out?

6 | Q. Yeah.

7 | A. Either corn or beans or wheat.

8 | Q. So you plant all three on this parcel?

9 | A. No. I usually just -- One year, I
10 | might put out all corn, next year rotation --

11 | Q. Um-hum.

12 | A. -- and then put wheat out, or I might
13 | put beans out two years in a row.

14 | Q. And I'm not a farmer. The land is
15 | equally suitable for any of those, for farming any of
16 | those?

17 | MS. BREWER: Objection.

18 | Q. You've been able to farm all three of
19 | those. The land is good for all three of those?

20 | A. Yes, yes.

21 | Q. The property has always been used for
22 | farming then?

23 | MS. BREWER: Objection.

24 | A. Yes.

25 | Q. Do you know if all of the land

1 | tillable?

2 | MS. BREWER: Objection.

3 | Q. Is all of the land tillable for
4 | farming?

5 | A. Yes.

6 | Q. Do you know what kind of soil is in
7 | the land?

8 | MS. BREWER: Objection.

9 | A. It's like a black soil. It's a black,
10 | rich soil.

11 | Q. Do you know if it's clay, sand, loam?
12 | Do you know the -- It's black. Do you know what the
13 | nature of that is?

14 | A. It's a black soil and then partials of
15 | it's got sand on it, too, you know.

16 | Q. And is that throughout the whole
17 | parcel?

18 | A. It kind of runs in sections.

19 | Q. So there are parts of your property
20 | that don't have this black soil then?

21 | A. Well, most of it's black soil, all
22 | except you get right up in here, it's a different
23 | kind of a soil. It's kind of sandy.

24 | (Witness indicating.)

25 | Q. Okay. So the bottom left-hand corner

1 | is more sandy?

2 | A. Where I, where it gets flooded, that's
3 | more of a black soil.

4 | Q. The shaded area on this, on Exhibit 1
5 | to your Affidavit is the, is the black soil stuff and
6 | then the, kind of that triangle there, in the corner
7 | --

8 | A. Kind of sandy.

9 | Q. -- southeast -- southwest corner is
10 | sand?

11 | A. Yeah.

12 | Q. Did you have a drainage system on your
13 | land?

14 | A. No. Oh, wait a minute. Yes.

15 | Q. Okay.

16 | A. Back here, in the corner, there's a
17 | drainage.

18 | Q. You're talking about the upper
19 | left-hand corner?

20 | A. Yeah.

21 | Q. All right. And what's the nature of
22 | that? Tell me about that.

23 | A. It's just a big receiver. When the
24 | water gets in, it runs out, back into the creek.

25 | Q. Is that naturally occurring?

1 MS. BREWER: Objection.

2 Q. Tell me what do you mean by,
3 "receiver?"

4 A. It's a big tile and when the water
5 gets in there, when it gets up deep, this, right
6 here, takes -- When the Beaver goes down, this, right
7 here, it sucks it back out in there.

8 Q. Okay. So there, again, that's in the
9 upper left-hand corner there --

10 A. Yes.

11 Q. -- on that exhibit. And do you
12 maintain that? You put the tile down?

13 A. It was already in there when I bought
14 the place.

15 Q. Has it been changed? Have you changed
16 it at all?

17 A. No.

18 Q. Do you know what kind of tile it is?

19 A. It's clay tile -- or cement tile that
20 runs into a big steel culvert; it goes out into the
21 river.

22 Q. Now, so it's cement or clay. You said
23 clay or cement. It's cement?

24 A. Yeah, it's cement startin' in and then
25 when it goes down, there's a big steel culvert it

1 goes out.

2 Q. And that was -- As far as you know,
3 that drainage was there when you purchased the
4 property?

5 A. Right.

6 Q. Any other drainage tile or other
7 system on this parcel, other than what you've told me
8 about?

9 A. Up here.

10 Q. Okay. You're talking about the upper
11 right-hand corner?

12 A. Right.

13 Q. Or kind of in the middle there. Tell
14 me about that.

15 A. Right here by the road. This would be
16 Gause Road, right here (indicating).

17 Q. Spell that.

18 A. Gause, G-A-U-S-E.

19 Q. All right. That's on the right-hand
20 side.

21 A. Yeah.

22 Q. And tell me what kind of drainage is
23 there.

24 A. There's a plastic tile in there, 12
25 inch.

1 Q. And where does it extend, from where
2 to where?

3 A. It's probably --

4 Q. Does it go the length of the road, as
5 far as you know?

6 A. No.

7 Q. And I'm sorry for interrupting.

8 A. Probably 80 foot of it, probably, in
9 there.

10 Q. Where does it start and end, if you
11 can indicate?

12 A. Well, probably starts right in here.

13 (Witness indicating).

14 Q. Okay. So where --

15 A. And there's a drive lane in there and
16 there's another drive lane back out into Beaver
17 Creek.

18 Q. Oh, so it does -- Okay, so we're
19 talking -- Do you know how many feet that is from the
20 south road here?

21 A. I'd say there's probably 80 feet of
22 it.

23 Q. All right. Eighty feet, the length of
24 Gause Road?

25 A. Yeah.

1 Q. All right. And when did that go in as
2 far as you know?

3 A. Oh, it was probably a lot of years
4 ago, when they dredged the Beaver out, when they took
5 all the trees out.

6 Q. Who's they? Do you know who did --
7 What do you mean, "they dredged the Beaver" Creek?

8 A. I don't remember how many years that's
9 been, 'cause it was a long time ago.

10 Q. Who put the drainage in on the Gause
11 Road, on the east -- on the right side here?

12 A. I think the guys that put that in, the
13 one that's doing all the -- taking all the timber
14 down out of there, up through there.

15 Q. You say it was many years ago. Do you
16 know if it was more than 10 years ago?

17 A. Oh, gosh, yeah!

18 Q. More than 20?

19 A. It might have been 15 years ago,
20 somewhere in there.

21 Q. All right. Did that drainage go in
22 after you owned it, after 1986?

23 A. No. It was already, it was already in
24 there.

25 Q. Okay, all right. So it was there when

1 | you bought the land?

2 | A. Right.

3 | Q. All right. Has it been changed since
4 | you bought it? Has it been modified or anything?

5 | A. No.

6 | Q. All right. You've told me about two
7 | drainage, one in the upper left-hand corner and one
8 | along Gause Road, on the right side. Any other
9 | drainage tile or other system on your land that you
10 | know of?

11 | A. Un-un, no.

12 | Q. Do you happen to know whether the
13 | drainage system is consistent with the industry
14 | standards?

15 | MS. BREWER: Objection.

16 | A. I'd say yes.

17 | MS. BREWER: And, again, I'd say don't
18 | guess. If you know the answer, you can
19 | give the answer, but you don't need to
20 | guess.

21 | A. Well, I'd say yes, they work good.

22 | MS. BREWER: Okay.

23 | Q. Have you ever taken any steps to
24 | modify drainage or to help alleviate water on your
25 | land? Have you ever taken -- done anything to your

1 | property to help water get off your land or manage
2 | water on your land?

3 | A. No.

4 | Q. Do you know if there are any easements
5 | on your property, sir?

6 | MS. BREWER: Objection.

7 | Q. Do you understand what I mean by
8 | easement? It's allowing someone else to use your
9 | property or go on your property for a specific
10 | purpose.

11 | A. No.

12 | Q. Does anyone, besides you and your
13 | wife, work on the property here? Do they farm it?

14 | A. No.

15 | Q. Do you have anyone help you?

16 | A. Oh! My grandson.

17 | Q. Other than family members?

18 | A. Just the family.

19 | Q. Do you have any wetland filter strips
20 | on your property?

21 | A. I got a -- It's a filter strip.

22 | Q. Where is that?

23 | A. Right beside the Beaver, right beside
24 | that Beaver Creek, right in here.

25 | Q. The northeast corner there.

1 A. It goes all the way back.

2 Q. Oh, it's the very top -- It's along
3 the Beaver then?

4 A. Yeah, right along the Beaver.

5 Q. And did you get any payment for
6 putting that in? Did the Federal Government --

7 A. Yes.

8 Q. All right. Do you recall what you got
9 for that?

10 A. I think I -- Well, \$230.

11 Q. Do you remember when you got paid for
12 that?

13 A. I get paid once a year for it.

14 Q. Oh! You get paid every year?

15 A. Yeah, for that. I wanted to put that
16 in because of the flooding, trying to hold, you know.

17 Q. When did you put it in?

18 A. It was probably six years ago.

19 Q. Did you do that voluntarily or were
20 you required to?

21 MS. BREWER: Objection.

22 Q. You put it in, right, it was your
23 choice?

24 A. I put it in.

25 Q. Okay. And you get paid \$230 a year;

1 is that correct, from the Federal Government for
2 that?

3 A. Yes.

4 Q. Have you ever heard about the Wetland
5 Reserves Program, governmental program?

6 A. No.

7 Q. When you bought the property, did you
8 talk with the previous property owns about it?

9 A. No.

10 Q. Did you know about the property when
11 you purchased it on your own or through anyone else?

12 A. I think -- We seen it in the paper and
13 a real estate guy had it. He was selling it
14 individual, you know.

15 Q. Do you recall what you learned about
16 the property when you bought it? Did you inquire?

17 MS. BREWER: Objection.

18 A. I don't know what you mean.

19 Q. All right. Let me ask you this: When
20 you purchased the property in 1986, were you told
21 anything about whether the property would flood or
22 flooded?

23 A. No.

24 Q. Did the property ever flood before the
25 dam's spillway was modified in 1997?

1 A. Just not real bad, just -- You
2 wouldn't lose crops on it.

3 Q. Okay. When would it flood? When did
4 it flood?

5 A. In there --

6 Q. Before the department modified the
7 spillway, yeah.

8 A. Well, I'd say just once in a while
9 we'd get water through there, but far as losing
10 anything, you probably wouldn't no more than,
11 probably, about an acre, maybe.

12 Q. When you say, "once in a while," what,
13 once a year, maybe?

14 A. Yeah.

15 MS. BREWER: Objection.

16 Q. Okay. And how much of the property?
17 Where did it flood before 1997, before the spillway
18 was changed?

19 A. Most of it would be just right here,
20 in the center a little bit.

21 Q. All right. You're talking about the
22 central area. All of the shaded area or a part of
23 that?

24 A. No. Just about a half acre, right in
25 there.

1 Q. Right in the center?

2 A. Yeah.

3 Q. Is that half acre a lower elevation?
4 Does it like, does it go lower?

5 A. Yeah. It kinda comes, like, into a
6 little valley, like.

7 Q. Do you know how deep that is below the
8 rest of the land there?

9 A. It kinda just lays in there. It --

10 Q. You don't know how far down it is; do
11 you?

12 A. No. It ain't real deep.

13 Q. And did you know that the property did
14 flood, as you said, every once in a while, when you
15 purchased it?

16 A. No.

17 Q. Do you know, when would it flood
18 before -- and again, this is all before the spillway
19 was changed. When would that property -- You said,
20 "every once in a while." Was it because of the rain?
21 What were the conditions that caused the flooding?

22 MS. BREWER: Objection. Are you
23 asking when, in the year, did it flood?

24 MR. COLE: No, what -- Let me ask this
25 one.

1 Q. Do you know why it flooded before
2 1997, when you did get flooding?

3 MS. BREWER: Objection.

4 A. It would be because of the rains, you
5 know.

6 Q. Just heavy rains?

7 A. Yeah.

8 Q. Was it -- Before '97, did Beaver Creek
9 top, overspill into your property?

10 A. No, I don't --

11 Q. Do you know how many -- when you did
12 get flooding, do you know how much it rained or do
13 you know how many inches it would have to be?

14 A. I think probably a couple inches,
15 someplace in there.

16 Q. Over how many days, couple days?

17 MS. BREWER: Objection.

18 A. Yes.

19 Q. Before the spillway was modified, did
20 the Beaver Creek overflow next to your land?

21 A. No.

22 Q. Even on a hard rain?

23 A. It would used to get, but not, not the
24 way, you know --

25 Q. Was there a particular time of year --

1 and again, this is, again, before the spillway was
2 changed that your property would flood?

3 A. I just -- I can't really remember, you
4 know. I'd always get some water in there and probably
5 lose about a half an acre.

6 Q. So the flooding that occurred on your
7 property before the spillway was changed in 1997 that
8 caused the crop loss for that area --

9 A. Yes.

10 Q. Do you know how long would that area
11 stay flooded?

12 A. Well, when, from '97?

13 Q. Before.

14 A. Before?

15 Q. Yeah.

16 A. Well, it just, it would kinda say in
17 there.

18 Q. How many days?

19 A. I'd say probably four, but usually, on
20 that kinda ground, it would kinda filter through.

21 Q. What do you mean by -- You mean drain
22 down or --

23 A. Yeah.

24 Q. Okay. Because it was in the valley;
25 right?

1 A. It's not a big valley. You can't
2 really see, but you can tell it, you know.

3 Q. Is it gradual then?

4 A. Yeah.

5 Q. Do you know approximately how high the
6 flooding got, again, before the spillway was changed
7 when it flooded?

8 A. I don't know. I'd say the ditch
9 probably got six foot, maybe, in there, seven foot.

10 MS. BREWER: To clarify, where are you
11 talking about getting six feet?

12 A. Now, this is in the Beaver. I'm
13 talkin' about the Beaver, nothin' up in here before,
14 you know, before '97. That's what you said; wasn't
15 it?

16 Q. Yeah.

17 A. The Beaver, you know, when it'd get
18 some pretty hard rains, I'd say probably five or six
19 feet, the river would raise.

20 Q. Oh, the river did, all right. Well,
21 let me ask you this: For that part of your land in
22 the middle, where you said it would flood --

23 A. Um-hum.

24 Q. -- before -- This, again, all before
25 the spillway was changed, do you know how high that

1 | water would get?

2 | A. I'd say probably -- I don't know, four
3 | or five inches in there, something like that.

4 | Q. And just so we're clear, the part
5 | that, when you had flooding on your land in the
6 | middle part, that would last four-to-five days then?

7 | A. Yeah, just lay in there and kinda --
8 | If you a had a tile in there, it would have, you
9 | know, shot right on out.

10 | Q. But that part of your property, there
11 | is no tile; correct?

12 | A. No.

13 | Q. Correct, there is no tile?

14 | A. No.

15 | Q. There is?

16 | A. No, there's no tile right in there
17 | wet.

18 | Q. Okay. Did you -- and again, for this
19 | previous flood. No, strike that.

20 | Did you make any records or keep any,
21 | keep a journal or any logs of your property before
22 | the spillway was changed?

23 | A. No.

24 | Q. Okay. What sort of income -- Let's
25 | talk about before the spillway was changed. What

1 kind of income did you make off farming this
2 property?

3 A. This property? Well, before, this
4 property right here, if you put out beans in it, it
5 would average right around 60 bushels per acre.

6 Q. And what would that go for? What
7 would that sell for?

8 MS. BREWER: Objection. Do you have a
9 time period you're asking about?

10 MR. COLE: Well, from -- Let's say
11 from the --

12 Q. You start farming it immediate, right,
13 once you purchased the property?

14 A. Yes.

15 Q. So in 1986-to-'87, do you know what
16 you'd make a year off your land for farming all
17 total?

18 A. Well, it'd probably be ever what the
19 price was, you know, ever what the price of the beans
20 was there and what the price of the corn was.

21 Q. Okay.

22 A. And then, well, when you get your
23 price of your beans or your corn, you gotta -- I mean
24 to figure out what you made, you gotta figure in all
25 your fertilize (sic) --

1 Q. Sure.

2 A. -- you know all this, right down to
3 fertilize, your spray. If you made 60 bushel an
4 acre, there's 34, I think 34-and-a-half acres in
5 there, farmable. Well, if you got \$5 a bushel for it

6 --
7 Q. Let me ask you this. I appreciate
8 that you go with the price. Do you know how much you
9 made in any given year, before the spillway was
10 modified, how much you made off your land from
11 selling your crops?

12 A. Selling them?

13 Q. Yes.

14 A. I really never paid no attention to it
15 'cause I just, I throwed everything together from my
16 other places and sat right down and figured it, you
17 know. You know, I never did that.

18 Q. All right. That's a fair answer. Do
19 you have -- Do you have crop insurance?

20 A. No.

21 Q. Did you ever have it?

22 A. No.

23 Q. Why not?

24 A. I never did have it before. I never
25 did have no problem with it.

1 MS. BREWER: And to be clear, when you
2 say you never had it before, you never had
3 it before 1997?

4 THE WITNESS: I never did have crop
5 insurance, never.

6 MS. BREWER: Okay.

7 MR. COLE: Takes care of that.

8 Q. Do you recall what your, what a
9 typical crop yield was in the, let's say, the early
10 1990's?

11 A. No.

12 Q. You indicated previously, maybe 60
13 bushels per acre.

14 A. Well, what, what do you mean? I mean,
15 you know, on this ground down here, on this ground
16 down here --

17 Q. Your property we're talking about,
18 yes.

19 A. Yeah.

20 Q. Yeah, and let me, just so we're clear,
21 unless I ask you and I -- unless I say I'm talking
22 about a different property, all my questions are
23 dealing with the property in this case. That's a
24 good point. On this property that we're talking
25 about --

1 A. Yeah.

2 Q. -- this parcel, before the spillway
3 was modified do you know what your average crop yield
4 was?

5 A. Well, like, on the beans down there, I
6 knowed it would probably run about 60, what I told
7 you. Now, repeat that again.

8 Q. Just in a typical year, do you know
9 what -- again before the spillway was modified --

10 A. Yeah.

11 Q. -- before the dam was modified, do you
12 know what your approximate crop yield was per year,
13 or per month or whatever?

14 A. Well, usually, on the beans, they'd
15 run 60 down there. Then on corn --

16 Q. Sixty bushels per acre?

17 A. Yeah.

18 Q. All right. What about corn?

19 A. Corn there, probably 125.

20 Q. How about wheat?

21 A. Wheat, it'd be right around 60, in
22 there.

23 Q. Did you ever have your property
24 appraised?

25 A. No.

1 Q. Surrounding areas, is the land
2 surrounding your property or nearby developed at all?

3 MS. BREWER: Objection.

4 Q. Let me ask you this: Tell me about
5 the properties, the land that surrounds this parcel.

6 A. This parcel?

7 Q. Yeah.

8 A. It's all farmable, too.

9 Q. Where is there -- Where is the nearest
10 land that isn't used for farming in relationship to
11 this parcel?

12 A. It's all farmable around.

13 Q. Is there any non-farming land within
14 two miles of this property?

15 MS. BREWER: I'm going to object. If
16 you know, you can answer.

17 A. It's all farmable.

18 Q. By the way, if you ever don't know, if
19 you don't know the answer, then I don't know is a
20 perfectly acceptable answer if you don't know.

21 A. But everything is farmable around.

22 Q. Okay. The surrounding areas --

23 A. Probably all the way to town.

24 Q. Six miles there and about?

25 A. Yeah, everything is farmable.

1 Q. All right. Now, let's talk about your
2 property after the spillway. Now we're gettin' good.
3 How often has water accumulated, flooded on your land
4 since 1997, since the spillway was changed? And
5 again, we're just talking about this parcel here.

6 A. Well, now last year, it never, last
7 year we never had no -- 'cause it never rained.

8 Q. So no flooding in 2009?

9 A. 2009, no. And 2000-what, 3, I think
10 5, we had a lot of water.

11 Q. So you had flooding in 2003?

12 A. (Nodding head.)

13 Q. Yes?

14 A. Yes.

15 Q. How about between 2003 and 2009, do
16 you recall if your property flooded at all between
17 those times? Let me ask you before you answer that,
18 your property hasn't flooded in January; has it?

19 A. When?

20 Q. I hasn't flooded this year; has it?

21 A. No.

22 Q. All right. So between 2003 and now,
23 has your property flooded at all?

24 A. I think in 5.

25 Q. In 5, in 2005?

1 A. Five.

2 Q. How about any other times since 2003?

3 A. It flooded again, but I can't -- I
4 don't know what year it was in there.

5 Q. Do you recall?

6 A. (Shaking head.)

7 Q. Tell me about how much flooding
8 happened in 2005. Do you know how high the water
9 got?

10 A. Well, it -- the water, the water was
11 deep in there.

12 Q. How deep?

13 A. Huh?

14 Q. How deep?

15 A. Well, if you're going by the Beaver
16 and my field, in there, I'd say in my field, I'd say
17 it was probably three foot deep.

18 Q. In 2005?

19 A. In there.

20 Q. And was that all this shaded area?

21 A. Yeah.

22 Q. You're sure?

23 A. I think it was three or was that -- Un

24 --

25 Q. Take your time. Take your time. Back

1 in 2005, you said it flooded then. Do you think it
2 was about three feet back in 2005?

3 A. I know my field had about three foot
4 in -- Or, actually, it has more than that 'cause at
5 Gause Road it sets up. My field sets in there and it
6 was goin' across the road right here.

7 Q. Did you ever measure it to see how
8 much it had flooded? No?

9 A. You couldn't get around down through
10 there. You had to go back around this way to go to
11 town.

12 Q. So you never measured?

13 A. No.

14 Q. Do you know how high it flooded in
15 2003?

16 MS. BREWER: And if looking at your
17 Affidavit helps you answer his questions,
18 you can do that.

19 A. In 2000 and -- Well -- I'm gettin' --

20 (Witness reviewing document.)

21 In there, we got from two-to-six feet.

22 Q. On when, when was that?

23 A. Well, if I get this, it was 2003.

24 Q. That's by looking at the Affidavit.

25 Do you, personally, as we're sitting here, remember

1 | what years it flooded?

2 | A. No.

3 | Q. Okay.

4 | MS. BREWER: Okay. Let's take a quick
5 | break because I think he's getting tired.

6 | MR. COLE: Okay. We can take a little
7 | break.

8 | MS. BREWER: We'll take a quick break.
9 | We'll go get a drink of water.

10 | (Brief recess take.)

11 | Q. All right, Mr. Gilbert, I was asking
12 | you about when your property flooded after 1997,
13 | after the spillway was changed and I think you
14 | indicated there was flooding in 2005. Do you know
15 | how many -- That's about five years ago. Do you know
16 | how many times that year your property flooded? Was
17 | it one time?

18 | A. Yes.

19 | Q. And do you know how long the water was
20 | on your property that time?

21 | A. Probably, just probably about a week.

22 | Q. And you believe it was three feet high
23 | at that time?

24 | A. In there.

25 | Q. At the highest?

1 A. Oh, gosh! Yes.

2 Q. Okay. And then before that, 2003, you
3 recall there was flooding. Do you recall how high
4 the water got in 2003?

5 A. It was really deep and it was deep
6 that time, too.

7 Q. Do you recall about how many feet?

8 A. I'd say probably three feet, six feet.

9 Q. Okay. Big difference there.

10 A. Well, you see, what I was going at was
11 the road.

12 Q. From Gause Road.

13 A. If you take the road down to the field
14 there, the height, you're probably talking six feet
15 through there.

16 Q. Okay. So Gause Road --

17 A. Sits up high.

18 Q. It abuts your property on the
19 right-hand side and you're saying it's about six feet
20 higher there; there's a dropoff to your land?

21 A. Yeah. It kinda runs like this
22 (indicating), but right at six feet, in there maybe.

23 Q. Is it a gradual slop or a drop,
24 straight drop down.

25 A. It's a straight, in there.

1 Q. Okay. So it's about six feet high?

2 A. And --

3 Q. Go ahead. You go.

4 A. The water was runnin' across the road
5 then.

6 Q. All right. So it was level with Gause
7 Road then back in 2003?

8 A. Yeah. It was probably three inches
9 that went across the road right there.

10 Q. Oh, okay, three inches on Gause?

11 A. Yeah, up on the road.

12 Q. Okay. And then that was -- that's how
13 much was across your property?

14 A. Across the road. Across the property,
15 there was probably six foot.

16 Q. Okay. And how many different times in
17 2003? Was that a one-time flood?

18 A. Yes, yes.

19 Q. What about any other times since 1997
20 that you can recall and I know we're going back some,
21 so to the best you can remember. How about before
22 2003?

23 A. 2003, I can't remember.

24 Q. Okay. The spillway was changed in
25 '97.

1 A. Yeah.

2 Q. Okay. Since then, do you recall,
3 other than the two we've talked about in 2005 and
4 2003 any other times that you had flooding on your
5 property?

6 A. There was a time before that, but I
7 can't remember.

8 Q. Okay. Before 2003?

9 A. In there, yeah.

10 Q. Sometime between 1997 and 2003? You
11 don't recall exactly when?

12 A. No.

13 Q. Do you recall how bad the flooding was
14 whenever it happened?

15 A. Yeah.

16 Q. And how high was the water on that?

17 A. It was deep that time, too, in the
18 field.

19 Q. Okay. Do you know --

20 A. I'd say probably two feet, three --

21 Q. Two feet, two or three feet?

22 A. Yeah.

23 Q. And do you know whenever that
24 occurred, how long the water was there?

25 A. It'd say in there probably a week.

1 Q. And I'm not sure I asked, going back
2 to 2003, when it was all the way at the top, so to
3 speak --

4 A. Um-hum.

5 Q. -- how long did the water stay there?

6 A. It stayed probably a week or more.

7 Q. Less than two weeks? Between a week
8 and two weeks?

9 A. I'd say probably a week and a half.

10 Q. Any other times since 1997 you can
11 recall when it flooded, when your land flooded?

12 A. Well, anytime, anytime the -- anytime
13 the lake, when the lake was up fully up and we got a
14 lot of rain, it flooded.

15 Q. And I'm asking you how many times did
16 that happen since 1997?

17 A. I don't know.

18 Q. Did you ever keep a, did you or your
19 wife, if you know, ever keep a record of when it
20 flooded?

21 A. No.

22 Q. What harm happened? When your
23 property was flooded, what did that do to you? What
24 did it do to your land?

25 A. Well, there's a lot of debris in it,



AFFIDAVIT OF H. EDWARD GILBERT

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

1. I am a Relator in this mandamus action seeking compensation for the property taken by Respondents Ohio Department of Natural Resources and Sean D. Logan, Director (collectively "ODNR").

2. Specifically, I, with my wife Mary E. Gilbert, am the owner of real estate described as Mercer County Parcel Numbers 26-01600.0000 and 26-041200.0000.

3. I have owned Mercer County Parcel Numbers 26-01600.0000 since approximately 1978 and 26-041200.0000 since 1986.

4. Mercer County Parcel Number 26-041200.0000 lies on the south bank of Beaver Creek.

5. Since ODNR replaced the western spillway of Grand Lake St. Mary's in 1997 and undertook its current lake level management practices, which include maintaining increased lake levels and use of the western spillway for virtually all water flow out of Grand Lake St. Mary's, Mercer County Parcel Number 26-041200.0000 has been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

{ DON000188 }

6. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 26-041200.0000 has flooded at least 4 times. On each occasion, Mercer County Parcel Number 26-041200.0000 was inundated with water at depths varying from at least 2 to 6 feet.

7. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 26-041200.0000 floods more rapidly and remains flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Number 26-041200.0000 remained inundated with water for a period of at least 3 days to a week.

8. To my recollection, prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 26-041200.0000 did not flood.

9. To date, the most invasive flood occurred in 2003 with at least 27.8 acres of Mercer County Parcel Number 26-041200.0000 being flooded with at least 6 feet of water for at least a week. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Number 26-041200.0000 is attached hereto as Exhibit 1. The area of the parcel that was flooded in 2003 has been shaded in by my wife, Mary Gilbert.

10. Mercer County Parcel Number 26-041200.0000 also experienced severe flooding in 2005.

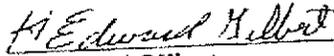
11. Mercer County Parcel Number 26-041200.0000 was again flooded at least twice in the Summer of 2008.

12. As a direct result of the flooding, Mercer County Parcel Number 26-041200.0000 has suffered damage in the form of loss of crops, field and bank erosion, the deposit of silt, sand, stones, and other debris such as wood, trees, trash cans and trash, and fish.

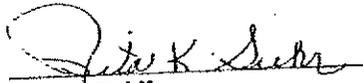
13. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Number 26-041200.0000.

14. I believe that the intermittent, continuing, persistent, frequent, and increased severe flooding from the western spillway of Grand Lake St. Marys will inevitably recur as a result of ODNR's replacement of the western spillway and ODNR's current management practices.

FURTHER AFFLIANT SAYETH NAUGHT.


H. Edward Gilbert

Sworn in my presence and subscribed before me this 14th day of October, 2009.


Notary Public

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



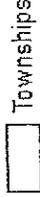
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Mercer County Ohio



Legend

Administrative



Townships



Neighborthoods

Parcels



Transportation



State Highways

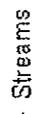


US Highways

Water



Lake



Streams

tabblist
EXHIBIT
1
Gilbert



Scale: 1:3,673

Map center: 1364221, 328245

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Harold Edward Gilbert and Mary E. Gilbert

-0- St. Rt. 29

Parcel No.: 26-041200.0000- 39.707 acres

1910000191



KNOW ALL MEN BY THESE PRESENTS:

VOL 299 PAGE 104

 EXHIBIT
 B
 SUBJECT
 PENGAD 800-631-6889

THAT

BONNIE DREFFER (formerly known as Bonnie Monroe)
 and RICHARD DREFFER, Her Husband;
 PATRICIA BRADFORD and ARTHUR BRADFORD, Her Husband;
 PEGGY BONFIGLIO and JAMES BONFIGLIO, Her Husband; and
 BOYD GRANGER and ANITA GRANGER, His Wife;

of Mercer County, Ohio, in consideration of One (\$1.00) Dollar and other
 good and valuable considerations to them in hand paid by

HAROLD EDWARD GILBERT and MARY E. GILBERT

whose address is

3003 Bunker Hill Road
 Cellina, Ohio 45822

do hereby GRANT, BARGAIN, SELL AND CONVEY to the said

HAROLD EDWARD GILBERT and MARY E. GILBERT

their heirs and assigns forever, the following described REAL ESTATE,
 situate in the TOWNSHIP of JEFFERSON, in the COUNTY of MERCER, and the
 STATE of OHIO:

Being a parcel of land situated in Jefferson Township, Mercer County,
 Ohio, in the Southwest Quarter of the Northeast Quarter and the
 Southeast Quarter of the Northwest Fractional Quarter of Section 6,
 Township 6 South, Range 2 East. Being more particularly described
 as follows:

Beginning at a railroad spike at the center of said Section 6-

Thence, North $89^{\circ} 35' 03''$ West, along the South line of the
 Northwest Fractional Quarter of said Section 6 and the centerline
 of State Route 29, a distance of Four Hundred Twenty-three and
 $48/100$ (423.48) feet to a railroad spike-

Thence, North $00^{\circ} 02' 31''$ East, a distance of One Thousand One
 Hundred Twenty-three and $34/100$ (1123.34) feet to a point in the
 approximate center of Beaver Creek-

Thence, in an Easterly direction along the approximate center of
 said Beaver Creek, the following courses and distances:

South $80^{\circ} 16' 21''$ East, 340.16 feet to a point-

South $78^{\circ} 19' 38''$ East, 978.69 feet to a point-

North $89^{\circ} 34' 39''$ East, 116.60 feet to a point-

North $71^{\circ} 53' 13''$ East, 369.56 feet to a point-

Said point being marked with a railroad date nail number 31 in
 the bridge directly above-

Thence, South $00^{\circ} 14' 41''$ West, along the East line of the
 Southwest Quarter of the Northeast Quarter of said Section 6 and
 the centerline of Gause Road, a distance of Nine hundred
 Ninety-six and $18/100$ (996.18) feet to a railroad spike-

Thence, North $89^{\circ} 35' 30''$ West, along the South line of the
 Southwest Quarter of the Northeast Quarter and the centerline of
 State Route 29, a distance of One Thousand Three Hundred
 Thirty-four and $70/100$ (1334.70) feet to the place of beginning.

Containing 39.707 acres of land more or less.

Subject to all easements and right-of-way of record.

DON000855

Reference is made to a survey of this area by Gordon L. Geeslin, Registered Surveyor 5372, dated December 13, 1985, on file in the County Engineer's Office.

GRANTORS hereby assume and agree to pay the July, 1986, installment of real estate taxes and/or assessments. GRANTORS further assume and agree to pay the Beaver Creek Ditch Assessment. GRANTEEES hereby assume and agree to pay the January, 1987, installment of real estate taxes and/or assessments and all installments of real estate taxes and/or assessments due and payable thereafter, except the Beaver Creek Ditch Assessment which is payable by the GRANTORS.

APPROVED
MERCER COUNTY TAX MAP DEPT.
Date 4-21-86
By Jk. B.

Exemption paragraph, conveyance Fee 43.70
The Grantor and Grantee of this deed have complied with the provisions of Sec. 5303.1, Roger A. Schwietzman, Mercer County Auditor.
E.M. 4-21-86
Deputy Aud. Date

LAST TRANSFER of record appears in Volume 250, Page 346, Deed Records, Mercer County, Ohio, Recorder's Office,

and all the ESTATE, RIGHT, TITLE AND INTEREST of the said Grantors in and to said premises; TO HAVE AND TO HOLD the same, with all the privileges and appurtenances thereunto belonging, to the said Grantees, their heirs and assigns forever.

And the said grantors do hereby COVENANT AND WARRANT that the title so conveyed is CLEAR, FREE AND UNINCUMBERED, and that they will DEFEND the same against all lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said

- BONNIE DREFFER (formerly known as Bonnie Monroe) and RICHARD DREFFER, Her Husband; PATRICIA BRADFORD and ARTHUR BRADFORD, Her Husband; PEGGY BONFIGLIO and JAMES BONFIGLIO, Her Husband; and BOYD GRANGER and ANITA GRANGER, His Wife;

who hereby release their right and expectancy of dower in said premises have hereunto set their hands this 9th day of April, in the year A.D. Nineteen Hundred and Eighty-six (1986).

SIGNED AND ACKNOWLEDGED IN THE PRESENCE OF US:

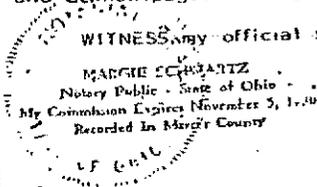
Shelly J. Kuhn
Witness as to 1 & 2 - Shelly J. Kuhn
Margie Schwartz
Witness as to 1 & 2 - Margie Schwartz
Jeffrey R. Ingraham
Witness as to 3 & 4 - Jeffrey R. Ingraham
Margie Schwartz
Witness as to 3 & 4 - Margie Schwartz
Richard H. Bell
Witness as to 5 & 6 - Richard H. Bell
Peter J. Juzenski
Witness as to 4 & 6 - Peter J. Juzenski
Margie Schwartz
Witness as to 7 & 8 - Margie Schwartz
Shelly J. Kuhn
Witness as to 7 & 8 - Shelly J. Kuhn

- Bonnie Dreyffer
(1) Bonnie Dreyffer
Richard Dreyffer
(2) Richard Dreyffer
Patricia Bradford
(3) Patricia Bradford
Arthur Bradford
(4) Arthur Bradford
Peggy Bonfiglio
(5) Peggy Bonfiglio
James Bonfiglio
(6) James Bonfiglio
Boyd Granger
(7) Boyd Granger
Anita Granger
(8) Anita Granger

STATE OF OHIO)
)
) SS:
)
) COUNTY OF MERCER)

On this 9th day of April, A.D., 1986, before me, a NOTARY PUBLIC in and for said County and State, personally came BONNIE DREFFER (formerly known as Bonnie Monroe) and RICHARD DREFFER, Her Husband; PATRICIA BRADFORD and ARTHUR BRADFORD, Her Husband; and BOYD GRANGER and ANITA GRANGER, His Wife; the GRANTORS in the foregoing deed, and acknowledged the signing thereof to be their voluntary act and deed.

WITNESS my official signature and seal on the day last above written.

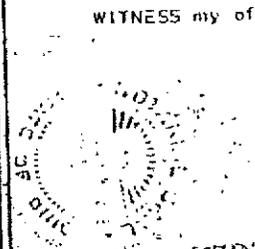


Margie Schwartz
Notary Public for the State of Ohio.
MY COMMISSION: Expires 11/5/90.

STATE OF OHIO)
)
) SS:
)
) COUNTY OF MONTGOMERY)

On this 4th day of April, A.D., 1986, before me, a NOTARY PUBLIC in and for said County and State, personally came PEGGY BONFIGLIO and JAMES BONFIGLIO, Her Husband, the GRANTORS in the foregoing deed, and acknowledged the signing thereof to be their voluntary act and deed.

WITNESS my official signature and seal on the day last above written.



Diana Simpson
Notary Public for the State of Ohio.
MY COMMISSION:

DIANA SIMPSON, Notary Public
In and for the State of Ohio
My Commission Expires April 28, 1987

7608

PRESENTED FOR RECORD
On the 21 day of April 86
at 3:11 o'clock P. M.
recorded April 21 86
in Mercer Co, Ohio, Record of

Deeds
Patricia E. Quata
RECORDER - MERCER CO., OHIO

Fee 12.00
Vol. 299 pg. 104-6

TRANSFERRED

APR 21 1986

ROGER A. SCHWIETERMAN
COUNTY AUDITOR
MERCER COUNTY, OHIO

This Instrument Prepared By: KNAPE & INGRAHAM, Attorneys at Law, 115 N. Walnut St., Celina, Ohio 45822

DON000857

TAB 16

IN THE SUPREME COURT OF OHIO

WAYNE T. DONER, et al.,

Relators,

vs.

Case No.: 09-1292

SEAN D. LOGAN, et al.,

Respondents.

DEPOSITION OF

DAVID LEE GRANGER

February 26, 2010
10:56 a.m.

402 South Kentucky Avenue, Suite 390
Lakeland, Florida

Loretta Lee, FPR, Certified Florida Professional Reporter



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ATTORNEY GENERAL OFFICE
ENVIRONMENTAL ENFORCEMENT

IN THE SUPREME COURT OF OHIO

WAYNE T. DONER, et al.,

Relators,

vs.

Case No.: 09-1292

SEAN D. LOGAN, et al.,

Respondents.

DEPOSITION OF DAVID LEE GRANGER
Taken on Behalf of the Respondents

DATE TAKEN: Friday, February 26, 2010
TIME: 10:56 a.m. - 12:05 p.m.
PLACE: Sclafani Williams Court Reporters
402 South Kentucky Avenue
Suite 390
Lakeland, Florida

STENOGRAPHICALLY REPORTED BY:

Loretta Lee, FPR

Certified Florida Professional Reporter



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1 APPEARANCES:

2
3 Counsel for Relators:

4 Thomas H. Fusonie, Esquire
5 Vorys, Sater, Seymour and Pease, LLP
6 52 East Gay Street
7 Columbus, Ohio 43215
8 (614) 464-8261

9 Appeared via telephone conference call

10 Counsel for Respondents:

11 Daniel J. Martin, Esquire
12 Assistant Attorney General
13 Ohio Department of Natural Resources
14 2045 Morse Road, D-2
15 Columbus, Ohio 43229
16 (614) 265-6870

17 Appeared via telephone conference call

18 ALSO PRESENT:

19 Betty Granger
20
21
22
23
24
25



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P R O C E E D I N G S

(Witness sworn.)

THE WITNESS: Yes.

DAVID LEE GRANGER,

called as a witness by the Respondents, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MARTIN:

Q. First what I want to do, Mr. Granger, I'd just ask you to state your name and spell it for the record, please.

A. Okay. My name is David L. Granger. D-a-v-i-d, middle initial L, G-r-a-n-g-e-r.

Q. Thank you, sir. The first question I usually ask folks is whether you've had your deposition taken before. And have you ever had your deposition taken?

A. Yes. I worked for an insurance company for my entire career and there were a few depositions there.

Q. Were you actually the deponent, the person being deposed?

A. Oh, I'd have to think back. I was involved in an auto accident probably 25 years ago, and I think there was depositions taken for that accident. That's the last one I recall.

Q. Okay. Were you a party to the accident, then,



1 rather than, you know, a client that was in an accident?

2 A. No, I was driving the vehicle.

3 Q. Okay. You said that was about 25 years ago?

4 A. Yes.

5 Q. Were you a plaintiff or a defendant in that
6 matter?

7 A. I would have been a defendant, I think.

8 Q. Besides that deposition, were there any others
9 you can recall?

10 A. No, I don't recall any.

11 Q. Okay. We've got a little bit of experience in
12 the past, but what I'll do, I'll just kind of run over
13 some basic ground rules for the deposition process; and
14 since we're doing this by phone today, that makes it
15 even more important that some of these suggestions I'm
16 going to give you, that we try to follow.

17 First of all, as you know, the court reporter
18 swore you in, so this is -- this deposition is being
19 taken under oath, so you'll have to answer the questions
20 truthfully and to the best of your knowledge.

21 One of the things we have to be careful of is
22 to not talk over each other, and I'll do my best not to
23 do that, and I'll just ask you to do your best to not
24 talk while I'm talking. So when I'm asking a question,
25 please wait so I can get my question out and then you



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1 can, you know, begin your answer. It may be good to
2 give a little slight pause in between question and
3 answer so, being on the phone here, we don't, you know,
4 cause any type of interference where our voices are
5 going over each other; and that will also make it easier
6 for the court reporter to be able to keep an accurate
7 record if we're not talking at the same time.

8 Also, because we're not there in the room with
9 you, it's important to give verbal responses to my
10 question. In other words, if you shake your head or nod
11 your head or maybe say uh-huh, we can't really see that
12 and it doesn't show up on the record very well. So I'd
13 just ask you to verbally respond. In other words, a yes
14 rather than, you know, nodding your head or saying
15 uh-huh so we can also keep the record clear for the
16 court reporter.

17 Obviously, if you have any trouble
18 understanding my question, if you can't hear me or you
19 just don't understand the question, let me know and I
20 can ask the question again and, you know, rephrase it or
21 do whatever we need to do to make the question clear.
22 I'm not trying to confuse you or trick you. I want you
23 to be able to understand my question. So if you have a
24 problem with that or you just can't hear me, let me know
25 and I will, you know, redo it.



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1 I don't think we'll be real long today, but if
2 you do get in a situation where you need to take a
3 break, that's fine. Just let us know that and we'll,
4 you know, take a break and that's, you know, that's not
5 a problem. So just let us know if you need to take a
6 break.

7 A. I'll do my best.

8 Q. So does everything that I'm saying make sense
9 so far?

10 A. Yes.

11 Q. Great. Well, Mr. Granger, I'm Dan Martin. I'm
12 an attorney representing the State of Ohio in this
13 action, and this involves a lawsuit that yourself and
14 other relators filed against the State regarding
15 property that the relators own near the Grand Lake
16 St. Mary's. And what I want to do is just get a little
17 bit of background information from you.

18 You already said that you had worked in the
19 insurance business; is that correct?

20 A. Yes.

21 Q. And how long did you work in that occupation?

22 A. Fifty-two years.

23 Q. And where did you work, sir?

24 A. Most of the career was there in Celina, Ohio.

25 Q. Was there a company you worked for?



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1 A. Yes, Celina Mutual Insurance Company. Well,
2 there was a group of companies: Celina Mutual, National
3 Mutual, Celina National Life, Celina Financial
4 Corporation.

5 Q. Okay. And did they change names every time; is
6 that what happened?

7 A. No, those were four different corporations
8 under one umbrella.

9 Q. Oh, I see. Did you own any of these entities?

10 A. No, these were mutual companies.

11 Q. Okay. And did you work with anyone else in
12 these companies?

13 A. What do you mean by that?

14 Q. Were you the sole employee, or were there other
15 people that worked with you?

16 A. Well, there were about 600 employees at one
17 time.

18 Q. Okay. So it's a large company, then.

19 A. Yes.

20 Q. All right. So it wasn't like you and someone
21 else in a small insurance office, then.

22 A. No, it was a large corporation.

23 Q. And before you started in this business 52
24 years ago, did you have any jobs prior to joining this
25 company?



1 A. Oh, a couple menial jobs, but I joined the
2 company when I was 21 years old, just out of business
3 college.

4 Q. And where did you attend business college?

5 A. Miami-Jacobs in Dayton, Ohio.

6 Q. Do you recall what year you graduated?

7 A. It would have been 1951.

8 Q. What type of courses did you take at
9 Miami-Jacobs?

10 A. It was called an executive secretarial course;
11 mainly accounting, with some secretarial duties.

12 Q. Okay. And before you went to Miami-Jacobs, I
13 take it you graduated from high school, right?

14 A. Fort Recovery, Ohio. Yes.

15 Q. Can you tell me what your job duties consisted
16 of when you were at Celina Mutual?

17 A. Well, in 43 active years, I moved around. I
18 started out in the data processing department; I moved
19 to underwriting; I was promoted to branch manager in
20 Norfolk, Virginia, and I was there for a year. I came
21 back into the marketing department, a couple different
22 job changes there. When I retired, I was vice president
23 of marketing.

24 Q. What year did you retire, sir?

25 A. I took active retirement in 1994, then I went



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1 back and worked at the company as an independent
2 contractor and did some work for them for another few
3 years.

4 Q. When you were working as an independent
5 contractor, what type of work did you do for the
6 company?

7 A. Those were mainly farm inspections.

8 Q. And tell me what you would do in a farm
9 inspection.

10 A. Well, we had established a farm program there
11 at Celina Group. To successfully write farm business,
12 somebody has to look at that property. We could use
13 independent sources to do that, or we preferred to have
14 our own company inspectors. When I retired, I was just
15 asked to work part-time to do that type of inspection
16 work.

17 Q. And you may have touched on this, but if you
18 could maybe elaborate for me. What would be the purpose
19 of doing these farm inspections? Why would you need to
20 go do those?

21 A. Well, you're the eyes and ears of the company.
22 In other words, if I'm going to insure your farm, which
23 has a million dollars worth of property and cattle, I'd
24 like to see what shape the buildings are in, what kind
25 of operation you have, a little bit about your finances.



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1 Then I merely write a report and pass that on to the
2 underwriters in the home office as to whether or not
3 they want to accept that type of a risk.

4 Q. So you would physically visit each farm that
5 was proposed for being covered, right?

6 A. Correct.

7 Q. And then you would prepare a report and pass
8 your findings on to the underwriters; is that correct?

9 A. That's correct.

10 Q. Did you do anything in relation to any
11 inspections for the purposes of crop insurance during
12 your time?

13 A. No, our company did not write crop insurance.

14 Q. Did it write property, like casualty insurance
15 on --

16 A. Mainly property and casualty.

17 Q. And during the time that you did this work as
18 an independent contractor, did you do any of this work
19 in the Celina area?

20 A. Yes, we covered about four states, but there
21 was occasionally some farms in Mercer County that I
22 would look at.

23 Q. And how long did you do this work as an
24 independent contractor?

25 A. About six years.



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12

1 Q. Okay. So that would take us to roughly 2000?

2 A. Yes.

3 Q. If you retired in --

4 A. '99 or 2000, one of those two, because I
5 started coming to Florida in '97, then I would work in
6 the summertime when I'd go home for a few months. So I
7 probably terminated that at about '99 or the year 2000.

8 Q. Okay. And after you terminated that
9 arrangement, did you have any other employment
10 opportunities?

11 A. No, I was fully retired.

12 Q. And do you maintain any residence in Mercer
13 County as we sit here today?

14 A. Yes, I do.

15 Q. And what is the address of that?

16 A. The address is 1670 State Route 29, which
17 consists of about 135 acres.

18 Q. Okay. Do you still -- do you have a house on
19 that property?

20 A. Yes, sir.

21 Q. Do you consider yourself at this point a
22 Florida resident or an Ohio resident?

23 A. I am a Florida resident. We spend six months
24 at the farm in Ohio and six months here in Florida.

25 Q. And what's your permanent address -- strike



1 that. Sorry.

2 What's your residential address there in
3 Florida?

4 A. 4925 Cypress Garden Road, Winter Haven, 33884,
5 Lot 116.

6 Q. You said Winter Haven?

7 A. Yes.

8 Q. In our prior deposition they said it was
9 snowing in West Virginia, so hopefully it's not snowing
10 down there.

11 A. We have had an unusually cold winter. January
12 was nine degrees below normal, and February is going to
13 be close to that. But we don't have the snow that you
14 have on the ground right now.

15 Q. Well, Mr. Granger, I appreciate that background
16 information. What I want to do now, I want to just get
17 to some of the questions I have about the lawsuit.

18 (Deposition Exhibit A previously marked for
19 identification.)

20 Q. You should have -- I hope the court reporter
21 has a document that's been marked Exhibit A that's
22 available to her. Do you have that?

23 A. Yes, I have that.

24 Q. Okay. Great. I just would like you to take a
25 look at the document that's been marked as Exhibit A,



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1 and this is an affidavit of David L. Granger.

2 Would that be you, sir?

3 A. Yes.

4 Q. And let's just confirm the signature. I'll ask
5 you to turn --

6 MR. FUSONIE: Hold on, Dan, just to make sure
7 for purposes of the record.

8 Mr. Granger, is that a six-page document?

9 THE WITNESS: Yes, it is.

10 MR. FUSONIE: Okay. Thank you.

11 Thanks, Dan.

12 Q. Yeah, it would be the third page. There's also
13 little numbers down at the bottom. You may have seen
14 these. They're called Bates stamps. And it's also
15 stamped 199 in the lower right-hand corner. It's the
16 third page of the document.

17 Do you see a signature there?

18 A. Yes.

19 Q. Is that your signature, sir?

20 A. Yes, it is.

21 Q. And do you remember signing this document?

22 A. Yes, I do.

23 Q. Do you recall if you signed this in Ohio?

24 A. Yes.

25 Q. All right. Let's just go to the first page,



1 after the first page, and paragraph 2 identifies you as
2 trustee of a Living Trust. Is that true?

3 A. That is true.

4 Q. And tell me what the David L. Granger and
5 Esther L. Granger Living Trust is.

6 A. That was just a Trust established by my wife
7 and I.

8 Q. And as I understand paragraph No. 2 here, is it
9 the Trust that is the actual owner of those two parcels?

10 A. Yeah, that's correct.

11 Q. And the third paragraph says that, "I have been
12 an owner of Mercer County Parcel Numbers 42-004100.0000
13 since 1964 and 42-012600.0000," that parcel since 1990.

14 Can you tell me, sir, when those two parcels
15 became placed in the Trust?

16 A. Let me correct a couple of things. The first
17 parcel I actually purchased in 1956.

18 Q. Okay.

19 A. In 1964, I lost my wife, so that then became
20 all into my name; and then 1990, I bought another parcel
21 across the river.

22 And we established the Trust -- I don't have
23 the exact date, but it's probably been six, seven years
24 ago. In fact, I had two Trusts. I had a Trust that was
25 originated there in Celina maybe eight, ten years ago;



16

1 and when I became a Florida resident, I voided that
2 Trust and established a Trust with a Florida attorney
3 down here. And that was probably about four years ago.
4 I'm guessing at those dates.

5 Q. Okay. Just so I'm keeping it straight, the
6 Trust you had about eight to ten years ago, did that
7 Trust have a specific name that you can recall?

8 A. I think it would have been the same name. It
9 was David L. Granger and Esther L. Granger Living Trust.

10 Q. Okay. And then the document -- I'm sorry, the
11 Trust that was formed, you said, about four years ago in
12 Florida, is that also bearing that same name?

13 A. Same name, yes.

14 Q. At the time of the affidavit that you had
15 signed here, if I could, dated 24th day of August 2009,
16 at that point, the two parcels, can you tell me whether
17 they were covered by the Trust that was formed since you
18 were in Florida?

19 A. Yes, because this was signed in August 24th,
20 2009, and that Florida Trust was established four years
21 ago.

22 Q. Okay. Well, yeah, I guess just what I wanted
23 to confirm, Mr. Granger, is whether the most recent
24 Trust you had contains these two properties, that they
25 weren't left in some other type of Trust document.



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1 A. No, they were in there.

2 Q. Okay. So it's still accurate to say they're
3 both owned by the David L. Granger and Esther L. Granger
4 Living Trust then?

5 A. That's correct.

6 Q. Okay. And the other modification you just
7 wanted to raise was that on paragraph No. 3, that your
8 recollection is you actually bought that parcel there,
9 42-004100, was actually purchased by you in 1956, right?

10 A. That's correct.

11 Q. Okay. Do you live -- I'm sorry, strike that.

12 When we talked earlier, you said there was a
13 house that you maintained and that you would go back to,
14 when you weren't in Florida, in Mercer County. Is that
15 house on either of these two parcels?

16 A. Yes, it is. It's on that first parcel. That's
17 the address 1670 State Route 29.

18 Q. All right. And the other parcel there, is that
19 adjacent to the parcel your house is on?

20 A. Yes, across the river.

21 Q. Okay. Which river is that, sir?

22 A. Wabash River.

23 Q. The property that your house is located on,
24 does that border the Wabash so that the Wabash would be
25 to the north of where your house is located?



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1 A. The Wabash River would be to the west of my
2 current set of buildings.

3 Q. Okay. To the west.

4 A. Yes.

5 Q. Why don't we look at -- I believe there's a map
6 attached, or a couple maps attached to your affidavit,
7 sir.

8 A. Yes.

9 Q. If we turn to -- at the bottom right-hand
10 corner, it would be page 201. I should say Bates
11 stamped 201. It may also have a sticker that says
12 Exhibit 1.

13 Do you have that in front of you, sir?

14 A. Yes.

15 Q. And the one I'm looking at, there's -- I'm
16 looking down at the bottom of the map. There's parcel
17 number and then indicates 125 acres.

18 Do you have that in front of you?

19 A. I don't see the 125 acres -- oh. Yes, I see
20 that. Okay.

21 Q. Kind of the lower right --

22 A. We're looking at the same picture.

23 Q. Okay. And I believe this may have been faxed
24 to you, so I don't know how well the resolution is, but
25 it appears, at least on my copy, there's an area that's



1 darker. It looks like it's been shaded in.

2 Do you have that?

3 A. Yes.

4 Q. Okay. Did you make that shaded area?

5 A. Yes, I did.

6 Q. And does this parcel look like the one that
7 would be where your house and buildings are located?

8 A. Yes, you can see the buildings there on the
9 diagram.

10 Q. And it looks like there's a type of feature
11 line that goes roughly through the middle. Would that
12 be the Wabash?

13 A. That's correct.

14 Q. And can you tell me what that shaded area
15 represents?

16 A. The shaded area are the areas that we
17 designated as the flood areas. When the Wabash
18 overflows, those are the areas that would be flooded.

19 Q. And what information did you use to determine
20 what parts of this property map should have been shaded
21 in?

22 A. Well, by visual. I see it every year. In
23 other words, on the right side of your picture, there's
24 a distinct crooked line east of the Wabash.

25 Q. Okay.



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1 A. There's a division there between the bottom
2 ground and an upground. So that's designated as a
3 little hill that may be 40, 50 feet long. And where the
4 buildings sit there at the top of your picture, that is
5 up on the hill. So my buildings are not subject to the
6 flood, it's the ground as you go down that hill. The
7 dark area is a lower area subject to flood.

8 Q. All right. Yeah, I see that. And then it
9 looks like there's maybe a smaller shaded-in portion
10 that -- I'm trying to -- yeah, it looks like it's kind
11 of to the south, there's like a smaller shaded area --

12 A. That is a farm pond.

13 Q. Oh, that's a pond there?

14 A. Yes, that's a pond. That's water all the time,
15 yes.

16 Q. Do you know when that pond was placed in the
17 property?

18 A. That bond was constructed, I believe, in 1964
19 or '65.

20 Q. Do you know roughly how many, if you can define
21 it by acres, how many acres in area that pond is?

22 A. It's about one-and-a-quarter acres.

23 Q. And how deep is that pond?

24 A. Ten feet at the deep end, about three feet at
25 the shallow end.



1 Q. And what type of use is made of the pond?

2 A. Just recreational. It's stocked with fish.

3 Q. Okay. To your knowledge, has that pond ever
4 overflowed?

5 A. Well, there is an overflow built into it. It
6 would overflow, yes, constantly, draining down into the
7 Wabash River. The pond is full -- the pond remains
8 full. And any time you get an inch or two of rain, the
9 overflow allows the water to drain on down to the river.

10 Q. I see. So let me ask this question: Has the
11 pond -- have you ever seen the pond overflow its own
12 banks?

13 A. No, only the overflow.

14 Q. In 2003, specifically July of 2003, were you in
15 Mercer County at that time?

16 A. Yes.

17 Q. And did you see any flooding on this property
18 in July of 2003?

19 A. Yes, I -- it's overflowed many, many times.
20 And I don't have those specific dates but, yes, in July
21 of '03, that was a flooded month.

22 Q. Being familiar with this property for a long
23 time, sir, did you ever see flooding on this property of
24 any type prior to 1997?

25 A. Yes.



1 Q. And where would that flooding have occurred?

2 A. Well, it would have occurred mainly in those
3 same areas. In other words, if there was a heavy
4 rain -- the Wabash River flows north. It's at the mouth
5 of the river -- the river starts ten miles south over by
6 Fort Recovery. So normally this river is very shallow.
7 If a two- or three-inch rain occurred in Fort Recovery,
8 the only place that water has to go is down the Wabash.
9 So for many, many years there would be -- if a heavy
10 rain occurred south of us, the Wabash would fill up and
11 many times overflow its banks.

12 Q. During your experience with this parcel, sir,
13 can you recall what the worst flooding was that you ever
14 saw on this parcel?

15 A. Well, it was probably in '03 or '05.

16 Q. So there was some flooding in '05, too?

17 A. Yes, as I recall.

18 Q. Do you know if there was as much as what is
19 shaded in here and representing the '03 flood?

20 A. Yes.

21 Q. Okay. So 2005 was at least as much as what it
22 was in '03, right?

23 A. I would think so, yes.

24 Q. Okay. Did you ever, to your knowledge, see it
25 flood as much in times prior to 2003 as it did in 2005?



1 MR. FUSONIE: Objection. Asked and answered.
2 He's already testified as to the two worst floods.

3 Q. Prior to 2003, Mr. Granger, what was the
4 greatest extent of flooding that you can recall on this
5 parcel?

6 A. I guess I'd have to say even prior to '97 there
7 was some flooding that occurred along the Wabash River
8 when there was a heavy rain south of us.

9 At that time the river might overflow, but I've
10 always stated that we didn't lose a lot of crop because
11 it would not stay overflowed. It might come out today
12 and be back in its banks tomorrow because the river
13 would empty itself rapidly.

14 Now, since '97, what happens when it floods
15 now, it may be flooded for a week at a time because the
16 Wabash River has no place to go because just north of
17 the map you're looking at, it joins the Beaver about --
18 about a mile north. So if the Beaver is running full,
19 then the Wabash has no place to empty itself.

20 Q. Okay. Thank you for the explanation because,
21 yeah, I -- actually, my next question was going to be
22 how close is your property that we're looking at right
23 now, how close is it to the Beaver and to my right --
24 did you just say about a mile?

25 A. Approximately a mile.



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1 Q. Okay. To your knowledge, sir, have you --
2 strike that.

3 The land that we're looking at right now in
4 this parcel, do you farm that?

5 A. Yes.

6 Q. Do you do it yourself, or does someone else --

7 A. I did. When I retired, then -- now I lease the
8 land.

9 Q. And who do you lease it to?

10 A. Michael Highley.

11 Q. Okay. Michael Highley. Does he pay you rent?

12 A. Yes.

13 Q. And do you know how much he pays for rent for
14 this parcel?

15 A. He pays \$150 an acre per year.

16 Q. How long has Mr. Highley been renting this
17 farmland from you?

18 A. Over ten years.

19 Q. Do you know if the rent was always 150, or was
20 it a different amount in the past?

21 A. No, it was a different amount. I raised it
22 about three to four years ago.

23 Q. Okay. Prior to that increase, do you recall,
24 what the rent was?

25 A. I think when we started, it was \$100 an acre.



1 Q. Is Mr. Highley still farming it as --

2 A. Yes.

3 Q. -- we sit here today?

4 Yes?

5 A. Yes.

6 Q. Okay. Prior to Mr. Highley farming the land,
7 then, did you do the farming yourself?

8 A. I had one farmer in between the time that I
9 quit farming, a guy by the name of Rick Adams, who I
10 think is also named in this suit. Rick farmed it for
11 probably three or four years back in the '90s; but prior
12 to that, I farmed it myself.

13 Q. Okay. Did Mr. Adams ever -- strike that. Let
14 me ask the question differently.

15 Do you have any knowledge as to why Mr. Adams
16 stopped farming the land?

17 A. It was my choice.

18 Q. While you were farming the land, Mr. Granger,
19 did you ever experience any crop loss as a result of any
20 flooding?

21 A. Yes.

22 Q. Can you tell me, if you can, what year or years
23 you would have had a loss?

24 A. That's been over 10, 15 years ago. I'm not
25 sure I could give you an intelligent answer to that.



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1 Q. That's all right. Your rough estimate is about
2 10 to 15 years ago?

3 A. I quit farming in '94, as I recall, so this
4 would have all been prior to that.

5 Q. Okay. Do you recall, to the best of your
6 ability, how many acres would have been impacted because
7 of crop loss?

8 A. It's hard to say because it could have been
9 different each year. It would be different. There are
10 some lower level areas, some low spots, and those, of
11 course, would be subject to more damage, more flood. So
12 some years it might be just a few acres and other years
13 it might be 15, 20 acres.

14 I remember last year Mr. Highley planted a
15 portion of one field there at least three times, and I'm
16 sure I did same thing 10, 15 years ago.

17 Q. Okay. And I appreciate that, because what I
18 wanted to sort of be clear about on the record is, I
19 wanted to know about the time frame when you were
20 farming yourself, you were the actual farmer, which
21 sounds like you did up until '94, right?

22 A. Yes.

23 Q. There was times that you did have some losses
24 because of flooding sometime prior to '94, then?

25 A. Yes.



1 Q. Okay. Do you know, sir, on this parcel how
2 many acres are tillable acres?

3 A. I believe the agricultural office classifies my
4 farm as 105 acres are tillable.

5 Q. Okay. Do you know if this parcel has any
6 filter strips on it?

7 A. There's one small filter strip. When I built
8 the pond, we built a filter strip where the water drains
9 out of the pond to the Wabash River. So there's a small
10 strip there, not very long, not very wide, but it does
11 filter water coming out of my pond.

12 Q. Do you participate in any programs on this
13 parcel, like a crop reserve program?

14 A. No.

15 Q. Do you know if any area of the farm is in like
16 an agricultural easement or some type of arrangement
17 where you've received some compensation for development
18 rights or things of that nature?

19 A. No, not to my knowledge.

20 Q. Okay. Let's look on the next map. There's a
21 handwritten note at the bottom of the page that's kind
22 of oriented towards sort of the long direction, and it
23 says, "This parcel does not flood."

24 Do you see that?

25 A. Yes.



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1 Q. Is that your handwriting?

2 A. No.

3 Q. Do you know whose handwriting that is?

4 A. No, I do not know.

5 Q. Do you agree with that statement, that this
6 parcel does not flood?

7 A. Yes, because the parcel on the page 2 is to the
8 west of the parcel on page 1.

9 Q. Okay. And is this the parcel, I believe, that
10 you may have purchased in 1990?

11 A. Yes.

12 To help you clarify that, on page -- on the
13 first map you'll see up in the left-hand corner the
14 parcel 002 and 003?

15 Q. Yes.

16 A. All right. That is the same as you're looking
17 at at the 002 and 003, which is in the middle of the
18 page on the second map. That land is not subject to
19 flood, even though it's all that same field, but there
20 is a difference between the low land and the -- the land
21 begins to rise about where that line is where the black
22 ends.

23 Q. Oh, I see.

24 A. Do you follow me?

25 Q. Yeah. Thank you. I see that. Okay.



1 Well, I guess what I just wanted to confirm was
2 that although this map is attached here, I think, and
3 this is at the Bates stamp No. 202 on the right-hand
4 corner, it's your understanding that you do not intend
5 this parcel to be a part of a claim that you would make
6 against the State in this matter?

7 A. That's correct.

8 Q. Okay. So let's just focus on some questions in
9 regard to parcel 42-004100.0000. I think you may have
10 touched on this earlier, but I just wanted to confirm
11 this. The house that's located there, did that house
12 experience any flood damage?

13 A. No.

14 Q. Were there any damages other than --

15 A. You're talking about the buildings and the
16 house itself; not the ground upon which it sets?

17 Q. Yes, sir, the house itself. Did you have any
18 water from the floods physically enter your home?

19 A. No.

20 Q. You said there were some other buildings there;
21 is that correct?

22 A. Yes. There's a grain bin, a barn, and a
23 granary.

24 Q. Did any of those buildings have water enter
25 into them?



1 A. No.

2 Q. Besides what we talked about earlier, I believe
3 you had testified that it was your observation that the
4 flood water seems to last longer, correct?

5 A. That's correct.

6 Q. Besides that, would there be any other, I guess
7 I would say, problems that you associate with the
8 flooding after 1997?

9 MR. FUSONIE: Objection. Vague.

10 MR. MARTIN: I'll try to phrase that better,
11 Tom.

12 Q. Let's look at your affidavit, again, sir, where
13 I think it references paragraph 12, if you'll go to
14 paragraph No. 12.

15 A. Okay.

16 Q. It says, "As a direct result of the
17 flooding..." the parcel we've just referenced earlier
18 has suffered some damages, and let's start with the
19 first: in the form of loss of crops.

20 After you stopped farming, sir, did you have
21 any interest -- what I mean by "interest," any monetary
22 interest -- in the proceeds from the crops that were
23 harvested from the property?

24 A. No, because I cash rent; therefore, he pays me
25 so much per acre and he takes the risk of crop loss.



1 Q. Right. So would you agree with me that as to
2 the issue of crop loss, that actual loss is borne by the
3 person who does the cash renting?

4 MR. FUSONIE: Objection.

5 Q. You can answer.

6 THE WITNESS: Should I answer that, Tom?

7 MR. FUSONIE: Mr. Granger, if you understand
8 the question, you can go ahead and answer.

9 A. The financial loss would be to the renter.

10 Q. Okay.

11 A. My income would be the same regardless of flood
12 or no flood.

13 Q. Okay. What about field and bank erosion, have
14 you observed any of that?

15 A. Yes, there would be some damage to the farm
16 itself by every time the land floods, it cuts a few new
17 grooves and washes away some topsoil.

18 Q. Does that occur in any particular portion of
19 the property?

20 A. Usually where the water overflows onto the
21 property; and then when it starts to recede, it cuts
22 some gullies going back into the river. There's two --
23 there would be two or three places along the river that
24 that would happen.

25 Q. Along the Wabash, right?



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1 A. Yes.

2 Q. Is there an amount, any term that you can
3 define, of land or acreage that is no longer there
4 because of erosion?

5 A. That would be difficult to identify.

6 Q. What about the deposit of silt, sand, and other
7 debris, have you observed those conditions?

8 A. Yes. In fact, that makes it tough on the
9 renter because after every flood, he has to come in with
10 either a payloader or a bulldozer or equipment of his
11 own to remove trees and silt so that he can actually
12 farm it.

13 Q. And this silt, sand, and debris, have you ever
14 known Mr. Highley or Mr. Adams to have been prevented
15 from farming any acreage because of the existence of the
16 material?

17 A. After they removed that material, I think they
18 were pretty well back to normal.

19 Q. Okay. And then the statement goes on. It
20 talks about the destruction of trees, bushes, and
21 shrubs. What destruction of trees, bushes, and shrubs
22 have you observed due to the flooding?

23 A. Well, along the riverbank it would completely
24 take trees out of the bank, and many times they're out
25 in the middle of your field. So there would be some



1 damage where that tree was ripped out of the bank; and
2 then, of course, it floats out into the field and has to
3 be removed.

4 Q. During the 2003 flood, were there any
5 particular trees, bushes, or shrubs that you recall
6 being destroyed by that flood?

7 A. I wouldn't recall that specific year and the
8 specific damage for that year, but usually with every
9 flood there is some damage. Now, what year and how
10 much, I can't say.

11 Q. Do you have any photographs that show any of
12 the flooding at any time?

13 A. I think we tried to research that back last
14 summer, and I did not come up with any. I know we've
15 taken a lot of pictures.

16 I'm not sure -- even the Daily Standard, the
17 local paper, did an extensive photographic display of
18 all along the river there, including our property, but I
19 don't -- I can't lay my hands on those right now, but
20 I'm sure they would be available. Maybe you have them.

21 Q. As far as any pictures that maybe you or your
22 wife took, do you recall if you or your wife took any
23 photos of the flood?

24 A. Yes, I'm sure we did, but I'm not sure where
25 they are.



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1 Q. Do you recall making any efforts to locate
2 those photographs as a result of any request for
3 documents that you have been presented with from your
4 counsel?

5 A. Yes, last summer, as I recall, we did go
6 through a batch of pictures and didn't come up with
7 anything specific.

8 Q. Well, did you have any pictures that were in
9 general depicting any of this flooding?

10 A. Not that I can lay my hands on.

11 Q. Okay. Do you know what happened to the photos
12 that you thought that you may have had?

13 A. They're probably buried there in some old
14 photographs someplace.

15 MR. MARTIN: Okay. Just on the record, Tom,
16 I'd just ask that -- I believe those would be
17 responsive. So if they're destroyed or something
18 happened to them, I guess if we could maybe get an
19 explanation of what efforts were taken to locate
20 them; or, you know, if they don't exist, I mean, I
21 guess that's fine. I guess if you wouldn't mind
22 just following up on that a little further.

23 MR. FUSONIE: Sure.

24 MR. MARTIN: Because I don't have any photos on
25 this property and it sounds like there may be -- I



1 just wasn't sure that there was due diligence in
2 trying to locate those and produce them.

3 THE WITNESS: Probably in the next 60 days
4 there will be some pictures available because with
5 the snow you have and with spring rains, the Wabash
6 will be out again. I'll be glad to take some and
7 send them to you.

8 MR. MARTIN: That would be fine, sir, if you
9 have those.

10 MR. FUSONIE: Dan is going to get a lot of
11 those photos, too.

12 THE WITNESS: Okay.

13 MR. FUSONIE: Yeah, I'll follow up, Dan.

14 MR. MARTIN: Okay. I appreciate that.

15 Q. Mr. Granger, I just want to, I guess, move you
16 on to -- actually, let me go back to one of my questions
17 about the trees.

18 I believe, as I understood your testimony,
19 these were along the river. And I know when we were
20 talking earlier that while you were farming the property
21 yourself, you recall there being flooding along the
22 river. Did you explore whether any of these trees may
23 have been impacted by floods that occurred prior to
24 1997?

25 A. Well, living along the river is a constant



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1 maintenance problem to keep trees from growing out onto
2 your farmland. So every year you make a swipe down
3 along there and you spend a lot of time with chain saws
4 and trying to cut trees that are infringing upon your
5 ground. And then, of course, during a flood many of
6 those trees are just kind of ripped out and float out
7 into the farmland.

8 But, you know, there's not a good maintenance
9 program on the Wabash River, there is on Beaver, but the
10 Wabash River has trees laying down in the bottom of the
11 river that the floods have placed there. So there's
12 always maintenance along the Wabash River.

13 Q. Well, paragraph 13 of your affidavit, there's a
14 statement there that says, "The flooding caused by ODNR
15 has substantially destroyed the value of Mercer County
16 Parcel Number 42-004100.0000."

17 If you could, sir, could you tell me what
18 information you have that leads you to conclude that
19 ODNR has caused the flooding?

20 A. Well, for instance, just as an example, I lost
21 my wife a couple years ago, so the farm was appraised
22 for the purpose of the estate, and the appraisal would
23 take into consideration that this land is subject to
24 flood. You don't always get 100 percent crop every
25 year. There are some waterways and damages that have



1 occurred. So all that would add into the fact that it
2 would decrease the value of the sale of that land.

3 Q. Okay. And do you know, was that information
4 contained in an appraisal?

5 A. The appraisal was made in '07.

6 Q. '07. Okay. And does that appraisal attribute
7 a decline in value to actions of ODNR?

8 A. I don't know. I don't think there's any
9 specific statement in that appraisal to that effect.

10 Q. Do you know if the appraisal gave a value for
11 the parcel?

12 A. Yes.

13 Q. Do you know what that value was?

14 A. I'm pulling that figure out of my head, but I
15 think it was appraised at -- on two different
16 appraisals. One was the vacant land, which lays west of
17 the river. I think that was 4500 per acre. And I think
18 the land east of the river was a little more than that.
19 I don't have those figures. They are available, though.

20 Q. When you said the land west of the river, does
21 that refer to the second map, the parcel that doesn't
22 have flooding issues?

23 A. No, part of that would be on your --
24 On the first map where you see the 002 and the
25 003 in the left-hand corner --



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1 Q. Yes, sir.

2 A. -- that is actually also a part of the same
3 where it's blackened, which there's no number on.
4 That's all one parcel.

5 Q. I see that.

6 A. So that parcel was appraised as one parcel.

7 Q. I see.

8 A. And then the land east of the river where the
9 buildings are, as I recall, was appraised as a different
10 parcel because they were bought at different times. I
11 think that's why, even on my tax duplicate, those two
12 properties could be different.

13 Q. Okay. And this may be a dumb question, but the
14 valuation of the amount per acre on the parcel that also
15 includes the house and buildings, does that valuation
16 per acre, does that, if you know, does that factor in or
17 include the value of the real property, the improvements
18 to the property, the house and the buildings?

19 A. Yes, the house and buildings were not set
20 apart. The entire 80 acres on the east side of the
21 river was appraised as one value.

22 Q. Thank you. Besides what you already identified
23 for me, is there any other information that you have in
24 your possession or through your personal knowledge that
25 would support your statement in the affidavit that the



1 value of that parcel has been substantially destroyed?

2 A. Well, I guess my only -- my personal
3 observation, Dan, would be that the Wabash River is not
4 large at this point except when we get a large rain
5 south of me, as we've talked before.

6 In prior years, the river would clean itself
7 rapidly in just a day or two. The problem now is the
8 lake remains full, so if you get a big rain in Celina,
9 what happens is, they have to let the lake out. As a
10 result, that fills up Beaver Creek to flood stage
11 almost. And when the Wabash comes down and hits the
12 Beaver, there's no place to go except back up onto all
13 of our farmland.

14 Q. Okay. Just so I understand the lay of the land
15 here, and I think you touched on this earlier, it's your
16 understanding that the conditions on the Beaver are
17 essentially, for lack of a better word, causing an
18 overflow of the Wabash where your property is located?

19 A. I would agree with that.

20 Q. I mean, that's kind of -- I'm not an engineer,
21 but sort of a lay person's statement, that there's sort
22 of like a backup in the water flow, so to speak?

23 A. Correct. Correct.

24 Q. Okay. Well, I was just trying to sort of
25 understand your perspective of it, and that's why I



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1 asked how that worked.

2 Did you see a flood, sir, on your property in
3 2009?

4 A. Yes.

5 Q. Do you know what month that was?

6 A. It's ironic, because my wife and I were just
7 talking about this. We go back home usually the latter
8 part of April, first of May. We hadn't been home but a
9 week or two, we're sitting at our kitchen table, and my
10 wife says, "There's a 60-acre pond out here." I'm
11 sitting there at the buildings, at the house, and all
12 you can see is water. So there in May of last year,
13 that entire farm was flooded.

14 Q. And that -- was that -- and I know earlier we
15 talked about there is a pond on your property. When you
16 said 60-acre pond, would --

17 A. That's about a quarter of a mile behind the
18 buildings.

19 Q. Okay. That's what I just wanted to clarify.
20 It was not in relation to the actual pond. You were
21 just using that to describe the area where the Wabash
22 is; is that right?

23 A. That's correct. Yeah.

24 And I can almost assure you, within the next 60
25 days we'll have the same scenario.



1 Q. All right. Well, I think that seems to cover
2 what I wanted to ask you today. I appreciate your time,
3 Mr. Granger. Mr. Fusonie may have some questions for
4 you.

5 A. Okay, Dan.

6 MR. FUSONIE: Mr. Granger, just give me one
7 moment to collect my notes.

8 (Pause in proceedings.)

9 CROSS-EXAMINATION

10 BY MR. FUSONIE:

11 Q. Mr. Granger?

12 A. Yes.

13 Q. Do you believe that if your property was not
14 subject to the severe and frequent flooding that it has
15 suffered since 1997, that the cash rent you charge would
16 be greater?

17 MR. MARTIN: Objection.

18 I'm just lodging objections for the record,
19 sir.

20 A. Well, if I was buying that piece of property,
21 would I pay more for it if it was not subject to flood?
22 Sure.

23 Could I get more rent out of it if a farmer
24 could be assured of 100 percent crop every year?

25 Absolutely.



1 Q. Okay. Just so I understand, kind of to
2 summarize your testimony about the flooding that's
3 occurred since 1997 versus kind of the minor flooding
4 that occurred before 1997; since 1997, there's been a
5 greater frequency of flooding; is that correct?

6 A. I don't know whether a greater frequency, but a
7 longer term.

8 Q. It lasts longer?

9 A. I think when you get a big rain south, whether
10 it was in '96 or 2006, the Wabash would flood, but it
11 might clean itself in 24 hours, where now it takes two
12 or three days maybe.

13 Q. So just so I can summarize, since 1997 the
14 flooding lasts longer, correct?

15 A. That's correct.

16 Q. And it has covered more acres in 2003, 2005,
17 and 2009 on your property than you ever saw before 1997,
18 correct?

19 A. No, that's not correct because I think, there
20 again, when the ground -- all the ground you're looking
21 at on the map there is subject to flood. So when it
22 flooded --

23 Q. I want to make sure I understand your
24 testimony, Mr. Granger. You earlier testified prior to
25 1997 that at most 15 to 20 acres would flood, right?



1 A. No, you were asking me -- that question was
2 asked how much of a crop loss might you suffer in those
3 years, not subject to flood, because it's all subject to
4 flood. The entire blackened portion of those pictures
5 were subject to flood back in the '90s and also subject
6 to flood today. So that hasn't changed.

7 But the length of time has changed, and
8 therefore the damage that would be inflicted in these
9 latter years is much greater than it was prior years
10 because the water would go down faster and you could get
11 back on the field and you'd have to replant.

12 Q. I understand the longer that water stands on
13 your property, the more damage to the actual soil
14 occurs, correct?

15 A. Soil and crops.

16 Q. And crops.

17 A. For instance, you can flood soybeans, but if it
18 goes down in 24 hours, there's very little damage; but
19 if those soybeans are under water for three days,
20 they're dead.

21 Q. Okay. So soil and crop damage has been greater
22 since 1997 because of the flooding?

23 A. Yes.

24 MR. FUSONIE: I don't have any other questions,
25 Dan.



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1 MR. MARTIN: Just one follow-up.

2 REDIRECT EXAMINATION

3 BY MR. MARTIN:

4 Q. Mr. Granger, do you know if any portion of that
5 parcel is in a floodplain zone?

6 A. I do not know that.

7 Q. Okay. That's it. So we're finished.

8 MR. MARTIN: Tom, did you have anything to
9 follow up after that?

10 MR. FUSONIE: I don't.

11 Mr. Granger, a transcript of your deposition
12 will be probably ordered by the State. If it is,
13 you have the right to review it and to correct any
14 errors in your testimony.

15 I can't tell you to do that, I can only
16 recommend and advise you that you take that
17 opportunity.

18 You would let -- you need to let the court
19 reporter know now if you would like to read your
20 transcript or not.

21 THE WITNESS: Would that be available?

22 MR. FUSONIE: My guess would be in the next
23 month.

24 THE WITNESS: Okay. We'll be here in Florida
25 for another two months. Should I review it here, or



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1 wait until I get home?

2 MR. FUSONIE: Probably, if it's ordered, we can
3 arrange either in Florida or -- probably in Florida.

4 MR. MARTIN: Yes, the State will be ordering a
5 copy of --

6 THE WITNESS: I'm not sure I need a copy, but I
7 would like to read through it.

8 MR. FUSONIE: Yeah.

9 THE WITNESS: Should I do that here?

10 MR. FUSONIE: Yeah. So as you're indicating,
11 you'd like to read the transcript for purposes of
12 reviewing it to correct any errors that may be in
13 the transcript.

14 THE WITNESS: Yes. I can make arrangements to
15 come back over here.

16 THE REPORTER: Mr. Fusonie, are you ordering a
17 copy, also?

18 MR. FUSONIE: We will be ordering a copy, yes.
19 Send the copy to me and I will arrange for a review.

20 (Deposition concluded at 12:05 p.m.)

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IT WAS STIPULATED BETWEEN counsel for the respective parties, with the consent of the witness, that reading and signing of the foregoing deposition by the witness be reserved.

THEREUPON, the deposition of DAVID LEE GRANGER, taken at the instance of the Respondents, was concluded at 12:05 p.m.

NOTE: The original and one copy of the foregoing deposition will be held by Mr. Martin, copy to Mr. Fusonie.



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February 26, 2010

David Lee Granger

48

ATTACH TO THE DEPOSITION OF DAVID LEE GRANGER

CASE: DONER, et al. vs. LOGAN, et al.

CASE NO.: 09-1292

ERRATA SHEET

I, DAVID LEE GRANGER, have read the foregoing deposition given by me on February 26, 2010, in Lakeland, Florida, and the following corrections, if any, should be made in the transcript:

PAGE	LINE	CORRECTION AND REASON THEREFOR
20	18	POND instead of BOND

Subject to the above corrections, if any, my testimony reads as given by me in the foregoing deposition.

SIGNED at Winter Haven Florida, this 2nd day of April 2010

David Lee Granger
DAVID LEE GRANGER



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NEW JERSEY DEPARTMENT OF TREASURY

2010 APR 20 P 1:42

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1 | stumps, washing banks off, washing my banks off. You
2 | had a lot of cleanup to do.

3 | Q. Anything else?

4 | A. No.

5 | Q. Did your crop yield in those years,
6 | let's say in 2005, was it less that year or about the
7 | same as in the previous years?

8 | A. Well, when it come a flood, there
9 | wasn't nothin' left; it was all gone.

10 | Q. Okay, so for maybe a week. Did you
11 | have to replant then; is that what you had to do?
12 | What happened after the water left?

13 | A. Well, if it was late, you couldn't do
14 | nothin', just leave it lay.

15 | Q. In 2005, do you recall what time of
16 | year that that flooding happened? That's the most
17 | recent flood you've indicated.

18 | A. I don't know when it was.

19 | Q. But just so I'm clear -- Don't let me
20 | put words in your mouth -- do you believe the last
21 | time that the property flooded was 2005?

22 | MS. BREWER: Objection. He's
23 | testified countless times that he can't
24 | remember.

25 | MR. COLE: Okay. Then he can -- But

1 I'm talking about the last five years.

2 A. I'm trying to think, but I can't
3 remember.

4 Q. Okay, fair enough. After 1997, did
5 you make any changes to the way you used your
6 property?

7 MS. BREWER: Objection.

8 A. No.

9 Q. Did you do anything to the property to
10 try to lessen the damage that the water caused?

11 A. No.

12 Q. Do you keep any records at all of any
13 flooding or anything that you've done to the land
14 since the spillway was changed?

15 MS. BREWER: Objection. Asked and
16 answered.

17 A. No.

18 Q. Did your wife? Did Mrs. Gilbert?

19 A. No.

20 Q. Has the income that you've made off
21 this property decreased because of the flooding?

22 A. Yes.

23 Q. How much?

24 A. I don't know.

25 Q. Significant, a little bit?

1 A. Quite a bit.

2 Q. Do you have any --

3 MS. BREWER: Objection.

4 Q. -- idea of dollar figures how much
5 less?

6 MS. BREWER: Objection. If you know,
7 you can answer, but he has already
8 testified that he didn't break out his
9 income by parcel.

10 MR. COLE: I'm just asking generally.

11 A. I don't know.

12 Q. Okay. Do you remember if your
13 property flooded two years ago?

14 A. Two years ago? Yes, I think it did.

15 Q. Okay. Do you remember anything about
16 that? What can you tell me about that?

17 MS. BREWER: Objection.

18 A. All of it never flooded, but it was
19 probably, I don't know, I think there was six acres
20 in there someplace, right up in here.

21 (Witness indicating.)

22 Q. Kind of in the middle to upper
23 left-hand corner?

24 A. Yeah.

25 Q. That was two years ago, so 2008? You

1 think maybe six acres flooded?

2 A. I think it was six acres.

3 Q. Do you know how long they were
4 flooded?

5 A. When it flooded, then when the water
6 went down, that might have been the year I went back
7 in and redone it again.

8 Q. What do you mean, "redone it again?"

9 A. Replanted it.

10 Q. Replanted? I'm talking about 2008.

11 A. I don't know. I can't think. I can't
12 think what year it was there. It sounds like that,
13 but --

14 Q. Do you, personally, remember that it
15 flooded in 2008?

16 A. I'm trying to think that's when it
17 was.

18 Q. Do you know how deep the water got in
19 2008?

20 A. Was it 2008? I don't know.

21 Q. Do you know how long it was flooded in
22 2008 if it was flooded at all?

23 MS. BREWER: I'm going to object.

24 He's already stated he can't remember.

25 MR. COLE: Well, counsel, he's

1 indicated he thinks it may have flooded in
2 2008. I'm just asking him about it.

3 A. I don't know, to tell you --

4 Q. If you don't know, that's fine.

5 That's all right.

6 A. When you're trying to think of dates

7 --

8 Q. Do you have any idea of what you think
9 your land is worth?

10 A. I don't know what it would be worth.

11 Q. Do you think it would be worth more if
12 the spillway hadn't been modified?

13 A. Yes.

14 Q. Is that just kind of your own gut
15 feeling?

16 MS. BREWER: Objection.

17 A. Well, when the rest of the people's
18 places sells around there, it would be worth what
19 they get.

20 Q. Have you looked at other sales or
21 nearby sales? Have you ever compared or do you take
22 a look at what other properties are selling for in
23 the area?

24 A. Yeah, some of 'em.

25 Q. Do you know what comparable properties

1 are going for?

2 MS. BREWER: Objection.

3 Q. Land like yours, do you know what it's
4 selling for recently?

5 A. Well, there ain't no land ever come up
6 like mine.

7 Q. What do you mean by that?

8 A. Most of the ground that comes up for
9 sale is not flooded ground.

10 Q. Okay. So well, has any of the nearby
11 properties that have experienced flooding been sold?
12 Have you noticed that?

13 A. No.

14 Q. Okay. Has anyone else told you that
15 they think the property is worth less?

16 A. No.

17 Q. Before this lawsuit was filed, but
18 after you started getting flooding, did you ever take
19 any legal action or go to the government, to the
20 State, complain, raise any --

21 A. No.

22 Q. -- make any claim or anything like
23 that?

24 A. No.

25 Q. Do you know how many acres were

1 flooded in 2005 about five years ago?

2 MS. BREWER: And I'm going to object.

3 He's already testified he doesn't remember.

4 A. No.

5 Q. Do you think your property will
6 continue to flood?

7 A. Yes.

8 Q. Why?

9 A. Because of the dam.

10 Q. Is that what other people have said or
11 have you, independently, looked into that?

12 A. Well, when you take that much water
13 comin' down through there, when it rains, what's
14 gonna stop it. If you take the dam and it's full,
15 you get two or three inches of rain what's gonna stop
16 all that water.

17 MR. COLE: Sir, thank you very much.

18 I'm finished.

19 MS. BREWER: I have a couple follow-up
20 questions.

21 DIRECT EXAMINATION

22 BY MS. BREWER:

23 Q. Was the flooding worse on your
24 property before or after the spillway was put in?

25 A. After the spillway was put in, our

1 | property flooded.

2 | Q. And did it flood like that before the
3 | spillway was put in?

4 | A. No.

5 | Q. Do you know if there is anyone who can
6 | remember in better detail than you can about when the
7 | flooding happened or how bad it was after 1997?

8 | A. Well, they put the spillway in; that's
9 | when everything started. When you get heavy rains --
10 | The spillway --

11 | MR. COLE: I object. He's not
12 | responding, but go ahead. She just asked
13 | if you knew of anyone else, who would know
14 | better, could recall better.

15 | A. No.

16 | Q. Do you think your wife would know
17 | about the flooding?

18 | A. Yeah, she would.

19 | Q. Okay.

20 | MS. BREWER: That's all.

21 | MR. COLE: I have no follow-up. Thank
22 | you. Thank you very much, sir. You did a
23 | good job.

24 | MS. BREWER: When the court reporter
25 | is finished typing up the conversation we

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had today, you have the opportunity to look at it and check to make sure that what you said was accurate and correct and then you can make corrections if you see corrections need to be made. Some people choose not to do this and I can't tell you whether or not you should look it over, but I would say that most people do take the opportunity to look over their transcript and then they sign it. Would you like to look over it and sign it?

THE WITNESS: I could.

MS. BREWER: Is that a yes.

THE WITNESS: Yes.

MS. BREWER: Okay.

- - -

(At 12:23 o'clock, PM, the deposition was concluded.)

- - -

H. Edward Gilbert
H. Edward Gilbert

Martha Brewer
Notary

MARTHA C. BREWER, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

3/4/10

ERRATA SHEET

I Edward Gilbert, have read the transcript of my deposition taken in this pending matter or the same has been read to me. I have noted all changes in form or substance on this sheet this 14 day of March, 2010.

PAGE	LINE	CORRECTION OR CHANGE AND REASON:
6		
7		
8	<u>6</u> <u>2</u>	<u>HARL-OLD Edward GILBERT should be</u>
9		<u>HAROLD Edward GILBERT</u>
10	<u>17</u> <u>8</u>	<u>Dick Seiberd should be</u>
11		<u>Dick Sibert</u>
12	<u>20</u> <u>20</u>	<u>DARYL MILLER should be</u>
13		<u>DARRELL MILLER</u>
14	<u>21</u> <u>7</u>	<u>SHOULD BE \$1080.00 ONCE A year</u>
15	<u>23</u> <u>17</u>	<u>SHOULD BE OBJECTION</u>
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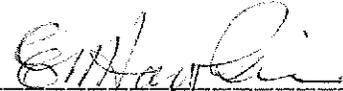
C E R T I F I C A T E

STATE OF OHIO)
) SS:
COUNTY OF MERCER)

I, Edna M. Hawkins, the undersigned, a duly qualified and commissioned Notary Public within and for the State of Ohio, do hereby certify that before the giving of his aforesaid deposition the said H. EDWARD GILBERT was sworn to depose the truth, the whole truth and nothing but the truth; that the foregoing is the deposition given at said time and place by the said H. EDWARD GILBERT; that said deposition was taken in all respects pursuant to agreement and stipulations of counsel hereinbefore set forth; that said deposition was taken by me; that the transcribed deposition was submitted to the witness for his examination and signature; that I am neither a relative of nor attorney for any of the parties to this cause, nor relative of nor employee of any of their counsel and have no interest whatever in the result of the action.

IN WITNESS WHEREOF, I have hereunto set my hand at Cincinnati, Ohio, this 22nd day of February, 2010.

My Commission Expires: _____
September 17, 2012 Edna M. Hawkins
Notary Public - State of Ohio



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CERTIFICATE OF REPORTER OATH

STATE OF FLORIDA

COUNTY OF POLK

I, the undersigned authority, hereby certify
that the witness named herein personally appeared
before me and was duly sworn.

WITNESS my hand and official seal this

Loretta Lee

LORETTA LEE, FPR

NOTARY PUBLIC - STATE OF FLORIDA

MY COMMISSION NO.: DD 802826

EXPIRES: AUGUST 12, 2012



LORETTA LEE
MY COMMISSION # DD 802826
EXPIRES: August 12, 2012
Bonded Thru Budget Notary Services

1 REPORTER'S DEPOSITION CERTIFICATE

2
3 STATE OF FLORIDA

4 COUNTY OF POLK

5
6 I, Loretta Lee, Florida Professional Reporter and
7 Notary Public in and for the State of Florida at large,
8 hereby certify that the witness appeared before me for
9 the taking of the foregoing deposition, and that I was
10 authorized to and did stenographically and
11 electronically report the deposition, and that the
12 transcript is a true and complete record of my
13 stenographic notes and recordings thereof.

14 I FURTHER CERTIFY that I am neither an attorney,
15 nor counsel for the parties to this cause, nor a
16 relative or employee of any attorney or party connected
17 with this litigation, nor am I financially interested in
18 the outcome of this action.

19 DATED THIS _____ at Lakeland, Polk
20 County, Florida.

21
22 

23 LORETTA LEE, FPR
24
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Date: 03/08/2010
To: DAVID LEE GRANGER C/O THOMAS FUSONIE ESQ.
From: DIRECTOR OF PRODUCTION
RE: WAYNE T. DONER, et al. vs.
SEAN D. LOGAN, et al.
File: 57050
Deposition of: DAVID GRANGER
Deposition Date: 02/26/2010
Original Transcript Recipient: DAN MARTIN ESQ.
cc: All counsel present

Your signature is required as acknowledgment that you have read the transcript of your deposition in the above-referenced matter.

Please complete the following steps within 30 days of the date of this memorandum:

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- Make any corrections necessary on the Errata sheet only
- Sign the bottom of the Errata sheet
- Sign the Certificate
- Return only the following to our offices within 30 days of receipt of this memorandum:
 - Original, executed Certificate
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1 DEPONENT'S ERRATA SHEET AND SIGNATURE INSTRUCTIONS

2
3 The original of the Errata Sheet has been
4 delivered to Mr. Fusonie, Counsel for Relators.

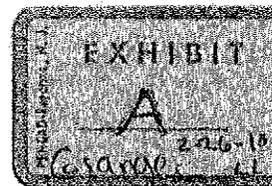
5
6 When the Errata Sheet has been completed by the
7 deponent and signed, a copy thereof should be delivered
8 to each party of record and the ORIGINAL delivered to
9 Mr. Martin, Counsel for Respondents to whom the original
10 deposition transcript was delivered.

11
12 INSTRUCTIONS TO DEPONENT

13
14 After reading this volume of your deposition,
15 indicate any corrections or changes to your testimony
16 and the reasons therefor on the Errata Sheet supplied to
17 you and sign it. DO NOT make marks or notations on the
18 transcript volume itself.

19
20 *** REPLACE THIS PAGE OF THE TRANSCRIPT WITH THE
21 COMPLETED AND SIGNED ERRATA SHEET WHEN RECEIVED.





AFFIDAVIT OF DAVID L. GRANGER

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

1. I am a Relator in this mandamus action seeking compensation for the property taken by Respondents Ohio Department of Natural Resources and Sean D. Logan, Director, Director (collectively "ODNR").

2. Specifically, I, as Trustee of the David L. Granger and Esther L. Granger Living Trust, am the owner of real estate described as Mercer County Parcel Numbers 42-004100.0000 and 42-012600.0000.

3. I have been an owner of Mercer County Parcel Numbers 42-004100.0000 since 1964 and 42-012600.0000 since 1990.

4. Mercer County Parcel Numbers 42-004100.0000 and 42-012600.0000 borders the Wabash River on both sides of the River near its confluence with Beaver Creek.

5. Since ODNR replaced the western spillway of Grand Lake St. Mary's in 1997 and undertook its current lake level management practices, which include maintaining increased lake levels and use of the western spillway for virtually all water flow out of Grand Lake St. Mary's, Mercer County Parcel Number 42-004100.0000 has been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

DON000197

6. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 42-004100.0000 has flooded annually, approximately 2 to 3 times per year. On each occasion, Mercer County Parcel Number 42-004100.0000 was inundated with water at depths varying from 2 to 4 feet.

7. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 42-004100.0000 floods more rapidly and remains flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Number 42-004100.0000 remained inundated with water for a period of 2 to 3 days on average.

8. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 42-004100.0000 never flooded as much or for as long as it does now.

9. To date, the most invasive flood occurred in 2003 with approximately 44.5 acres of Mercer County Parcel Number 42-004100.0000 being flooded with approximately 2 to 4 feet of water for approximately 5 to 6 days. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Numbers 42-004100.0000 and 42-012600.0000 is attached hereto as Exhibit 1. I have shaded in the area of Parcel Number 42-004100.0000 that was flooded in 2003.

10. Mercer County Parcel Number 42-004100.0000 also experienced severe flooding in 2005. Indeed, the flooding in January 2005 was so extensive that it flooded the first five roads that cross Beaver Creek west of the spillway.

11. Mercer County Parcel Number 42-004100.0000 was again flooded as recently as April 2009.

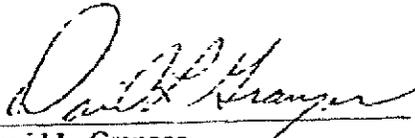
DON000198

12. As a direct result of the flooding, Mercer County Parcel Number 42-004100.0000 has suffered damage in the form of loss of crops, field and bank erosion, the deposit of silt, sand, and other debris, including trees, and the destruction of trees, bushes, and shrubs.

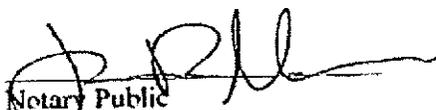
13. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Number 42-004100.0000.

14. I believe that the intermittent, continuing, persistent, frequent, and increased severe flooding from the western spillway of Grand Lake St. Marys will inevitably recur as a result of ODNR's replacement of the western spillway and ODNR's current management practices.

FURTHER AFFIANT SAYETH NAUGHT.


David L. Granger

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


Notary Public



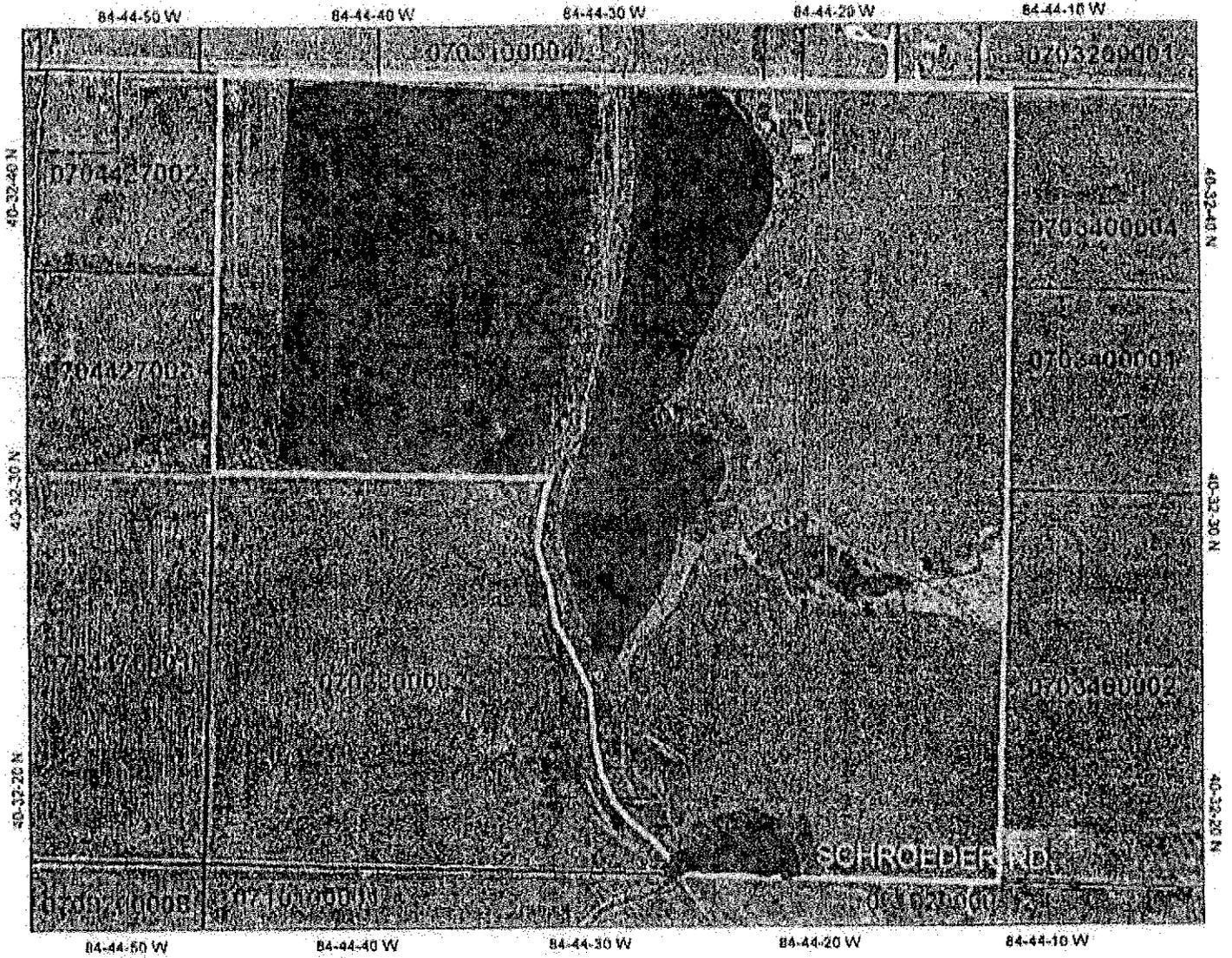
JOSEPH R. MILLER
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 RC.

DON000199

EXHIBIT 1
TO
AFFIDAVIT OF DAVID L. GRANGER

DON000200

Mercer County Ohio



DON000201

0 600 1200 1800 ft.

Map center: 1345606, 32681

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

David L. Granger, Co-Trustee of the David L. and
Esther L. Granger Living Trust Dated 5-22-07
1670 St. Rt. 29
Parcel No.: 42-004100.0000 - 125 acres

TAB 17

IN THE SUPREME COURT OF OHIO

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

CASE NO. 09-1292

VS.
SEAN D. LOGAN, DIRECTOR
OHIO DEPARTMENT OF
NATURAL RESOURCES
2045 MORSE ROAD
COLUMBUS, OHIO 43229-6693
AND
OHIO DEPARTMENT OF
NATURAL RESOURCES
2045 MORSE ROAD
COLUMBUS, OHIO 43229-6693

Deposition of PATRICIA HIGHLEY,

Relator, was taken by the Respondents as on
cross-examination, pursuant to the Ohio Civil
Rules of Procedure at Central Service Building,
220 West Livingston Street, Celina, Ohio 45822, on
Friday, February 5, 2010, at 3:00 a.m., before
Terence M. Holmes, Professional Court Reporter,
and Notary Public within and for the State of
Ohio.

HOLMES REPORTING & VIDEO
982 Havensport Drive
Cincinnati, Ohio 45240
(513) 342-2088
(513) 342-1820 Fax
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1 APPEARANCES:

2 On Behalf of Ohio Department of Natural
3 Resources:

4
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6 Assistant Attorney General
7 Environmental Enforcement
8 30 East Broad Street, Floor 26
9 Columbus, Ohio 43215-3400

10 On Behalf of Relators:

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12 Attorney at Law
13 Vorys, Sater, Seymour and Pease LLP
14 52 East Gay Street
15 Columbus, Ohio 43216-1008
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C O N T E N T S

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WITNESSES	DIRECT	CROSS
Patricia Highley	Mr. Fusonie-52	Ms. Croskey-4
	REDIRECT	RECROSS
	Mr. Fusonie-58	Ms. Croskey-58

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of Patricia Highley	11
C	Department of Agriculture	30
D	Rural Community Insurance	33
E	Farm Service Agency	38

RELATOR'S	DESCRIPTION	MARKED
No. 1	Photograph	52

1 PATRICIA HIGHLEY
2 of lawful age, a witness herein, being first duly
3 sworn, as hereinafter certified, was examined and
4 deposed as follows:

5 CROSS-EXAMINATION

6 BY MS. CROSKY:

7 Q. Thank you Mrs. Highley. Can you
8 tell us what your name is?

9 A. Patricia L. Highley.

10 Q. And where do you live?

11 A. 6888 Wabash Road, Celina.

12 Q. The court reporter has put you
13 under oath, so you need to testify truthfully just
14 as you would in court.

15 A. Um-hum.

16 Q. We need to be careful not to talk
17 at the same time, and we both need to be careful
18 to speak loud enough so the court reporter can
19 hear.

20 A. Okay.

21 Q. Give verbal answers, no shaking of
22 the head, difficult to record. If you don't
23 understand a question or you don't hear a
24 question, just make sure that you let me know.
25 I'll try to either speak loudly or more clearly.

1 And I don't think that yours is going to go very
2 long, but if you need to a break, you can take a
3 break, just let me know, but I will that you
4 answer any question that I've asked you before we
5 take a break.

6 A. All right.

7 Q. Can you tell me about your
8 educational background?

9 A. I quit school my junior year, I went
10 into sales and I have what they say three years
11 college training in sales.

12 Q. Was that at a particular college?

13 A. No. It was training seminars in
14 numerous areas that I had to go to.

15 Q. Oh, okay. So did you work for a
16 particular company?

17 A. Stanley Home Products Incorporated.

18 Q. How long did you work there?

19 A. Forty-two years.

20 Q. Still working?

21 A. Part time.

22 Q. Okay. I assume your family is the
23 same as Mr. Highley?

24 A. Yes.

25 Q. He's your husband?

1 A. Right.

2 Q. Have you ever had your deposition
3 taken before?

4 A. No.

5 Q. And I don't want you to answer this
6 question and tell me anything that your attorneys
7 have told you, but what is your understanding of
8 this case, what it's about?

9 A. To try to get some help with the
10 flooding from ODNR with the spillway situation.

11 Q. Okay. Have you tried to get any
12 help from anyone other than ODNR?

13 A. No. I think my husband has talked
14 to the Wabash conservator, but I think that's bank
15 repair.

16 Q. It's what, I'm sorry?

17 A. Like the river bank repair.

18 Q. Oh, okay. So you are familiar with
19 an organization that's called the Wabash -- What
20 did you say it was again?

21 A. I'm not sure, Wabash Conservatory

22 --

23 Q. Okay.

24 A. -- the proper name.

25 Q. Okay.

1 Q. But there's an organization that
2 exist to take care of the Wabash?

3 MR. FUSONIE: Objection.

4 A. Certain areas.

5 Q. Okay. Do you know which areas?

6 A. It appears mostly before it gets to
7 the beaver ditch joining.

8 Q. Do you know about how far from
9 beaver this organization stops taking care of the
10 river?

11 A. No, I really don't.

12 Q. Okay. Does the organization take
13 care of any part of the river in the State of
14 Ohio?

15 A. I'm not sure what areas it does
16 honestly in the state.

17 Q. Okay. So are you saying that you
18 just know they don't take care of the part that's
19 on your properties?

20 A. They don't appear to from beaver to
21 the state line.

22 Q. From beaver to the state line. And
23 you mean the state line that divide Ohio and
24 Indiana?

25 A. Indiana state line, right.

1 Q. Okay. Have you ever asked this
2 organization whether they could do anything?

3 A. I know my husband has talked to
4 them numerous times I've been in the room.

5 Q. Okay. Were you present for any
6 conversations where your husband asked that this
7 organization do anything in particular?

8 A. I was in the room when he had a
9 phone conversation about meeting to look the
10 situation over.

11 Q. It was a telephone conversation?

12 A. Right.

13 Q. So could you hear what the person
14 on the other end of the telephone was saying?

15 A. No. All I could hear was my
16 husband's response.

17 Q. Okay. And based on that response
18 did you have any understanding whether or not the
19 organization would agree to take on any work?

20 A. From what I interpreted it did not
21 sound favorable.

22 Q. Do you know is Beaver Creek a
23 maintained ditch?

24 MR. FUSONIE: Objection.

25 A. Out away from the spillway to some

1 extent perhaps it has since it was dragged number
2 offer years ago.

3 Q. Do you know what a maintain ditch
4 is or what's your understanding of a maintained
5 ditch?

6 A. Maintained ditch would be something
7 that were they keep brush and the over growth
8 under control weeds and so forth.

9 Q. Do you know who would be
10 responsible for that type of maintenance?

11 A. I do not know.

12 Q. And if I'm misstating what you just
13 said, correct me, but did you say that someone
14 dipped out the ditch not long ago?

15 MR. FUSONIE: Objection.

16 A. It was dragged and that's what they
17 call it, cleaning it out, sides, bottom, a number
18 of years ago. I'm thinking probably in the early
19 '80's, I'm not sure. It was a state issue.

20 Q. Do you know who did the work?

21 A. No.

22 Q. Do you know what part of the ditch
23 was dragged?

24 MR. FUSONIE: Objection.

25 A. I was under the understanding all

1 | nine miles.

2 | Q. All nine miles. So --

3 | A. That would be from Celina to the
4 | spillway to where it joins the Wabash River.

5 | Q. Okay. Do you own property that's
6 | adjacent to Beaver Creek?

7 | A. Yes.

8 | Q. Did you own that property at the
9 | time of this dragging project?

10 | A. Yes.

11 | Q. Do you recall ever seeing anyone on
12 | any of your properties doing the dragging?

13 | A. We saw when the work was being done
14 | at different areas, and paid for it very dearly.

15 | Q. What do you mean "paid for it?"

16 | A. We were assessed a charge when they
17 | done it.

18 | Q. Okay. Do you know who you paid
19 | that money to?

20 | A. I'm thinking it might have been the
21 | state, but I am not sure.

22 | Q. Are you aware that there were a
23 | number of property owners that asked the Soil and
24 | Water Conservation District to do some work with
25 | that request being made in 2009?

1 A. I don't recall it.

2 Q. Okay. Do you know what I'm talking
3 about?

4 A. I just heard that.

5 Q. Do you know what work people have
6 asked the district to do?

7 A. No, because I was not aware of it.

8 (Affidavit of Patricia L. Highley,
9 marked for identification as
10 Respondent's - Patricia L. Highley -
11 Exhibit A.)

12 Q. Okay. Hand you a copy of what we
13 have marked as Patricia Highley Deposition Exhibit

14 A.

15 A. Okay.

16 Q. Take some time to take a look at
17 it. When you've had enough time, let me know.

18 A. Um-hum.

19 Q. Do you recognize that document?

20 A. Yes.

21 Q. Can you tell me what that is?

22 A. An affidavit.

23 Q. And there's a signature on Page 5
24 of the affidavit. Is that your signature?

25 A. Yes.

Q. At the time that you signed this or
before you signed this did you read this

1 affidavit?

2 A. Yes.

3 Q. Okay. And did you believe that
4 everything stated in the affidavit was true at the
5 time you sign it?

6 A. Best of my knowledge.

7 Q. Okay. This affidavit mentions a
8 number of parcels that are identified by parcel
9 number. Do you know your properties by parcel
10 number?

11 A. Somewhat.

12 Q. Okay. We'll try to go through
13 this and to the extent we need to refer to other
14 documents, we'll do that to help you remember what
15 you're talking about.

16 A. Okay.

17 Q. Paragraph 3 of this affidavit says,
18 "I have owned since 1978 Mercer County Parcel
19 Number 26-041400.0000. Do you know which parcel
20 of land that's --

21 A. Hundred acres.

22 Q. And where is that parcel in
23 relationship to Beaver Creek?

24 A. South edge is Beaver Creek of the
25 property.

1 Q. Okay. Where is that parcel in
2 relationship to the Wabash River?

3 A. I'm not a good judge of distance,
4 so I will -- probably four miles, give or take
5 east of the Wabash River.

6 Q. Okay. And where is that parcel in
7 relationship to the spillway at Grand Lakes St.
8 Mary's?

9 A. Five mile, give or take -- west.

10 Q. So you say it's about halfway
11 between the spillway and --

12 A. Um-hum, pretty close.

13 Q. That particular parcel, is it
14 jointly owned by you and your husband?

15 A. Yes.

16 Q. Are there any other people that
17 have any kind of legal interest in the property?

18 A. No.

19 Q. So there are no other owners and
20 there are no --

21 A. No.

22 Q. -- Lease holders?

23 A. No.

24 Q. Between 1967 and 1997, how many
25 times did that parcel of land flood?

1 A. Flood? I don't recall it ever
2 really flooding. Waterways or not waterways,
3 necessarily, low spot would get water in 'em and
4 rain accumulates.

5 Q. Okay. Just let me ask. What's
6 your understanding of flooding?

7 A. Flooding is when water comes so
8 fast it comes over the banks of the river or the
9 creek and engulfs the land.

10 Q. Okay. So from 1967 until 1997 you
11 remember Beaver Creek ever being out of its banks?

12 A. I can't say yes or no on that. I
13 don't recall it being out to the extent that we
14 have now at all.

15 Q. So between 1997 and now, how many
16 times has Beaver Creek been out of its banks?

17 A. I would say practically every year
18 we have it, some worse than others.

19 Q. For any given year in that time
20 period, do you know which months this would have
21 happened?

22 A. Not exactly, no, I can't say that.

23 Q. Okay.

24 A. Usually the worst is in the summer
25 when it does destroy the crop it seems like. I

1 want to say summer time.

2 Q. Okay. By summer, what months do
3 you mean in summer?

4 A. I would say the basic bad floods
5 could be from May to August, those are the ones we
6 remember because destruction.

7 Q. Were there any years between 1997
8 and now when there was not a flood on this
9 particular property the 101 acres?

10 A. I can't honestly say, there may
11 have been a year or two, but I can't honestly say.

12 Q. Okay. Did you ever take any
13 photographs of any of this flooding?

14 A. The photographs I've taken I have
15 turned in.

16 Q. Okay. You turned in all of the
17 photographs that you have?

18 A. What I have, I probably have some
19 more, but.

20 Q. Did you identify on those
21 photographs when they were taken or approximately
22 when they were taken?

23 A. Yes. My daughter-in-law did have some
24 photos that she took a number of years ago of one of
25 the floods, but she had turned them in, in the other

1 court case, I never got 'em back.

2 Q. Other court case, do you know what
3 court case?

4 A. The five farmers.

5 Q. Who is your daughter-in-law?

6 A. Mary Highley.

7 Q. I'm sorry, just to clarify. Were
8 those photographs that you took or that Mary
9 Highley?

10 A. Those were taken by Mary Highley, I
11 took some myself and turned them in in '09.

12 Q. Okay. The photographs that Mary
13 Highley took, were they of your property?

14 A. I don't know exactly what
15 properties they were, but she had several.

16 Q. Okay. The photographs that you
17 took in turned in, were they all photographs of
18 your property?

19 A. No, they were only -- I ran out of
20 film, I only had one of the property we're talking
21 about here.

22 Q. Okay.

23 MR. FUSONIE: Of the hundred acre
24 property?

25 MS. HIGHLEY: Right.

1 Q. Okay. So of the photographs that
2 you turned in -- Are there photographs, at least
3 one photograph of every property that you own?

4 A. That we own.

5 Q. Um-hum.

6 A. Yeah. I also had some of the rent
7 property.

8 Q. The ones that you lease? Okay.

9 A. We could not get any of the Post's at
10 that time because they were, the water was over the
11 road too badly on both sides.

12 Q. What road is that?

13 A. That would be Carmel Church Road.

14 Q. And do you know, had the water been
15 over Carmel Church Road in more than one year?

16 A. Almost every year that one does.

17 MR. FUSONIE: Since when?

18 MS. HIGHLEY: Since 1997.

19 Q. If you take a look within Exhibit A
20 at the page that's marked Exhibit 1, do you
21 recognize that, what's depicted in the photograph?

22 A. Yes.

23 Q. What is that?

24 A. That's our 100 acres.

25 Q. And there's an area that's shaded

1 | darker than the rest?

2 | A. Um-hum.

3 | Q. Does that depict anything
4 | particular?

5 | A. That is the area that floods,
6 | basically;

7 | Q. Did you do that shading?

8 | A. Yes.

9 | Q. How is it that you decided to shade
10 | in that particular area?

11 | A. Because I've seen it.

12 | Q. Okay. There are a number of places
13 | where the you know it's not a straight line.

14 | A. Um-hum.

15 | Q. Where it's shaded.

16 | A. Um-hum.

17 | Q. Are in certain landmarks that
18 | helped you, you know, decide?

19 | A. Um-hum.

20 | Q. Yeah.

21 | A. This is the river. This is a
22 | little high area and this is a higher ground in
23 | here.

24 | MS. CROSKEY: Okay. Let the record
25 | reflect that the witness has identified

1 the river that's being the line on the
2 south edge of the property.

3 Q. Is that correct?

4 A. Um-hum.

5 MS. CROSKEY: And identify high
6 areas as being on the north and
7 northeast corner of the property.

8 Q. That's correct?

9 A. Um-hum. Um-hum.

10 Q. Now when you decided to draw this
11 line and do this shading, could you -- was there
12 anything in the photograph that helped you decide
13 where to draw the line?

14 A. The photograph I took was from the
15 corner right here because there was what would
16 have been from this corner.

17 MS. CROSKEY: Let the record
18 reflect that the witness is pointing to
19 the northwest --

20 A. Northwest.

21 MS. CROSKEY: -- corner of the
22 property.

23 MR. FUSONIE: I can't talk over
24 each other.

25 Q. Gentle reminder. Okay. So you

1 took a photograph from the northwest corner of
2 your property?

3 A. Um-hum, yes.

4 Q. And that's how you decided where to
5 draw the line?

6 A. That picture was taken in '09. We
7 had flooded -- we inked it out because we've seen
8 it numerous times before to know, but I did take
9 the picture to get an idea of the gravity of it is
10 why.

11 Q. You took the picture where you were
12 standing in the northwest corner in 2009?

13 A. Um-hum.

14 Q. The picture that you took, did it
15 show flooding at that time?

16 A. Yes.

17 Q. Do you recall in what month you
18 took that photograph?

19 A. I think the larger part of March or
20 the first part of April.

21 Q. Did you identify when you took the
22 picture on the photograph?

23 A. Yes, I think I handed it in the 1st
24 of April.

25 Q. Okay. When this particular

1 | property, the 101 acres floods, did it always
2 | flood to this extent?

3 | A. Pretty well, yes.

4 | Q. Okay. Is there ever a time when
5 | there's water on the property that the river is
6 | not out of its bank?

7 | A. Nothing to speak of unless you get
8 | a flash of rain and then that's just a little
9 | puddle like you have in your yard.

10 | Q. Okay. When the property floods to
11 | this extent -- Let's take the time in 2009 when
12 | this happened.

13 | A. Um-hum.

14 | Q. How long did the water stay on the
15 | property at this extent?

16 | A. Probably had water in some of the
17 | areas yet, be close to two weeks.

18 | Q. What do you mean by "in some of the
19 | areas?"

20 | A. Because your tile will take some of it
21 | down gradually, and when the river goes down the tile
22 | takes it to the river; it's a slow process.

23 | Q. But you said some, some of the
24 | areas?

25 | A. Like your lower areas they're

1 slower to drain.

2 Q. Okay. What do you mean by "lower
3 areas," are there particular areas on the
4 property?

5 A. Nothing, nothing really that much
6 lower, only closer to the river or closer to the
7 road, just like any field is not perfect and it's
8 not, and where there's tile, it drains quicker, it
9 would, and it can't drain until the river goes
10 down at the beaver.

11 Q. Do you recall whether this property
12 was flooded to this extent in 2008?

13 A. Yes, I can't tell you how many
14 times, but it was flooded in 2008, too, 2005.
15 Every year we have at least one flood.

16 Q. Okay. 'Cause you said 2008 and
17 then you I skipped to 2005?

18 A. Yeah, and '6. We have a flood
19 every year.

20 Q. Okay.

21 A. Some years it's much worse than
22 others.

23 MR. FUSONIE: So the record is
24 clear, when you're saying "every year,"
25 what time frame are you talking about?

1 MS. HIGHLEY: Some time from
2 harvest to spring.

3 MR. FUSONIE: What years?

4 MS. HIGHLEY: Oh, what years, every
5 year.

6 MR. FUSONIE: Between what year and
7 when?

8 MS. HIGHLEY: Oh, I see. Between
9 '97 and 2009, 2009 we had three. I
10 remember that, cause it's been that
11 recent.

12 Q. Okay. So I think we talked one
13 time in 2009 was around April?

14 A. Um-hum, the last one.

15 Q. When -- But you said there were
16 three times, what were the other times?

17 A. It was earlier. One we had in late
18 2008 and we call it 2009 because it is planting
19 season so-to-speak. We had one late in 2008. I
20 can't tell you exactly the month it was.

21 Q. When would you say your 2009 -- did
22 you call it a farming season, planting season --
23 When did your 2009 planting season start?

24 A. We usually try to be in the field
25 in April but we didn't get in into later because

1 we had one 1st of April.

2 Q. Let me back up. I think you said,
3 and if I say this wrong, just correct me, but I
4 think you said that there was some flooding in
5 late 2008 that you consider part of your 2009
6 planting?

7 A. Because it -- Yes.

8 Q. So that's what I was trying to get
9 at. When in 2008 do you considerate to be the
10 start of your 2009 planting?

11 A. Somewhere after you've completed
12 your harvest in October November.

13 Q. Okay. So when it flooded in 2008
14 it was some time between October and December?

15 A. I would say, yes.

16 Q. And in April -- And then you said
17 three times in 2009. So after April what was the
18 other time period?

19 A. February or March some time in
20 there. I can't tell you exactly, it was just we
21 had it three times.

22 Q. Okay. So in what you would call
23 your 2009 planting year, there was one flooding
24 event that is --

25 A. Um-hum.

1 Q. -- some time between October and
2 December of 2008?

3 A. Um-hum.

4 Q. And then another one in February --

5 A. Um-hum. Give or take.

6 Q. -- of 2009? And then another one
7 in April of 2009. You mentioned that you had
8 some photographs from, I believe you said April or
9 around there in 2009. Do you have any photographs
10 from any other times when the property was
11 flooded?

12 A. I think we turned some others in.

13 Q. Okay. Do you know what periods of
14 time those would have been from?

15 A. Not offhand, I don't know it was
16 2005 or which for sure they was.

17 Q. Would you have identified on the
18 photographs what period of time they were from?

19 A. No. Actually I think
20 Mr. Ransbottom turned them in.

21 Q. Okay. So were they photographs
22 that you took or that Mr. Ransbottom took?

23 A. I had took and gave him.

24 Q. Okay. For this hundred acre parcel
25 you mentioned something about tiles and draining.

1 | Are there tiles on that particular property?

2 | A. Yes.

3 | Q. Do you know how many?

4 | A. No.

5 | Q. Do you know what systematic tiling
6 | is?

7 | A. No.

8 | Q. Okay. Do you know how many tiles
9 | have an outlet in -- Is it Wabash River that's on
10 | this property?

11 | A. Beaver.

12 | Q. Beaver that's on the 100 acre. Do
13 | you know how many tiles outlet into Beaver Creek?

14 | A. No, I don't. I know we did put a
15 | waterway in and we had to re-seed it. We put it
16 | in in '08 and re-seeded in '09.

17 | Q. What do you mean by waterway?

18 | A. An area you can't farm to help the
19 | water get away and keep from washing.

20 | Q. Okay. And you mentioned you had to
21 | re-seed it, what do you mean by that?

22 | A. It means you seed them so they
23 | don't -- a type of grass seed so they don't erode
24 | Okay, and it didn't take, so they had to redo it
25 | this year.

1 Q. Approximately how wide is this
2 waterway, do you know?

3 A. I have no idea.

4 Q. Okay. This hundred acre parcel, is
5 it used only for agricultural purposes?

6 A. Yes.

7 Q. Are there any structures on the
8 property?

9 A. No.

10 Q. Has it always since 1967, has it
11 always been used for agriculture?

12 A. It had some old buildings that we
13 removed the second year I believe it was we bought
14 it, and since then it has all been -- they were
15 not livable.

16 Q. Do you have crop insurance on this
17 hundred acre parcel?

18 A. Yes. It's impossible to carry a
19 100 percent but we do have.

20 Q. What you mean it's impossible to
21 carry a 100 percent?

22 A. We can't afford a 100 percent.

23 Q. What percentage?

24 A. I think we have like 65 percent.

25 Q. Okay. I guess, what do you mean by

1 that? If you have 65 percent, does that mean that
2 you have 65 percent of your crops insured?

3 A. No.

4 Q. Okay.

5 A. You have to lose more. Let me
6 think. 65 percent of it is covered, so you have
7 to lose less than 35 percent to get anything, and
8 normally what you get from most of those is just
9 enough to pay for a replant or the cost maybe of
10 your seed.

11 Q. Okay. Why don't we take a look at
12 -- I'm gonna hand you a copy of what we have
13 marked as Patricia Highley's Deposition Exhibit D.
14 Let me know when you've had enough time to look at
15 that.

16 A. Okay.

17 Q. Do you recognize the handwriting?

18 A. Yes.

19 Q. Is it your handwriting?

20 A. Yes.

21 Q. Okay. What is this? Can you tell
22 me what it is?

23 A. It's a copy of the paper I take to
24 my accountant CPA, and I could not find the thing
25 from the company back that far, so I pulled these

1 out and it told us what we received from crop
2 insurance that year. Okay.

3 Q. Okay.

4 A. And the second one is '98, and we
5 remembered '98 very vividly because '98 was a bad
6 flood, and we lost all of our bean crop that year
7 in August, I believe it was we had a flood, and we
8 did get that much compensation from insurance.

9 Q. Okay. Now on the -- there are
10 some spots where it looks like --

11 A. I didn't figure -- some of those
12 things is --

13 MR. FUSONIE: Let her ask the full
14 questions first.

15 Q. It looks like from the document, it
16 looks like there are some things that are covered
17 up?

18 A. Um-hum.

19 Q. Are there things that are covered
20 up?

21 A. Yes.

22 Q. Is there a reason that you covered
23 those things up?

24 A. I really didn't feel like that the
25 details was anybody's business, they were

1 | personal.

2 | Q. Okay. So by covering those things up
3 | and not covering up what you're showing as crop
4 | insurance pay offs, you were just trying to show what
5 | you got for that?

6 | A. Yes.

7 | Q. So looking at this for 1997 and
8 | 1998, did that help you better explain what you
9 | mean by this being insured for 65 percent?

10 | A. Um-hum. That tells you that we
11 | lost most of our crop.

12 | (Department of Agriculture, Government
13 | Payments, marked for identification as
14 | Respondent's - Patricia Highley -
15 | Exhibit C.)

16 | Q. Okay. I want to hand you what we
17 | have marked as Patricia Highley Deposition Exhibit
18 | C?

19 | A. Um-hum.

20 | Q. Do you recognize that?

21 | A. Yes.

22 | Q. Can you tell me what that is?

23 | A. That was a government. They asked
24 | if we had anything from the government, and they
25 | had disaster crop loss that they paid in '99.

26 | Okay.

27 | Q. The government paid you paid you

1 | for crop loss?

2 | A. Um-hum. "Crop disaster" they
3 | called it.

4 | Q. Okay. Now, in the top half of Exhibit
5 | C?

6 | A. Um-hum.

7 | Q. Above where it says "crop loss
8 | disaster assistance?"

9 | A. Um-hum.

10 | Q. It looks like there's something
11 | shaded out. Do you know what that is?

12 | A. Yes.

13 | Q. Was it highlighted or was it tried
14 | -- did you try to black that out?

15 | A. I just blacked it out because it
16 | was other government situations that had nothing
17 | to do with flood or anything like that.

18 | Q. Okay. It comes from the
19 | Department of Agriculture?

20 | A. Right.

21 | Q. I guess I'm not familiar with what
22 | other types of payments would come from the
23 | Department of Agriculture?

24 | A. It's government program probably.

25 | Q. What particular program?

1 A. I don't know how to explain it to
2 you.

3 Q. Okay. Is there a reason that you
4 covered that up?

5 A. I just I didn't figure it was
6 anybody's business.

7 Q. Okay. Did it relate to any of the
8 properties that are involved in this case?

9 A. Basically it had nothing to do with
10 flooding or anything like that.

11 Q. Did it relate to the properties?

12 A. What do you mean by "relate to the
13 properties?"

14 Q. Did --

15 A. It is a government program that you
16 sign your farm in, and all the farms are signed in
17 and most everybody, I think.

18 Q. Okay. So the farms that are
19 mentioned in this case, are they part of this
20 program?

21 A. I have no idea because this is all
22 we got. They don't name any farm numbers or
23 anything with it.

24 Q. Okay. And you don't know which of
25 your farms are in this program?

1 A. All the farms are in the government
2 program.

3 Q. What program is that, do you know
4 the name of it?

5 A. No, I don't, it's just a government
6 farm program that you have to sign up what you're
7 doing and when you're doing, and those type of things;
8 it's almost mandatory. I didn't know if I should have
9 even send them in, but I did.

10 (Rural Community Insurance Agency, Inc.,
11 marked for identification as
12 Respondent's -- Patricia Highley -
13 Exhibit D.)

14 Q. Gonna hand you what we have marked
15 as Patricia Highley Exhibit D. If you could take
16 a look at those pages and let me know when you've
17 had enough time to look at it?

18 A. Um-hum.

19 Q. Do you recognize those documents?

20 A. Yes.

21 Q. Can you tell me what they are?

22 A. Most of 'em is insurance, farm crop
23 insurance.

24 Q. Okay. The top page says for tax
25 year 2000?

A. Um-hum.

Q. What happened in 2000 that lead to

1 the claim that's represented here?

2 A. Evidently it had to do with
3 soybeans, so it appears to be a replant, that
4 means we had a flood and they had to replant.

5 Q. Okay.

6 A. And we do have insurance that
7 covers the replanting, portion of it anyhow.

8 Q. Now there's -- I'm gonna guess and
9 correct me if I'm wrong, but where it says
10 "REPLNT," is that what you mean by replant?

11 A. Yes.

12 Q. Now the line above that says
13 "MPCI." Do you know what that means?

14 A. No. Probably premium. I don't
15 know.

16 Q. Okay.

17 MR. FUSONIE: Don't guess.

18 Q. Okay. So looking at this, do you
19 -- does it help you remember at all whether your
20 property flooded in 2000?

21 A. No.

22 Q. Okay.

23 MR. FUSONIE: Looking at Page 1 or
24 all of it?

25 MS. CROSKEY: Yes, I'm sorry, page

1 1. Page 1.

2 Q. And if you turn and look at the
3 second page it's actually marked at bottom
4 DON001834. This says for tax year 2002. Do you
5 recall anything specific that would have happened
6 in 2002 that lead to this particular claim?

7 A. No, the only thing crop insurance
8 covers basically is flood, so evidently something
9 occurred.

10 Q. Does crop insurance ever pay for
11 losses due to drought?

12 A. We have never company elected for
13 that.

14 Q. Okay. If you look at the third
15 page it's actually identified DON001835. Says
16 it's for tax year 2003. Does that help you recall
17 anything specific about 2003 that would have lead
18 to that claim?

19 A. Flood.

20 Q. Okay. Do you remember anything
21 more specific than that like what month?

22 A. We had -- no, but we had a lot of
23 corn damage.

24 Q. Okay. Now if you'll look at the
25 next page, it's identified DON001836. Says it's

1 | for tax year 2005. Skip from 2003 to 2005. Do
2 | you recall whether there was anything in 2004 that
3 | would have lead to any claim?

4 | A. No flood that we lost any amount of
5 | crops that we have gotten any insurance.

6 | Q. So for tax year 2005 they have on
7 | this page DON001836. Does that help you remember
8 | anything specific about what would have happened
9 | in 2005 to lead to that claim?

10 | A. Not really.

11 | Q. And the next Page DON001837 for tax
12 | year 2006. Does that help you remember anything
13 | specific about 2006 that would have lead to this
14 | claim?

15 | A. Only that we evidently lost beans
16 | due to flood.

17 | Q. Now on these, on these documents
18 | that are contained within Deposition Exhibit D,
19 | can you tell by looking at any of these which farm
20 | these claims relate to?

21 | A. No, they don't give, they don't
22 | give any farm numbers. I couldn't find anything.

23 | Q. Okay. So could this have been for
24 | one of your farms or all of your farms, do you
25 | know?

1 A. When we have flood we lose on all
2 of 'em.

3 Q. Okay. And when you file a came for
4 your crop insurance, do you file all of the farms
5 in one claim?

6 A. I don't know how to explain the way
7 they do farms with crop insurance.

8 Q. Okay.

9 A. And mostly our representative takes
10 care of it. All we do is give him details, and
11 most of that our son takes care of.

12 Q. Who is your son?

13 A. Mike Highley.

14 Q. Actually if we look at the last
15 page of Exhibit D. It's identified as DON001838.
16 It says it's for tax year 2008. 'Cause we skipped
17 from 2006 to 2008?

18 A. Um-hum.

19 Q. Does that mean that you did not
20 have a claim in 2007?

21 A. Evidently we did not.

22 Q. Okay. Looking at the, at the paper
23 that says it's for tax year 2008. Does that
24 particular document help you remember anything
25 specific about 2008 that would have lead to this

1 | claim?

2 | A. No.

3 | (Farm Service Agency, National Payment
4 | Service, marked for identification as
5 | Respondent's - Patricia Highley -
6 | Exhibit E.)

7 | Q. I understand it's a lot to ask.

8 | I'm gonna hand you a copy of what we have marked
9 | as Deposition Exhibit E. Let me know when you've
10 | had enough time to look at that.

11 | A. Uh-huh.

12 | Q. Can you tell me what that is?

13 | A. This has to do with the waterway
14 | that we put in 101 acres.

15 | Q. Okay. So these three pages on
16 | Exhibit E, all relate to the 100 acre property?

17 | A. Right.

18 | Q. And does it all relate to the
19 | waterway that you put in?

20 | A. I believe so.

21 | Q. Okay. And what do you mean it
22 | relates to the waterway? Does this represent --

23 | A. Okay. 2008 was when they put the
24 | original waterway in and 2009 was when they
25 | re-seeded, and this is what the government paid on
26 | it.

27 | Q. Paid to put it in and to re-seed?

1 A. Right.

2 Q. Okay.

3 A. It actually cost more than that but
4 that's all they paid on it.

5 Q. Do you know how much it cost?

6 A. Putting it in it was 4000 and some
7 dollars, and re-seeding was 441, I believe, and we
8 paid 193.

9 Q. And who did the re-seeding for you?

10 A. The re-seeding was done by Gary
11 Steinbrenner, that's what the check says.

12 Q. Okay. And by "check" you mean the
13 copy of the check?

14 A. Yeah, this is a copy of the check
15 that we paid.

16 Q. And that's shown on the last page
17 of Exhibit E?

18 A. Right, yes.

19 Q. I want to go back and talk about
20 some of your other parcels. First, with the
21 parcels that are described in Paragraph 4 of your
22 affidavit, specifically those that it says you've
23 owned since 1973, having parcel numbers
24 42-003500.0000 and 42-004500.0000. Do you know
25 which properties I'm talking about?

1 A. Those are the properties that we
2 live on.

3 Q. Okay. And are those the properties
4 that are pictured in Exhibit 2 contained within
5 Exhibit A?

6 A. Yes.

7 Q. Okay. On the first page of Exhibit
8 2, there's what appears to be an area that's shade
9 darker than the rest, can you tell me why that is?

10 A. Flooded.

11 Q. And did you do that shading?

12 A. Yes.

13 Q. Okay. How did you decide to shade
14 that particular area?

15 A. When you see it year after year you
16 know what to darken.

17 Q. Okay. When you're standing on this
18 property or on the other property that -- When
19 you're standing on a property that you own that's
20 shown in the first page of Exhibit 2 --

21 A. Um-hum.

22 Q. -- can you tell where your west
23 property line is?

24 A. The west property line? Now you've
25 got to get me -- I've got to get it straight.

1 Q. North arrows down there on your --

2 MR. FUSONIE: Right there.

3 A. Right there. Okay.

4 Q. When you're out at the property can
5 you tell where that west property line is?

6 A. Yes, because the road goes here and
7 a road goes here, right, Yeah. Um-hum.

8 Q. Okay.

9 MR. FUSONIE: I think there's some
10 confusion.

11 A. The west property line -- this is
12 all one property, two different parcels, two
13 different deeds. So the west of that whole
14 property is the road up here. Now if you want
15 parcels or the deeds, you're saying, can I see the
16 west side of that, yes, from the corner right
17 there because that is road.

18 Q. Okay. What identifies that corner
19 -- you've pointed to the northwest corner of the
20 shaded area in the first page of Exhibit 2. What
21 identifies that particular corner?

22 A. Okay. Is this the road? I'm
23 confused.

24 MR. FUSONIE: This is the northwest
25 corner.

1 A. The northwest corner of this
2 property, there's a road.

3 Q. Okay. And does the road turn?

4 A. Um-hum.

5 Q. Okay.

6 MR. FUSONIE: Is that a "yes???"

7 A. Yes.

8 Q. Do you know what that road is, what
9 the road is called?

10 A. Wabash Road.

11 Q. And is it still Wabash Road when it
12 turns?

13 A. Yes.

14 Q. Okay.

15 A. It makes two drastic turns.

16 Q. We only see one of those turns in
17 this photograph.

18 A. Um-hum.

19 Q. Okay. On the second page of
20 Exhibit 2 there's a shaded -- there's an area
21 that's shaded darker. How is it that you knew the
22 shade -- Actually let me ask you first. Did you
23 do that shading?

24 A. Yes.

25 Q. Okay. How is it that you knew to

1 draw the line and shade that you did?

2 A. The Wabash Road goes right there.
3 There.

4 Q. Okay. How did you know how far,
5 how far into this property to draw that shading?

6 A. There is a driveway right here. I
7 don't know if it shows or not, it goes back to the
8 graveyard right here.

9 MS. CROSKEY: And let the record
10 reflect that the witness is pointing to
11 a --

12 A. Alley.

13 MS. CROSKEY: -- east west an east
14 west line at the southern edge of your
15 property.

16 Q. Is that correct?

17 A. Right.

18 Q. And how is it that that, that
19 driveway helps, helped you know where to shade for
20 the flooding?

21 A. Because you can drive back that and
22 see when it's flooded.

23 Q. In this case are you saying that
24 flooding has damaged your property?

25 A. Yes.

1 Q. How has flooding damaged your
2 property?

3 A. Takes your topsoil it destroys the
4 bank, destroys crops, and it make an awful bad
5 cleanup when it happens. We spend days cleaning
6 up after the floods.

7 Q. Is it that type of damage you would
8 say on all of the property that you own?

9 A. All the ones we own.

10 Q. Is it the same type of damage would
11 you say on all of the properties that you lease?

12 A. Yes.

13 Q. Other than the crop loss and the,
14 what would you say, cleanup?

15 A. Um-hum.

16 Q. Is there any other way that you
17 feel your property has been damaged?

18 A. You lose your topsoil, you lose
19 trees, and on Ransbottom we have a terrible
20 cleanup on that one.

21 Q. On the Ransbottom?

22 A. Right.

23 Q. I think they're two separate
24 parcels that you lease from Ransbottom?

25 A. Yes, yes.

1 Q. Let's talk about those. I believe
2 those are the ones that are identified as, in your
3 affidavit in Paragraph 7 as 28-013500.0000 and
4 28-dash 013400.0000. Now I think you said you had
5 a terrible cleanup on Ransbottom.

6 A. Did you say which paragraph?

7 Q. Oh, Paragraph 7.

8 A. Paragraph 7 is the Post's farm.

9 MR. FUSONIE: There are two
10 sentences to Paragraph 7.

11 Q. I just read off -- gonna read again
12 -- The parcels number that are in the second
13 sentence in Paragraph 7?

14 A. Oh, the second sentence, all right.

15 Q. It says that you have leased them
16 for at least for the last 30 years?

17 A. Right.

18 Q. Are those the Ransbottom parcels?

19 A. Right, yes.

20 Q. You mentioned that you had a
21 terrible cleanup. What do you mean by that?

22 A. The debris that comes in also trees
23 that are because of the weakness have uprooted,
24 fell out in the fields.

25 Q. What do you mean "because of the

1 weakness?

2 A. All of the water has caused,
3 because of the flooding has weakened the root
4 system on the trees, and every year we have gobs
5 of 'em go down and have to be cleaned up, so we
6 don't lose farm ground.

7 Q. So when you say "terrible cleanup,"
8 are you referring to any particular year?

9 A. Every year we have cleanup.

10 Q. Every year including what years?

11 A. Every year since 1997 we have a
12 cleanup some time. Last year the end of '08 and
13 '09 we had three sessions of cleanup.

14 Q. What do you mean by "three sessions
15 of cleanup?"

16 A. After every flood we have cleanup.

17 Q. Okay. For every year that you had
18 to do this, did you document that cleanup in any
19 particular way?

20 A. No, you just do it. The work, we hire,
21 get the grand kids some time to help or someone else.

22 Q. Okay. You said "hire," do you mean
23 hire the grand kids or hire somebody else?

24 A. Both.

25 Q. Okay. So if you would hire someone

1 other than the grand kids, do they bill you for
2 that?

3 A. No, we just pay them.

4 Q. Do you normally make those payments
5 by check or?

6 A. No biggie.

7 Q. No biggie. How do you know normally
8 pay?

9 A. Cash, check, whichever nothing
10 extensive we do a lot of it ourselves.

11 Q. For the Ransbottom parcels would
12 you say that they're solely an agricultural?

13 A. Yes.

14 Q. For the entire time that you've
15 leased those parcels have they always been solely
16 an agricultural lease?

17 A. Yes.

18 Q. And are you still farming those?

19 A. Yes.

20 Q. I apologize if I've asked this
21 before. There are a lot of parcels here and I
22 just honestly don't remember, but for the
23 Ransbottom parcels, where are they located with
24 respect to Beaver Creek?

25 A. Beaver Creek goes right through

1 | them and also the other side Wabash River edges.

2 | Q. Okay. So where would they be in
3 | relationship to the spillway at Grand Lakes St.
4 | Mary's?

5 | A. Probably right close to the 8 and a
6 | half mile, the nine out. They're actually right
7 | across the road from Terry Linn that was in the other
8 | lawsuit.

9 | Q. Now in Paragraph 7, there are two
10 | other --

11 | A. Um-hum. Okay.

12 | Q. -- Parcels of land. They're in the
13 | first sentence, they're identified 29-004200.0000
14 | and 28-011400.0000. Those are identified as
15 | parcels that you lease from the Post family?

16 | A. Right.

17 | Q. Is that pursuant to a written lease
18 | agreement?

19 | A. No, it's verbal at this point.
20 | Originally in the beginning there was a paper
21 | contract from the father.

22 | Q. So when you say "originally in the
23 | beginning," do you mean in 1983?

24 | A. Yes.

25 | Q. Do you know when that written

1 contract would expired?

2 A. It was a continuous.

3 Q. Okay. Would that lease agreement
4 have been recorded at the county recorder's
5 office?

6 A. Probably not.

7 Q. Do you have a copy of it?

8 A. Oh, my, I have no idea where
9 anymore now. It seems it's kind of a farmers,
10 it's a farmers honesty thing between farmers.

11 Q. Do you recall what the lease
12 payment was prior to 1997?

13 A. No, I don't, I don't at this point,
14 no.

15 Q. Do you recall what it was after
16 1997?

17 A. We pay a \$100.00 an acre.

18 Q. Do you remember if it has always
19 been a \$100.00 an acre after 1997?

20 A. No, I don't.

21 Q. Is it the same for 2010?

22 A. I believe there is an increase.

23 Q. And for these parcels that you
24 lease from the Post family, where are they in
25 relationship to Beaver Creek?

1 A. The 45 acres at the southeast
2 corner is where beaver dumps into the Wabash, and
3 then from then it's the Wabash. Actually those
4 two farms are on either side James Post who had
5 the other lawsuit, 45 acres on one side and 145 on
6 the other.

7 Q. I think previously you mentioned
8 flooding that happened around April of 2009?

9 A. Um-hum.

10 Q. Was that particular flood preceded
11 by rain or storm?

12 MR. FUSONIE: Objection.

13 A. I don't recall exactly what, but
14 eye drops rain we get flood.

15 Q. So in order for your property to
16 flood does it need to rain for any particular
17 length of time?

18 MR. FUSONIE: Objection.

19 A. Yes.

20 Q. How long would you say it needs to
21 rain before your property floods?

22 A. I have no idea I'm not a --

23 Q. Okay. Do you know how many inches
24 it rains when your property floods?

25 MR. FUSONIE: Objection.

1 A. No, I don't.

2 Q. Do you know the average yields on
3 any of your properties?

4 MR. FUSONIE: Objection.

5 A. Of what?

6 Q. Asking very generally for any of
7 the crops that you plant. Do you know any of the
8 average yields?

9 MR. FUSONIE: Objection.

10 A. Which crop are you talking?

11 Q. Okay. Let's say the hundred acre
12 parcel, what did you plant last year?

13 A. Well, we rotate, so we have all three
14 crops: wheat, corn, and beans.

15 MR. FUSONIE: She asked what did
16 you have last year?

17 A. All three of 'em.

18 Q. Okay.

19 A. We rotate.

20 Q. Okay. So you planted corn in 2009
21 on the hundred acres?

22 A. Yes.

23 Q. Okay. Do you know what your yield
24 was for corn last year?

25 A. No, I don't. I got -- I don't.

1 Q. Okay. Do you know what your yield
2 was for corn on any of your farms?

3 A. No, not really because it was hurt
4 a little bit because they got 'em out late because
5 of the April flood?

6 MS. CROSKY: I don't have any other
7 questions.

8 MR. FUSONIE: I do have a few. I
9 just need to grab one document.

10 (Photographs, marked for identification
11 as Relator's Exhibit 1.)

11 DIRECT EXAMINATION

12 BY MR. FUSONIE:

13 Q. Ms. Highley, I'm showing you what
14 I have marked as Relator's Exhibit 1. If you
15 could take a look at the few page exhibit and tell
16 me if you recognize the photographs?

17 A. Um-hum.

18 Q. Is that a "yes"?

19 A. Yes.

20 Q. Did you take those photos?

21 A. Yes.

22 Q. And what do they reflect?

23 A. Flood water.

24 Q. Are these the -- are these of the
25 William Ransbottom Jen Carr property?

1 A. Part of them, yes.

2 Q. Why don't we start with the first
3 page, the first photo and what is Exhibit 1,
4 Relator's Exhibit 1 is also down at bottom
5 DON000579 and page 2 is DON000580. Page 1 of
6 Exhibit 1, Mrs. Highley, what is the top
7 photograph?

8 A. This is looking towards the
9 northeast of the Ransbottom farm showing the water
10 and the edge of the road.

11 Q. And what road is reflected, what
12 road is reflected on?

13 A. Wabash Road.

14 Q. Sorry?

15 A. What road is reflected in the top
16 photo on Page 1 Exhibit 1?

17 A. Wabash Road.

18 Q. And the Ransbottom property is on
19 the right-hand side of the photograph?

20 A. Yes.

21 Q. Is it also on the left-hand side of
22 the photograph?

23 A. No.

24 Q. Whose property is on the left-hand
25 side?

1 A. That would be Terry Linns'.

2 Q. And did that flood?

3 A. Yes.

4 Q. In this photo?

5 A. Yes.

6 Q. Is this photo from the July 2003
7 flood?

8 A. Probably, yes.

9 Q. Do you remember when he took the
10 photo?

11 A. No.

12 Q. Is this flooding after 1997?

13 A. Yes.

14 Q. You mentioned Terry Linn earlier and he
15 was in another lawsuit, what lawsuit were you
16 referring to?

17 A. The other five farmers in Mercer
18 County with ODNR.

19 Q. Do you know if Terry Linn's property
20 reflected in the top photo on Page 1 of Exhibit 1 was
21 part of that lawsuit?

22 A. Yes.

23 Q. Moving onto the bottom photo of
24 Exhibit 1, Page 1 to Exhibit 1, what does that
25 photo reflect?

1 A. Flood.

2 Q. Of what property?

3 A. Ransbottom.

4 Q. Okay. And would this have been of
5 flooding after 1997?

6 A. Yes.

7 Q. Do you know what road is in the
8 left-hand corner of the bottom photo on page 1 of
9 Exhibit 1?

10 A. That's curb at Wabash Road.

11 Q. And then turning to Page 2 of
12 Exhibit 1, Mrs. Highley, is that a photo that you
13 took?

14 A. Yes.

15 Q. And what does it reflect?

16 A. This is flood.

17 Q. And is this flooding post 1997?

18 A. Yes.

19 Q. Do you know what property it is
20 showing flooding?

21 A. This is the Ransbottom.

22 Q. Okay. With respect to the lawsuit
23 brought by the five other or the landowners.

24 A. Right.

25 Q. Are either of your three or any of

1 | your three properties that now flood located near
2 | any of their properties that were at issue in that
3 | lawsuit?

4 | A. You mean our personal property?

5 | Q. Correct.

6 | A. The 101 acres is just one field
7 | between us and Dick Baucher.

8 | Q. Okay. In what direction?

9 | A. And that would be east.

10 | Q. So I understand Mr. Baucher's
11 | property is just to the east of your hundred acre
12 | field?

13 | A. Right, one field between.

14 | Q. Now are any of your other
15 | properties near any of those landowners' property
16 | that was at issue in that lawsuit?

17 | A. The other is catty-corner across the
18 | road from Terry Linns.

19 | Q. And how far away is that?

20 | A. Across the road.

21 | Q. All right. On what road?

22 | A. Wabash Road.

23 | MR. FUSONIE: I think that might
24 | it, but just want to make sure. Oh, I
25 | know.

1 Q. You mention with the Ransbottom and
2 Carr property that there were trees that were fell
3 by the weakened root systems?

4 A. Yes.

5 Q. Were any of those mature trees?

6 A. Oh, they were all major trees.

7 Q. Do you know how old some of those
8 trees were that have been fell?

9 A. Old, old.

10 Q. What type of trees?

11 A. I have no idea, I'm not a -- and
12 they're back away from the road a ways.

13 Q. But they are on the Ransbottom
14 property?

15 A. Yes.

16 Q. And how many years have you lived
17 in Mercer County?

18 A. All my life?

19 Q. I tried to avoid asking you how old
20 you were, now you're gonna make me ask how old you
21 are?

22 A. 73.

23 MR. FUSONIE: Those are all the
24 questions that I have.

25 RE-CROSS-EXAMINATION

1 BY MS. CROSKY:

2 Q. With regard to the Relator's
3 Exhibit 1, Page 2, are there any idea identifying
4 characteristics in that photograph that help you
5 identify what property it is?

6 A. The gravel at the bottom at the
7 gravel pit, at the bottom at the corner here and
8 at the trees.

9 Q. I guess what is it about that that
10 helps you know where this property is located?

11 MR. FUSONIE: Objection. asked and
12 answered?

13 A. I know where that gravel is.

14 Q. Okay. Can you see Wabash Road
15 anywhere in that photograph?

16 A. No, the gravel is right off of
17 Wabash Road.

18 MR. CROSKY: Okay. I don't have
19 no other questions.

20 MR. FUSONIE: I have one last
21 question, I should have asked this
22 before, I apologize.

23 REDIRECT EXAMINATION

24 BY MR. FUSONIE:

25 Q. So I'm clear with the last page of

1 Exhibit 1, these trees in the background on Page
2 2, the photo on Page 2, are those trees on
3 Ransbottom's property?

4 A. Yes.

5 MR. FUSONIE: Mrs. Highley, when
6 the state attorneys order a transcript
7 of the questions and answers that I
8 you've been asked today and your answers
9 given, you have the right to review the
10 transcript to correct any errors that
11 may have been made. I can't tell you to
12 do that, I can only say that I recommend
13 to my clients and my witnesses that they
14 do read the transcript. You have to let
15 the court reporter know now if you'd
16 like to do that.

17 MS. HIGHLEY: Yes, please.

18
19 Patricia L. Highley
Patricia L. Highley

20 - - -
21 (At 3:39 p.m., the deposition concluded)
22 - - -

23 MARTHA C. BREWER, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
24 My commission has no expiration date
Sec. 147.03 R.C.

25 Martha C. Brewer 3/15/10
Notary Public

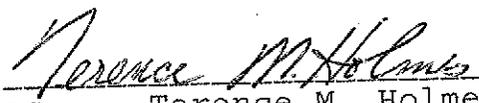
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STATE OF OHIO)
) SS:
COUNTY OF MERCER)

I, Terence M. Holmes, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do hereby certify that before the giving of her aforesaid deposition, the said PATRICIA L. HIGHLEY was by me first duly sworn to depose the truth, the whole truth, and nothing but the truth, that the foregoing is the deposition given at said time and place by said PATRICIA L. HIGHLEY; that said deposition was taken in all respects pursuant to agreement and stipulations of counsel hereinbefore set forth; that said deposition was taken by me in stenotype and transcribed into typewriting by me; that I am neither a relative of nor attorney for any of the parties to this cause, nor relative of nor employee or any of their counsel, and have no interest whatever in the result of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Cincinnati, Ohio, this 27th day of February, 2010.


My Commission Expires: Terence M. Holmes
July 28, 2012 Notary Public - State of Ohio

AFFIDAVIT OF PATRICIA L. HIGHLEY

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

I state as follows:

1. I am a Relator in this mandamus action seeking compensation for the property taken by Respondents Ohio Department of Natural Resources and Sean D. Logan, Director (collectively "ODNR").
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, and 42-004500.0000.
3. I have owned since 1967 Mercer County Parcel Number 26-041400.0000
4. I have owned since 1973 Mercer County Parcel Numbers 42-003500.0000 and 42-004500.0000.
5. Mercer County Parcel Number 26-041400.0000 lies adjacent to the Beaver Creek.
6. Mercer County Parcel Numbers 42-003500.0000 and 42-004500.0000 lie adjacent to the Wabash River.
7. I have leased Mercer County Parcel Numbers 29-004200.0000 and 28-011400.0000 since at least 1983 from the Post family. I have leased Mercer County Parcel Numbers 28-013500.0000 and 28-013400.0000 for at least the last 30 years.
8. Since ODNR replaced the western spillway of Grand Lake St. Mary's in 1997 and undertook its current lake level management practices, which include maintaining increased lake levels and use of the western spillway for virtually all water flow out of Grand Lake St. Mary's,

DON000209

Patricia Highley
Deposition Ex. A

16. Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000 also experienced severe flooding in 2005. Indeed, the flooding in January 2005 was so extensive that it flooded the first five roads that cross Beaver Creek west of the spillway.

17. Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000 were again flooded as recently as spring 2009.

18. As a direct result of the flooding, Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000 have suffered damage in the form of crop losses, field and bank erosion, the deposit of silt, sand, stones, and other debris, soil compaction, drainage tile failure, and the destruction of trees, bushes, shrubs, vines and saplings.

19. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000.

20. I believe that the intermittent, continuing, persistent, frequent, and increased severe flooding from the western spillway of Grand Lake St. Mary's will inevitably recur as a result of ODNR's replacement of the western spillway and ODNR's current management practices.

DON000212

FURTHER AFFIANT SAYETH NAUGHT.

Patricia L. Highley
Patricia L. Highley

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

Theresa E. Baucher
Notary Public

THHERESA E. BAUCHER
ROTARY PUBLIC, STATE OF OHIO
My Commission Expires March 4, 2013

DON000213

EXHIBIT 1
TO
AFFIDAVIT OF PATRICIA L. HIGHLEY

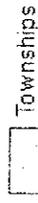
DON000214

Mercer County Ohio

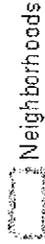


Legend

Administrative

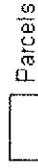


Townships



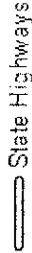
Neighborhoods

Parcels

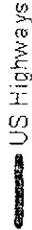


Parcels

Transportation



State Highways



US Highways

Water

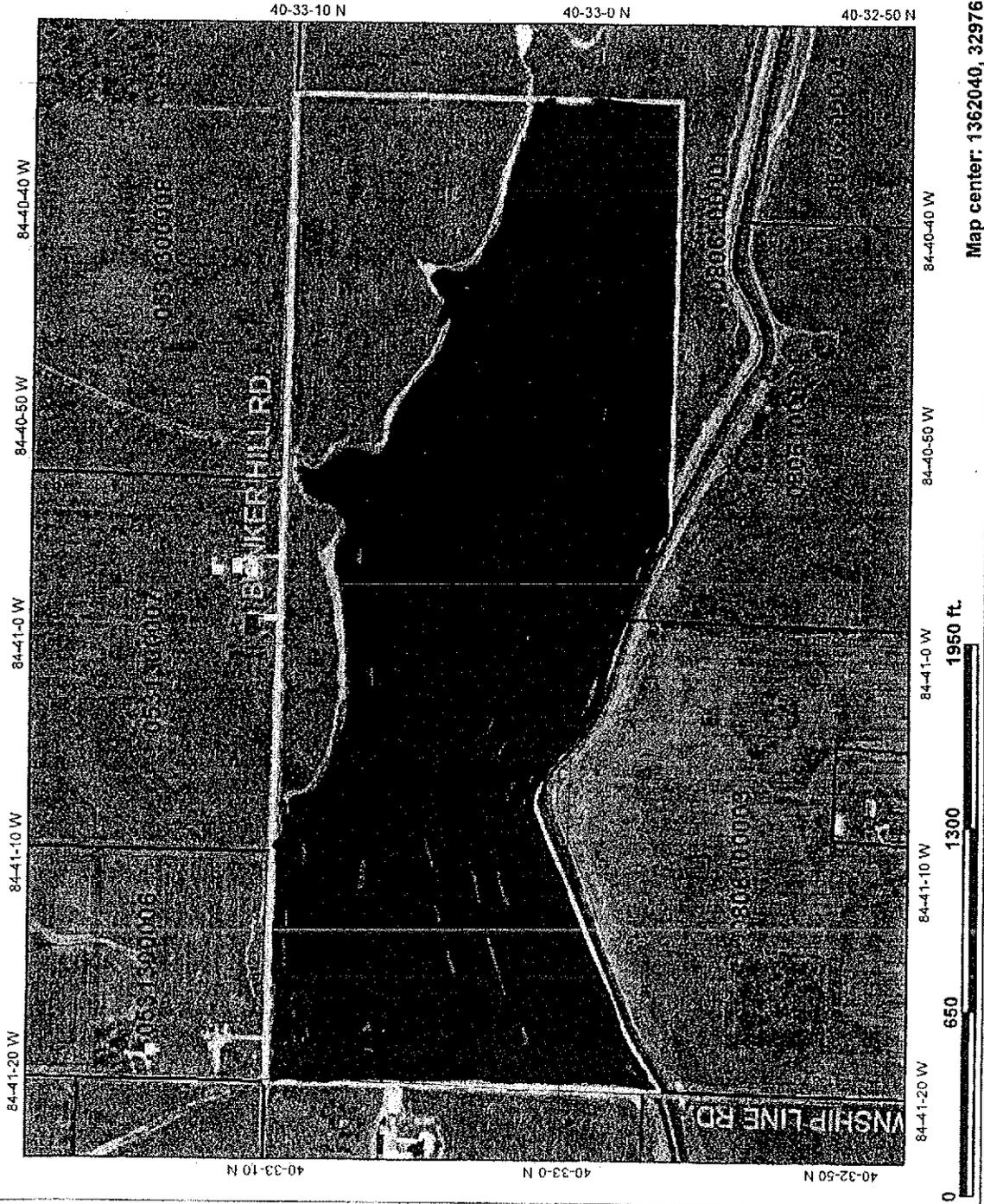


Lake



Streams

tabbles
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Map center: 1362040, 329766

Scale: 1:6,612

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Robert E. Hightley and Patricia L. Hightley
-0- Bunker Hill Rd.
Parcel No.: 26-041400.0000 - 101 acres

EXHIBIT 2
TO
AFFIDAVIT OF PATRICIA L. HIGHLEY

DON000216

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

Transportation

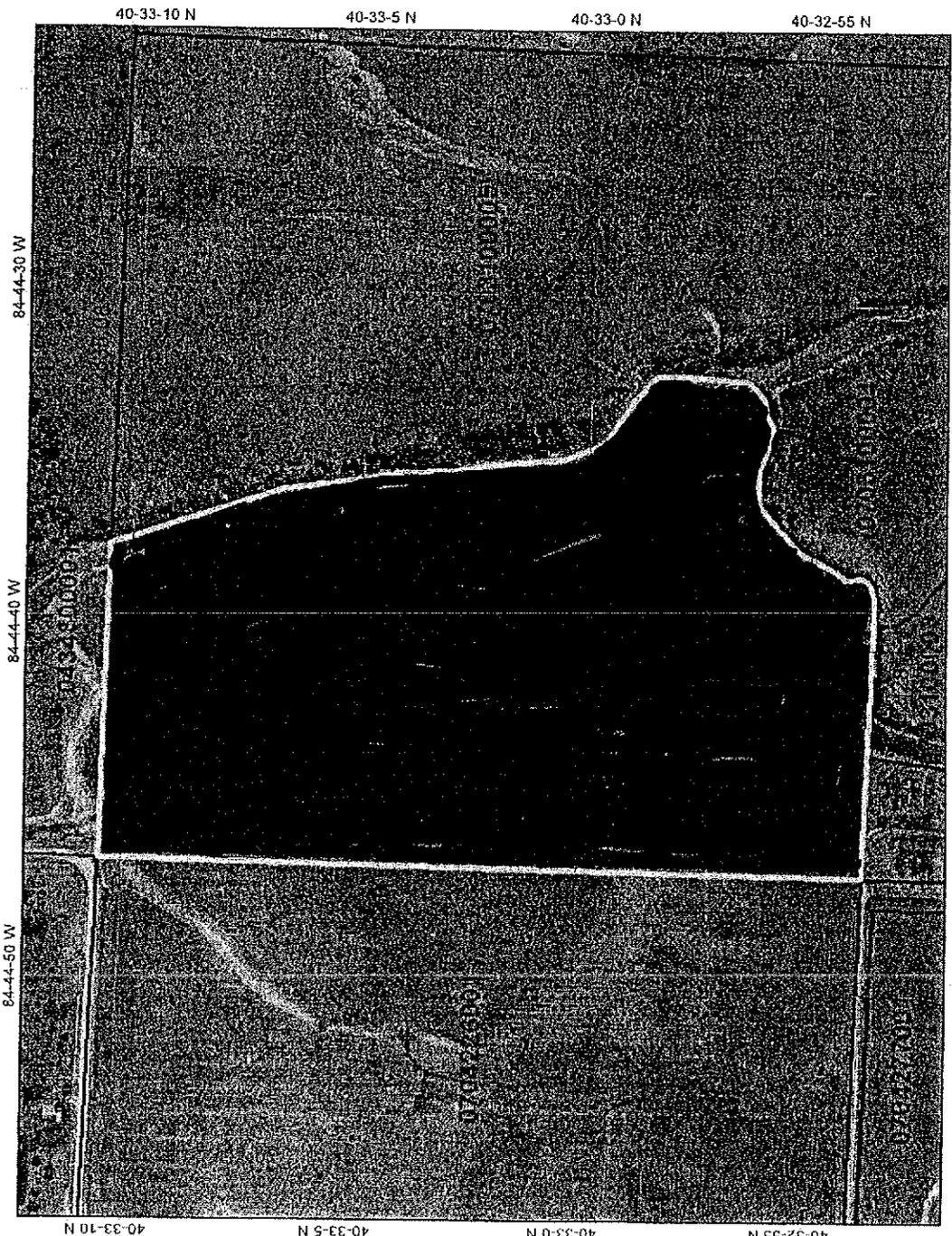
- State Highways
- US Highways

Water

- Lake
- Streams

EXHIBIT 2

Scale: 1:4,373



Map center: 1344881, 330059

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Robert E. Highley and Patricia L. Highley

-0- Wabash Rd.

Parcel No.: 42-003500.0000 - 29.60 acres

Mercer County Ohio



Legend

Administrative

-  Townships
-  Neighborhoods

Parcels

-  Parcels

Transportation

-  State Highways
-  US Highways

Water

-  Lake
-  Streams



Scale: 1:4,409



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Robert E. Highley and Patricia L. Highley
6888 Wabash Rd.
Parcel No.: 42-004500.0000 - 53.08 acres

DON000218

Gambling

Income

"97"

SS

60

Prudential
 American Income
 All American Life
 Merces Landmark
 Ft Recovery Equity 100%

Election Board
 Crop Ins payoff Rebate \$47.00 + 1661.00 \$1708.00

Machinery Lease

Cash Rent

Grain Sales

Interest Coldwater People
 Key Bank
 Merces Saving Bank
 Community First

Govt py.

DON001824

Patricia Highley
Deposition Ex. B

"Income"
"98"

Govt pymt. 66
91
12.

43

Mercer Savings Bank
Community Trust BOND

Prudential Ins. 36.9
33.6
59

Patronage
Mercer Handmark #2
Mercer Land Bank #
Farmers Hail Ins
~~Mercer Handmark #~~
#Recovery 213

Crop Insurance
12/ cks 1584.00
22,495.00
24,079.00

Election Board 103.00
98.00

#201.00

U.S. DEPARTMENT OF AGRICULTURE
 Farm Service Agency - Commodity Credit Corporation
 MERCER COUNTY FSA OFFICE
 220 W LIVINGSTON ST
 CELINA OH 45822

CERTAIN GOVERNMENT PAYMENTS

IDENTIFICATION NO.	CALENDAR YR.	TYPE OF PAYMENTS	REPORTABLE INCOME	REFUNDS FROM RECIPIENT
REDACTED	1999	CROP LOSS DISASTER ASSISTANCE	16,608.00	0.00
PRODUCER (Name & Address) * S150 P1**AUTO*****5-DIGIT 45822 ROBERT HIGHLEY 6888 WABASH RD CELINA OH 45822-9708 				
		TOTALS	\$39,156.28	\$0.00

CCC-1099-G (01-04-2000)

REPORT OF PAYMENTS TO PRODUCERS

FORM APPROVED OMB NO. 1545-0120

2005 CALENDAR YEAR CERTAIN GOVERNMENT PAYMENTS

PAYER'S name, street address, city, state, ZIP code		Type of Payment	Reportable Income	Refunds From Recipient
U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency - Commodity Credit Corporation MERCER COUNTY FSA OFFICE 220 W LIVINGSTON ST CELINA OH 45822		CROP DISASTER PROGRAM - 2005	20,201.00	0.00
RECIPIENT'S Identification Number REDACTED	PAYER'S Federal Identification Number 43-0951685			
RECIPIENT'S name, street address, city, state, ZIP code ROBERT HIGHLEY 6888 WABASH RD CELINA OH 45822-9708 				
		7. Total Agriculture Payments	\$38,990.80	\$0.00

Form CCC - 1099 - G (12-12-05)

REPORT OF PAYMENTS TO PRODUCERS

FORM APPROVED OMB NO. 1545-01
 OH-101322

DON001832

Patricia Highley
 Deposition Ex. C

RURAL COMMUNITY INSURANCE AGENCY, INC
3501 THURSTON AVENUE
ANOKA, MN 55303-1060

800/328-9143 EXT. 2301
OR EXT. 2120

THIS DOCUMENT IS ISSUED AS A SUBSTITUTE STATEMENT FOR A 1099 INFORMATION RETURN

ROBERT E HIGHLEY
 6888 WABASH RD
 CELINA OH 45822

FOR TAX YEAR
2000

1099-MISC (OMB No. 1545-0115)

TAX PAYER ID NUMBER
REDACTED

PAYERS FEDERAL
 ID NUMBER
 41-1708414

SUMMARY OF MISCELLANEOUS INCOME AS REPORTED - CROP INSURANCE PROCEEDS

CROPS: SBEAN MPCI	2000 34-951-163544	532155	CHECK AMOUNTS PREMIUM WITHD.	542.00 00	542.00
CROPS: SBEAN REPLNT	2000 34-836-163544	532155	CHECK AMOUNTS PREMIUM WITHD.	249.00 209.00	458.00

TAX INFORMATION

**** WE APPRECIATE YOUR BUSINESS **** TOTAL INDEMNITY PAYMENT REPORTED **\$1,000.00**

TO HAVE ANY CORRECTIONS MADE TO YOUR FORM 1099, YOU MUST CONTACT OUR OFFICE BEFORE FEBRUARY 28, 2001.

THE "TOTAL INDEMNITY PAYMENT" WHICH INCLUDES ALL AMOUNTS DEDUCTED FROM THE CLAIM(S) AND CHECK(S) ISSUED, IS CONSIDERED TAXABLE INCOME BY THE INTERNAL REVENUE SERVICE. PLEASE CONTACT YOUR TAX PREPARER OR THE IRS IF YOU HAVE ANY QUESTIONS ON REPORTING THIS INCOME.

THIS IS IMPORTANT TAX INFORMATION AND IS BEING FURNISHED TO THE INTERNAL REVENUE SERVICE. IF YOU ARE REQUIRED TO FILE A RETURN, A NEGLIGENCE PENALTY OR OTHER SANCTION WILL/MAY BE IMPOSED ON YOU IF THIS INCOME IS TAXABLE AND IRS DETERMINES THAT IT HAS NOT BEEN REPORTED.

Patricia Highley
 Deposition Ex. D
 DON001833

RURAL COMMUNITY INSURANCE AGENCY, INC
3501 THURSTON AVENUE
ANOKA, MN 55303-1060

800/451-3836 EXT. 2178
OR EXT. 2353

THIS DOCUMENT IS ISSUED AS A SUBSTITUTE STATEMENT FOR A 1099 INFORMATION RETURN

ROBERT E HIGHLEY
 6888 WABASH RD
 CELINA OH 45822

FOR TAX YEAR 2005
TAX PAYER ID NUMBER REDACTED

1099-MISC (OMB No.1545-0115)

PAYERS FEDERAL
 ID NUMBER
 41-1708414

SUMMARY OF MISCELLANEOUS INCOME AS REPORTED - CROP INSURANCE PROCEEDS

TYPE OF INS	CROP YEAR POLICY NUMBER	CLAIM NUMBER	CLAIM DETAIL AMOUNTS	CLAIM TOTAL
CROPS: CORN MPCI	2005 34-951-153544	1186474	CHECK AMOUNTS: PREMIUM WITHD. 987.00 00	987.00
DONOR INFORMATION				
				DON001836

**** WE APPRECIATE YOUR BUSINESS **** TOTAL INDEMNITY PAYMENT REPORTED **\$987.00**

TO HAVE ANY CORRECTIONS MADE TO YOUR FORM 1099, YOU MUST CONTACT OUR OFFICE BEFORE FEBRUARY 28, 2006.

THE "TOTAL INDEMNITY PAYMENT" WHICH INCLUDES ALL AMOUNTS DEDUCTED FROM THE CLAIM(S) AND CHECK(S) ISSUED, IS CONSIDERED TAXABLE INCOME BY THE INTERNAL REVENUE SERVICE. PLEASE CONTACT YOUR TAX PREPARER OR THE IRS IF YOU HAVE ANY QUESTIONS ON REPORTING THIS INCOME.

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RURAL COMMUNITY INSURANCE AGENCY, INC
3501 THURSTON AVENUE
ANOKA, MN 55303-1060

800/451-3836 EXT. 2353
OR EXT. 2381
OR EXT. 2162

THIS DOCUMENT IS ISSUED AS A SUBSTITUTE STATEMENT FOR A 1099 INFORMATION RETURN

ROBERT E HIGHLEY
 6888 WABASH RD
 CELINA OH 45822

FOR TAX YEAR 2006
TAX PAYER ID NUMBER REDACTED

1099-MISC (OMB No.1545-0115)

PAYERS FEDERAL ID NUMBER

41-1708414

SUMMARY OF MISCELLANEOUS INCOME AS REPORTED - CROP INSURANCE PROCEEDS

TYPE OF INS	CROP YEAR / POLICY NUMBER	CLAIM NUMBER	CLAIM DETAIL AMOUNTS	CLAIM TOTAL
CROPS: SBEAN MPC1	2006 34-951-153544	1252595	CHECK AMOUNTS: 1,024.00 PREMIUM WTHLD: .00	1,024.00
CROPS: SBEAN REPLNT	2006 34-090-153544	1252595	CHECK AMOUNTS: 665.00 PREMIUM WTHLD: 194.00	859.00
CROPS: SBEAN MPC1	2006 34-951-153544	1252606	CHECK AMOUNTS: 780.00 PREMIUM WTHLD: .00	780.00
CROPS: SBEAN REPLNT	2006 34-090-153544	1252606	CHECK AMOUNTS: 105.00 PREMIUM WTHLD: .00	105.00

DON001837

**** WE APPRECIATE YOUR BUSINESS **** TOTAL INDEMNITY PAYMENT REPORTED **\$2,768.00**

TO HAVE ANY CORRECTIONS MADE TO YOUR FORM 1099, YOU MUST CONTACT OUR OFFICE BEFORE FEBRUARY 28, 2007.

THE "TOTAL INDEMNITY PAYMENT" WHICH INCLUDES ALL AMOUNTS DEDUCTED FROM THE CLAIM(S) AND CHECK(S) ISSUED, IS CONSIDERED TAXABLE INCOME BY THE INTERNAL REVENUE SERVICE. PLEASE CONTACT YOUR TAX PREPARER OR THE IRS IF YOU HAVE ANY QUESTIONS ON REPORTING THIS INCOME.

THIS IS IMPORTANT TAX INFORMATION AND IS BEING FURNISHED TO THE INTERNAL REVENUE SERVICE. IF YOU ARE REQUIRED TO FILE A RETURN, A NEGLIGENCE PENALTY OR OTHER SANCTION WILL/MAY BE IMPOSED ON YOU IF THIS INCOME IS TAXABLE AND IRS DETERMINES THAT IT HAS NOT BEEN REPORTED.

RURAL COMMUNITY INSURANCE AGENCY, INC
3501 THURSTON AVENUE
ANOKA, MN 55303-1060

800/451-3836 EXT. 2353
OR EXT. 2162
OR EXT. 2381

THIS DOCUMENT IS ISSUED AS A SUBSTITUTE STATEMENT FOR A 1099 INFORMATION RETURN

ROBERT E HIGHLEY
 6888 WABASH RD
 CELINA OH 45822

FOR TAX YEAR
 2008

1099-MISC (OMB No.1545-0115)

TAX PAYER ID NUMBER
 REDACTED

PAYERS FEDERAL
 ID NUMBER
 41-1708414

SUMMARY OF MISCELLANEOUS INCOME AS REPORTED - CROP INSURANCE PROCEEDS

TYPE OF INS	CROP YEAR/ POLICY NUMBER	CLAIM NUMBER	CLAIM DETAIL AMOUNTS	CLAIM TOTAL
CROPS: CORN SBEAN MPCI	2008 34-951-153544	1465365	CHECK AMOUNTS: DEDUCTIONS:	3,357.00 .00 3,357.00
CROPS: CORN SBEAN REPLNT	2008 34-090-153544	1465365	CHECK AMOUNTS: DEDUCTIONS:	1,140.00 138.00 1,278.00

DON001838

** WE APPRECIATE YOUR BUSINESS **

TOTAL INDEMNITY
 PAYMENT REPORTED

\$4,635.00

PLEASE VERIFY THE ACCURACY OF THE TAX PAYER IDENTIFICATION NUMBER LISTED.
 REPORT ANY CORRECTIONS TO OUR OFFICE BEFORE FEBRUARY 27, 2009.

THE "TOTAL INDEMNITY PAYMENT" WHICH INCLUDES ALL AMOUNTS DEDUCTED FROM THE CLAIM(S) AND CHECK(S) ISSUED, IS CONSIDERED TAXABLE INCOME BY THE INTERNAL REVENUE SERVICE. PLEASE CONTACT YOUR TAX PREPARER OR THE IRS IF YOU HAVE ANY QUESTIONS ON REPORTING THIS INCOME.

THIS IS IMPORTANT TAX INFORMATION AND IS BEING FURNISHED TO THE INTERNAL REVENUE SERVICE. IF YOU ARE REQUIRED TO FILE A RETURN, A NEGLIGENCE PENALTY OR OTHER SANCTION MAY BE IMPOSED ON YOU IF THIS INCOME IS TAXABLE AND THE IRS DETERMINES THAT IT HAS NOT BEEN REPORTED.



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- Signing
- Reset Held Payments

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Payment Certification Approval

ROBERT HIGHLEY

Tax ID: **REDACTED** Program: 09CRPPRI Reference / Type: #1235 - CT

Date Issued: 12-29-2008 State / County: OH (39) - MERCER (107) Payment ID:

Transaction Summary:

Original Payment Amount: \$1,685.00

Disbursement Payee Information:

ROBERT HIGHLEY \$1,685.00

Action:

Please Select One:

- Defer
- Approve
- Reset Payment Processing
- Hold for Cancel by Program
(this selection forces the program application to cancel the payment)

DON001825

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**Patricia Highley
Deposition Ex. E**



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PAYMENTS

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Payment Certification Approval

ROBERT HIGHLEY

Tax ID: REDACTEDS Program: 09AUTOCRPCS Reference / Type: #20080327

Date Issued: 12-29-2008 State / County: OH (39) - MERCER (107) Payment ID:

FINANCIAL SERVICES

FSA Home Page

Logoff

Transaction Summary:

Original Payment Amount:	\$2,106.00
--------------------------	------------

Disbursement Payee Information:

ROBERT HIGHLEY	\$2,106.00
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Action:

Please Select One:

- Defer
- Approve
- Reset Payment Processing
- Hold for Cancel by Program
(this selection forces the program application to cancel the payment)

Submit

DON001826

Accessibility Statement

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PAYMENTS

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- Certification
- Signing
- Reset Held Payments

Payment Certification Approval

ROBERT HIGHLEY

Tax ID: REDACTED State / County: OH (39) - MERCER (107)

Program: 09AUTOCRPCS Reference: #20090143 - CN

Payment ID: #12990628 Issue Date: 10-14-2009 PPI Date: 10-17-2009

FINANCIAL SERVICES

DISBURSEMENT REPLACEMENT

FSA Home Page

Logoff

Transaction Summary:

	Amount
Original Payment:	\$193.00

Disbursement Payee Information:

ROBERT HIGHLEY \$193.00

-- Action:

Please Select One:

- Defer
- Approve
- Reset Payment Processing
- Hold for Cancel by Program
(this selection forces the program application to cancel the payment)

Submit

ROBERT HIGHLEY 1241
 PATRICIA L. HIGHLEY
 P.O. BOX 942-1303
 4500 WADASH RD.
 CELINA, OH 45822-9703

5317
55-91 308
 000156013

DATE 8-24-09

PAY TO THE ORDER OF Gary Steinbrunner \$ 441.80

Four Hundred Forty One and 80/100

FIRST
First National Bank

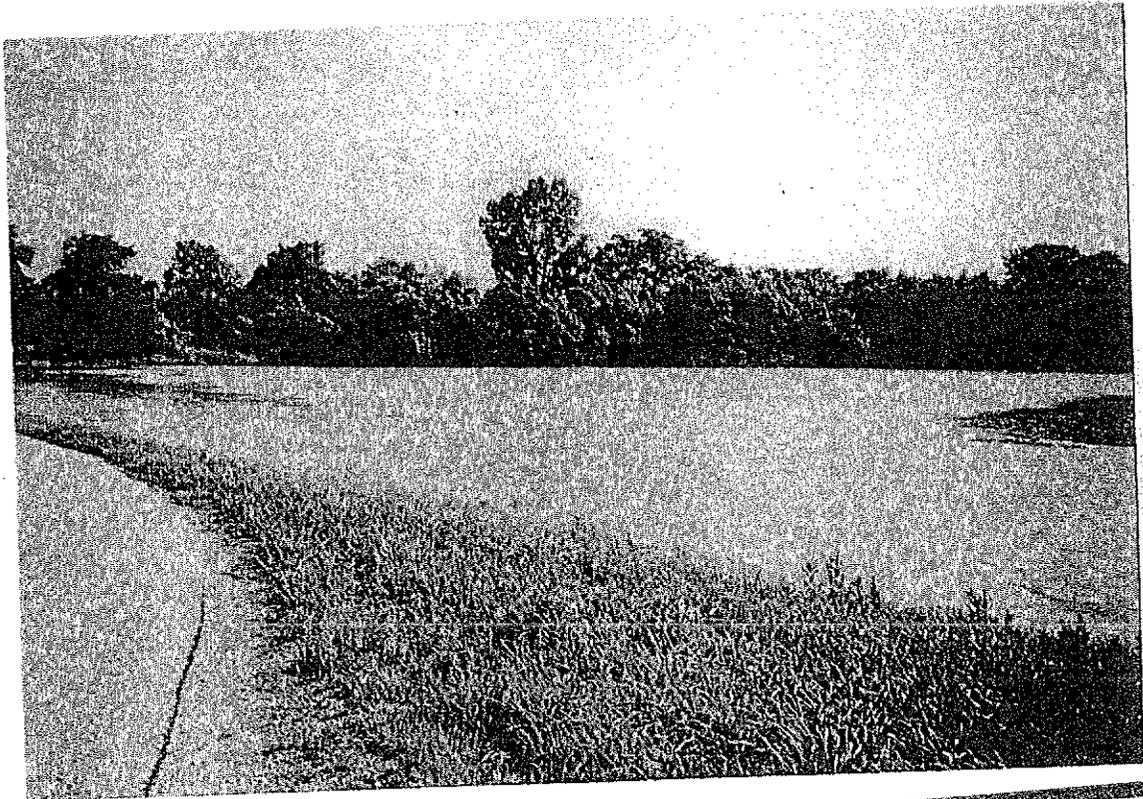
MEMO Robert Highley

REDACTED

Check 5317, \$441.80 Date Paid 09/01/2009

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DON001830



PENGAD 800-851-8988
EXHIBIT
1
Relators
ms. Healy

DON000579

EXHIBIT
tabbles
C



DON000580

TAB 18

IN THE SUPREME COURT OF OHIO

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STATE OF OHIO
EX REL., WAYNE T. DONER,
ET AL.,
VS.
SEAN D. LOGAN, DIRECTOR
OHIO DEPARTMENT OF
NATURAL RESOURCES
2045 MORSE ROAD
COLUMBUS, OHIO 43229-6693
AND
OHIO DEPARTMENT OF
NATURAL RESOURCES
2045 MORSE ROAD
COLUMBUS, OHIO 43229-6693

CASE NO. 09-1292

Deposition of ROBERT E. HIGHLEY,
Relator, was taken by the Respondents as on
cross-examination, pursuant to the Ohio Civil
Rules of Procedure at Central Service Building,
220 West Livingston Street, Celina, Ohio 45822, on
Friday, February 5, 2010, at 1:00 p.m., before
Terence M. Holmes, Professional Court Reporter,
and Notary Public within and for the State of
Ohio.

HOLMES REPORTING & VIDEO
982 Havensport Drive
Cincinnati, Ohio 45240
(513) 342-2088
(513) 342-1820 Fax
www.OhioDeposition.com

1 APPEARANCES:

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On Behalf of Ohio Department of Natural
Resources:

Jennifer S.M. Croskey
Assistant Attorney General
Environmental Enforcement
30 East Broad Street, Floor 26
Columbus, Ohio 43215-3400

On Behalf of Relators:

Thomas H. Fusonie, Esq.
Attorney at Law
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43216-1008

C O N T E N T S

1

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3

WITNESSES	DIRECT	CROSS
Robert Highley	Mr. Fusonie-43	Ms. Croskey-4

4

5

E X H I B I T S

6

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of Bob Highley	10
B	Handwritten document	41

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1 ROBERT E. HIGHLEY

2 of lawful age, a witness herein, being first duly
3 sworn, as hereinafter certified, was examined and
4 deposed as follows:

5 CROSS-EXAMINATION

6 BY MS. CROSKY:

7 Q. Mr. Highley, thank you for coming
8 here today. You are here for purposes of your
9 deposition. And your name is Robert E. Highley?

10 A. Right.

11 Q. And where do you live?

12 A. 6888 Wabash Road, Celina.

13 Q. Okay. And the court reporter has
14 sworn you in, so you're under oath. You need to
15 testify just as you would as if you were in court.
16 Testify truthfully, try to keep your voice up.
17 I'll try to keep mine up so you can hear me. We
18 should try not to talk at the same time so that
19 the court reporter can catch everything. Ask that
20 you make sure that you give verbal answers,
21 instead of shaking head yes or no.

22 A. Okay.

23 Q. If I ask you any question that you
24 don't understand or you don't hear, just let me
25 know and I'll try to speak louder or rephrase the

1 | question so you can understand it.

2 | A. Okay.

3 | Q. I don't think this is gonna take
4 | very long, so we probably won't need to take a
5 | break, but if you do need to take a break for
6 | whatever reason, just let me know, and if I have a
7 | question that's pending to you -- if I've asked
8 | you a question, I'll ask that you answer the
9 | question before we take a break, the only
10 | rule.

11 | Can you tell me about your
12 | education background?

13 | A. I went through high school,
14 | graduated in 1948.

15 | Q. Okay. Did you go to high school in
16 | this area?

17 | A. Celina.

18 | Q. Okay. How long have you lived in
19 | Mercer County?

20 | A. All my life.

21 | Q. All right. Can you tell me a
22 | little bit about your family, are you married,
23 | have children?

24 | A. I have six children and they're all
25 | married, gone, one of 'em deceased, she was killed

1 | in an automobile accident.

2 | Q. Are you employed?

3 | A. I'm a farmer.

4 | Q. So you're self-employed as a
5 | farmer?

6 | A. Yeah.

7 | Q. All right. How long have you been
8 | farming?

9 | A. All my life.

10 | Q. Have you ever had your deposition
11 | taken before?

12 | A. No.

13 | Q. You're what's called a relator in
14 | this case. You filed a case against the
15 | Department of Natural Resources.

16 | A. Yes.

17 | Q. Can you tell me a little bit about
18 | why you did that?

19 | A. 'Cause -- flood.

20 | MR. FUSONIE: Objection, just to
21 | the extent that it asks him to reveal
22 | attorney-client communications or
23 | attorney work product.

24 | MR. HIGHLEY: You want me to
25 | finish?

1 MR. FUSONIE: If you can without
2 revealing anything that your attorneys
3 have told you.

4 MR. HIGHLEY: What do you mean by
5 that?

6 Q. Well, I don't want you to tell me
7 what your attorneys have told you about this
8 case. I'm looking for you know what is your own
9 personal opinion that you developed on your own,
10 not in consultation with your attorneys?

11 A. Well we've been flooded. It's been
12 a lot worse since '97, since they put that new
13 spillway in.

14 Q. Okay. And you say it's been a lot
15 worse. I guess more specifically what do you mean
16 by that?

17 A. More high water, a lot more times.

18 Q. So it's been -- The flooding is
19 more frequent after 1997 than it was before 1997?

20 A. Oh, definitely, yes.

21 Q. Okay. Would you say that the depth
22 of the water on any of your properties is higher
23 after 1997?

24 A. Yes.

25 Q. Were you one of the property owners

1 that asked the Mercer County Soil and Water
2 Conservation District to do some work in January
3 of 2009, not that they were gonna do the work in
4 January of 2009, but you asked that they do some
5 work?

6 A. I don't remember.

7 Q. Okay. Have you ever asked the Soil
8 and Water Conservation District to do any work
9 regarding any of your properties?

10 A. Yes.

11 Q. When did you make any of those
12 requests?

13 A. It's been several times, I can't
14 remember.

15 Q. Okay. Do you know a Matt
16 Heckler?

17 A. Yes.

18 Q. Who is Matt Heckler?

19 A. Soil Conservation leader. Soil
20 Conservation -- whatever you call him.

21 Q. But Mercer County Soil and Water
22 Conservation District?

23 A. Yeah, he's the head of it.

24 Q. Oh, he's the head of it. Are you
25 aware that Jan Doner provided a list of names to

1 Matt Heckler and indicating that those people
2 wanted the Soil and Water Conservation district to
3 do some work?

4 A. Yes.

5 Q. Do you know that you were included
6 in that list of names?

7 A. I didn't know.

8 Q. Okay. Do you know anything about
9 the work that those property owners have
10 requested?

11 A. Not really.

12 Q. Okay. How many parcels of land do
13 you own in Mercer County?

14 A. Do I own?

15 Q. Yes?

16 A. We own three places.

17 Q. And do you farm more than just
18 property that you own?

19 A. Yes.

20 Q. The properties that you don't own
21 but you farm, do you lease those from other
22 people?

23 A. Yes.

24 Q. Who do you lease those parcels
25 from?

1 A. Oh, from Post Gene Carr and Jack or
2 Bill Ransbottom.

3 Q. And how many parcels of land do
4 you lease?

5 A. I just lease two.

6 Q. Okay.

7 A. Two different owners.

8 (Affidavit of Robert E. Highley, marked
9 for identification as Respondent's
Robert E. Highley - Exhibit A.)

10 Q. You lease two parcels of land.
11 Gonna hand you a copy of what we have marked as
12 Robert Highley Deposition Exhibit A. It's kind of
13 long, so take your time and take a look at it.
14 When you think that you've had enough time to look
15 at it, just let me know.

16 A. I've read it over before.

17 Q. You've seen the document before?

18 A. Yeah.

19 Q. Can you tell me what it is?

20 A. What what is?

21 Q. What Exhibit A is, the document
22 that you have in your hand?

23 A. What?

24 Q. Okay. Let me --

25 MR. FUSONIE: Do you know the

1 question?

2 MR. HIGHLEY: Huh?

3 MR. FUSONIE: She's asking you what
4 this document is?

5 A. Well, I guess --

6 Q. Let me ask a different question.

7 On Page 5 there's a signature?

8 A. Page 5?

9 Q. Um-hum.

10 A. Okay.

11 Q. Is that your signature?

12 A. Yes.

13 Q. Okay. At the time that you signed
14 this, did you read this document?

15 A. Did I what?

16 Q. Did you read the document before
17 you signed it?

18 A. Yes, I read it, but I can't
19 remember nothing.

20 Q. Okay. When you signed it did you
21 think that every thing that was stated in the
22 document was true at the time you signed it?

23 A. Yes, it's definitely worse since
24 since '97.

25 Q. Okay. Now this has a number of

1 different parcel numbers on it. Do you know your
2 properties by parcel number or do you know them
3 some other way?

4 A. I know 'em by parcel numbers, but I
5 can't remember 'em, I have to look at 'em.

6 Q. Okay. So let's start with the one
7 that begins with 26, it's Parcel Number
8 26-041400.0000.

9 A.

10 Q. Do you know which one that is?

11 A. That's.

12 Q. Actually?

13 A. That's the 101 acres.

14 Q. Okay. And I believe in Paragraph 3
15 you've owned that since 1967?

16 A. Right.

17 Q. Correct? Okay. So for that 101
18 acre parcel, how many times did that property
19 flood between 1967 and 1997?

20 A. Not too many, but it wasn't as bad
21 as it is now.

22 Q. Okay. How many times has it
23 flooded since 1997 until now?

24 A. It's been several.

25 Q. Okay.

1 A. Good many times, and gets over the
2 road and everything else.

3 Q. Do you know more specifically when
4 it's flooded?

5 A. When?

6 Q. Yes?

7 A. August in of '98 it was flooded
8 real bad.

9 Q. Any other times in '98?

10 A. I can't remember, but that was --
11 that's when wiped the crops out in '98.

12 Q. Okay. Did it flood at all in 1997?

13 A. 1997?

14 Q. Um-hum.

15 A. Probably did in the spring, I don't
16 remember.

17 Q. Okay. Do you know whether it
18 flooded in 1999?

19 A. What?

20 Q. Did it flood in 1999?

21 A. 1999, I think it did.

22 Q. Do you know when?

23 A. I can't definitely tell you the
24 dates.

25 Q. Okay.

1 A. But we've had so damn many floods
2 I'm sick of it.

3 Q. Okay. Do you know specifically
4 whether there were any times that it flooded in
5 2001?

6 A. I can't tell you know dates, but it
7 definitely flooded some time and that's all we get
8 done.

9 Q. So without asking you to identify
10 specific dates, can you at least identify specific
11 years when the property for the part, the 101 acre
12 parcel, when it been flooded?

13 A. I can't tell you know dates, I
14 don't remember.

15 Q. Okay. Do you remember any
16 particular years when any of the parcels that you
17 own have been flooded?

18 A. Any particular years?

19 Q. Yes?

20 A. Well, it happens about every year,
21 and some times it's more. A lot of times it's
22 three times.

23 Q. Okay.

24 A. Since '97.

25 Q. Is it all of your properties that

1 flood about three times a year?

2 A. All of our properties, yes, and
3 everybody else's on all sides of us, too.

4 Q. Okay. Now when you say it floods
5 about three times a year, is the timing in any
6 given year, is it consistent from year-to-year?

7 MR. FUSONIE: Objection.

8 A. Well, it varies.

9 Q. Okay. Are there certain times of
10 year when you would say that the properties are
11 more likely to flood?

12 MR. FUSONIE: Objection.

13 A. It depends.

14 Q. Okay. This 101 acre parcel, can
15 you tell me where that's located in relationship
16 to Beaver Creek?

17 A. It's right along Beaver Creek.

18 Q. Okay. Can you tell me where it is
19 in relationship to the spillway at Grand Lakes St.
20 Mary's?

21 A. It's about five and a half miles
22 west of that spillway.

23 Q. And can you tell me where it is in
24 relationship to the Wabash River?

25 A. It's about three and a half mile,

1 | about four mile back from Wabash River.

2 | Q. Okay. Does Beaver Creek, the part
3 | of Beaver Creek that borders this 101 acre
4 | parcel, does it have noticeable banks?

5 | A. Have what?

6 | Q. Noticeable banks?

7 | A. Yeah, it's got banks.

8 | Q. Okay. During the time that this
9 | 101 acre parcel has been flooded, was Beaver Creek
10 | out of its banks?

11 | A. Yes. That's the only time it
12 | floods is when its out of its banks.

13 | Q. Well, that was actually my next
14 | question. Is there any time when your property
15 | has been flooded that Beaver Creek was not out of
16 | it banks?

17 | A. No.

18 | Q. If you could turn in Exhibit A to
19 | the page that's labeled Exhibit 1. The piece of
20 | land that's shown there, is that this 101 acre
21 | parcel?

22 | A. Yes.

23 | Q. Now, there is an area that is
24 | shaded and it looks darker than the rest. Can you
25 | -- that suppose to represent something?

1 A. That's where it floods.

2 Q. Okay. Is there any particular time
3 when your property was flooded to that extent?

4 A. To this extent?

5 Q. U-hum.

6 A. I guess it's been lot of 'em since
7 '97.

8 Q. Okay. Did you shade in this area
9 that's shaded?

10 A. Yes, we took pictures of it, too,
11 when it's been flooded like that. That's the way
12 we got it.

13 Q. Okay. How did you decide where to
14 draw this line and what to shade it?

15 A. When you see it as much as I have you
16 know where to mark the lines.

17 Q. Now you said that this property is
18 adjacent to Beaver Creek, where is Beaver Creek in
19 this?

20 A. Right along the south edge there or
21 the, yeah, the south edge there.

22 Q. The south edge of your property is
23 Beaver Creek?

24 A. Yeah.

25 Q. There is another parcel of land

1 identified as 42-003500.0000. Do you know which
2 parcel that is?

3 A. Well that's the home place.

4 Q. By "home place" do you mean is that
5 a piece of land where your house is where you
6 live?

7 A. Yes.

8 Q. Okay. Do you also farm there or
9 just live there?

10 A. We farm that.

11 Q. Okay. Do you know approximately
12 what size that is in term of acreage?

13 A. The acreage?

14 Q. Um-hum. Approximate?

15 A. It tell here on the map.

16 Q. Okay.

17 A. There's 29 and 6/10th acres back
18 behind, that's this.

19 MS. CROSKEY: Let the record
20 reflect that the witness is pointing to?

21 A. A what?

22 Q. I'm just telling the court
23 reporter.

24 A. Oh.

25 MS. CROSKEY: Let the record

1 reflect that the witness is pointing to
2 Robert Highley Deposition Exhibit A, the
3 page that is marked Exhibit 2 and
4 identified as DON 000236.

5 Q. Mr. Highley, you said that this is
6 your home place. Can you tell me where is your
7 house in this photograph, can you see it?

8 A. The house is up in-front here on
9 Wabash Road?

10 Q. Along Wabash Road.

11 MR. FUSONIE: I think there might
12 be some confusion as to --

13 A. See, in the back, this is the back
14 side of the farm. Here is the front side here,
15 and here is the other part that floods on the 53
16 acres.

17 Q. Okay.

18 A. See here, this here floods, too,
19 and this here is that 29 acres, and here's where
20 we live up here, here's where the buildings is.

21 MS. CROSKY: Let -- Oh, okay.

22 MR. FUSONIE: Mr. Highley is
23 pointing west of Exhibit 2, Page 1, the
24 area shaded in on Exhibit 2, Page 1,
25 Mr. Highley just pointed directly west

1 of that area shaded in.

2 Q. Mr. Highley, let's actually look
3 at the next page.

4 MS. CROSKY: And for the record
5 this is Page 2 of Exhibit 2 which that's
6 apart of Exhibit A identified as
7 DON000237.

8 Q. And in the center of this
9 photograph there's a parcel of land that appears
10 to be outlined by light gray or white broader. Do
11 you recognize that particular property?

12 A. Which one are you talking about?

13 Q. The one that's outlined in white
14 here?

15 A. This here white part here?

16 MS. CROSKY: Let the record
17 reflect that the witness is pointing to
18 what appears to be --

19 A. That's the buildings there.

20 MR. FUSONIE: You can't talk over.

21 MR. HIGHLEY: Huh?

22 MR. FUSONIE: You can't talk over
23 her when she's talking.

24 MR. HIGHLEY: Oh.

25 MS. CROSKY: Let the record

1 reflect that the witness is pointing to
2 what appears to be a structure on the
3 parcel identified in DON000237.

4 Q. Is that a building that you were
5 pointing to?

6 A. Yeah, that's where we live.

7 Q. Okay. That's your house?

8 A. A house and tool shed and grain
9 bins.

10 Q. Okay. So there are a number of
11 structures that are shown there?

12 A. Yeah.

13 Q. Now in this particular photograph
14 there's a part that is shaded darker than the rest.
15 Can you tell me, does that represent something in
16 particular?

17 A. This down here you mean?

18 Q. Yes.

19 A. Well, that's what floods off of
20 this. It joins this other -- it lays together, but
21 that's the part that floods.

22 Q. Okay. So these two parcels that
23 appear in these two pages, they're back-to-back,
24 is that what you're saying?

25 A. Yeah.

1 MR. FUSONIE: "Two pages" meaning
2 the two pages to Exhibit 2 to Exhibit A.

3 MS. CROSKEY: Yes.

4 MR. FUSONIE: I want to make sure
5 we're clear.

6 A. Yeah, it's one farm, but there are
7 two deeds.

8 Q. Okay.

9 A. I don't know why, but there is.

10 Q. Lawyers. All right. So let's just
11 try to be clear. On the 1st page of Exhibit 2 we've
12 got a picture of a piece of land that's 29.6 acres.
13 Mr. Highley, it looks like, and tell me if I'm wrong,
14 it looks like you've shaded in the entire parcel of
15 land that you own, is that correct?

16 A. Yeah, that back there is all
17 floods.

18 Q. Okay. Is this particular parcel of
19 land adjacent to Beaver Creek?

20 A. That's Wabash River?

21 Q. Oh, I'm sorry. So this parcel of
22 land on the first page of Exhibit 2 is adjacent to
23 the Wabash River?

24 A. Right.

25 Q. Where is the Wabash River in this

1 | photograph?

2 | A. In this photograph it's right here.

3 | MS. CROSKY: Okay. Let the record
4 | reflect that the witness has pointed to
5 | the line that is not straight.

6 | MR. HIGHLEY: Right.

7 | MS. CROSKY: That runs north and
8 | south.

9 | Q. Is that right?

10 | A. That river runs north and south,
11 | yeah, northwest.

12 | MR. FUSONIE: On the east side of
13 | your property?

14 | MR. HIGHLEY: Yes.

15 | Q. Then if we could turn to the next
16 | page again, Page 2 of Exhibit 2 to Exhibit A?
17 | Yes, that one?

18 | A. This one?

19 | Q. Yes. Can you see either the Wabash
20 | River or Beaver Creek in this photograph?

21 | A. From this, you mean?

22 | Q. Yes.

23 | A. No, this here, it joins this, this
24 | back here.

25 | Q. It's actually -- the river is

1 | actually off of the photograph, it's not in the
2 | photograph?

3 | A. It's not on the photograph.

4 | Q. Do you know how many acres is in
5 | the parcel of land where your home is located?

6 | A. You mean the whole farm?

7 | Q. No, just the parcel that's on that
8 | particular deed?

9 | A. Well, it's got 53 acres here, 53
10 | and 8 hundreds.

11 | Q. Now, for this -- When did you, when
12 | did you acquire the 53 acres?

13 | A. I bought the whole thing at once.

14 | Q. The 53 and the 29 point 6?

15 | A. Yes, it all joined together, it's all
16 | one farm.

17 | Q. When did you buy that?

18 | A. '73.

19 | Q. Do you know how many times that
20 | property flooded between 1973 and 1997?

21 | A. Quite a few.

22 | MR. FUSONIE: Between 1973 and
23 | 1997?

24 | A. Oh, it wasn't too bad before,
25 | before '97.

1 Q. Okay.

2 A. Wasn't near as bad.

3 Q. How many times has it flooded since
4 1997?

5 A. Quite a few, I can't tell you how
6 many.

7 Q. Do you know any particular years
8 when this property has flooded?

9 A. Well '98 of August it was flooded.

10 Q. Any other times that you recall?

11 A. Well it's been flooded since then,
12 but I can't tell you when, I mean that was a bad
13 one there. They're bad, but after you got a crop
14 raised and then get it flooded out in August, why
15 it's hell.

16 Q. Okay. For these various times that
17 the property has been flooded how you taken any
18 photographs?

19 A. Since it's been flooded, you say?

20 Q. Yeah. When it's been flooded have
21 you ever taken any photographs?

22 A. Yes, we have.

23 Q. Did you ever take any photographs
24 before 1997?

25 A. Not that I know of.

1 Q. Okay. Did you take any photographs
2 after 1997?

3 A. Yes.

4 Q. Do you know in what years you took
5 those photographs?

6 A. '97 was one of 'em.

7 Q. Okay.

8 A. We took other photos, too, but I
9 can't remember.

10 Q. Okay. Do you still have those
11 photographs?

12 A. I don't know.

13 Q. Okay. When you took the
14 photographs did you, did you mark on them what
15 year you took them or anything like that?

16 A. Yes.

17 Q. In Exhibit A there is some parcels
18 identified in Photograph 7. One is identified as
19 29-004200.0000.

20 A. Yeah.

21 Q. Do you know which property that is?

22 A. That's the Post property.

23 Q. Okay. Do you know about how many
24 acres that is?

25 A. Well, there's 145 in one and 45 in

1 | the other.

2 | Q. Okay.

3 | A. And then they got 18 acres across
4 | the road or 19 I guess, but that don't flood, the
5 | one across the road.

6 | Q. The 19 acre parcel that's across
7 | the road does not flood?

8 | A. No. That's across from our own
9 | place.

10 | Q. Okay. Now for this parcel that I
11 | mentioned, the parcel number begins with 29, if
12 | you can turn to the last page of Exhibit A. It's
13 | actually marked Exhibit 3 and identified as
14 | DON000239. Do you recognize what's shown in that
15 | photograph?

16 | A. Yeah, I know all about this.

17 | Q. Okay. Is this the 145 acre piece
18 | of land that you mentioned?

19 | A. It floods.

20 | Q. Okay.

21 | A. All that dark part floods.

22 | Q. Okay. This is the piece of land
23 | that you lease from the Posts?

24 | A. Right.

25 | Q. This shaded area, did you do that

1 shading?

2 A. I shaded this. There's the
3 buildings up there.

4 Q. How did you, how did you decide to
5 shade this particular area?

6 A. Well because I know how it floods.
7 I've seen it so many times since '97, I don't need
8 -- I can shut my eyes and damn near run around
9 where it's at.

10 Q. Okay. Does either the Beaver Creek
11 or the Wabash River, is it -- are either of those
12 shown in this particular photograph?

13 A. Yes.

14 Q. What's shown in this photograph?

15 A. Down there at the
16 bottom.

17 Q. At the southern edge of the 45
18 acre parcel?

19 A. Yeah.

20 Q. What is it that's at that southern
21 edge?

22 A. What?

23 Q. What is it that's at -- Is it the
24 Beaver Creek or is it the Wabash River?

25 A. That's Wabash River.

1 Q. Okay. Is there any particular time
2 when this property has been flooded that the
3 Wabash River was not out of its bank?

4 A. No.

5 Q. Do you know whether there's any
6 organization that is established to take care of
7 the Wabash River?

8 MR. FUSONIE: Objection. Vague.

9 Q. Do you know of the organization
10 that's referred to Wabash River Conservancy?

11 A. Well I don't know what it would be.
12 The Conservancy District takes care of it from
13 beaver on. After that, from there to the state
14 line, nobody takes care of the river.

15 Q. Do you know if there's an
16 organization that's called Wabash River
17 Conservancy?

18 A. Yeah, but that's up south. That's
19 beyond south of where beaver dumps in. They ain't
20 got nothing to do with this.

21 Q. Okay. So the organization that's
22 known as the Wabash River Conservancy they take
23 care of apart of the river?

24 A. Well, they help but they don't do
25 much, it's all up south.

1 Q. Mr. Highley, also in Photograph 7
2 of this building affidavit, there is another
3 parcel described as 28-011400.0000. Do you know
4 which parcel of land that is?

5 A. Well, that's the one we're looking
6 at.

7 Q. Actually we were looking at the
8 parcel of land that's shown in Exhibit 3 to
9 Exhibit A and that parcel number begins with 29
10 and it's 140 -- yeah, 145 acres. The one that I'm
11 asking you about, it begins with 28. Do you know
12 which one that is? It says that you also lease it
13 from Post?

14 A. Yeah, yeah. Okay.

15 Q. Can you tell me how many acres is
16 that parcel?

17 A. In the whole thing?

18 Q. The one that begins with 28, not
19 the 145 acre?

20 A. Okay. That's that 45 acres then.

21 Q. 45 acre.

22 A. Yeah.

23 Q. Okay. Where is that particular
24 parcel located in relationship to Beaver Creek?

25 A. Beaver Creek butts up again. I

1 mean that's right where Beaver Creek dumps into
2 the Wabash River at the east corner, southeast
3 corner.

4 Q. The southeast corner of where the
5 two meet beaver and the Wabash River?

6 A. Yeah.

7 Q. Okay. And your affidavit says that
8 you lease that from Post since 1983?

9 A. Right.

10 Q. From 1983 until 1997, do you know
11 how many times that 45 acre parcel has flooded?

12 A. Not near, nothing like it, just the
13 low places it was before, before '97.

14 Q. Okay. So in are low places on
15 that parcel? What do you mean by "low places?"

16 A. Like your bios where it floods
17 out.

18 Q. Okay. How many low places are in
19 that 45 acres?

20 A. Oh, I don't think there's over a
21 couple.

22 Q. Okay. How many times has that 45
23 acre parcel flooded between 1997 and now?

24 A. Too many.

25 Q. Do you remember any specific

1 instances when that property has flooded, any
2 particular years?

3 A. '98 was a bad one.

4 Q. Any others?

5 A. Yeah, there's been some others but
6 I can't tell you when.

7 Q. Okay. Now for that particular
8 parcel, has there ever been a time when it's been
9 flooded that the Beaver Creek was not out of its
10 bank?

11 A. Not that I know of.

12 Q. Were there any times that that
13 parcel has been flooded that the Wabash River was
14 not out of its bank?

15 A. No.

16 Q. So these low places that you
17 described, they've never been flooded when the
18 creek was not out of its banks?

19 A. Not real bad.

20 Q. Okay.

21 A. You get a flash rain, why, you get
22 some of that in them low places, but not like a
23 flood.

24 Q. Okay. I guess maybe I should ask
25 you then. What is your understanding of "flood,"

1 | what constitutes flood?

2 | A. You want me to tell you the truth?

3 | Q. Yes.

4 | A. When they keep the dame lake too
5 | high up there and they don't get it down in the
6 | winter time so that we can get some water so it's
7 | got some room for water in the spring when it all
8 | -- yet have to keep this full, it all runs our way
9 | and floods us, that's the answer.

10 | Q. Okay. Now you mentioned keeping
11 | the lake at a particular level. Do you know what
12 | level that is?

13 | A. Yeah, it's full.

14 | Q. Okay. What do you mean by "full?"

15 | Like how --

16 | A. When it's running over the top.

17 | Q. Okay. Over the top of what?

18 | A. The waste way.

19 | Q. Okay.

20 | A. And another thing, they don't, they
21 | don't open them tiles up, the gates up so they can
22 | get it down so it's got room to fill up in the
23 | winter time. They keep it full.

24 | Q. Okay.

25 | A. They've never opened it since they

1 put that new in.

2 Q. They've never opened what?

3 A. Them small gates that they got the
4 tile at the bottom so they can open them up and
5 run some out. They've never opened them since.

6 Q. Where are the gates located?

7 A. Down there at the waste way.

8 Q. Okay. Is that on the west end of
9 the lake?

10 A. Yes.

11 Q. Would you say that something is
12 different now, meaning after 1997, than what it
13 was before?

14 A. Yes, they opened the gates before
15 and they don't now.

16 Q. Okay. So before 1997 what level
17 was the lake kept at?

18 A. Before 1997?

19 Q. Um-hum.

20 MR. FUSONIE: Objection.

21 A. They kept it down anyway.

22 Q. Okay.

23 A. We wasn't bothered with floods like
24 we are now.

25 Q. Okay. How would you measure the

1 lake level?

2 A. Right now?

3 MR. FUSONIE: Objection.

4 Q. Any time, like is there away to
5 look at it and measure what the level is?

6 MR. FUSONIE: Objection.

7 Q. Okay. Let me ask a different
8 question. How do you know that the lake level is
9 different now compared to what it was before 1997?

10 A. Well if it's running over, why, the
11 lake level is full.

12 Q. Okay. There are two other
13 properties that are mentioned in your affidavit
14 that we haven't talked about yet. One is
15 identified as 28-013500.0000. Do you know which
16 property that is?

17 A. Well it's the Post's place.

18 Q. It's another Post properties. Do
19 you know how many acres that property is?

20 A. Well, it's 145 acres.

21 Q. Are in two 145 acre parcels that
22 are owned by Post that you lease?

23 A. Well, that's the 20 --

24 Q. Let me ask. Do you lease any land
25 from anyone other than Post?

1 A. Yes, Ransbottoms.

2 MR. FUSONIE: Hold on. Off the
3 record.

4 (Off the record)

5 Q. Mr. Highley, did you say that you
6 lease two parcels of land from Ransbottom?

7 A. One part.

8 Q. Just one. Okay. Do you -- Other
9 than the two parcels that you lease from Post and
10 the parcel that you lease from Ransbottom, do you
11 lease any property from anyone else?

12 A. No.

13 Q. Okay.

14 MR. FUSONIE: There still may be
15 confusion when he says "one parcel." Is
16 that two separate deeds from Ransbottom,
17 for the Ransbottom property?

18 MR. HIGHLEY: Well it's -- they own
19 it together.

20 MR. FUSONIE: Ransbottom and Carr?

21 MR. HIGHLEY: Yeah. Jean Carr and
22 Jack Ransbottom were brother and sister,
23 and Jack died, so Bill is the oldest.
24 That's the reason it's Bill Ransbottom
25 and Jean Carr. Do you understand what I

1 mean?

2 MR. FUSONIE: Yeah.

3 Q. Let me ask you. How many acres do
4 you lease from Ransbottom?

5 A. 133 acres I believe it is. I
6 believe they changed it to 135 now, I don't know
7 why.

8 Q. Okay. How long have you leased 130
9 or so acres from Ransbottom?

10 A. Since 19 -- I think it was about
11 19. It was in the '80's.

12 Q. Okay. Are these 130 acres are they
13 all together contiguous?

14 A. Yeah.

15 Q. Okay. There aren't any --

16 A. There some on each side of
17 beaver.

18 Q. So --

19 A. That's on the east side of Beaver.

20 Q. Beaver Creek runs through the 130
21 or so acres?

22 A. Yeah.

23 Q. Okay.

24 A. And the river is on the south side
25 of it.

1 Q. Okay. So the 130 or so acres that
2 you lease from Ransbottom, Beaver Creek runs
3 through it, and the Wabash River is also adjacent?

4 A. Yeah, it's, it goes across the
5 corner of it on the southwest corner.

6 Q. Okay. Are you saying that that
7 property, the 130 or so acres floods?

8 A. Yes, differently.

9 Q. We don't have any photographs of
10 those, of that parcel. Out of the 130 or so
11 acres, how much of it would you say floods?

12 A. All the tillable ground floods
13 except for maybe about three or four acres.

14 Q. Okay. So is that property used for
15 something other than agriculture?

16 A. No.

17 Q. You said -- Why isn't all of the
18 ground tillable?

19 A. What are you say, why is it all
20 tillable?

21 Q. Why is it not all tillable?

22 A. Well, it's woods.

23 Q. Okay.

24 A. Patch of woods on it, and then
25 where building was and the building there now, but

1 | it's pure brush woods.

2 | Q. Where are the woods on this
3 | property in relationship to Beaver Creek?

4 | A. Well it's on -- part of it on the
5 | northeast side, and the other part was -- There
6 | isn't -- It don't really show. It was on the
7 | other side of the river or beaver on the south
8 | side of the beaver, but it's east of where they
9 | -- their east line is, and it -- they -- you
10 | really can't, you really can't prove it. It's 166
11 | acres altogether, the whole farm, but there's 133
12 | or 35 tillable.

13 | Q. Okay. That's what I was looking
14 | for. Thank you.

15 | MR. FUSONIE: I was gonna get
16 | there.

17 | Q. We've got a lot of property to talk
18 | about. Do you have crop insurance on any of your
19 | properties?

20 | A. Yes.

21 | Q. Do you maintain crop insurance on
22 | all of your properties that you own?

23 | A. Yes.

24 | Q. Do you maintain crop insurance on
25 | all of the properties that you lease?

1 A. Yes.

2 Q. Have you ever made any claims
3 against your crop insurance?

4 A. Yes.

5 Q. Do you know in particular which
6 years you've made claim?

7 A. I can't really completely tell you,
8 this last year we didn't have none, no crop
9 insurance except for some replant.

10 Q. And by "last year" do you mean
11 2009?

12 A. Yeah.

13 Q. And what do you mean "replant,"
14 what type of claim is that?

15 A. Well, we had big rain and we had to
16 go in and do some patching.

17 Q. Do you remember when that big rain
18 happened?

19 A. It was in May, I don't know when it
20 was?

21 Q. May of 2009?

22 A. 2009, yeah.

23 Q. Do you know how long it rained?

24 A. I don't remember, but it was just a
25 big flash rain overnight. It made everything wet

1 | and some of the corn didn't come up, but it -- I had
2 | perfect stands of beans, and corn, we had to do some
3 | patching.

4 | Q. Okay.

5 | A. In the early plant.

6 | Q. Did that particular rain cause
7 | Beaver Creek to be out of its bank?

8 | A. No.

9 | Q. Did it cause Wabash River to be out
10 | of its bank?

11 | A. No.

12 | (Handwritten document, marked for
13 | identification as Respondent's -
 Robert Highley - Exhibit B.)

14 | Q. I hand you a copy of what we have
15 | marked as Exhibit B. Take a look at that and when
16 | you have enough time or when you've had enough
17 | time to look at it, let me know.

18 | A. What is this?

19 | Q. Well I don't know. Is that your
20 | handwriting?

21 | A. I don't think.

22 | Q. Okay. Do you recognize the
23 | handwriting?

24 | A. No, I don't.

25 | Q. Okay.

1 A. Might be my wife's.

2 Q. Well, you don't have to guess,
3 we'll just ask her later.

4 MR. HIGHLEY: What?

5 MR. FUSONIE: You don't have to
6 guess.

7 MR. HIGHLEY: Well, I guess.

8 MR. FUSONIE: No, you don't guess.

9 MR. HIGHLEY: Oh, I don't know.

10 Q. We'll just put that one aside, and
11 if you could take a look at this next one, Exhibit
12 C. When you've had enough time to look at it,
13 just let me know.

14 A. I don't know what it is.

15 Q. Okay. For your farming operation,
16 do you take care of the paperwork?

17 A. She does most of that.

18 Q. "She" meaning your wife?

19 A. Yeah.

20 Q. So you're the one that goes out and
21 gets your hands dirty?

22 A. Yeah.

23 Q. And she does the rest? All right.

24 Mr. Highley, of all of the parcels
25 that you farm, the ones that you own and the ones

1 that you lease, are any of them not adjacent to
2 either Beaver Creek or the Wabash River?

3 A. Well the one we got across the
4 road, my wife owns, that's not adjacent to any of
5 'em.

6 Q. How many acres is that?

7 A. 54. That's not in this.

8 Q. Okay. So of all of the ones that
9 are adjacent to either Beaver Creek or the Wabash
10 River, do you have any filter strips?

11 A. No.

12 Q. Do you know what a filter strip is?

13 A. Yes. I don't like 'em. When I
14 farm, I farm out to the edge, and I have to clean
15 up after floods, and I'm sick of it, and I won't
16 say anymore.

17 Q. So when you say you farm all the
18 way out to the edge, meaning you farm up to the
19 bank?

20 A. Yes. After a flood you know what
21 you got, a bunch a trash to clean up, clean those
22 up.

23 MS. CROSKY: I don't have any
24 other questions.

25 DIRECT EXAMINATION

1 BY MR. FUSONIE:

2 Q. How old are you, Mr. Highley?

3 A. 79.

4 Q. So you've lived in Mercer County
5 for 79 years?

6 A. Yes.

7 MR. FUSONIE: I don't have any
8 other questions. Thank's.

9

10

Robert Highley
Robert Highley

11

12

(At 2:00 p.m., the deposition concluded)

13

14

MARTHA C. BREWER, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

Martha Brewer 3/15/10
Notary Public

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ERRATA SHEET

I, Robert Higley, have read the transcript of my deposition taken in this pending matter or the same has been read to me. I have noted all changes in form or substance on this sheet this 15 day of March, 2010.

PAGE LINE

CORRECTION OR CHANGE AND REASON:

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STATE OF OHIO)
) SS:
COUNTY OF MERCER)

I, Terence M. Holmes, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do hereby certify that before the giving of his aforesaid deposition, the said ROBERT E. HIGHLEY was by me first duly sworn to depose the truth, the whole truth, and nothing but the truth, that the foregoing is the deposition given at said time and place by said ROBERT E. HIGHLEY; that said deposition was taken in all respects pursuant to agreement and stipulations of counsel hereinbefore set forth; that said deposition was taken by me in stenotype and transcribed into typewriting by me; that I am neither a relative of nor attorney for any of the parties to this cause, nor relative of nor employee or any of their counsel, and have no interest whatever in the result of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Cincinnati, Ohio, this 27th day of February, 2010.



My Commission Expires: Terence M. Holmes
July 28, 2012 Notary Public - State of Ohio

Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000 have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

9. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000 have flooded every year and most years, they have flooded several times. On each occasion, Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, and 42-004500.0000, 29-004200.0000, and 28-011400.0000 were inundated with water at depths varying from eight to ten feet, and Mercer County Parcel Numbers 28-013500.0000 and 28-013400.0000 with depths varying from one to six feet of water.

10. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000 flood more rapidly and remain flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, and 28-011400.0000 remained inundated with water for a period of one week to three weeks and Mercer County Parcel Numbers 28-013500.0000 and 28-013400.0000 remained inundated for up to one month.

11. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000,

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29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000 rarely flooded, never flooded as much, never flooded over as large an area, and never flooded for as long.

12. To date, the most invasive flood occurred in 2003 with approximately 77 acres of Mercer County Parcel Number 26-041400.0000 being flooded with approximately eight to ten feet of water for approximately up to three weeks. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Number 26-041400 0000 is attached hereto as Exhibit 1. I have shaded in the area of the parcel that was flooded in 2003.

13. To date, the most invasive flood occurred in 2003 with approximately 39 acres of Mercer County Parcel Numbers 42-003500.0000 and 42-004500.0000 being flooded with approximately eight to ten feet of water for approximately up to three weeks. A true and accurate copy of black and white aerials from the Mercer County Auditor's website of Mercer County Parcel Numbers 42-003500.0000 and 42-004500.0000 are attached hereto as Exhibit 2. I have shaded in the area of each parcel that was flooded in 2003.

14. To date, the most invasive flood occurred in 2003 with approximately 124 acres of Mercer County Parcel Number 29-004200.0000 and all of Mercer County Parcel Number 28-011400.0000 being flooded with approximately eight to ten feet of water for approximately up to three weeks. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Number 29-004200.0000 is attached hereto as Exhibit 3. I have shaded in the area of that parcel that was flooded in 2003.

15. To date, the most invasive flood occurred in 2003 with approximately 22 acres of Mercer County Parcel Number 28-013500.0000 and 142 acres of Mercer County Parcel Number

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28-013400.0000 being flooded with approximately one to six feet of water for approximately up to one month.

16. Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000 also experienced severe flooding in 2005. Indeed, the flooding in January 2005 was so extensive that it flooded the first five roads that cross Beaver Creek west of the spillway.

17. Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000 were again flooded as recently as spring 2009.

18. As a direct result of the flooding, Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000 have suffered damage in the form of crop losses, field and bank erosion, the deposit of silt, sand, stones, and other debris, soil compaction, drainage tile failure, and the destruction of trees, bushes, shrubs, vines and saplings.

19. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 26-041400.0000, 42-003500.0000, 42-004500.0000, 29-004200.0000, 28-011400.0000, 28-013500.0000, and 28-013400.0000.

20. I believe that the intermittent, continuing, persistent, frequent, and increased severe flooding from the western spillway of Grand Lake St. Mary's will inevitably recur as a result of ODNR's replacement of the western spillway and ODNR's current management practices.

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FURTHER AFFIANT SAYETH NAUGHT.

Robert E. Highley
Robert E. Highley

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

Theresa E. Baucher
Notary Public
THERESA E. BAUCHER
ROTARY PUBLIC, STATE OF OHIO
My Commission Expires March 4, 2013

DON000232

EXHIBIT 1
TO
AFFIDAVIT OF ROBERT E. HIGHLEY

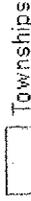
DON000233

Mercer County Ohio



Legend

Administrative

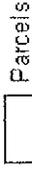


Townships



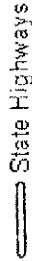
Neighborhoods

Parcels

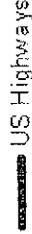


Parcels

Transportation



State Highways



US Highways

Water



Lake



Streams

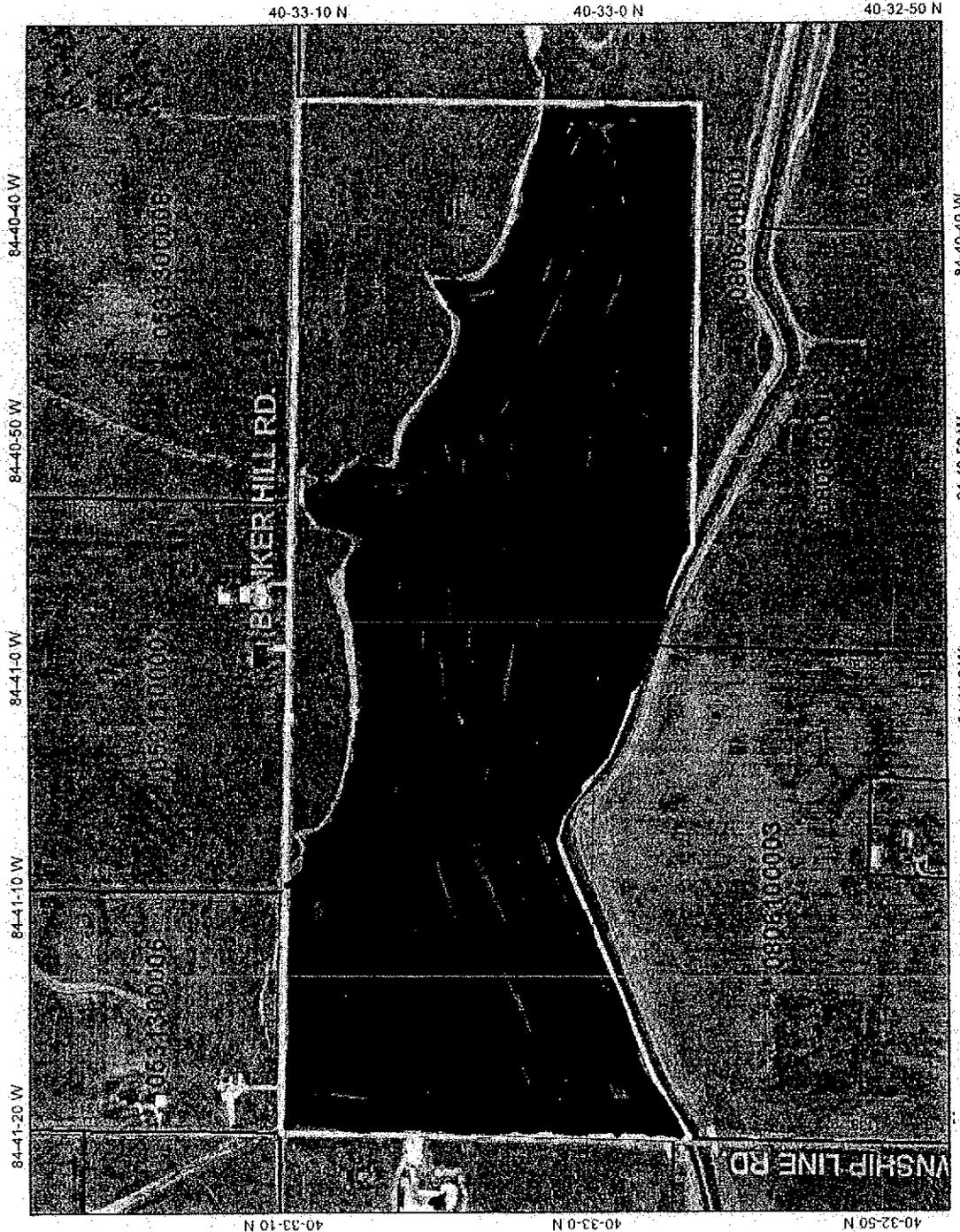
tabbles

EXHIBIT

1



Scale: 1:6,612



0 650 1300 1950 ft.

Map center: 1362040, 329766

This map is a user-generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Robert E. Highley and Patricia L. Highley
-0- Bunker Hill Rd.
Parcel No.: 26-041400.0000 - 101 acres

EXHIBIT 2
TO
AFFIDAVIT OF ROBERT E. HIGHLEY

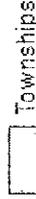
DON000235

Mercer County Ohio



Legend

Administrative



Townships



Neighborhoods

Parcels



Parcels

Transportation



State Highways



US Highways

Water



Lake

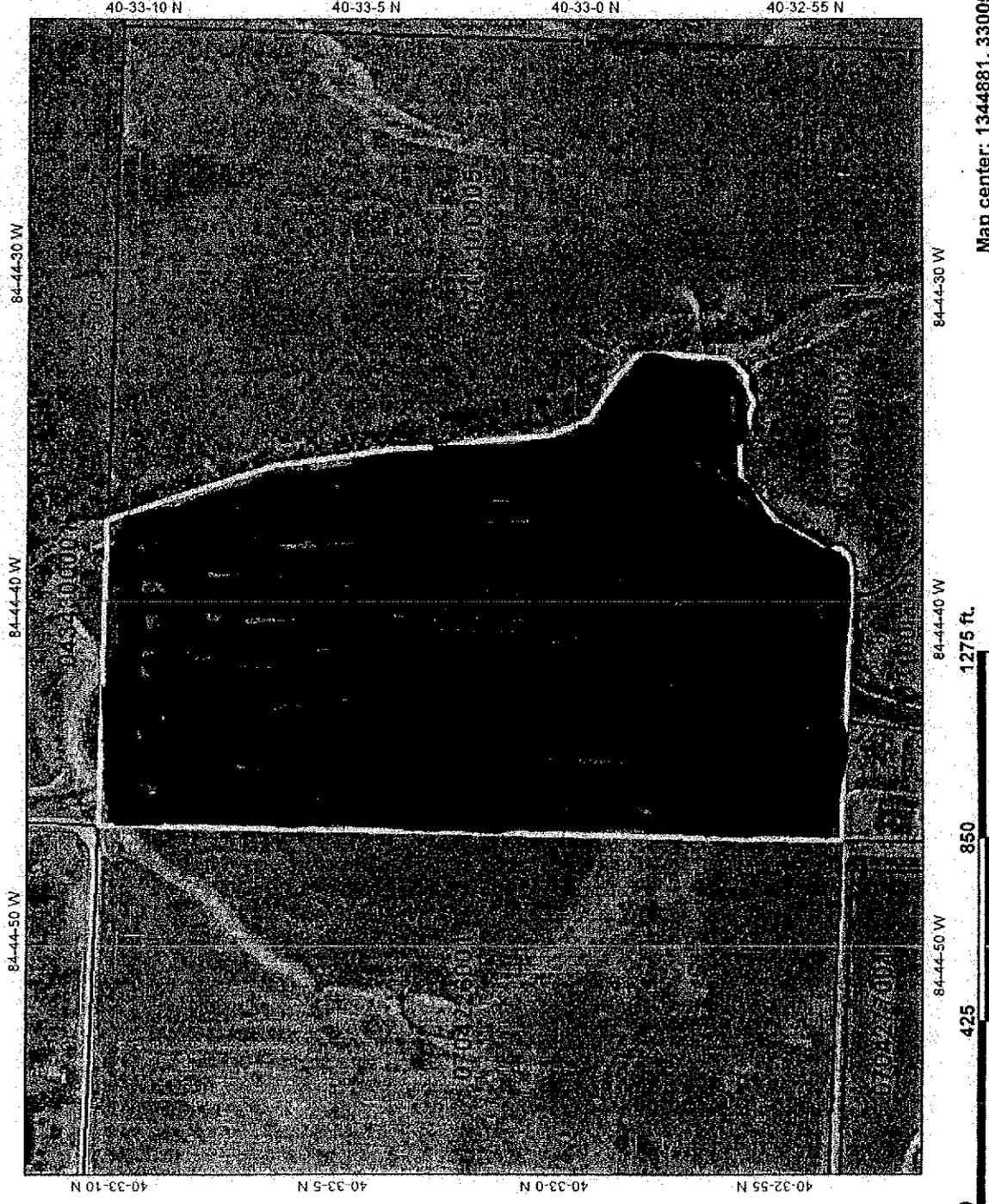


Streams

tabbies'

EXHIBIT

2



Scale: 1:4,373



Map center: 1344881, 330059

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Robert E. Hightley and Patricia L. Hightley
-0- Wabash Rd.
Parcel No.: 42-003500.0000 - 29.60 acres

Mercer County Ohio



Legend

Administrative



Townships



Neighborhoods

Parcels



Parcels

Transportation



State Highways



US Highways

Water



Lake

Streams



Scale: 1:4,409



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Robert E. Highley and Patricia L. Highley
 6888 Wabash Rd.
 Parcel No.: 42-004500.0000 - 53.08 acres

DON000237

EXHIBIT 3
TO
AFFIDAVIT OF ROBERT E. HIGHLEY

DON000238

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

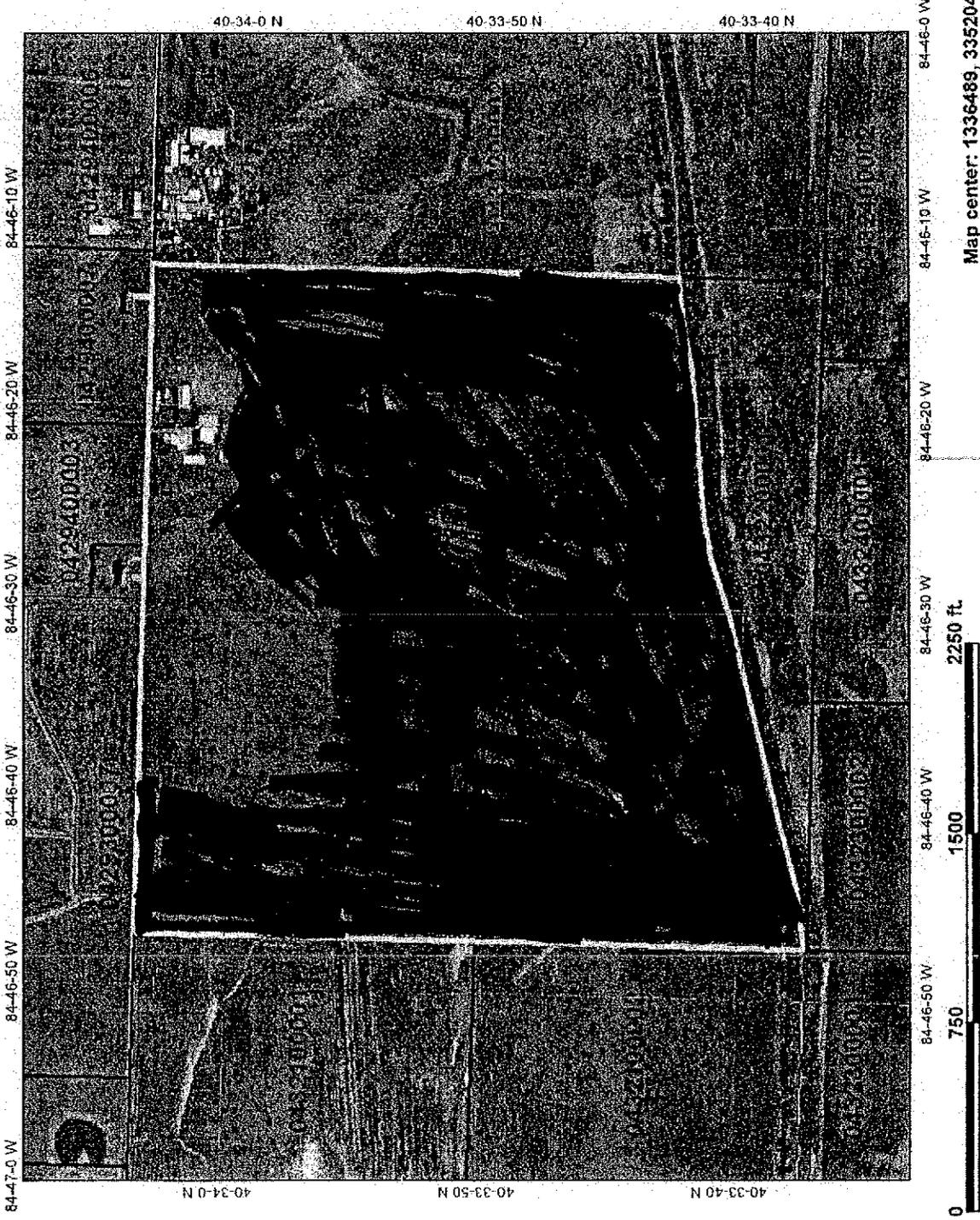
- Parcels

Transportation

- State Highways
- US Highways

Water

- Lake
- Streams



84-46-10 W 84-46-20 W 84-46-30 W 84-46-40 W 84-46-50 W 84-46-0 W

40-34-0 N 40-33-50 N 40-33-40 N

0 750 1500 2250 ft

Scale: 1:7,500

Map center: 1336489, 335204

This map is a user-generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Opal L. Post
 810 Carmel Church Rd.
 Parcel No.: 29-004200.0000 - 145 acres

DON000239

tabbles' **3** EXHIBIT

Sambling

Income

"97"

Expenses
S.S.

Prudential
American Income
All American Life
Merces Landmark
Ft Recovery Equity 100%

Election Board
Crop Ins payoff Rebate \$47.00 + 1661.00 \$1708.00

Machinery Lease

Cash Rent

Grain Sales

Interest Coldwater People
Key Bank
Merces Saving Bank
Community First

Govt pay.

DON001824

Robert Highley
Deposition Ex. B

"Income"
"98"

Govt pymt. ⁶⁶₉
12.

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Mercer Savings Bank
Community Hurst BOND

Prudential Ins. ^{36.9}
^{33.5}
59

Patronage
Mercer Landmark #2
Mercer Landmark #1
Farmers Hail Ins.
~~Mercer Landmark #4~~
#Recovery 212

Gap Insurance
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TAB 19

IN THE SUPREME COURT OF OHIO

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

CASE NO. 09-1292

VS.
SEAN D. LOGAN, DIRECTOR
OHIO DEPARTMENT OF
NATURAL RESOURCES
2045 MORSE ROAD
COLUMBUS, OHIO 43229-6693
AND
OHIO DEPARTMENT OF
NATURAL RESOURCES
2045 MORSE ROAD
COLUMBUS, OHIO 43229-6693

Deposition of DANIEL W. JOHNSMAN,

Relator, was taken by the Respondents as on
cross-examination, pursuant to the Ohio Civil
Rules of Procedure at Central Service Building,
220 West Livingston Street, Celina, Ohio 45822, on
Tuesday, February 2, 2010, at 3:15 p.m., before
Terence M. Holmes, Professional Court Reporter,
and Notary Public within and for the State of
Ohio.

HOLMES REPORTING & VIDEO
982 Havensport Drive
Cincinnati, Ohio 45240
(513) 342-2088
(513) 342-1820 Fax
www.OhioDeposition.com

1 APPEARANCES:

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On Behalf of Ohio Department of Natural
Resources:

Dale T. Vitale, Esq., Chief
Environmental Enforcement
30 East Broad Street, Floor 25
Columbus, Ohio 43215-3400

On Behalf of Relators:

Thomas H. Fusonie, Esq.
and
Martha C. Brewer
Attorney at Law
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43216-1008

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C O N T E N T S

WITNESSES	DIRECT	CROSS
Daniel Johnsman	-	Mr. Vitale-4

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of Daniel Johnsman	7
B	Affidavit of Daniel Johnsman	9
C	Affidavit of Daniel Johnsman	15
	Supplemental	

DANIEL JOHNSMAN

1
2 of lawful age, a witness herein, having been duly
3 sworn, as hereinafter certified, was examined and
4 deposed as follows:

5 CROSS-EXAMINATION

6 BY MR. VITALE:

7 Q. Mr. Johnsman, as I mentioned, I'm
8 Dale Vitale and I'm one of the lawyers working for
9 the Department of Natural Resources on the case.
10 Have you had your deposition taken before?

11 A. No.

12 Q. Okay. Well, it's really nothing
13 more than asking some questions and you given
14 answers, and if you don't understand what I'm
15 saying, then --

16 A. Um-hum.

17 Q. -- don't be afraid to ask me to
18 repeat or clarify, or make sure you understand
19 what I'm asking you before you give the answer.

20 A. Okay.

21 Q. And I'll sure Mr. Fusonie has
22 probably explained it to you.

23 A. Okay. Yeah.

24 Q. And follow that, follow those
25 instructions, and the only one I have for you is

1 that Mr. Holmes needs to hear your answer to this.

2 A. Okay.

3 Q. So that's, that's pretty much all,
4 all that has to happen. If you would, state your
5 name and your address for the record?

6 A. Dan Johnsman, 4061 State Route 29,
7 Celina, Ohio 45822.

8 Q. And how long have you lived at that
9 address, Mr. Johnsman?

10 A. I've lived there two and a half
11 years.

12 Q. Have you lived in Celina longer
13 than that?

14 A. Yes.

15 Q. And where did you live before that?

16 A. My parent's address.

17 Q. And that is?

18 A. 6980 Fleetfoot Celina, Ohio.

19 Q. And how long did you live there?

20 A. Approximately 25 years.

21 Q. And what is your occupation?

22 A. I work as an engineer.

23 Q. And where is that?

24 A. General Dynamics. I farm part time.

25 Q. How long have you been farming?

1 A. All my life, 46 years.

2 Q. And where is it that you farm?

3 A. The property that is at my
4 residence, there's 35 acres, and then there's
5 another 25 acres across the road.

6 Q. And is it a crop farm or do you do
7 also livestock and other things?

8 A. Currently it's just crop. I said
9 "all my life," I helped my brothers and my dad
10 going up on the farm.

11 Q. Um-hum. What crops?

12 A. Corn and beans.

13 Q. The area or excuse me, the two, the
14 two parcels that you're farming, where are they in
15 relationship to Beaver Creek?

16 A. One is directly adjacent to the
17 beaver, and other one is across the road, across
18 29 on the north side of 29.

19 Q. So the beaver is south of the one
20 parcel?

21 A. Yes.

22 Q. And then you have the road and then
23 you have your second parcel?

24 A. Yes.

25 Q. Are both of those parcels subject

1 to flooding?

2 A. Yes.

3 Q. And how often have you experienced
4 flooding on those parcels?

5 A. Can I look at my affidavit or?

6 Q. Sure. Let's mark this as

7 Respondent's A.

8 (Daniel Johnsman Affidavit, marked for
9 identification as Respondent's Daniel
10 Johnsman Exhibit A.)

11 A. Is -- Oh, okay. Okay.

12 MR. FUSONIE: Thinking of the other
13 one?

14 MR. JOHNSMAN: Well, yeah.

15 Q. Okay. Well, for a moment let's
16 just identify what you've --

17 A. Okay.

18 Q. -- been handed. I've handed you
19 something that's been marked Respondent's Exhibit
20 A, have you seen that before?

21 A. This, yes.

22 Q. Okay.

23 A. Um-hum.

24 Q. And that appears to at the top say
25 that it's the affidavit of Daniel W. Johnsman,
that is you, is that correct?

1 A. Yes, it is.

2 Q. And on the back side of it, is that
3 your signature on it?

4 A. Yes, it is.

5 Q. Okay. And did you appear in front
6 of a notary and sign that?

7 A. Yes. Could you repeat the question
8 again?

9 Q. I was asking how often the parcels
10 that you farm have been subject to flooding?

11 A. Sometimes several times a year.

12 Q. Now would that be the same for both
13 the southern most and northern-most parcel or does
14 one flood more frequently than the other?

15 A. The southern definitely floods more
16 than the northern parcel.

17 Q. The one closer to the --

18 A. The beaver, yes.

19 Q. The beaver?

20 A. Yes.

21 Q. By the way, if I could, how far are
22 you from the Wabash?

23 A. I don't know the exact distance, 8
24 to 10 miles.

25 Q. Okay. And the Wabash is 8 to 10

1 miles to your west?

2 A. To the west, yes.

3 MR. VITALE: Let's mark this one as
4 B, please.

5 (Affidavit of Daniel W. Johnsman, marked
6 for identification as Respondent's
Daniel Johnsman Exhibit B.)

7 Q. And that -- I'm showing you what
8 has been marked as Respondent's Exhibit B, that
9 also indicates at the top that it's the affidavit
10 of Daniel W. Johnsman?

11 A. Yes.

12 Q. Which I'm assuming is still you.
13 And could you go to the signature page on that
14 one, and can you confirm that that is your
15 signature?

16 A. Yes.

17 Q. What's the date on which you signed
18 that on?

19 A. 25th day of August 2009.

20 Q. And Respondent's Exhibit A what
21 date that you sign that on?

22 A. 19th day of June 2009.

23 Q. So looking at B, why did you do
24 Respondent's Exhibit B?

25 MR. FUSONIE: Objection. Instruct

1 you not to answer.

2 MR. JOHNSMAN: Okay.

3 MR. VITALE: What's your basis for
4 your objection?

5 MR. FUSONIE: You're asking him why
6 he signed an affidavit.

7 MR. VITALE: I'm not asking for any
8 advice.

9 MR. FUSONIE: And one was attached
10 to the complaint, the other one was part
11 of the presentation of evidence.

12 You're asking him why he signed an
13 affidavit. Am I gonna get to ask your
14 witnesses why they signed affidavits?

15 MR. FUSONIE: I am not asking for
16 any advice that he sought or you gave,
17 but if your objection is because of
18 that, then I don't want an answer. I
19 don't want an answer. Could I see
20 Respondent's Exhibit B then? Thank you.

21 Q. Looking at Respondent's Exhibit B
22 again. There is a picture attached to -- excuse
23 me, there's a map attached to Exhibit 1, could you
24 tell me what that is?

25 A. This came off the Auditor's website.

1 It shows my tract of land.

2 Q. And how is your tract of land
3 depicted on that, on that particular page?

4 A. Inside the white lines.

5 Q. Is that both parcels or is that
6 just one of them?

7 A. Just the one.

8 Q. When you say "just the one" is that
9 the southern-most parcel?

10 A. Yes, it is the southern most.

11 Q. Okay. And what is the darkened
12 area on that particular page?

13 A. The darkened area shows the
14 flooding area, the worst flooding that we saw in
15 2003.

16 Q. And how did you -- well, excuse me.
17 Who put the darkened area on that?

18 A. I did.

19 Q. How did you calculate where that
20 actually was?

21 A. This is kind of an approximation.
22 I do think it -- Should I go ahead and say this?
23 It does show along here, and this appears to be a
24 trash line going down along through here. You can
25 actually see it along the properties.

1 Q. And you are referring to a, lack of
2 a better word, a squiggly white line to the east
3 of your tract of land, is that right?

4 A. Um-hum. Yes.

5 Q. And you call that, what, I'm sorry?

6 A. The trash line. That was the high
7 point of the water when any debris that are
8 floating on the water will end up kind of like
9 stuff that washes up on the bank.

10 Q. So kind of like a water mark from
11 the flood or?

12 A. Yeah, mark from the flood, yes, and
13 you can see the adjacent property. There's a
14 trash line that comes approximately up to here.
15 The next property is a little bit harder to see,
16 because there is a woods here, probably wouldn't
17 see it, but then on the next property you can see
18 another white line that goes along that. I'd walk
19 the field and dealt with trash and it certainly
20 has gotten worse in the last few years cleaning
21 that up, picking up junk.

22 Q. There's another white line to the
23 north of where the flood indication is that runs
24 through your property?

25 A. This?

1 Q. Yes. Could you tell me what that
2 is, if you know?

3 A. This is a waterway. The waterway
4 is to help run off control erosion in land, it's
5 actually seeded grass.

6 Q. Is that something that was
7 naturally occurring or something that you
8 installed to help run the water off?

9 A. It was installed.

10 Q. Did you do it or did somebody do
11 that for you?

12 A. There was a waterway in there when
13 I purchased the property in 1985, but in
14 2002 we went back and redid the waterway. I
15 Reworked it because it was having severe erosion,
16 it was gullied, there were tiles that had
17 suckholes in em, broken-down tiles.

18 Q. Now, you mentioned "tiles," is this
19 particular tract of land tiled?

20 A. Yes, it is. There's a mane that
21 runs through it, and there are a couple feeders
22 into it.

23 Q. And where -- Feeders from, just on
24 your property?

25 A. Actually I think some of 'em come

1 | from this property?

2 | Q. To the west?

3 | A. Yeah, I don't know all the details
4 | where they come in, but there is like a 16 inch
5 | tile that runs down through here, runs across the
6 | waterway and runs down into the beaver. They are
7 | some feeders that are attached to the sides. I
8 | don't know all the, where everything is at. It
9 | was done before I purchased the property, so.

10 | Q. Have you installed any additional
11 | field tiles into the property since you've owned
12 | it?

13 | A. No.

14 | Q. And is the property to the north
15 | also tiled?

16 | A. To the north, specifically my
17 | property?

18 | Q. Yes, your property?

19 | A. Yes, it is, yes.

20 | Q. Okay. And attached to Respondent's
21 | Exhibit B at -- I believe it's Exhibit 2 is a
22 | picture, could you tell me what that is?

23 | A. This is a picture that I took of
24 | the flooding in 2003. It was around the beginning
25 | of July when that happened. This was off a road

1 | near my property.

2 | Q. And is -- Off a road at your
3 | property, but the flooding is on your property; is
4 | that what that shows?

5 | A. No, it is not.

6 | Q. Okay.

7 | A. My property is further west. It
8 | was hard to get to my property at that point.
9 | This is just an adjacent road to it.

10 | Q. But that is a picture that you
11 | actually took yourself?

12 | A. Yes, it is.

13 | (Supplemental Affidavit of Daniel W.
14 | Johnsman, marked for identification
15 | as Respondent's Daniel Johnsman
16 | Exhibit C.)

17 | MR. FUSONIE: Is there a question
18 | pending?

19 | MR. VITALE: No. I wanted him --
20 | let 'em have a chance to look at it
21 | before I asked him any questions.
22 | Sorry.

23 | Q. And now you 've had a chance to
24 | look at what you have been handed and is marked as
25 | Respondent's Exhibit C, do you recognize this?

 A. Yes.

 Q. And it, at the head -- excuse me --

1 at the heading, indicates that it's the
2 supplemental affidavit of Daniel W. Johnsman?

3 A. Um-hum.

4 Q. Do you remember reviewing that and
5 signing it?

6 A. Yes.

7 Q. Okay. In this one which is
8 Respondent's Exhibit C and Respondent's Exhibit B,
9 parcel Number 26-038300.0200 is referenced as the
10 parcel you own?

11 A. Yes.

12 Q. What was marked as Respondent's
13 Exhibit A it indicates a second parcel. So I'm a
14 little confused? Is this --

15 A. That's the parcel that is across
16 the road.

17 Q. Okay. So when you say that, you're
18 referring to the second one on Respondent's

19 A. Yeah.

20 Q. -- Exhibit A? That's the
21 northern-most parcel?

22 A. The northern most, yes.

23 Q. I see. And then the other two
24 affidavits refer only to the southern-most parcel?

25 A. Yes.

1 Q. Okay. Attached to Respondent's
2 Exhibit C are a series of pictures. If you could
3 take a look at -- I guess let's start with
4 Exhibit 1. And do you recognize these pictures?

5 A. Yes, I do.

6 Q. Did you take them?

7 A. Yes, I did.

8 Q. And there is handwriting to the
9 right of those pictures. Can you tell me who made
10 those notes?

11 A. No, I cannot. It's not my
12 handwriting.

13 Q. Okay. Can you tell me as to all of
14 the pictures that are part of Exhibit 1 to this
15 supplemental affidavit, were those all taken in
16 2003?

17 A. Yes.

18 Q. Do you remember approximately
19 when, the month, within 2003?

20 A. July. It was around July 4th time
21 frame.

22 Q. If you can recall, when was the
23 peak of the flooding in 2003?

24 A. I don't know the exact date. It
25 was around the July 4th time frame. It didn't

1 peak in one day. Some of these pictures were not
2 taken all on the same day. A lot of 'em were
3 taken off of Fleetfoot Road, and there is one here
4 that -- I think it's not in here. They were taken
5 over a period of several days, and I tried to show
6 how much worse the flooding got, there were
7 several days. I don't believe that picture is in
8 here. But there was another picture of this road.
9 This was taken early on in the flooding, and then
10 a few days later this point was all the further
11 you get, and all you could see was water across
12 there. So over a period of several days the water
13 got higher. This is not the peak of the flooding.

14 Q. But they were all generally taken
15 in July of 2009?

16 A. Yes, ah-huh.

17 Q. Taking a look at the pictures that
18 are attached to what's marked as Exhibit 2 to
19 Respondent's Exhibit C. Same questions. These
20 are pictures that you took?

21 A. Yes.

22 Q. And they were taken generally in
23 the July 2009 time frame -- 2003 time frame,
24 excuse me?

25 A. Yes, 2003.

1 Q. And the notes, again, are those
2 your notes?

3 A. They're not my notes.

4 MR. FUSONIE: That was the
5 question.

6 MR. JOHNSMAN: Okay.

7 Q. When you, when you farm any of your
8 parcels do you get crop insurance?

9 A. I -- the first year I took out crop
10 insurance was 2004.

11 Q. And have you made any claims on
12 your crop insurance since you've taken it out?

13 A. Yes, I have.

14 Q. And how many?

15 A. I believe I did not take crop
16 insurance out in 2005 when it flooded. I did
17 receive claims in 2008 and 2009.

18 Q. So you skipped 2005 --

19 A. Yeah.

20 Q. -- And then started up again, is
21 that --

22 A. Yeah. I took it out 2004. I had
23 lost my job in 2005 and I didn't take crop
24 insurance out that year, and I got another job in
25 2006.

1 Q. And your claims in 2008 and 2009,
2 were those based on flooding?

3 A. One was a replant and other one was
4 drought.

5 Q. When you say "replant" what does
6 that mean?

7 A. Replant is because the crop didn't
8 come up, but really the flood of 2003 prompted me
9 to take out crop insurance.

10 Q. Did you lose a substantial portion
11 of your crop in 2003?

12 A. Yes.

13 Q. Have you ever participated in the
14 Conservation Reserve Program?

15 A. CRP?

16 Q. Yes?

17 A. No.

18 Q. Have you ever participated in the
19 Wetlands Reserve Program?

20 A. No.

21 Q. Are you familiar with where the
22 flood plain is for Beaver Creek?

23 MR. FUSONIE: Objection. You can
24 answer, if you know.

25 A. No, I don't know.

1 Q. When you purchased the property,
2 did you have a survey done?

3 A. No.

4 Q. Was there title insurance acquired?

5 A. I don't know.

6 Q. Over the time you had farmed the
7 property prior to your purchase, had it flooded?

8 A. Yes. But the flooding, flooding
9 after 1997 got worse.

10 Q. About how much rain needs to fall,
11 if you know, about how much rain needs to fall
12 before flooding becomes an issue on that southern
13 parcel?

14 MR. FUSONIE: Objection. Go head.

15 A. Well, it really depends on how high
16 the lake is, the level of the lake.

17 Q. You've never correlated it with a
18 certain amount of participation in a certain
19 period of time?

20 MR. FUSONIE: Objection.

21 A. Oh, just watching it. You know
22 I've been out there since 1985. You can always
23 tell when the lake is low. It takes a lot of rain
24 to make it flood, and when the lake is high it
25 doesn't take as much, and it certainly, with that

1 | 500 foot spillway when the lake is high, it
2 | doesn't take a lot of rain to make it flood.

3 | Q. Have you had your property
4 | appraised since you purchased?

5 | A. No.

6 | Q. Has there been increased
7 | development in your neighborhood in the last five
8 | years?

9 | A. Increased development?

10 | Q. Yes.

11 | MR. FUSONIE: Objection.

12 | A. Could you -- Could you elaborate
13 | on "development?"

14 | Q. Has there been new businesses put
15 | in?

16 | A. Specific locations -- I mean what
17 | you mean, where at?

18 | Q. Within a mile radius of your
19 | property?

20 | A. Okay. Are you talking about
21 | development around or near the beaver or are you
22 | talking about around my house or what, I mean a
23 | radius is still a big area?

24 | Q. Well, we can ask both questions.
25 | Let's start with around the beaver?

1 A. No, there has not been any anybody
2 building close to the beaver.

3 Q. Is that still primary farm land in
4 that area?

5 A. Yes.

6 Q. And then how about around your
7 house?

8 A. There were properties put up but
9 not within the last couple years.

10 Q. When you say "properties put up"
11 what do you mean?

12 A. Residential.

13 Q. Are you familiar with a nonpoint
14 source pollution abatement program that Mercer
15 County Soil and Water Conservation District Runs?

16 A. No.

17 Q. Have you received compensation from
18 Mercer County Storm and Water Conservation
19 District for losses that you experienced from the
20 flooding?

21 A. Could you elaborate on that -- I
22 mean is -- I received money from the soil and
23 water to redo my waterway back in 2002.

24 Q. Pursuant to what program was that,
25 do you know?

1 A. I'm not specifically, it was soil
2 and water money, it was grant money. They paid I
3 think 70 percent of the cost of redoing the
4 waterway.

5 Q. How did you learn about that
6 program?

7 A. My dad was a member of the Soil and
8 Water Board.

9 Q. Showing you, again, Respondent's
10 Exhibit B, Paragraph 14. You said that the
11 flooding has substantially destroyed the value.

12 A. Ah --

13 Q. Have you actually had somebody
14 appraise that value?

15 A. No. There was no official
16 appraisal, but properties that I have seen, there
17 was a property that was sold right beside me that
18 sold at a substantially lower value than maybe
19 properties that were close to the beaver, but it
20 mostly based upon what other properties close to
21 mine had sold for recently.

22 Q. And you've been following that?

23 A. Just -- yeah, yes?

24 MR. VITALE: I don't think I have
25 any other questions of Mr. Johnsman at

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this time.

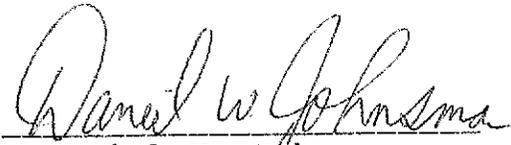
MR. JOHNSMAN: Okay.

MR. FUSONIE: You have the right to, if they order the transcript, you have the right to review it to correct any errors on the transcript. I can't tell that you -- can't say yes or no for you.

MR. JOHNSMAN: Um-hum.

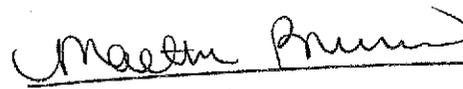
MR. FUSONIE: My advice is that you say, "yes," I'd like to read it.

MR. JOHNSMAN: Yes, I'd like to read it.


Daniel W. Johnsman

(At 4:08 p.m., the deposition concluded)

MARTHA C. BREWER, Attorney
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

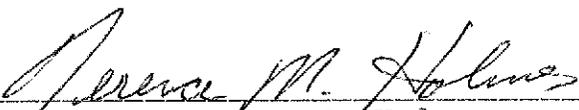

Notary
date: 3/14/10

C E R T I F I C A T E

1
2 STATE OF OHIO)
3) SS:
4 COUNTY OF MERCER)

5 I, Terence M. Holmes, the
6 undersigned, a duly qualified and commissioned
7 notary public within and for the State of Ohio, do
8 hereby certify that before the giving of his
9 aforesaid deposition, the said DANIEL W. JOHNSMAN
10 was by me first duly sworn to depose the truth,
11 the whole truth, and nothing but the truth, that
12 the foregoing is the deposition given at said time
13 and place by said DANIEL W. JOHNSMAN; that said
14 deposition was taken in all respects pursuant to
15 agreement and stipulations of counsel hereinbefore
16 set forth; that said deposition was taken by me in
17 stenotype and transcribed into typewriting by me;
18 that I am neither a relative of nor attorney for
19 any of the parties to this cause, nor relative of
20 nor employee or any of their counsel, and have no
21 interest whatever in the result of this action.

22 IN WITNESS WHEREOF, I have hereunto
23 set my hand at Cincinnati, Ohio, this 9th day of
24 February, 2010.



25 My Commission Expires: Terence M. Holmes
July 28, 2012 Notary Public - State of Ohio

RESPONDENT'S A
DANIEL W. JOHNSMAN

AFFIDAVIT OF DANIEL W. JOHNSMAN

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

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

RESPONDENT'S B
DANIEL W. JOHNSMAN

AFFIDAVIT OF DANIEL W. JOHNSMAN

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

1. I am a Relator in this mandamus action seeking compensation for the property taken by Respondents Ohio Department of Natural Resources and Sean D. Logan, Director. (collectively "ODNR").
2. Specifically, I am the owner of real estate described as Mercer County Parcel Numbers 26-038300.0200.
3. I have owned Mercer County Parcel Numbers 26-038300.0200 since April 1985 and farmed it continuously since that time.
4. Mercer County Parcel Number 26-038300.0200 borders the north side of Beaver Creek.
5. Since ODNR replaced the western spillway of Grand Lake St. Mary's in 1997 and undertook its current lake level management practices, which include maintaining increased lake levels and use of the western spillway for virtually all water flow out of Grand Lake St. Mary's, Mercer County Parcel Numbers 26-038300.0200 have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

DON000250

6. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 26-038300.0200 has flooded annually, sometimes several times a year, even up to 6 times per year. On each occasion, Mercer County Parcel Numbers 26-038300.0200 were inundated with water at depths varying from several inches up to approximately 6 feet.

7. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 26-038300.020 flood more rapidly and remain flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Number 26-038300.0200 remained inundated with water for a period of a few to several weeks. Sometimes, in the Winter months, the water remains for months.

8. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 26-038300.0200 never flooded as much, never flooded over as large an area, and never flooded for as long.

9. To date, the most invasive flood occurred in July 2003 with approximately 13 acres of Mercer County Parcel Number 26-038300.0200 being flooded with up to six feet of water for several weeks. Some floodwaters remained on the property until the Fall of 2003. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Number 26-038300.0200 is attached hereto as Exhibit 1. I have shaded in the area of the parcel that was flooded in 2003.

10. I have attached hereto as Exhibit 2 photographs of the area in the vicinity of my property that depict the flooding in 2003. I do not have photographs that depict the flooding of Mercer County Parcel Number 26-038300.0200 in 2003 because it was inaccessible due to the depth and severity of the floodwaters.

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11. Mercer County Parcel Numbers 26-038300.0200 has experienced severe flooding again since 2003, including in 2005.

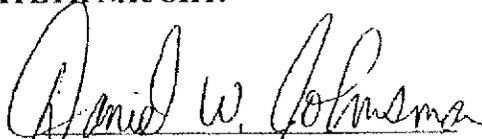
12. Mercer County Parcel Numbers 26-038300.0200 was again flooded as recently as Winter of 2009.

13. As a direct result of the flooding, Mercer County Parcel Numbers 26-038300.0200 have suffered damage in the form of loss of crops, field and bank erosion, the deposit of silt, sand, stones, and other debris (including wood, trash, decking, and crop waste), drainage tile failure, and soil compaction.

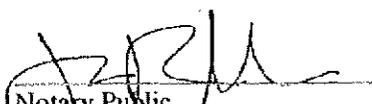
14. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 26-038300.0200.

15. I believe that the intermittent, continuing, persistent, frequent, and increased severe flooding from the western spillway of Grand Lake St. Marys will inevitably recur as a result of ODNR's replacement of the western spillway and ODNR's current management practices.

FURTHER AFFIANT SAYETH NAUGHT.


Daniel W. Johnsman

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


Notary Public

DON000252



JOSEPH R. MILLER
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

EXHIBIT 1
TO
AFFIDAVIT OF DANIEL W. JOHNSMAN

{ DON000253

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

Transportation

- State Highways
- US Highways

Water

- Lake
- Streams

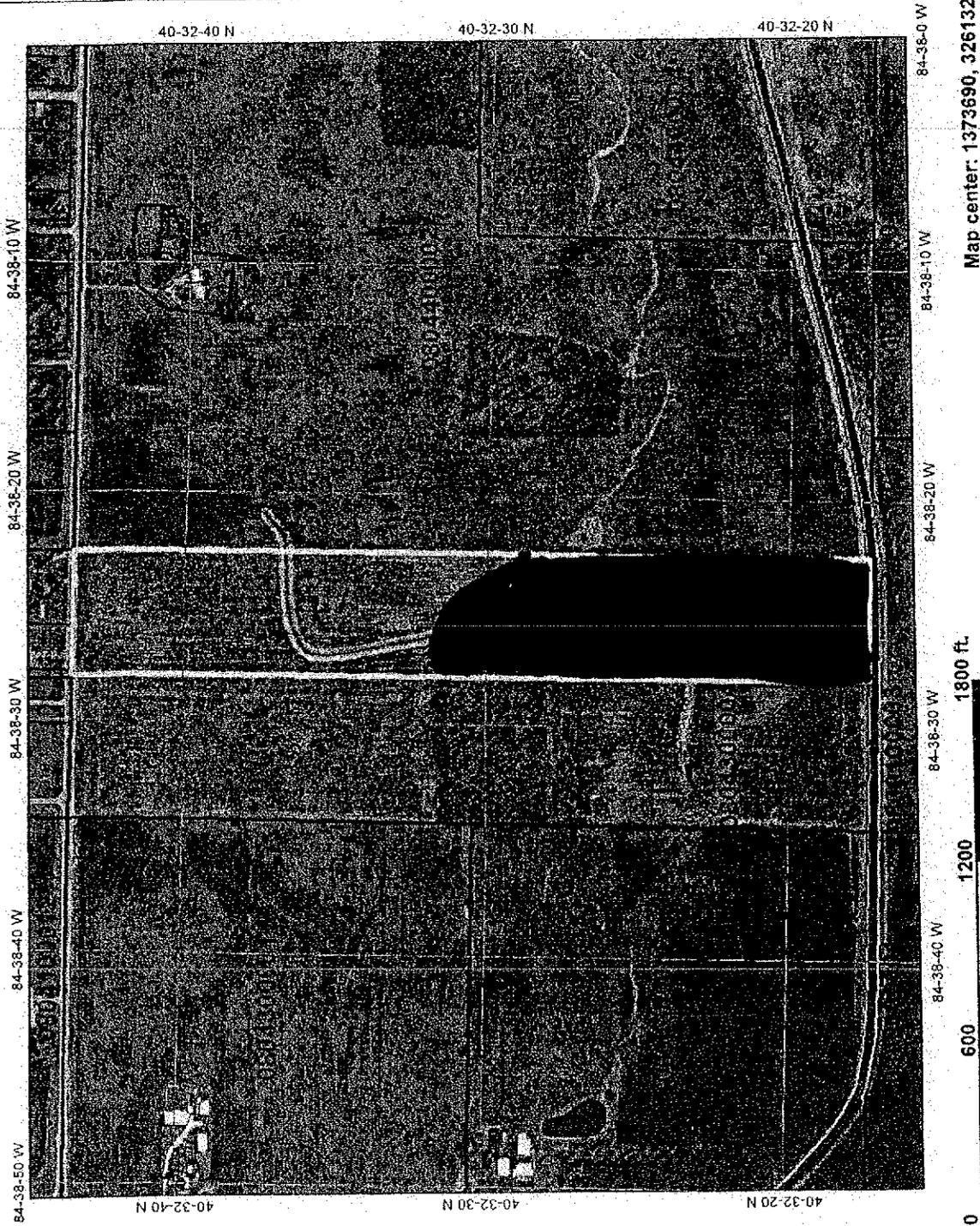
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EXHIBIT



Scale: 1:6,336



This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Daniel W. Johnsman
-0- St. Rt. 29
Parcel No.: 26-038300.0200 - 25 acres

DON000254

EXHIBIT 2
TO
AFFIDAVIT OF DANIEL W. JOHNSMAN

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EXHIBIT
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RESPONDENT'S C.
DANIEL JOHNSMAN

SUPPLEMENTAL AFFIDAVIT OF DANIEL W. JOHNSMAN

STATE OF OHIO

)

) ss:

COUNTY OF MERCER

)

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

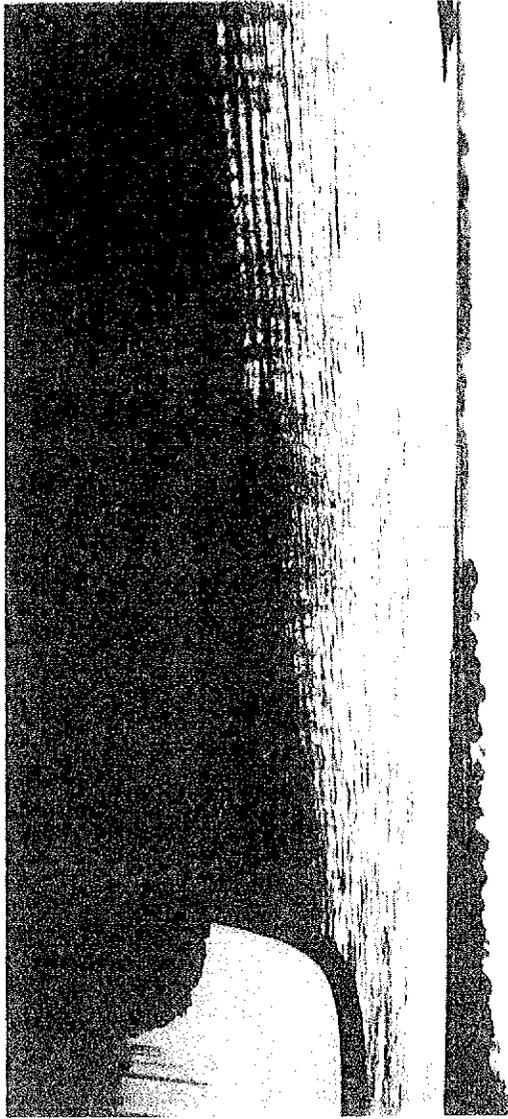
I state as follows:

1. I am a Relator in this mandamus action seeking compensation for the property taken by Respondents Ohio Department of Natural Resources and Sean D. Logan, Director (collectively "ODNR").
2. Specifically, I am the owner of real estate described as Mercer County Parcel Number 26-038300.0200.
3. I have owned Mercer County Parcel Number 26-038300.0200 since April 1985 and farmed it continuously since that time.
4. I have attached hereto as Exhibit 1 photographs of the area in the vicinity of my property that depict the flooding in 2003. I do not have photographs that depict the flooding of Mercer County Parcel Number 26-038300.0200 in 2003 because it was inaccessible due to the depth and severity of the floodwaters.
5. My brother, David A. Johnsman, is an owner of real estate described as Mercer County Parcel Numbers 26-029500.0100 and 26-048600.0000.
6. The R. Johnsman Trust and L. Johnsman Trust own real estate described as Mercer County Parcel Numbers 26-024700.0000 and 26-038300.0000.

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**EXHIBIT 1 TO SUPPLEMENTAL
AFFIDAVIT OF DANIEL W. JOHNSMAN**

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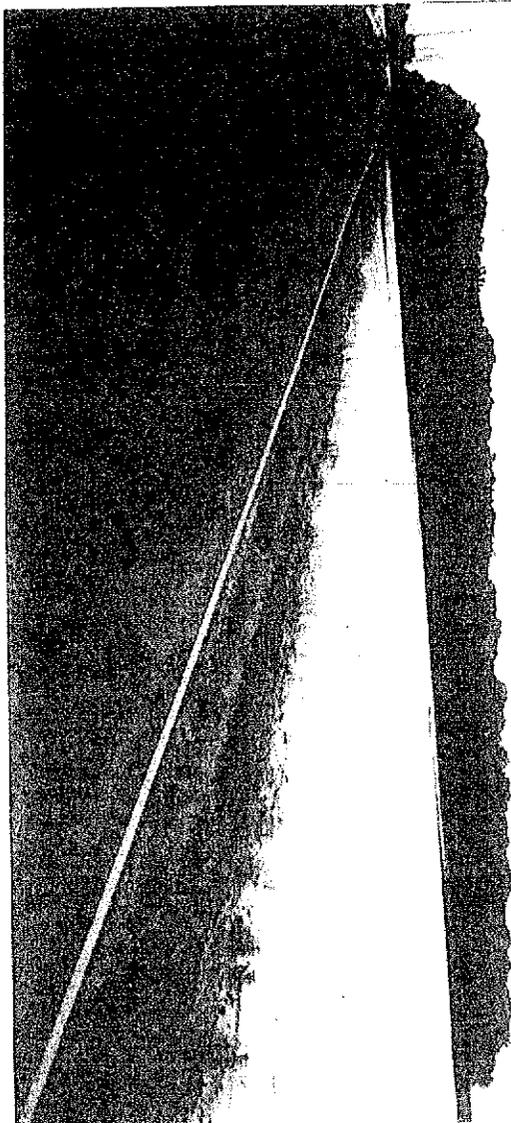


FLEET FOOT RD.

LOOKING WEST

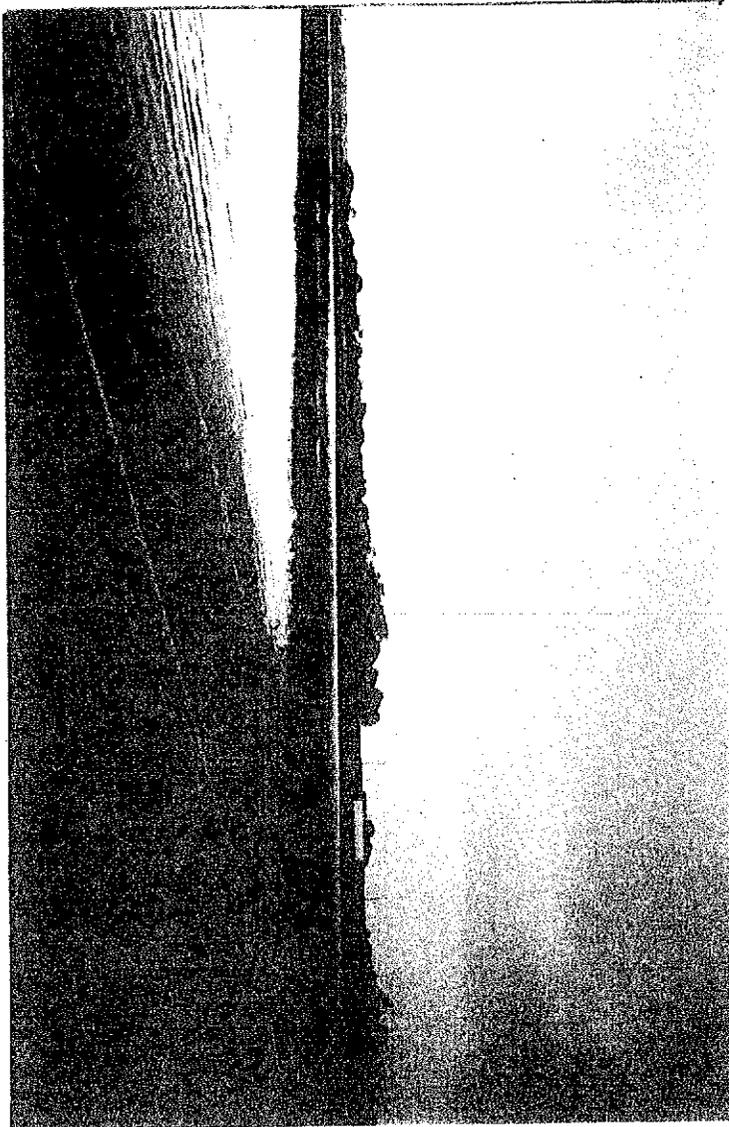
Don Johnson's
He took
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FLEETFOOT Rd
LOOKING SOUTH
DAN JOHNSON'S
the Trail of 2003

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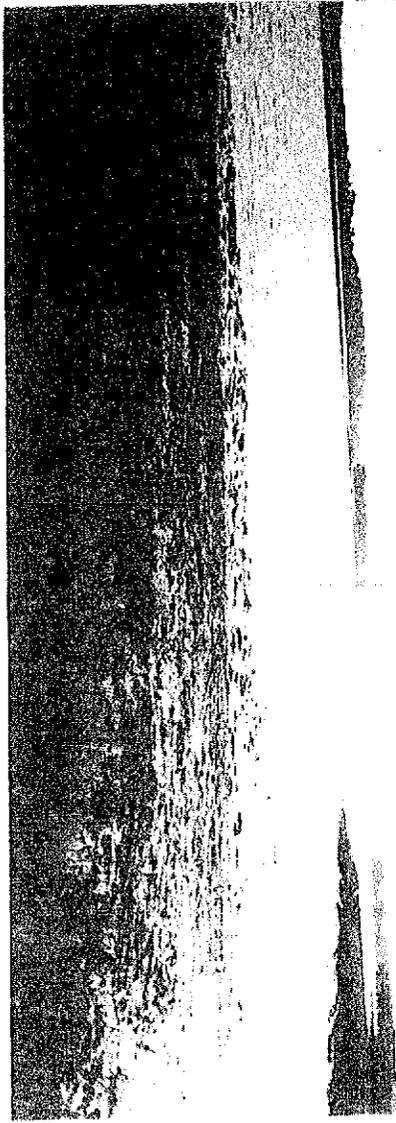


EVERETT RD.
LOOKING NORTH
JIM JOHNS W/3 DS.
IN 2003

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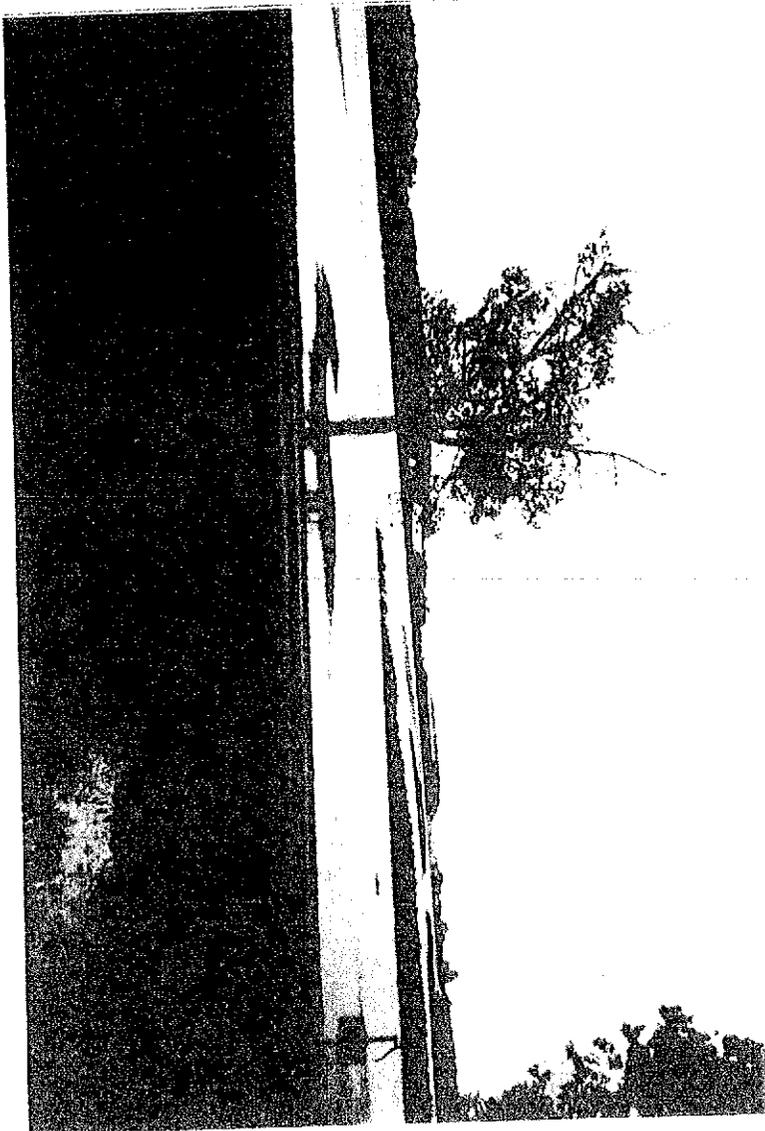
**EXHIBIT 2 TO SUPPLEMENTAL
AFFIDAVIT OF DANIEL W. JOHNSMAN**

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DRIVE TO USMARS
FARM

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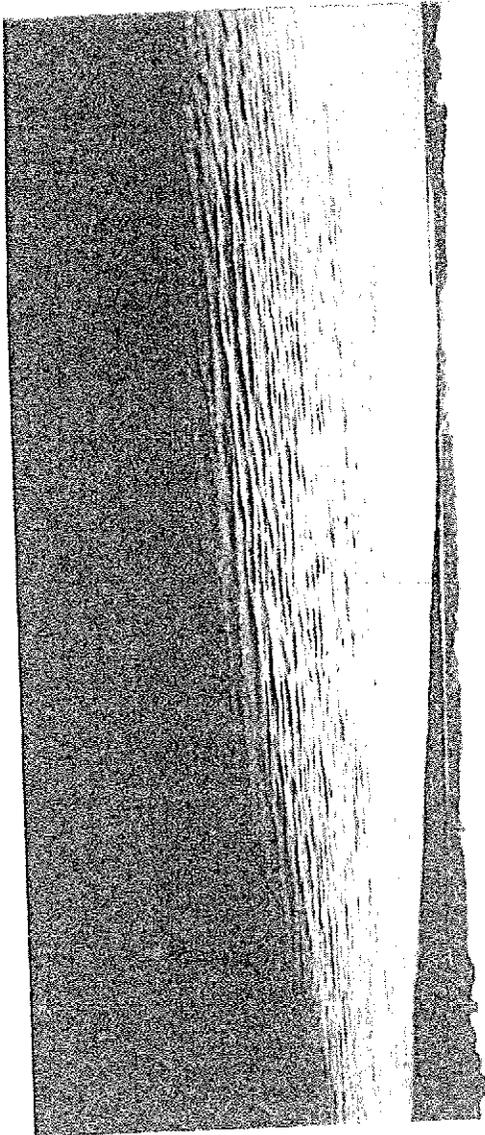


PAUL JOHNSON'S
STATION 118
ACORNE NORTH TOWNSHIP ST. LOUIS MO.

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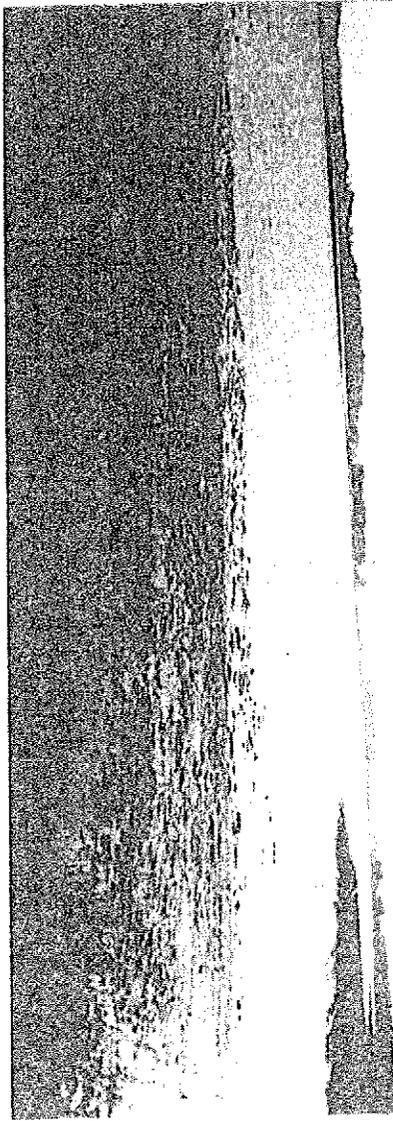
**EXHIBIT 2 TO SUPPLEMENTAL
AFFIDAVIT OF DANIEL W. JOHNSMAN**

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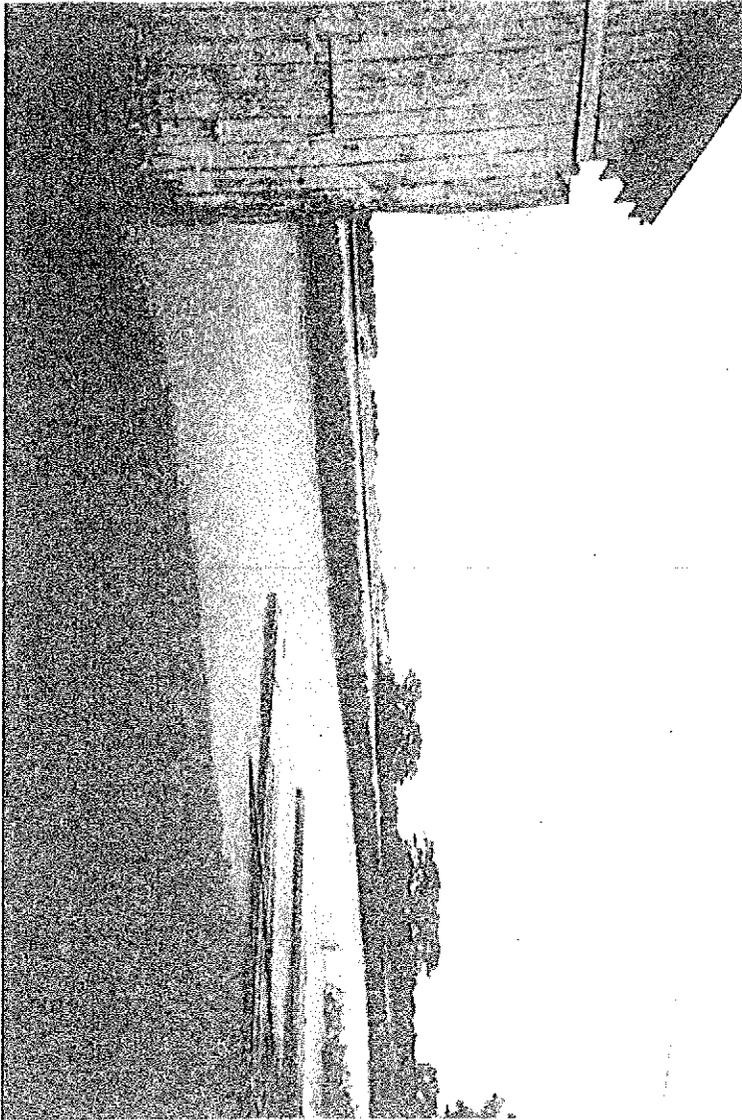
VIEW FROM FOOT Rd.
LOOKING WEST TOWARDS
DAVE JOHNSON'S FARM

DON001244



Private Light Rd
Washington West
Drive 504 USMARS FARM

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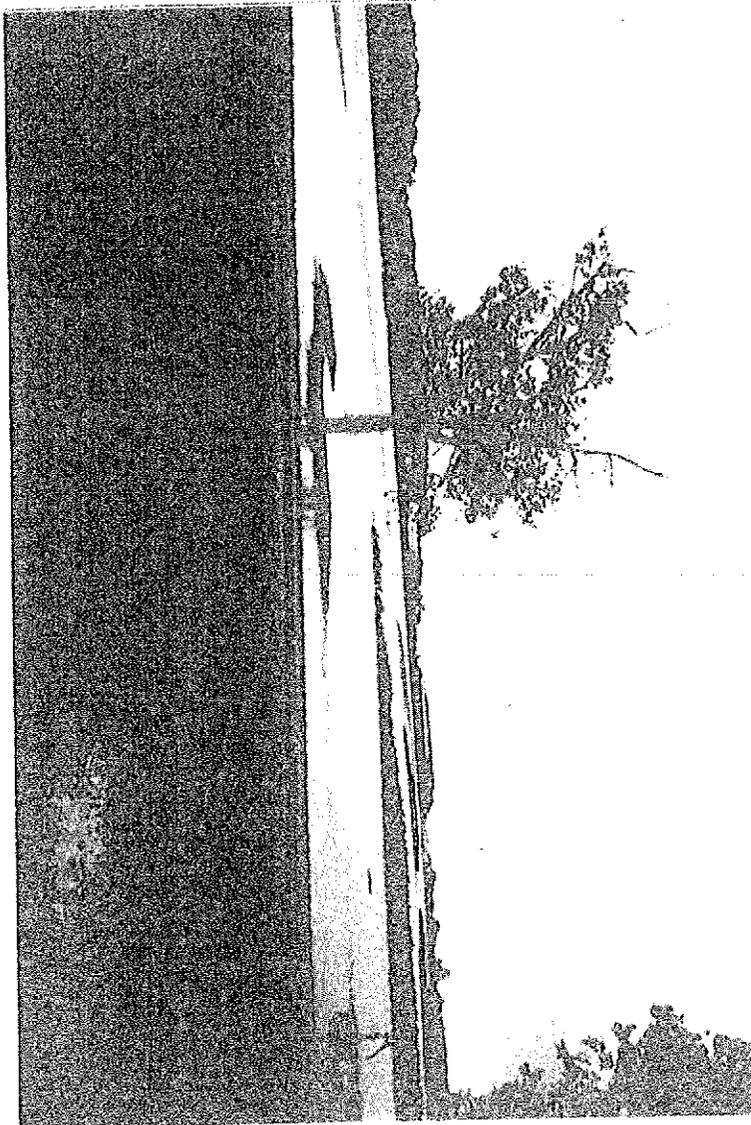


DAVE JOHNSONS

STAGE 118 LOOKING NORTH

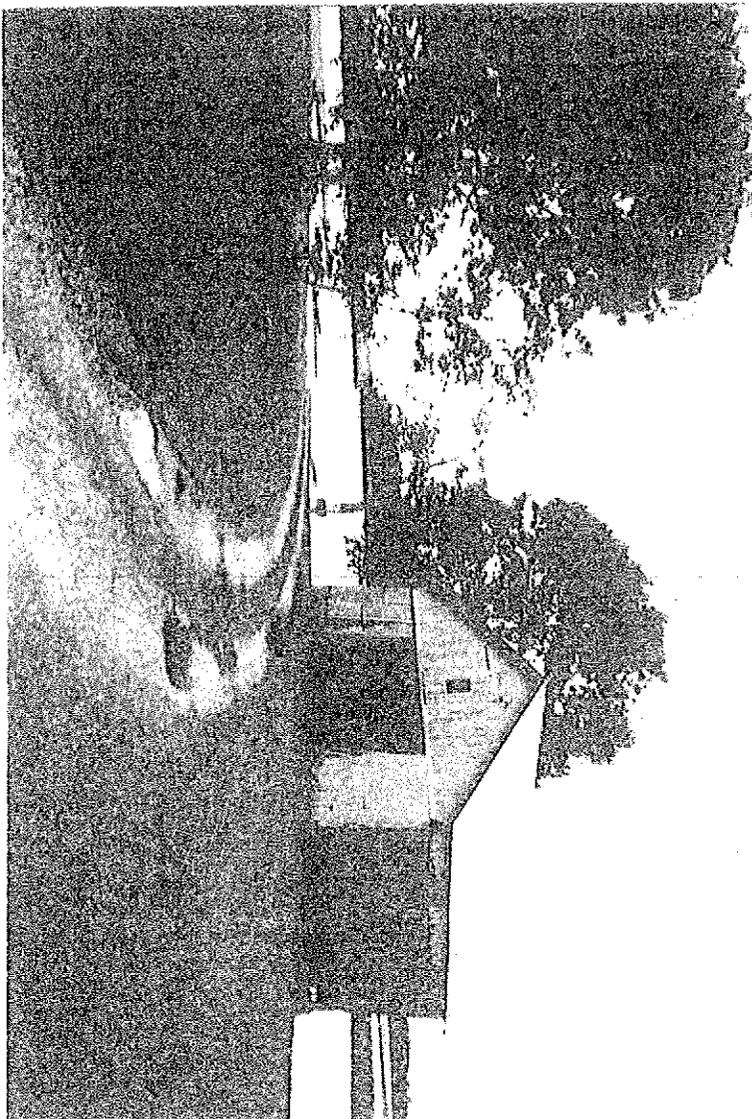
WATER IS IN BUILDING

DON001246



DAVE SOMMERS
STRAVE 118
LOOKING NORTH TOWARDS ST LAURE 20

DON001247



DALE JOHNSON RUS

ST ROUTE 118

LOOKING NORTH TOWARD ST ROUTE 29

CORNER IS THE BACK SIDE OF BUILDING

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TAB 20

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO
EX REL., WAYNE T. DONER, et al.

vs. CASE NO. 09-1292

SEAN D. LOGAN, DIRECTOR
OHIO DEPARTMENT OF NATURAL RESOURCES
2045 MOSE ROAD
COLUMBUS, OHIO 43229-6693

and

OHIO DEPARTMENT OF NATURAL RESOURCES
2045 MORSE ROAD
COLUMBUS, OHIO 43229-6693

DEPOSITION of ANDREA KNAPKE, taken by
the Respondents as on cross-examination, pursuant to
the Ohio Rules of Civil Procedure, at the Central
Service Building, 220 West Livingston Street, Celina,
Ohio 45822, on Wednesday, February, 2010, at, 4:00
p.m., before Edna M. Hawkins, Professional Court
Reporter and a Notary Public within and for the State
of Ohio.

HOLMES REPORTING & VIDEO
982 Havensport Drive
Cincinnati, Ohio 45240
(513) 342-2088
(513) 342-1820
www.ohiodeposition.com

1 APPEARANCES:

2

3

On Behalf of Ohio Department of National
Resources:

4

5

6

Rachel H. Stelzer
Attorney at Law
Environmental Enforcement
30 East Broad Street, Floor 25
Columbus, Ohio 43215-3400

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On Behalf of the Respondent:

Thomas H. Fusonie, Esq.

and

Martha C. Brewer

Attorney at Law

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street

Columbus Ohio 43216-1008

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I N D E X

WITNESS:	ANDREA KNAPKE		
	Examinations	DIRECT	CROSS
	By Ms. Stelzer		4
	By Mr. Fusonie	36	

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of Andrea Knapke	22

- - -

1 A. Okay.

2 Q. It's important that if -- well first,
3 that you speak loudly and clearly so the court
4 reporter can get down everything you're saying. And
5 second, if you have -- if you don't understand a
6 question I ask, please stop me so I have time to
7 clarify. Can you agree to do that?

8 A. I can.

9 Q. Okay. Did you review any documents
10 today's in preparation for your deposition?

11 A. Just my affidavit.

12 Q. Okay. So the affidavit that you filed
13 in this case?

14 A. Yes.

15 Q. Okay. Nothing else?

16 A. No.

17 Q. Okay. Andrea, where do you work?

18 A. I work at Coldwater School, and Celina
19 School.

20 Q. Okay?

21 A. As a substitute teacher's aid.

22 Q. Okay. So did you further your
23 education after high school?

24 A. Yes.

25 Q. Okay. How, what?

1 A. I went to Columbus State --

2 Q. Okay.

3 A. For veterinary technology.

4 Q. Okay. Could you please describe the
5 location of the property that you own that you allege
6 has been taken by the State in this case?

7 ~~A.~~ Describe it --

8 Q. Tell me where its located?

9 A. On the Ohio State Indiana Line Road
10 and right beside the Wabash River.

11 Q. North or south of the Wabash River?

12 A. North.

13 Q. Okay. And how long have you owned
14 this property?

15 A. Since 2000.

16 Q. How many acres do you own?

17 A. Now?

18 Q. Yes. How many acres are you alleging
19 are at issue in this case. So how many acres do you
20 own now, yes?

21 A. Eighty-one.

22 Q. Who owned that 81 acres before you?

23 A. My grandparents.

24 Q. Do you know when they bought the
25 property?

1 A. No. It was the third generation, so I
2 have no idea. A long time.

3 Q. Okay. Do you own any or property in
4 the area?

5 A. Yes.

6 Q. Where is that?

7 A. On Wabash Road.

8 Q. That's your residence; correct?

9 A. And we have a hog farm.

10 Q. Okay. Any other property in Mercer
11 County?

12 A. No.

13 Q. Approximately how many miles from the
14 Beaver Creek-Wabash confluence is the 81 acres we'll
15 be talking about?

16 A. The Wabash runs right on our property.

17 Q. Sure, but where does the Wabash meet
18 the Beaver Creek, how far away from your 81 acres?

19 A. I'm not exactly sure. I'm just gonna
20 guess and say seven miles, maybe.

21 Q. Okay.

22 A. I'm not real sure.

23 Q. That's okay. Are there any buildings
24 on your 81 acres?

25 A. No.

- 1 Q. Is it pretty flat?
- 2 A. Mostly, yes.
- 3 MR. FUSONIE: Objection.
- 4 Q. Are there any woods?
- 5 A. Yes.
- 6 Q. Where are those located?
- 7 A. Along the river.
- 8 Q. Along the river? So in the southern
- 9 portion of your property?
- 10 A. Yes.
- 11 Q. Okay. Anywhere else on your property?
- 12 A. To the east.
- 13 Q. Okay. So along -- Well that would be
- 14 to the east. I'm sorry.
- 15 A. To the west would be the road, the
- 16 State Line Road.
- 17 Q. Okay. So woods on the east and woods
- 18 to the south of your property?
- 19 A. Right.
- 20 Q. How many acres, approximately, are
- 21 covered in trees or woods?
- 22 A. I have no idea. I don't know.
- 23 Q. Okay. And is the rest of your
- 24 property wooded?
- 25 A. No.

- 1 Q. Okay. Is a quarter of your property
2 wooded?
- 3 A. No.
- 4 Q. Okay. So less than a quarter, an
5 eighth?
- 6 A. Maybe, yes.
- 7 Q. Okay. Not even that?
- 8 A. Probably an eighth, maybe.
- 9 Q. Okay. How is your 81 acres -- How do
10 you use your 81 acres?
- 11 A. For farming.
- 12 Q. The entire 81 acres, approximately?
- 13 A. Yeah.
- 14 Q. What crops did you guys plant last
15 years?
- 16 A. Both corn and beans.
- 17 Q. Who, actually, farmed the property?
- 18 A. My husband.
- 19 Q. Okay. Anyone else?
- 20 A. His family helped him farm.
- 21 Q. Okay.
- 22 A. But my husband -- it my husband's
23 farm.
- 24 Q. Okay. When your grandparents owned
25 the property, did they farm it?

1 A. No.

2 Q. Was it farmed?

3 A. Yes.

4 Q. Did they rent it out?

5 A. Yes.

6 Q. Do you know to who?

7 A. The Martin's.

8 Q. Do you know the first name?

9 A. Woodie and Aletha.

10 Q. Do you know approximately how many
11 years Woodie and Aletha Martin farmed your
12 grandparent's property?

13 A. For as long as I can remember.
14 Probably at least 20 years I would say.

15 Q. So do you know, would it be fair to
16 say that the 81 acres that you own has been pretty
17 much always used for farmland?

18 A. Yes.

19 Q. Can you describe the drainage system
20 on your property?

21 A. No.

22 Q. Do you know if it's tiled?

23 A. I know there is a tile. I don't know
24 how many or -- I don't do the, I don't do the farming
25 part of it.

1 Q. Okay, fair enough?

2 A. I lived there and that was the extent
3 of it.

4 Q. Okay. So when did you live there?

5 A. We lived there from 1999 until 2007.

6 Q. Was there a home on this 81 acres?

7 A. There -- Not on that 81 acres.

8 Q. But on an adjacent property?

9 A. Yes.

10 Q. And you've since sold that property?

11 A. Yes.

12 Q. Okay. When was the last time you were
13 physically out on this 81 acres?

14 A. Last spring.

15 Q. The spring of 2009?

16 A. Yes.

17 Q. Why were you out there in the spring
18 of 2009?

19 A. Checking to see how wet it was.

20 Q. Okay. Were you just out there a
21 single day in spring, 2009?

22 A. I was.

23 Q. Okay. Before that single day in
24 spring, 2009, when was the last time you were out at
25 the property?

1 A. Probably 2007, in the fall.

2 Q. And was that just a single days in
3 fall, 2007?

4 A. That's when we were moving.

5 Q. Okay. So moving from the home, okay
6 Do you know if you participate in the Conservation
7 Reserve Program?

8 A. I don't know.

9 Q. Okay. Do you know if you have any
10 filter strips that you're maintaining on the
11 property?

12 A. No.

13 Q. Okay. How about the Wetlands Reserve
14 Program?

15 A. No.

16 Q. Okay. Before you acquired the
17 property, so before you bought the property from your
18 grandparents in 2000, did you -- were you aware that
19 the property flooded?

20 A. It never flooded to the extent that we
21 saw it when we lived there. I mean it would, like,
22 pond. You know there would be, like, little ponds
23 out in the field and -- but it never did anything
24 like it did until after we lived there. I mean for
25 all the years that my grandparents lived there, it

1 never did anything like that.

2 Q. Okay. What do you mean by, "ponding,"
3 how big of a standing water are we talking?

4 A. Like, I mean, like, big puddles.

5 Q. Okay.

6 A. I mean, like, now, if you'd compare it
7 to now, now it's like a big lake when it floods as
8 opposed to, like, water puddled out in the middle of
9 the field.

10 Q. Would it be several puddles in the
11 field at would not time?

12 A. Like, maybe -- not several. Like, not
13 at a time, but probably, maybe, 5-to-10.

14 Q. Do you have any guess as to how big
15 the individual puddles were?

16 A. I mean it was just --

17 Q. You shouldn't guess --

18 (Laughter.)

19 MR. FUSONIE: I'll let that slide.

20 Question asked at 4:10, fifth deposition of
21 the day.

22 Q. How often were you out to your
23 grandparents' -- were you at your grandparents'
24 property when they owned it?

25 A. A couple times a month.

1 Q. And how often would you see ponding on
2 the property?

3 A. Couple times a year, maybe.

4 Q. Do you have any sense of how long the
5 ponding remained?

6 A. No, because I was never there for
7 consecutive days.

8 Q. Did you ever discuss flooding on the
9 property with your grandparents?

10 A. No.

11 Q. Did you ever discuss the ponding with
12 your grandparents?

13 A. No.

14 Q. Okay. Since you and your husband
15 bought the property in 2000, how often has it
16 flooded?

17 A. Like, just the ponding or -- Can you
18 be more specific?

19 Q. Sure.

20 A. Ponding or, like, total wipe out?

21 Q. Let's talk about ponding first. How
22 often does it pond since you bought the property?

23 A. Probably, maybe on average, probably
24 about three times a year.

25 Q. And when the property ponds now, since

1 | you bought it, how long does water remain on the
2 | land?

3 | A. Couple days. Maybe three days.

4 | Q. Do you have any sense of how many
5 | acres are affected by the ponding?

6 | A. No.

7 | Q. Do you know how deep the ponding is?

8 | A. No.

9 | Q. Okay. So there's been bigger events
10 | or bigger flooding events than ponding on your
11 | property since you bought it in 2000?

12 | A. Yes.

13 | Q. Okay. And when have those occurred?
14 | When was the last time?

15 | A. The last time, we had a lot of water
16 | standing this last spring.

17 | Q. So spring of 2009?

18 | A. Yes.

19 | Q. Do you know how long water was
20 | standing on the property?

21 | A. Maybe a week. I'm not real sure.

22 | Q. You indicated you were only out there
23 | one day during spring of 2009. How deep was it the
24 | day you were out there?

25 | A. I don't know.

1 Q. Do you know how many acres were
2 affected the day you were out there?

3 A. No.

4 Q. Okay. Before spring, 2009, when was
5 the last time the property flooded?

6 A. 2007.

7 Q. Do you know what time of the year?

8 A. I think that was in the spring.

9 Q. Were you still living there?

10 A. Yes.

11 Q. Do you remember how long water stood
12 on the property in spring of 2007?

13 A. Probably about a week.

14 Q. And do you remember how many acres
15 were affected?

16 A. No.

17 Q. Or how deep it was?

18 A. No.

19 Q. Prior to spring, 2007, when was the
20 last time your property flooded?

21 A. 2005.

22 Q. Okay. What time of the year in 2005?

23 A. That was in the wintertime.

24 Q. And do you remember how long water
25 stood on the property in winter, 2005?

1 A. It was longer because it -- then it
2 froze out there. Maybe around two weeks. That's one
3 of the times that we had to move out of our house
4 because of the flooding.

5 Q. How deep was the water on this 81
6 acres, the property we're talking about during winter
7 of 2005?

8 A. That was -- I don't know how deep it
9 was for sure, but it went across the road, so high
10 enough or deep enough that it went across the road to
11 prevent us from getting to our house.

12 Q. How many roads border your property?

13 A. Two.

14 Q. And both were covered by water in the
15 spring -- or winter, 2005 flood?

16 A. Just -- Well, just the one, but it
17 blocked us from both ways. It went across the road
18 in two spots.

19 Q. Before the flood, in winter 2005, what
20 was the last flood you remember?

21 A. 2003.

22 Q. Do you remember when, in 2003 that
23 occurred?

24 A. July.

25 Q. And do you remember how deep that

1 | flood event was?

2 | A. Well, there was also another time that
3 | we had to move out of our house because of it and my
4 | husband took a boat across the road and he stuck the
5 | oar down in the water and the oar didn't hit the
6 | bottom, so it was across the road at that time, too,
7 | and the oar did not touch the road, so I have no idea
8 | how deep was, but deep, probably at least eight
9 | feet.

10 | Q. Was the July, 2003 flood event bigger
11 | than the winter 2005 flood event?

12 | A. I would -- I don't know. I would say
13 | -- I wouldn't know because we had to move out. I
14 | don't know. I would say yes, but I'm not sure.

15 | Q. Do you have any sense of how long the
16 | water remained on your property in July, 2003?

17 | A. Probably about two weeks.

18 | Q. And how much of the property was
19 | impacted by the flood in 2003, July, 2003?

20 | A. Of the 81 acres, all of it.

21 | Q. Before July, 2003, do you remember a
22 | flood event since you bought the property in 2000?

23 | A. Not that bad.

24 | Q. So nothing that you remember between
25 | 2000 and 2003 was a major flood event?

1 A. Um-um.

2 Q. Was there ponding, to your knowledge,
3 between 2000 and 2003?

4 A. Yes.

5 Q. Since you bought the property in 2000,
6 have you ever experienced standing water on your
7 property when the banks of the Wabash are not over
8 flowing?

9 MR. FUSONIE: Objection.

10 Q. You can still answer though.

11 A. So can you repeat that then.

12 Q. Sure. Have you ever experienced
13 standing water, ponding, flooding on your property
14 when the water in the Wabash River is not overflowing
15 or not out of bank?

16 MR. FUSONIE: Objection.

17 Q. I can ask it another way, too. Does
18 the Wabash have to be flowing out of bank in order
19 for there to be flooding on your property?

20 A. Major flooding.

21 Q. But does ponding occur on your
22 property while the Wabash is still in bank?

23 A. Some.

24 Q. So sometimes there is ponding while
25 the Wabash is still flowing within it banks?

1 A. Yes.

2 Q. What harm or damage have you
3 experienced because of flooding?

4 A. It worn away the banks of the river.
5 My grandparents double banked it and so it worn some
6 of that away. We've had tons of debris when there is
7 flooding, and garbage in our yard.

8 Q. Can you tell me what double banking
9 means?

10 A. There is the existing bank there and
11 then they brought in dirt and put another bank up
12 higher than that so that the water didn't come out.

13 Q. Okay. And you mentioned that you've
14 had debris on your property after the waters receded?

15 A. Yes.

16 Q. When have you had debris on your
17 property?

18 A. After the flooding.

19 Q. After every flood?

20 A. Yes.

21 Q. Okay. What other harm or damage has
22 resulted from flooding on your property?

23 A. We had a tile that broke.

24 Q. Okay. When was that?

25 A. The 2005, because we repaired it in

1 2006.

2 Q. Have any other tiles broke?

3 A. I don't know.

4 Q. Okay. Any other harm or damage due to
5 flooding on your property?

6 A. No.

7 Q. Since you bought the property in 2000,
8 have you carried crop insurance?

9 A. Yes.

10 Q. Okay. Have you submitted any claims
11 for crop loss due to flooding at any point?

12 A. Yes.

13 Q. When was that?

14 A. For sure in 2003, other than that, I'm
15 not sure what --

16 Q. Did you receive reimbursement for crop
17 loss in 2003?

18 A. Yes.

19 Q. What do you believe is the value of
20 your property today?

21 A. I have no idea. Less than it would
22 have been before; I know that.

23 Q. Less than it would have been when?

24 A. Before all the flooding started
25 happening.

1 Q. Do you think your property is worth
2 less today than it was when you bought it in 2000?

3 A. I don't know. I don't know.

4 Q. Has your property been appraised
5 recently?

6 A. Two years ago.

7 Q. Two years ago. So 81 acres was
8 appraised two years ago?

9 A. Um-hum.

10 Q. Why did you have it appraised two
11 years ago?

12 A. So we could move.

13 Q. Andrea, I'm going to hand you what's
14 been marked Respondent's Exhibit A. Would you read
15 that plead.

16 (Xerographic Documents, headed,
17 "Affidavit of Andrea Knapke," was
18 marked for identification Exhibit A.)

19 (Witness complying.)

20 Okay. Andrea, this is your Affidavit;
21 correct?

22 A. Yes.

23 Q. And it's signed on August 25th, 2009;
24 right?

25 A. Right.

Q. And that's your signature on page 4?

1 A. Yep.

2 Q. Okay. In paragraph 2, you refer to
3 two separate parcel numbers; correct?

4 A. Correct.

5 Q. And are those parcel numbers the 81
6 acres we've been talking about today?

7 A. Yes.

8 Q. And are those the only parcels that
9 you are alleging in this lawsuit have been taken by
10 the State of Ohio?

11 A. Can you --

12 Q. Is this the only property that you are
13 alleging had been taken by the State?

14 A. Taken by the State?

15 Q. Is this -- Strike that. Are the two
16 parcels referred to in paragraph 2, the only property
17 that you are alleging has been flooded and resulted
18 in a taking by the State?

19 A. Yes.

20 Q. Okay. Could you flip to Exhibit 1 to
21 your Affidavit. The first page of that Exhibit is a
22 map of a 49.999-acre parcel that you own; correct?

23 A. Correct.

24 Q. And what does the shading on this map
25 reflect?

1 A. The flood of the -- or what area was
2 wiped out from the flood.

3 Q. Which flood?

4 A. 2003.

5 Q. Did you shade this map?

6 A. Yes, my husband and I did.

7 Q. Anyone else?

8 A. No.

9 Q. Okay. And the second page of Exhibit
10 1 to your Affidavit is also a map reflecting a
11 31-acre parcel you own; correct?

12 A. Correct.

13 Q. And what does the shading on this map
14 reflect?

15 A. The acres that were flooded during
16 that flood.

17 Q. In the 2003 flood?

18 A. Yes.

19 Q. Okay. And did you shade this map?

20 A. Yes, my husband and I.

21 Q. Did anyone else help you?

22 A. No.

23 Q. Okay. If you could flip to Exhibit 2
24 to your Affidavit, the series of photographs --

25 A. Um-hum.

1 Q. -- correct?

2 A. Correct.

3 Q. And who took these photographs?

4 A. My husband and I.

5 Q. And when were these photographs taken?

6 A. In 2003.

7 Q. Could you flip to Exhibit 3 to your

8 Affidavit, please.

9 (Witness complying.)

10 Exhibit 3 to your Affidavit is five

11 photos; right?

12 A. Yes.

13 Q. And who took those photographs?

14 A. My husband and I.

15 Q. Okay. This Affidavit also talks about
16 properties that are owned by relatives of yours, Mark

17 Knapke and Tim Knapke?

18 A. Yes.

19 Q. Where is Tim Knapke's property in

20 relation to yours?

21 A. On the other side of the river.

22 Q. So your 81 acres -- I'm sorry.

23 A. The river splits our land.

24 Q. So your 81 acres is north of the

25 Wabash?

1 A. Yeah.

2 Q. And Tim Knapke's property is directly
3 south of yours?

4 A. Yes.

5 Q. And south of the Wabash, as well?

6 A. Yes.

7 Q. Can you see Tim Knapke's property from
8 yours?

9 A. No.

10 Q. Why not?

11 A. Because the woods is there.

12 Q. So there is woods on the Wabash?

13 A. Um-hum.

14 Q. On both sides?

15 A. Yes.

16 Q. Okay. When was the last time you were
17 out on Tim Knapke's property?

18 A. No idea.

19 Q. Were you out there in 2009?

20 A. Yeah, I guess, yes.

21 Q. Okay. How many times?

22 A. Once that I can think of.

23 Q. Why were you out there in 2009, the
24 time you can remember?

25 A. To pick them up from farming out

1 | there.

2 | Q. Okay. When was the last time you
3 | remember being at the property before that instance
4 | in 2009?

5 | A. Probably 2008.

6 | Q. Do you know why you were out there?

7 | A. For the same thing or to pick 'em up
8 | from farm being.

9 | Q. Does that happen often?

10 | A. No.

11 | Q. How many times a year does that
12 | happen?

13 | A. Once or twice.

14 | Q. Okay. Have you seen any flooding on
15 | Tim Knapke's property?

16 | A. Yes.

17 | Q. When was the last flood event that you
18 | saw on Tim's property?

19 | A. In the spring of 2009.

20 | Q. Is that the one instance you remember
21 | being out there?

22 | A. No. I mean I wasn't there when it
23 | flooded, I guess.

24 | Q. Okay, but while the property was still
25 | flooded, you were on the property?

1 A. No.

2 Q. Okay. Did you, personally, see
3 flooding on Tim Knapke's property in the spring of
4 2009?

5 A. No.

6 Q. How are you aware that his property
7 flooded?

8 A. From my husband and from Tim.

9 Q. Okay. Have you, personally, seen
10 flooding on Tim Knapke's property ever?

11 A. Yes.

12 Q. When was that?

13 A. 2007 and probably every year before
14 that.

15 Q. In 2007, what time of year did Tim
16 Knapke's property flood?

17 A. The spring.

18 Q. Were you, personally, on Kim Knapke's
19 property in the spring of 2007, while it was flooded?

20 A. We had to drive right past there, but
21 not, like, out in the field, but --

22 Q. From the road?

23 A. -- from the road.

24 Q. Okay. And from the road, how many
25 acres of Tim Knapke's property were flooded in

1 | spring, 2007?

2 | A. I don't know.

3 | Q. Okay. Do you have any sense for how
4 | deep the water was in spring, 2007?

5 | A. No.

6 | Q. Any sense of how long it stayed on his
7 | property?

8 | A. Maybe a week or two.

9 | Q. Before spring of 2007, when was the
10 | last time you remember seeing flooding on Tim
11 | Knapke's property?

12 | A. The 2005.

13 | Q. Okay. In the winter of 2005?

14 | A. Yes.

15 | Q. And during that flood event on Tim's
16 | property, were you, physically, on the property?

17 | A. No.

18 | Q. Were you, again, viewing flooding from
19 | the road?

20 | A. Yes.

21 | Q. Okay. Do you have any sense of how
22 | deep the water was?

23 | A. No.

24 | Q. How many acres were affected?

25 | A. Probably that time, most of them.

1 | Probably at least 90 percent.

2 | Q. And do you remember how long water
3 | remained on Tim's property?

4 | A. Probably two-to-three weeks.

5 | Q. And before that winter, 2005 flood,
6 | when was the last time you remember seeing flooding
7 | on Tim Knapke's property?

8 | A. The 2003 flood.

9 | Q. Were you, physically, on the property
10 | in 2003?

11 | A. No.

12 | Q. What time of year was the flood in
13 | 2003?

14 | A. Spring -- Well, summer, actually,
15 | because it was July.

16 | Q. July of 2003?

17 | A. Um-hum.

18 | Q. Do you have any sense of how deep the
19 | water was in 2003 on Tim's property?

20 | A. No, but they had jet skis out there.

21 | Q. Do you have any sense of how many
22 | acres were affected on Tim's property in July, 2003?

23 | A. At least ninety-to-a-hundred percent,
24 | probably.

25 | Q. Was it bigger than the winter, 2005

1 flood?

2 A. Maybe a little.

3 Q. Do you remember how long water stayed
4 on Tim's property in July, 2003?

5 A. Probably two-to-three weeks.

6 Q. Before the July, 2003 flood, what's
7 the last flood you remember on Tim Knapke's property?

8 A. I really don't know of any major
9 flooding like that before.

10 Q. Okay. Your Affidavit also talks about
11 Mark Knapke's property. Where is that in relation to
12 yours?

13 A. North of ours.

14 Q. Is there a property in between your
15 property and Mark's?

16 A. No.

17 Q. So how far away is Mark's property
18 from the Wabash River?

19 A. Probably about a quarter of a mile.

20 Q. Who owned Mark's property -- or who
21 did Mark Knapke buy the property in?

22 A. My husband and I.

23 Q. Okay. When was that?

24 A. In 2003, in the spring.

25 Q. How many acres did Mark buy from you

1 | in spring, 2003, approximately?

2 | A. I don't know.

3 | Q. Okay. Did you tell Mark Knapke that
4 | the property flooded?

5 | A. It didn't flood then. We hadn't seen
6 | any flooding when he bought it.

7 | Q. So between the time you bought the 81
8 | acres that we've been talking about in 2000 and
9 | selling some acreage to Mark Knapke in the spring of
10 | 2003, that property that you sold to Mark had never
11 | flooded?

12 | A. That's my understanding.

13 | Q. Can you see Mark's property from your
14 | 81 acres?

15 | A. Yes.

16 | Q. Have you ever seen any flooding on
17 | Mark's property?

18 | A. Yes.

19 | Q. And when was that?

20 | A. In the spring of 2009.

21 | Q. How long did the water remain on
22 | Mark's property in spring of 2009?

23 | A. Probably about a week or two.

24 | Q. Were you, physically, on the property
25 | in spring of 2009?

1 A. Yes.

2 Q. Why?

3 A. Well, just to bring my husband from
4 farming.

5 Q. Okay. Were you out there for one day,
6 several days?

7 A. No. Just likes a day or two.

8 Q. Did you have any sense of how many
9 acres were affected in the spring, 2009 flood, on
10 Mark's property?

11 A. No.

12 Q. Any sense of how deep the water was in
13 the spring, 2009 on Mark's property?

14 A. No.

15 Q. Okay. Before the spring, 2009, flood,
16 what is the last flood event do you remember on Mark
17 Knapke's property?

18 A. In the spring of 2007.

19 Q. And were you, personally, on the
20 property in the spring of 2007?

21 A. Yes.

22 Q. Did you still live nearby then?

23 A. Yes.

24 Q. Okay. How long did water remain on
25 Mark's property in the spring of 2007?

1 A. Probably a week or two.

2 Q. Do you have any sense of the acreage
3 affected in the spring of 2007, how deep the water
4 was?

5 A. No.

6 Q. Okay. Before spring, 2007, what was
7 the last flood event you remember on Mark Knapke's
8 property?

9 A. 2005, in the winter.

10 Q. And were you, physically, on Mark
11 Knapke's property during that flood event?

12 A. Just from -- I mean we had to drive
13 past it to get in and out.

14 Q. Okay. So from the road, did you get
15 any sense of how deep the water was?

16 A. Deep, because it went across the
17 road.

18 Q. How long did water remain and Mark's
19 property in the winter of 2005?

20 A. Two-to-three weeks.

21 Q. How much of his property was affected
22 by flooding?

23 A. Almost -- Probably if not all of it,
24 all of it.

25 Q. Before winter of 2005, what was the

1 | last flood event you remember on Mark Knapke's
2 | properties?

3 | A. July of 2003.

4 | Q. Okay. And during that flood event,
5 | were I, physically, on Mark Knapke's properties?

6 | A. Just from the road.

7 | Q. Okay. And from the road, how deep did
8 | the water look?

9 | A. That was when it was, like, about
10 | eight foot deep, approximately.

11 | Q. In the fields or on the road?

12 | A. On the road.

13 | Q. And how long did water remain on
14 | Mark's property in July of 2003?

15 | A. Probably two-to-three weeks.

16 | Q. Do you know how much of his properties
17 | was affected by flooding?

18 | A. Pretty much all of it then.

19 | Q. Do you remember any flood events on
20 | Mark Knapke's property before July 4 -- occurring
21 | before July 2003?

22 | A. No.

23 | Q. Andrea, what do you hope to accomplish
24 | from this lawsuit?

25 | A. Hopefully to get the spillway fixed so

1 | that it stops flooding in the fields, keep the lake
2 | level controlled.

3 | MS. STELZER: I don't have any
4 | further questions.

5 | MR. FUSONIE: I do.

6 | DIRECT EXAMINATION

7 | BY MR. FUSONIE:

8 | Q. If you could turn to Exhibit 1 to
9 | your Affidavit. Just to the west of the area shaded
10 | in, it looks like there are some structures; is that
11 | correct?

12 | A. Um-hum.

13 | Q. Is that yes?

14 | A. Yes.

15 | Q. Is that where you lived between 2000
16 | and 2007?

17 | A. Yes.

18 | Q. And why did you move?

19 | A. Because there were two times that we
20 | could not get to our house because the water was
21 | across the road on both ways and we had young kids
22 | and animals and two times we were out of our house
23 | for a week, so we didn't want to take a chance of
24 | that happening again and having to try to find a
25 | place to go for another week.

1 Q. Were you afraid of living there?

2 A. Yeah, some, because there would be
3 flooding and then people would try to drive through
4 it and come to our house to ask for help out.

5 Q. With the July, 2003 flooding, did you
6 see any waves on the water on your property?

7 A. Yeah. There were -- I mean when the
8 wind would blow, there was, actually, white caps that
9 would go across the field.

10 Q. Any sense on how big those white caps
11 were?

12 A. Probably a couple feet, I would say.

13 Q. Okay. When you had to move out of
14 your house in July of 2003, did you have any children
15 at that time?

16 A. In 2003, we had a toddler and a
17 infant, so we were dealing with trying to get
18 everything out and we didn't even have any warning of
19 the first time that we had to go out in 2003. We
20 just had both went to work and dropped the kids off
21 at the babysitter's and the water went across the
22 road while we were at work.

23 Q. Okay. And then you had to move out of
24 your house again when the flooding occurred in 2005?

25 A. Yes.

1 Q. And how many people were living with
2 you then?

3 A. At that time, we still just had the
4 two and -- but every time we would have to take or
5 that dogs and cats because there would be no way to
6 get to them to get 'em through the water. We had to
7 board our animals which is another cost.

8 Q. When you said in 2005, you saw people
9 jet skiing across Tim Knapke's property --

10 A. Um-hum.

11 Q. Were they creating waves on the -- on
12 Tim Knapke's property?

13 A. Yes.

14 Q. How long have you lived in Mercer
15 County?

16 A. All my life, 34 years.

17 MR. FUSONIE: I don't have any other
18 questions.

19 MS. STELZER: Neither do I.

20 MR. FUSONIE: If the State attorneys
21 order a transcript of the questions and
22 answers, you have the right to use it and
23 correct any errors in the transcript. I
24 can't tell you to do that, but I recommend
25 to everyone that they do read the

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transcript

THE WITNESS: Yes, I would like to.

MS. STELZER: Thank you.

- - -

(At 4:43 o'clock, PM, the deposition concluded.)

- - -

Andrea Knapke

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transcript

THE WITNESS: Yes, I would like to.

MS. STELZER: Thank you.

- - -

(At 4:43 o'clock, PM, the deposition concluded.)

- - -

Andrea Knapke
Andrea Knapke

Martha C. Brewer 3/11/10

MARTHA C. BREWER, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

E R R A T A S H E E T

I, Andrea Knappke, have read the transcript of my deposition taken in this pending matter or the same has been read to me. I have noted all changes in form or substance on this sheet this 15th day of March, 2010.

PAGE	LINE	CORRECTION OR CHANGE AND REASON:
10	23	delete a
13	12	insert Several after not
20	5	Change worn to wore
20	23	delete a
20	25	delete the
21	6	Change no to yes, we had soil erosion
22	3	Strike the 2 nd I don't know
27	8	Change farm being to farming
28	14	after that add since the spillway was put in
28	18	Change Kim to Tim
33	7	the change likes to like
38	4-5	Change or that to our two
16 ²⁸	6 ¹¹³	2007 should be 2008
16	12	Spring of 2007 should be Spring 2008

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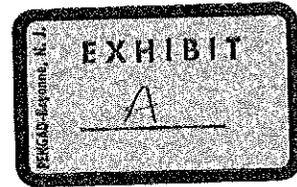
C E R T I F I C A T E

STATE OF OHIO)
) SS:
COUNTY OF MERCER)

I, Edna M. Hawkins, the undersigned, a duly qualified and commissioned Notary Public within and for the State of Ohio, do hereby certify that before the giving of her aforesaid deposition the said ANDREA KNAPKE was sworn to depose the truth, the whole truth and nothing but the truth; that the foregoing is the deposition given at said time and place by the said ANDREA KNAPKE; that said deposition was taken in all respects pursuant to agreement and stipulations of counsel hereinbefore set forth; that said deposition was taken by me; that the transcribed deposition was submitted to the witness for her examination and signature; that I am neither a relative of nor attorney for any of the parties to this cause, nor relative of nor employee of any of their counsel and have no interest whatever in the result of the action.

IN WITNESS WHEREOF, I have hereunto set my hand at Cincinnati, Ohio, this 21st day of February, 2010.

My Commission Expires: _____
September 17, 2012 Edna M. Hawkins
Notary Public - State of Ohio



AFFIDAVIT OF ANDREA KNAPKE

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

1. I am a Relator in this mandamus action seeking compensation for the property taken by Respondents Ohio Department of Natural Resources and Sean D. Logan, Director (collectively "ODNR").
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 29-003600.0000 and 29-003500.0000.
3. I have owned since 2000 Mercer County Parcel Numbers 29-003600.0000 and 29-003500.0000. My grandparents lived there before then for decades.
4. Mercer County Parcel Numbers 29-003600.0000 and 29-003500.0000 lie along the Wabash River.
5. My uncle-in-law, Mark Knapke owns Mercer County Parcel Number 29-002400.0000, which is adjacent to my parcels.
6. My brother-in-law, Tim Knapke owns Mercer County Parcel Number 29-003700.0000.
7. Since ODNR replaced the western spillway of Grand Lake St. Mary's in 1997 and undertook its current lake level management practices, which include maintaining increased lake levels and use of the western spillway for virtually all water flow out of Grand Lake St. Mary's, Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 29-002400.0000, and 29-

{ DON000269 }

003700.0000 have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

8. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 29-003700.0000 and 29-002400.0000 have flooded almost every year.

9. On each occasion, 29-003600.0000, 29-003500.0000, 29-003700.0000 and 29-002400.0000 were inundated with water at depths varying from approximately one to eight feet.

10. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 29-003700.0000 and 29-002400.0000 flood more rapidly and remain flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 29-003700.0000 and 29-002400.0000 remained inundated with water for a period of up to two and a half weeks.

11. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 29-003700.0000 and 29-002400.0000 had less frequent flooding, never flooded as much, never flooded over as large an area, never flooded for as long.

12. To date, the most invasive flood occurred in 2003 with all acres of Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000 and 29-002400.0000 and approximately 93 acres of 29-003700.0000 being flooded with approximately up to eight feet (up to twelve feet for 29-003700.0000) of water for approximately up to two and a half weeks. A true and accurate copy of black and white aerials from the Mercer County Auditor's website of Mercer County Parcel Numbers 29-003600.0000 and 29-003500.0000 are attached hereto as Exhibit 1. I have

DON000270

shaded in the area of Mercer County Parcel Numbers 29-003600.0000 and 29-003500.0000 that were flooded in 2003.

13. Attached hereto as Exhibit 2 are photographs that truly and accurately depict the flooding of Mercer County Parcel Numbers 29-003600.0000 and 29-003500.0000 in 2003 several days after the flooding had taken place.

14. Attached hereto as Exhibit 3 are photographs that truly and accurately depict the flooding of Mercer County Parcel Number 29-002400.0000 in 2003 several days after the flooding had taken place.

15. Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 29-003700.0000 and 29-002400.0000 also experienced severe flooding in 2005.

16. Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 29-003700.0000 and 29-002400.0000 were again flooded as recently as spring 2009.

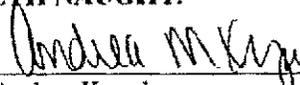
17. As a direct result of the flooding, Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 29-003700.0000 and 29-002400.0000 have suffered damage in the form of crop losses, bank erosion, the deposit of silt, sand, stones and other debris, soil compaction, and drainage tile failure.

18. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 29-003600.0000, 29-003500.0000, 29-003700.0000 and 29-002400.0000.

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19. I believe that the intermittent, continuing, persistent, frequent, and increased severe flooding from the western spillway of Grand Lake St. Marys will inevitably recur as a result of ODNR's replacement of the western spillway and ODNR's current management practices.

FURTHER AFFIANT SAYETH NAUGHT.



Andrea Knapke

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



Notary Public



JOSEPH R. MILLER
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

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EXHIBIT 1
TO
AFFIDAVIT OF ANDREA KNAPKE

DON000273

Mercer County Ohio



EXHIBIT
1

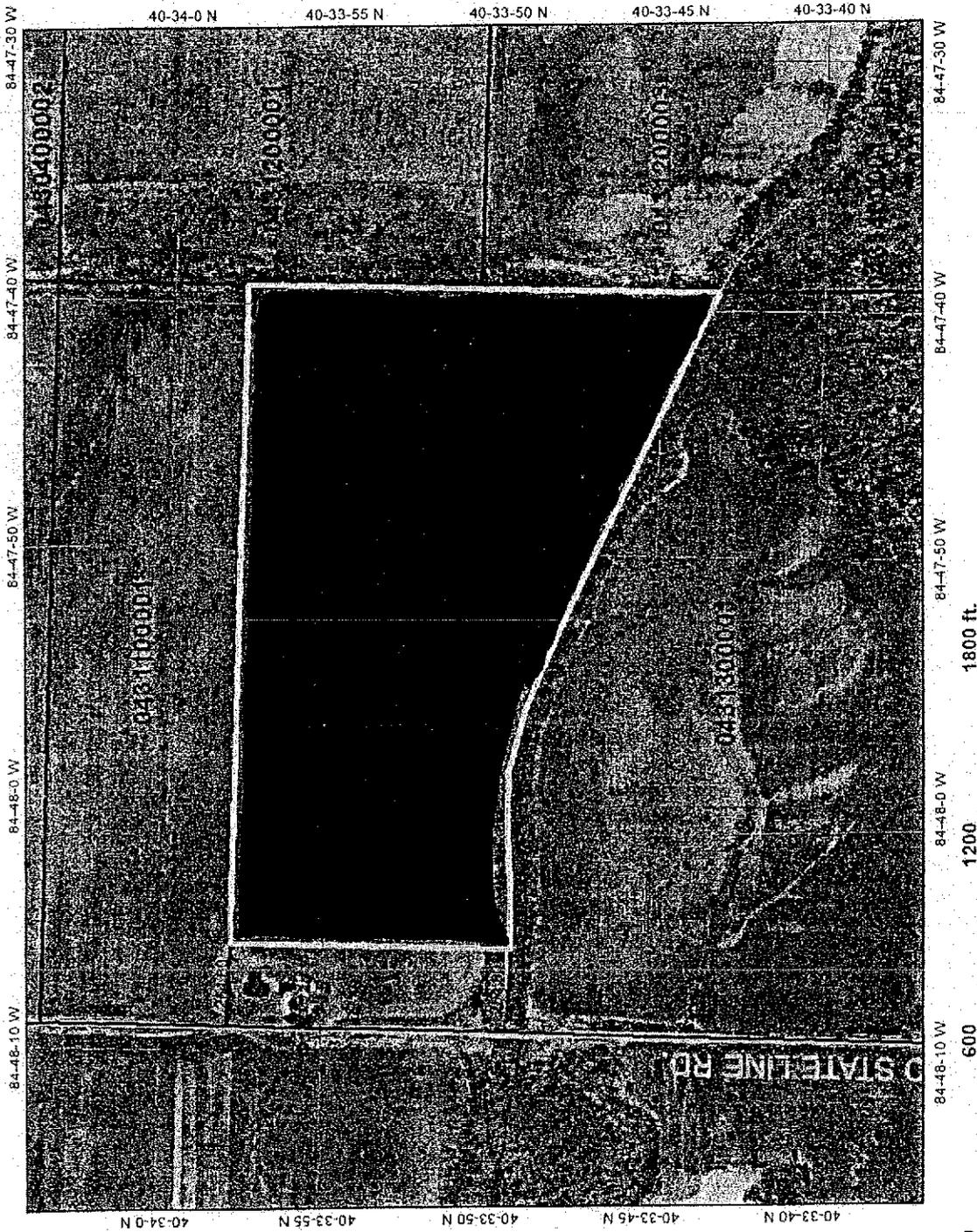
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Administrative
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Neighborhoods: [Symbol]

Parcels
Parcels: [Symbol]

Transportation
State Highways: [Symbol]
US Highways: [Symbol]

Water
Lake: [Symbol]
Streams: [Symbol]



Map center: 1330130, 335349

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Chad M. Knapke and Andrea M. Knapke
-0- Indiana Ohio State Line Rd.
Parcel No.: 29-003600.0000 - 49,999 acres

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

Transportation

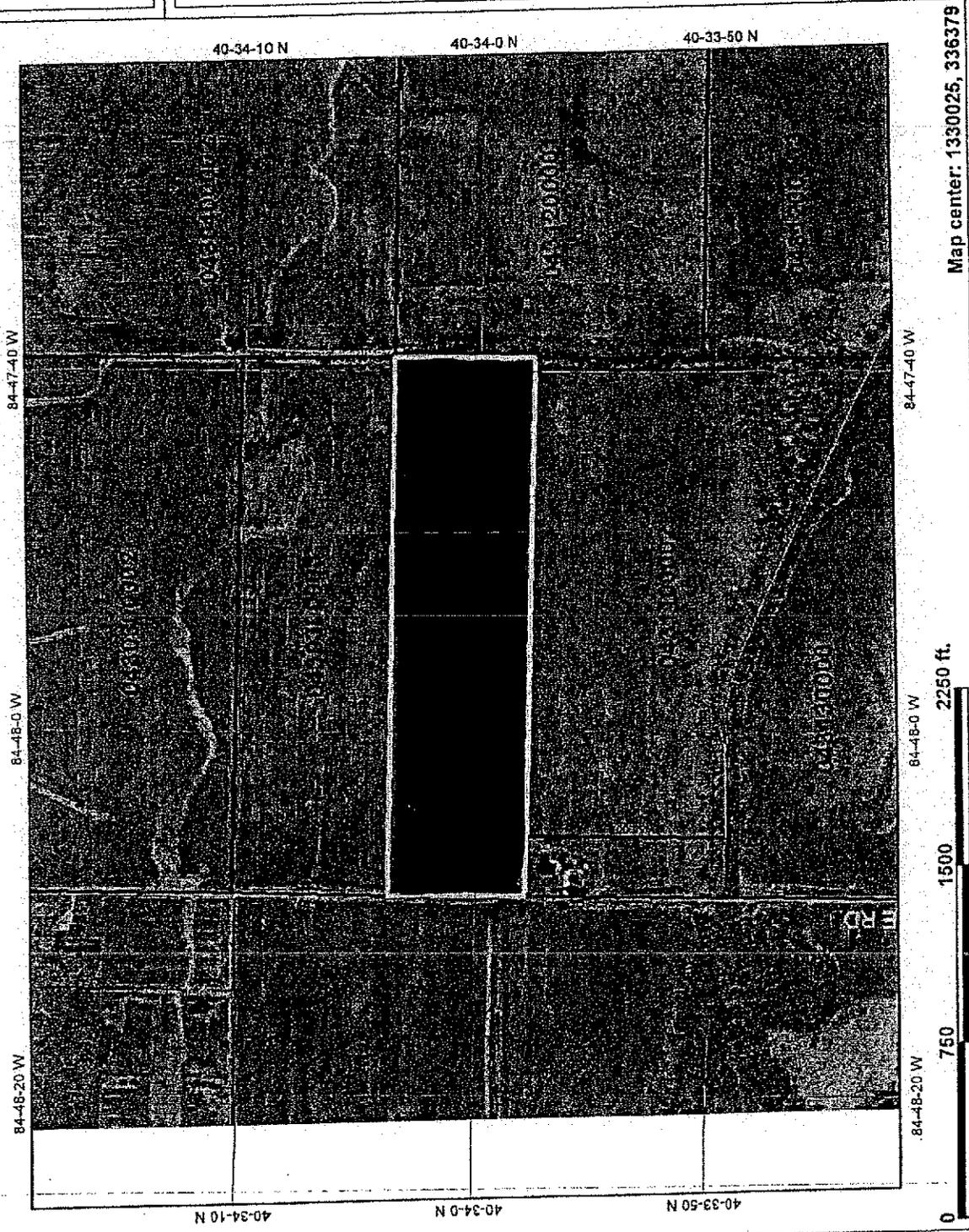
- State Highways
- US Highways

Water

- Lake
- Streams



Scale: 1:8,000



This map is a user generated static output from an internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Chad M. Knapke and Andrea M. Knapke
-0- Indiana Ohio State Line Rd.
Parcel No.: 29-003500.0000 - 31 acres

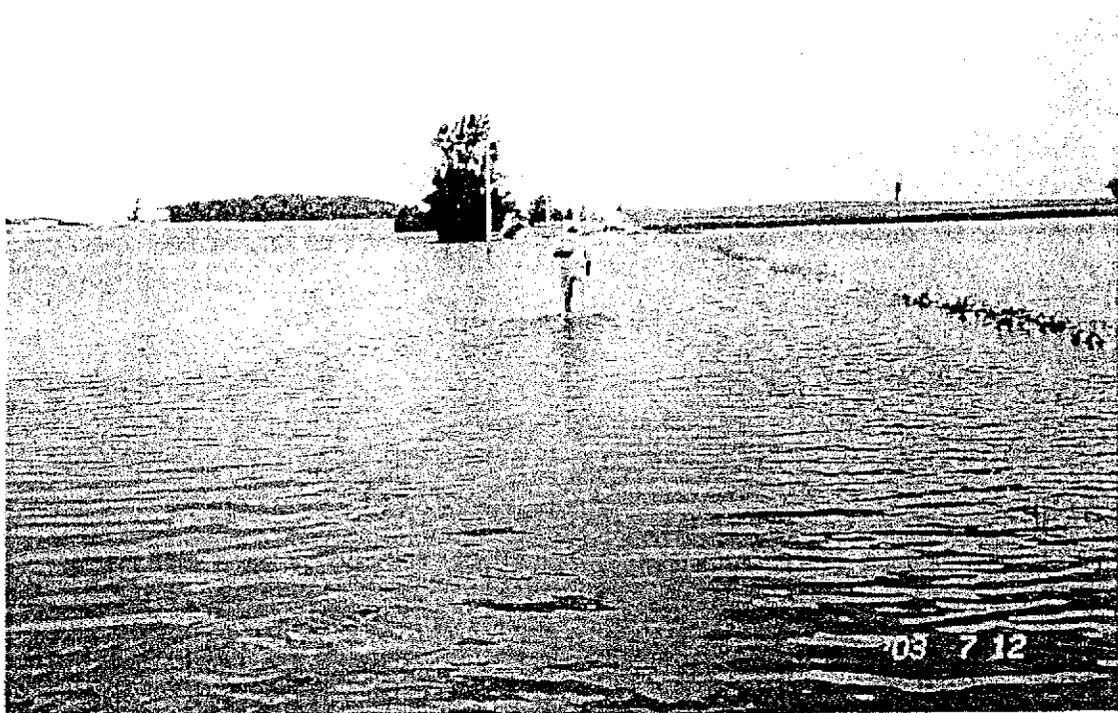
EXHIBIT 2
TO
AFFIDAVIT OF ANDREA KNAPKE

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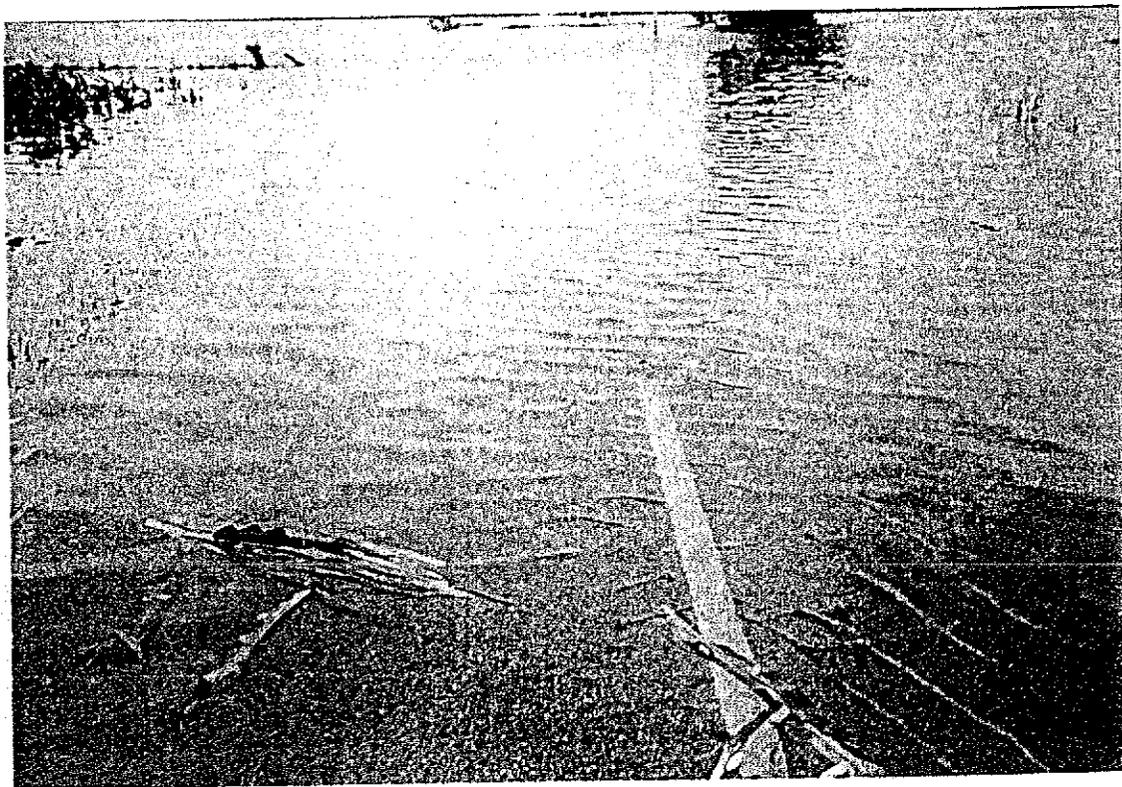


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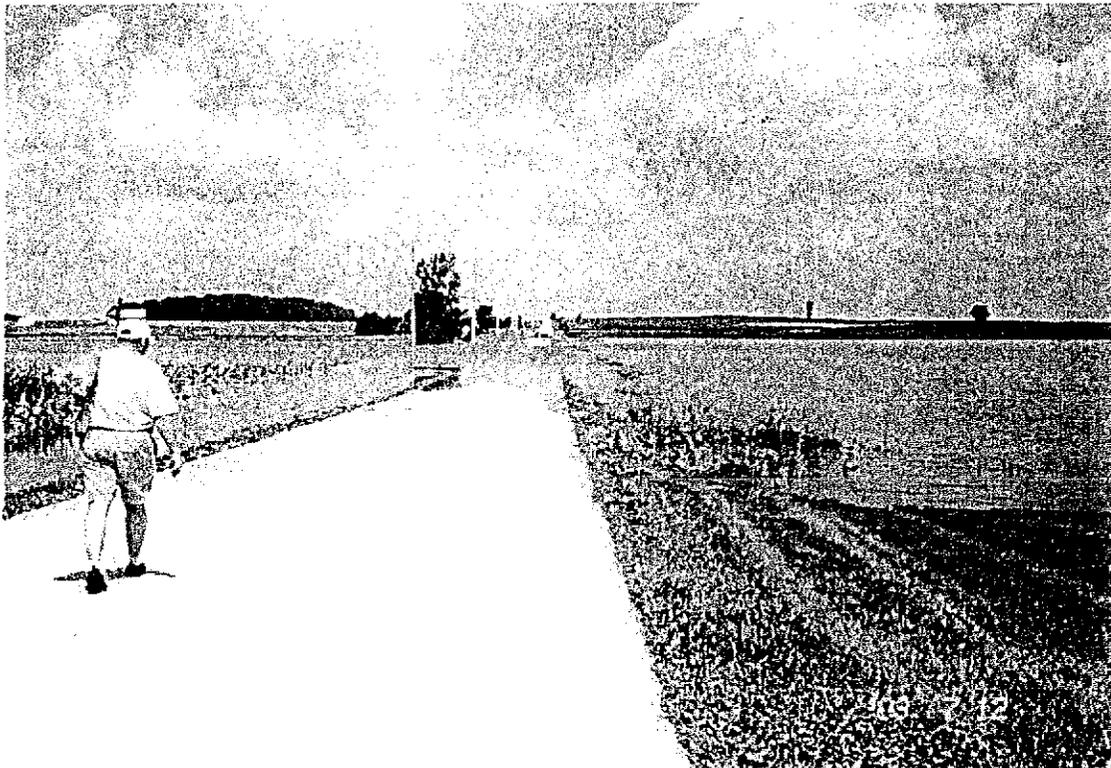
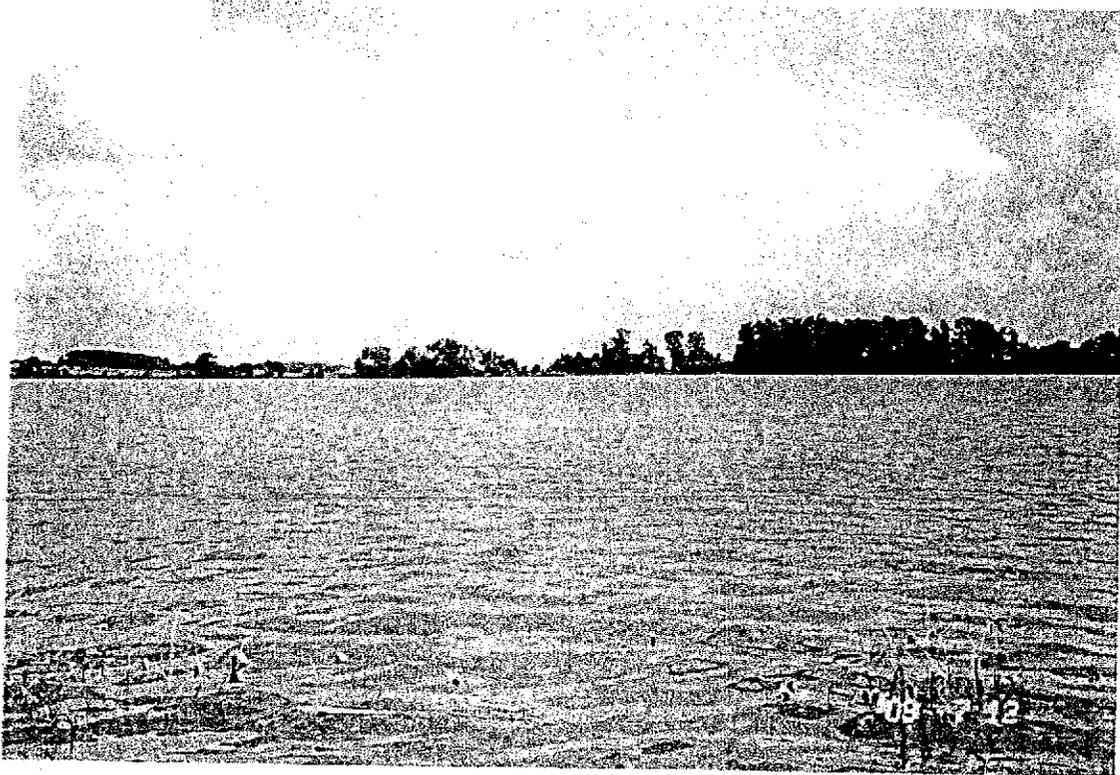
EXHIBIT
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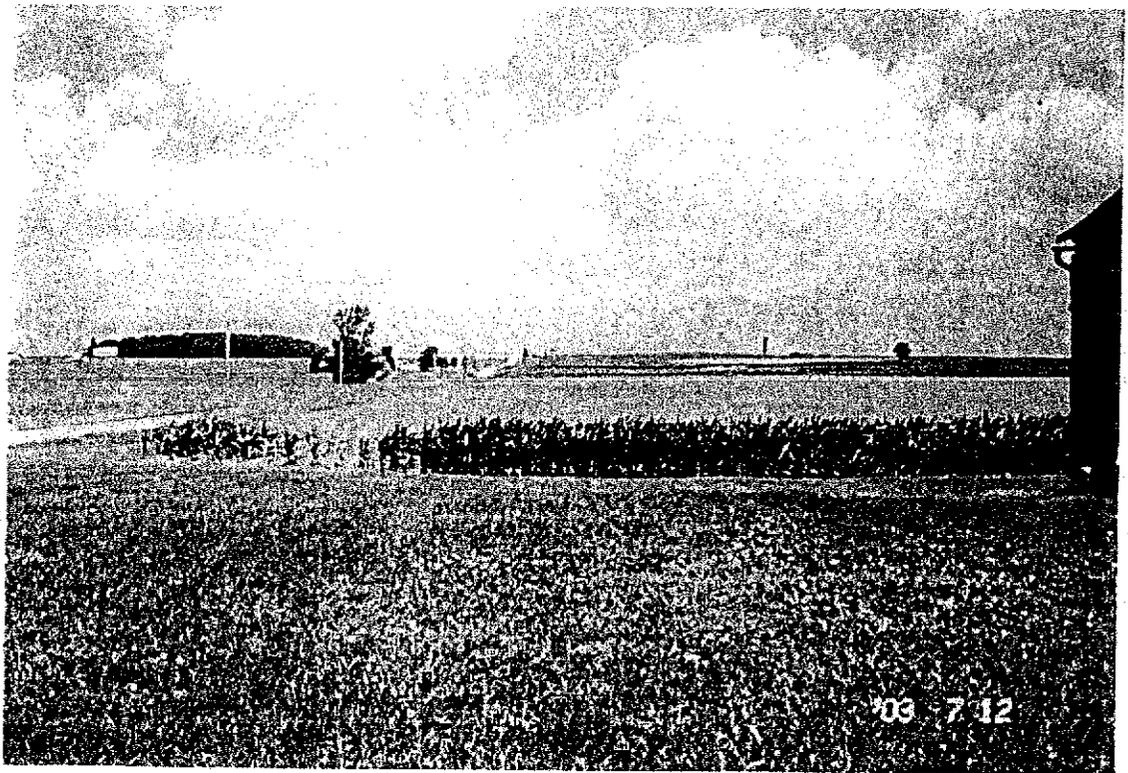
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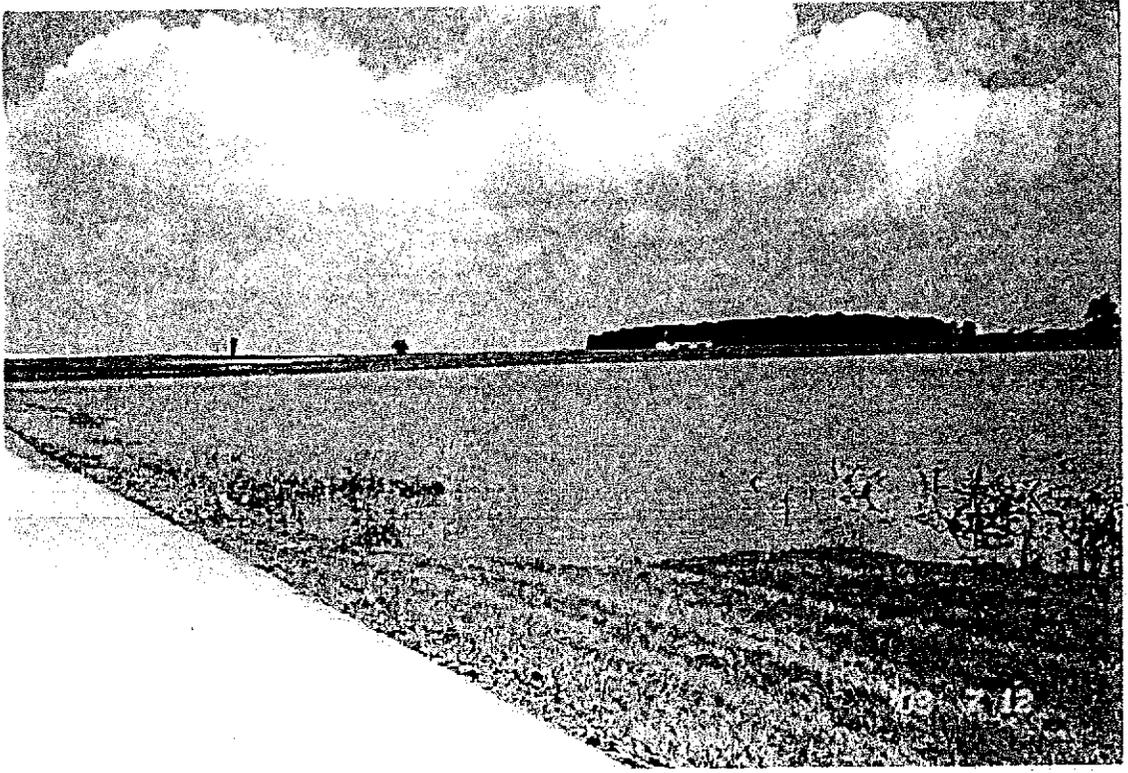


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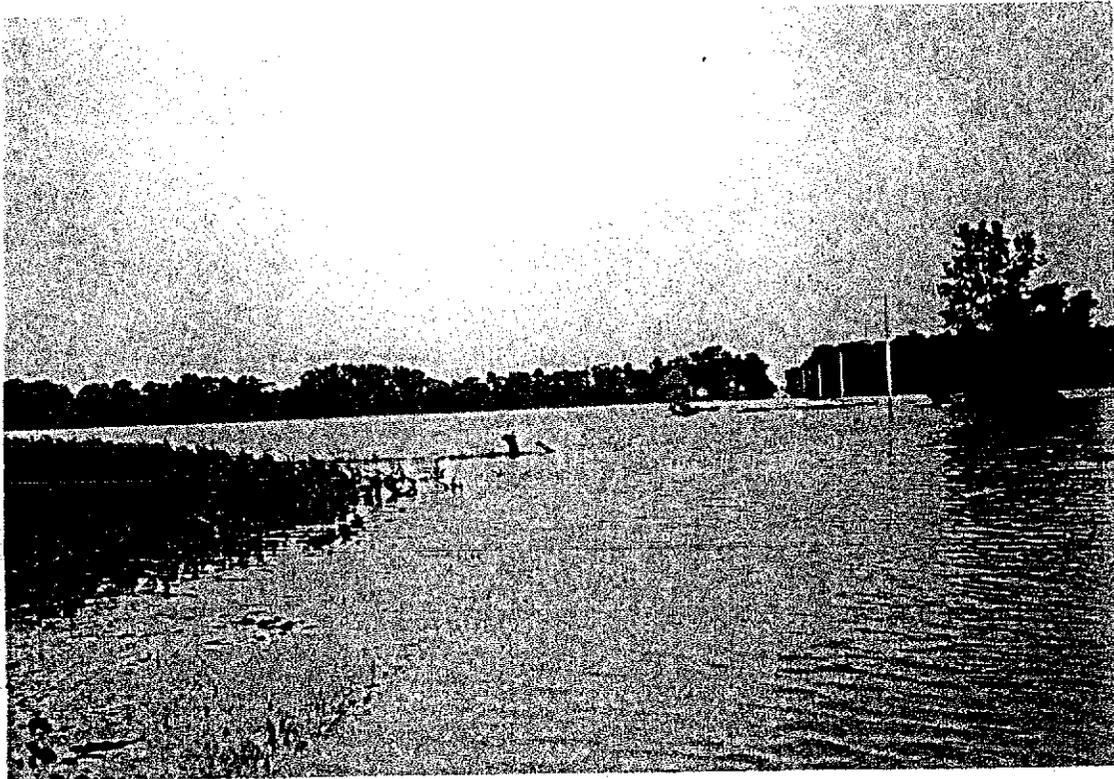




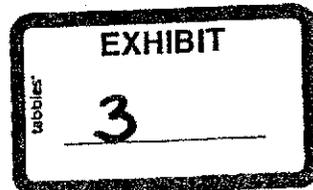
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EXHIBIT 3
TO
AFFIDAVIT OF ANDREA KNAPKE

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