

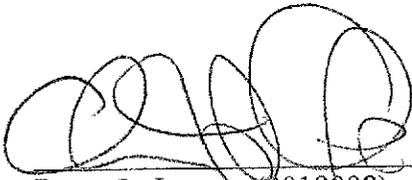


The parties to this action, by and through their respective attorneys, hereby jointly submit, for purposes of this action only, that each of the exhibits listed below are authentic for all purposes in this action:

| <u>Tab</u> | <u>Description</u>   |
|------------|--|
| 47         | Deposition Transcript with Exhibits of Robert E. Searight taken February 3, 2010 |
| 48         | Deposition Transcript with Exhibits of Duane Sheets taken February 3, 2010       |
| 49         | Deposition Transcript with Exhibits of Linda Sheets taken February 5, 2010       |
| 50         | Deposition Transcript with Exhibits of Rodney Sheets taken February 5, 2010      |
| 51         | Deposition Transcript with Exhibits of Carol Siefring taken February 10, 2010    |
| 52         | Deposition Transcript with Exhibits of Jeffrey Siefring taken February 19, 2010  |

Dated: June 1<sup>st</sup>, 2010

Joint Exhibits Approved and Respectfully Submitted By:



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TAB 47

IN THE SUPREME COURT OF OHIO

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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 ROBERT E. SEARIGHT, 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 2:14 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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I N D E X

WITNESS: Robert E. Searight

|              |        |       |
|--------------|--------|-------|
| Examinations | DIRECT | CROSS |
| By Mr. Cole  | -      | 4     |

E X H I B I T S

| RESPONDENT'S | DESCRIPTION                     | MARKED |
|--------------|---------------------------------|--------|
| A            | Affidavit of Robert E. Searight | 7      |
| B            | Xerographic document            | 65     |



1 Q. You ever take any classes or courses?

2 A. No. I helped farmers when I was a  
3 kid.

4 Q. Okay. So personal work experience?

5 A. Yeah, yeah --

6 Q. What about -- Go ahead.

7 A. It's a lot of -- Your mistakes, you  
8 learn.

9 Q. Sure. What about engineering?

10 A. No.

11 Q. By the way, you do need to give verbal  
12 -- I'll give you these instructions.

13 How about water or drainage or water  
14 movement or hydraulics or anything like that?

15 A. I was maintenance and -- That's my  
16 background, you know, maintenance. We had to do some  
17 plumbing, but, you know, that's minor.

18 Q. Yeah. I should have given you this.  
19 Let me give you just a quick -- few quick ground  
20 rules. I'm deposing you in this litigation involving  
21 the Department of Natural Resources and your claim  
22 because the spillway modification has flooded and  
23 damaged your property. I will ask that you give  
24 verbal answers, yes and no. Nods of the head and the  
25 un-huhs and un-uns are --

1           A.    Oh, all right, okay.  Okay.  There  
2 ain't no hollow (sic) on it?

3           Q.    Right.

4           A.    Okay.

5           Q.    And, if I, you know, I'm keeping that  
6 in mind, so I may sound very tedious.  You know, I  
7 may say, you didn't do that; did you and you say, no.  
8 Well, I may need you to clarify; no, you agree with  
9 me or no, you disagree and so don't take that  
10 personally.  It's just because there's a record and  
11 someone down the road, who isn't us in this room  
12 right now, it may not be clear, so I'm just trying to  
13 clear that up.

14                    If I ask you a question that you don't  
15 understand, it's confusing, it's ambiguous, let me  
16 know; I'll rephrase it.  I'm not, you know, I'm not  
17 trying to stick it to you that way, if you don't  
18 know.  And do answer truthfully, to the best of your  
19 knowledge.  If you don't know something, then just  
20 let me know and I may ask a couple of follow-up  
21 things, maybe, to try to jog your memory, but if you  
22 don't know, I'm, you know -- If that's the answer,  
23 then that's the answer.

24                    If you need to take a break -- I don't  
25 think we'll be here that long, but if you do, just

1 let me know, with one condition, if there's a  
2 question pending, go ahead and try to answer that  
3 before you take a break.

4                   And one thing I will ask is let me  
5 finish asking a question before you start answering  
6 it. You may think -- and you may know the answer  
7 halfway through, but then I may say something at the  
8 end that you weren't expecting or maybe I thought,  
9 well, I'll add one more thing and then all of a  
10 sudden, you gotta backtrack. So try not to start  
11 answering until I'm done and I'll try not to  
12 interrupt you with my questions. I'll try to let you  
13 finish. Sound good?

14                   A. Okay.

15                   Q. Do you have any questions before we  
16 begin?

17                   A. No.

18                   Q. All right. Well, we've actually kind  
19 of begun. I would like you to go ahead and look at  
20 -- I'm going to mark this as Exhibit A.

21                                   (Xerographic Document, Affidavit of  
22                                   Robert E. Searight, was marked for  
                                  identification Exhibit A.)

23 I will tell you this is what was provided to me by  
24 your counsel. Go ahead and take a quick look over  
25 that. You don't have to try and memorize it, just

1 see if -- just kind of familiarize yourself with it.

2 If there's a blank page, you can take it out.

3 A. Okay, yes.

4 Q. You can go ahead and look at the  
5 exhibits, too, on that. That's also part of the --

6 A. Yeah.

7 Q. Does that look familiar to you.

8 A. Yes.

9 Q. All right. And if you look at page 3,  
10 of your Affidavit, is that your signature?

11 A. Yes.

12 Q. And you signed that back in August?

13 A. Yes.

14 Q. All right. The statements in here, I  
15 mean, they were prepared for you; correct?

16 MS. BREWER: Objection.

17 Q. They were typed up by somebody else?

18 A. Yes.

19 Q. Were they typed up by your lawyers?

20 A. Yes.

21 Q. All right. Did you review these  
22 statements here before you signed it?

23 A. Yes.

24 Q. Have you had a chance to review this  
25 before your deposition?

1 A. Before I signed it?

2 Q. Before here today.

3 A. Yes.

4 Q. Okay. Anything, any of the statements  
5 in here that may not be accurate because things may  
6 have changed?

7 A. Not that I have seen.

8 Q. Okay. Now, I noticed that you had  
9 also done an affidavit, I believe, back in June, when  
10 the complaint was filed and it identified five  
11 parcels, even though this Affidavit only refers to  
12 four of the parcels.

13 A. Um-hum.

14 Q. One of those is called -- I don't know  
15 if it's going to be familiar to you -- 06-0155. I  
16 don't see it in this. You're not claiming that  
17 parcel's been flooded; are you?

18 A. No. That's by wife.

19 Q. And do you lease that property?

20 A. No, I own it. It was my mother 's.  
21 When she passed away, I inherited it.

22 Q. Do you farm that parcel, as well?

23 A. Yes.

24 Q. But you don't claim that that parcel  
25 has been affected by the spillway change?

1 A. No.

2 Q. No, it's not affected?

3 A. No, it's not affected.

4 Q. The other four, though, you do claim  
5 are affected?

6 A. Yes.

7 Q. All right. If you will look at those.  
8 They're listed in what has been provided as Exhibits  
9 A through D; they're four separate parcels.

10 A. Oh, I got 'em all mixed up.

11 Q. That's okay. That's all right.

12 A. Okay.

13 Q. Well, I might go over them. Let me  
14 ask you, I did go over some of these with Mrs.  
15 Searight, but on -- it's on Exhibit B, and that's the  
16 030700.02.

17 A. Let's see. Where is that at?

18 Q. Yeah, that's the one.

19 A. B, yeah, okay. I didn't see the  
20 number.

21 Q. Way at the bottom there, it looks like  
22 it's cut off. Is it approximately 60 acres. Does  
23 that sound right, that one that's on that picture  
24 there?

25 A. The whole --

1 Q. Well, within the area, yeah.

2 A. Yeah, that's approximately 60.

3 Q. Okay. That's the size of that parcel?

4 A. It's kind of a -- Yes, I would say  
5 it's right.

6 Q. Approximately 60?

7 A. Approximately, right.

8 Q. And the reason I'm saying that, sir,  
9 is if you look way at the bottom, in the left-hand  
10 corner, it just looks to me like that's a six there  
11 and a zero. I'm not holding you to it, but if you --  
12 Way at the bottom.

13 MS. BREWER: His is cut off.

14 MR. COLE: Oh, his is completely off.

15 Q. Well, then that doesn't even help you.

16 A. What I was gonna say all I see is  
17 zero.

18 Q. All right. I'm not trying to put  
19 words in your mouth. That's what mine says and it  
20 looks like it's -- The others I've got, this one, you  
21 have approximately 8 point -- 8-and-a-quarter acres?

22 MS. BREWER: When you say, "this one,"  
23 you're referring to --

24 MR. COLE: Exhibit A. It's the 26-119  
25 parcel?

1 A. Yes, 8.23?

2 Q. Right. And then the others there,  
3 Exhibit C looks like it's just about five acres, a  
4 little more than five acres?

5 A. Yes.

6 Q. And the other one's just a little  
7 under five acres, 4.761?

8 A. Mine's cut off there.

9 Q. Okay. Does that look about like, just  
10 about five acres, maybe a little less?

11 A. What's that, the whole parcel?

12 Q. Yeah, yes.

13 A. Yeah, that's roughly about five.

14 Q. All right. Tell me how you acquired  
15 these parcels, how these parcels --

16 A. I bought `em. Is that what you mean  
17 or -- Well, actually, we lived up the road about  
18 quarter of a mile and I wasn't a farmer than and we  
19 had a little pony building. We bought a house had a  
20 little pony building, so I don't like horses, so a  
21 friend of ours, raised a couple of calves, so, humph,  
22 made some money, bought some more, sold `em, bought  
23 some more. So I was doin' okay that way. So Dan, a  
24 guy that owned this to begin with, one year, said,  
25 "How would you like to rent my buildings?" "Sure."

1 Q. Do you know about what year that was?

2 A. Oh, boy! I can't say what year for  
3 sure. It was in the '60's.

4 Q. Okay.

5 A. And then --

6 MS. BREWER: I'm going to instruct you  
7 to listen to his question and answer the  
8 question he's asked. The question that was  
9 asked was -- Could you read that back.

10 MR. COLE: I thought he was answer,  
11 but I'll let her tell you.

12 (Record read.)

13 I'll go ahead and ask another question, but  
14 I'm not sure if he --

15 Q. Sir, were you finished answering my  
16 question?

17 A. That I bought the ground from the guy  
18 that owned it. I bought 40 acres off of him.

19 Q. Who was that? Who did you buy it  
20 from?

21 A. Orlan Menchoffer.

22 Q. Can you spell his last name?

23 A. Oh, no!

24 Q. Menchoffer?

25 A. Menchoffer.

1 Q. Orlan?

2 A. Orland. (Spelling) M-C-H-O-F-F-E-R

3 (sic), I think.

4 Q. Do you know if he's still alive? Is  
5 Mr. Menchoffer still alive?

6 A. No.

7 Q. And did you have any sort of  
8 relationship with him when you purchased that  
9 property?

10 MS. BREWER: Objection. Go ahead.

11 A. Just friend, I mean, you know, far as  
12 that, you know, no relation.

13 Q. Had you occupied those parcels before  
14 you bought them?

15 A. The buildings.

16 Q. Okay.

17 A. Yeah.

18 Q. And was that -- were you leasing from  
19 Mr. Menchoffer?

20 A. Yes.

21 Q. All right. Do you know when you  
22 purchased the parcels from Mr. Menchoffer, do you  
23 know whether those were -- you paid the market value  
24 or did he, because you were friends, maybe give you a  
25 discount?

1 MS. BREWER: Objection.

2 A. I can't say. You know, I don't --

3 Q. Do you remember what you paid for 'em,  
4 per acre or otherwise?

5 A. I think it was -- I'm gonna take a  
6 wild guess.

7 MS. BREWER: Don't take a wild guess.

8 THE WITNESS: Oh, okay.

9 MS. BREWER: I'm going to instruct you  
10 not to guess. To the extent you know or  
11 you can approximate, that's okay, but I  
12 don't want you to guess.

13 Q. What's your best estimate?

14 THE WITNESS: I can say that?

15 MS. BREWER: If you can give an  
16 estimate or an approximate answer --

17 A. Approximate \$1500 an acres for 40  
18 acres.

19 Q. And that was in the '60's.

20 A. Yeah. That was the house and  
21 buildings.

22 Q. Could it have been in the '70's?

23 A. No, it had to be --

24 MS. BREWER: And again, I'm going to  
25 instruct you not to guess.

1 A. Can't say.

2 Q. Okay. And the two other -- It looks  
3 like you bought the properties in the early '80's,  
4 '83, two of the parcels and then two of them you  
5 bought --

6 A. Different times, we bought --

7 Q. Right.

8 A. -- different --

9 Q. And those are in there. We won't go  
10 over those, so -- Let me ask you this: Did you buy  
11 the four that are in question in this case, were they  
12 all previously owned by Mr. Menchoffer?

13 A. Yes.

14 Q. How about the when you bought the five  
15 acres which is the 0307.0.03 (sic)? It's Exhibit D.  
16 Do you remember what you paid for that one per acre.  
17 Now, that was in 1998.

18 A. No, I can't remember what it was --

19 Q. Okay.

20 A. -- for sure.

21 Q. Well, let me ask you this: You  
22 remember -- The reason I'm asking is you remember you  
23 paid 1500 acres -- an acre further back, but you  
24 don't remember more recently what you paid for the  
25 other parcels?

1 MS. BREWER: Objection.

2 A. I can't say for sure. I'd rather not

3 --

4 Q. Okay.

5 A. -- you know --

6 Q. If you don't know, you don't know.

7 A. No, I don't. I'm pretty sure it was  
8 probably more. I mean, you know --

9 MS. BREWER: And again, you don't  
10 need to guess.

11 Q. Do you know how long Mr. Menchoffer  
12 had owned that property, the properties that you  
13 bought from him?

14 A. No. Long time.

15 Q. More than 20 years?

16 A. I think it was a homestead.

17 Q. Okay. The properties that are in this  
18 case, as far as you know -- as far as you have owned  
19 them, have them always been farmed?

20 A. Yes.

21 Q. Okay. Do you know if those properties  
22 have ever been used for anything besides farming?

23 A. No. What I had heard, it was an  
24 orchard at one time.

25 Q. And I'm not asking you to go back to

1 | caveman times.

2 |           A.    That's just what he had said one time  
3 | and how long ago, I have no idea.  I'm just --

4 |           Q.    Well, that's fine.

5 |           A.    Whether the whole thing was or not, I  
6 | don't know.

7 |           Q.    You've never seen those properties for  
8 | anything besides farming; have you?

9 |           A.    No.

10 |           Q.    Are the surrounding properties -- and  
11 | let's maybe go a mile in all directions -- is that  
12 | also farmland?

13 |           A.    No.  There is woods around, too.

14 |           Q.    Is there a housing development nearby?

15 |           A.    Yes.

16 |           Q.    Tell me about that.

17 |           MS. BREWER:  Objection.

18 |           Q.    Go ahead.  That, sir --

19 |           MS. BREWER:  Unless I instruct you not  
20 | to answer, you can go ahead.  The  
21 | objections are just the lawyers talking to  
22 | preserve our disagreements with the  
23 | questions --

24 |           THE WITNESS:  Okay.

25 |           MS. BREWER:  -- for the court later

1 down the road.

2 MR. COLE: We don't have a judge who  
3 can rule, so unless she -- unless it's  
4 something real serious or privileged,  
5 you're going to have to go ahead and  
6 answer.

7 THE WITNESS: Okay.

8 A. Yeah. There was a housing behind us  
9 that actually abuts up to us.

10 Q. Okay. Does that have a name?

11 A. Menchoffer Woods.

12 Q. Okay. Had that been owned by Mr. Ian  
13 Menchoffer?

14 A. Yes. I'm positive it was.

15 Q. Do you know, is that a housing  
16 subdivision?

17 A. Yes.

18 Q. Do you know how many houses are there?

19 A. No.

20 Q. Do you know what the market value of  
21 those houses are, what those properties go for on the  
22 market?

23 A. They seem to be normal houses. I mean  
24 it's not high, high end or anything like that.

25 Q. Any other, besides the woods and the

1 housing development, any other areas within a mile  
2 that are not farmland?

3 A. There is one at a corner that was --  
4 it was there before I even bought the place. Quite a  
5 few different -- It was a dance hall at one time.

6 Q. Oh! Is the building still there?

7 A. Yes.

8 Q. Do you know what it's currently being  
9 used for?

10 A. I think they got some offices in  
11 there.

12 Q. Where is that in approximation with --

13 A. It's right at -- to the corner. It's  
14 not even --

15 (Witness reviewing document.)

16 Yes, it is shown on here, on the --

17 Q. In that picture ID, it's in the very  
18 upper left-hand corner?

19 A. Oh, wait a minute. I'm lost here.

20 MS. BREWER: That's okay. Take your  
21 time.

22 A. No. It's in the left, bottom corner,  
23 bottom right-hand corner.

24 Q. We're talking about where there's a  
25 big building right here --

1 A. Yeah.

2 Q. -- in Exhibit D?

3 A. Yeah.

4 Q. Well, in Exhibit D to your Affidavit.

5 Okay. And what are those other buildings there that  
6 are --

7 A. There are some garages there.

8 Q. Okay. And you believe -- And, again,  
9 your understanding is this is being used maybe as  
10 office space?

11 A. The one is.

12 Q. The big one?

13 A. No. That's a garage.

14 Q. Oh, okay! So one of the smaller is a

15 --

16 A. Yes.

17 Q. On Exhibit D, what's directly south  
18 and to the middle; is that water there? Is that a  
19 lake?

20 A. That's south and to the middle.

21 You're talking about this, right here?

22 (Witness pointing on map.)

23 Q. Yeah.

24 A. That's a pond.

25 Q. Pond, okay. How close are these four

1 parcels to each other?

2 MS. BREWER: Objection.

3 A. My parcels?

4 Q. Yeah, the four that are in this case.

5 A. They all run together. They're all  
6 together.

7 Q. Well, how, physically distance-wise,  
8 how close are they?

9 A. This all is one farm.

10 Q. All right. But they don't abut each  
11 other; do there? There's some distance between 'em

12 --

13 MS. BREWER: Objection.

14 Q. -- do they? Are they adjacent to each  
15 other?

16 MS. BREWER: Objection.

17 Q. You can answer.

18 A. They join together. They're all  
19 together. It's one whole field.

20 Q. Okay. How far are they, collectively,  
21 how far are they from Grand Lake St. Marys and we  
22 will say the west side?

23 A. I'm going to say two-and-a-half miles,  
24 somewhere around there approximately.

25 Q. How about from Beaver Creek?

1           A.    I'm gonna say roughly three-eighths of  
2 a mile, something like that, three-eighths of a mile.

3           Q.    Three-eighths of a mile?

4           A.    Three-eighths of a mile, half a mile,  
5 somewhere like that.

6           Q.    And Beaver Creek is in what direction  
7 from these parcels?

8           A.    South.

9           Q.    And I understand that on these four  
10 exhibits here you have -- those are shadings that  
11 you've indicated where flooding has occurred?

12          A.    Yes.

13          Q.    Do you know if your properties, any of  
14 them, are in the flood plain?

15                MS. BREWER:  Objection.

16          A.    No, I don't know.

17          Q.    Can you describe the topography of  
18 your land?

19                MS. BREWER:  Objection.

20          Q.    Do you know what that means?

21          A.    No.

22          Q.    All right.  Let's talk about how's the  
23 elevation?  Are the lands level?

24                MS. BREWER:  Objection.

25          A.    No, it slopes.

1 Q. All right. And do you know about how  
2 far it slopes?

3 A. No. You talkin' about --

4 Q. Depths or heights?

5 A. No. I can't, I can't answer that. I  
6 know it's -- where the water is, is low ground, you  
7 know.

8 Q. Are any of the slopes man made or are  
9 they all naturally occurring?

10 A. They're all naturally occurring.

11 Q. One of your parcels abuts a road; is  
12 that correct?

13 MS. BREWER: Objection.

14 A. Yes.

15 Q. What road is that?

16 A. Mudd Pike -- Well, I got two of 'em.

17 Q. Okay. What's the other road?

18 A. Hellwarth.

19 Q. All right. Is Mudd Pike, is that road  
20 at the same level as where your property is or is  
21 there a ditch or an elevation. I doubt there'd be --  
22 Is there a ditch?

23 A. Yeah, there's a ditch runs along the  
24 road; is that what you mean?

25 Q. Yeah. Do you know how deep that is?

1           A.    No.  I can't -- In places, it varies,  
2 it varies so much.

3           Q.    Okay.

4           A.    You know.

5           Q.    What about the other road you  
6 mentioned?

7           A.    Hellwarth.

8           Q.    Hellwarth.  What about that one?

9           A.    It varies, too.  You know, some  
10 places, it --

11          Q.    Ever more than six feet?

12          A.    I don't believe.

13          Q.    Other than your residence which is on  
14 your property, are there any -- on the properties  
15 that you own, are there any man-made structures,  
16 buildings, any other buildings?

17          A.    Just what are there.

18          Q.    Everything else is mother nature?

19          A.    Yes.

20          Q.    Do you know if any of your properties  
21 -- And I'm saying 'cause they're different parcels.  
22 Since they're all abutting, it may not really make a  
23 difference.  Do you know if your property or  
24 properties, if there are any rivers and streams on  
25 any of them?

1 A. No.

2 Q. There are none or you don't know if  
3 there are?

4 A. There is no streams, no, rivers  
5 either.

6 Q. Do you know how -- Are there hills on  
7 your property?

8 A. What do you consider a hill?

9 Q. I suppose anything above the natural  
10 layout of the property.

11 MS. BREWER: Objection.

12 A. Well --

13 MR. COLE: You know, I know it's  
14 vague, but -- Gee! I'm on the spot. I  
15 better get sworn in.

16 Q. I would say any portions of your  
17 property that slope upward at a higher elevation.

18 A. There is different elevations.

19 Q. Do you know, like, how high does it go  
20 up; do you know?

21 A. (Witness shaking his head.)

22 Q. Is there any part of your property  
23 that is not farmable?

24 A. No.

25 Q. Is there any part of your property

1 that you don't farm, obviously, other than your  
2 house?

3 A. Now, you're talking about right now?

4 Q. Correct.

5 A. Okay. I put a quail cover in just  
6 last year.

7 Q. All right. Before that?

8 A. No.

9 Q. You farm the entire properties? What  
10 did you farm, what kind of crops? My question was:  
11 You farm the entire property; correct?

12 A. Yes.

13 Q. Okay. And then I think I asked you  
14 quail cover. Well, it was before that.

15 MS. BREWER: He said is there any  
16 that's not farmable; you said, there's a  
17 quail cover. He said is there any that's  
18 not farmed; he said, what are you talking  
19 about.

20 MR. COLE: Right, right, and I  
21 appreciate that.

22 Q. So currently, everything, but where  
23 the quail cover is?

24 A. Yes.

25 Q. All right. And when did you put that

1 | quail cover in?

2 |           A.    This year.

3 |           Q.    Okay.  And why did you put --

4 |           A.    In '09.

5 |           Q.    Okay.  Sure, all right.  And why did  
6 | you put that in?

7 |           A.    It was along a woods and we just put  
8 | it in.  The government will pay for some and --

9 |           Q.    They reimbursed you for that?

10 |          A.    Yeah.

11 |          Q.    Did they fully reimburse you?

12 |          A.    No, not totally.

13 |          Q.    Well, what is it?  I'm kinda ignorant  
14 | on that.  What is a quail cover?  Why do you have  
15 | one?

16 |                    MS. BREWER:  Objection.  Is that two  
17 | questions or one?

18 |          Q.    Why do you have a quail cover?

19 |          A.    Because it abuts right up to a woods.

20 |          Q.    What does it do?

21 |          A.    It's for quail I suppose.  You know,  
22 | it's a --

23 |          Q.    Okay.  What does it look like.  I  
24 | mean, I --

25 |          A.    There's just grass.  Plain grass in

1 the ground.

2 MS. BREWER: You got a city boy here.

3 A. Yeah. It's just a small one. It's  
4 only 50 feet wide and it's --

5 MR. COLE: Off the record.

6 (Discussion held off the record.)

7 Q. Is all of your land tillable?

8 MS. BREWER: Objection.

9 A. Yes.

10 Q. I'm not sure you answered. Did you  
11 tell me what you plant, what kind of crops?

12 A. Rotation, corn, beans; I have had hay  
13 different times when we had cattle.

14 Q. When's the last time you had cattle?

15 A. Well, actually, I still got two, but I  
16 mean, actually, milk sometime.

17 Q. Okay. Well, when was the last time  
18 you did that?

19 A. I can't remember what year it was.

20 Q. More than 10 years ago?

21 A. I would say so.

22 Q. Do you know what kind of soil your  
23 property is?

24 MS. BREWER: Objection.

25 A. It's all types.

1 Q. Clay?

2 A. We have clay.

3 Q. Sand?

4 A. Yes.

5 Q. Do you happen to know what percentage

6 of --

7 MS. BREWER: Objection, and I'm going

8 to ask you not to guess, but to the extent

9 that you can approximate or you know, you

10 can answer.

11 A. I can't say. It varies so much from

12 one spot to another spot.

13 Q. , And is it throughout there are

14 different soil types? It's not just certain

15 sections; it's all throughout; is that what you're

16 telling me?

17 A. It's just some spots there is one

18 little spot got a little sand.

19 Q. All right.

20 A. It varies. It's varies so much.

21 Q. Tell me what kind of drainage systems

22 you have on your property?

23 MS. BREWER: Objection.

24 A. Tile.

25 Q. Okay. Tell me about that. Do you

1 have it on -- Is your entire property tiled?

2 A. Yes.

3 Q. How are they laid?

4 MS. BREWER: Objection.

5 A. With a machine.

6 Q. When were the tiles put down.

7 A. The big one was a couple years ago.

8 Q. Okay. What year?

9 A. I --

10 Q. '08?

11 A. No. I think it was before that.

12 Q. Five years ago?

13 A. I can't say. I just, you know, I just  
14 don't write it down.

15 Q. How much of -- When you say, "the big  
16 one," how much -- try to quantify that. What kind of  
17 tiling? Tell me about that.

18 MS. BREWER: Objection.

19 A. It's a 24-inch tile. It runs right  
20 through.

21 Q. Why did you do that?

22 A. 'Cause there was holes in the old one.

23 Q. Okay. When you say, "the old one,"  
24 was that pre-existing before you bought it?

25 A. Yes.

1 Q. Do you know whether your drainage  
2 system is consistent with the industry standards?

3 MS. BREWER: Objection.

4 A. I believe so.

5 Q. Have you ever taken any steps to make  
6 your land -- to alleviate water on your land or any  
7 flooding? Have you ever done anything to lessen the  
8 impact of flooding on your property?

9 MS. BREWER: Objection.

10 A. There ain't much you can do, you know.

11 Q. Do you have any easements on your  
12 property?

13 MS. BREWER: Objection.

14 A. No.

15 Q. Have you ever participated in the  
16 Conservation Reserve Program, the government has?

17 A. Now, this is what I'm --

18 Q. Go ahead.

19 A. -- don't know. You mean far as  
20 government programs?

21 Q. Yes.

22 A. Yes.

23 Q. All right. And that's the filter  
24 strip?

25 A. Yeah, that was -- Yeah.

1 Q. You have a filter strip on your  
2 property?

3 A. A waterway.

4 Q. All right.

5 A. Where is that?

6 Q. Yeah.

7 A. Do you want me to show you on the map?

8 Q. That would be fine. Take your time.

9 (Witness reviewing document.)

10 A. Okay. It's -

11 Q. You're looking at B then?

12 A. Yes, B.

13 MR. COLE: Just for the record, that's  
14 the 030700.0200 parcel.

15 Q. Go ahead.

16 A. There's two of `em. Actually, two of  
17 `em runs down to, about right there at the point,  
18 somewhere around in there.

19 Q. You're kind of pointing toward the  
20 middle of the right-hand side?

21 A. Actually, it'd be kind of the  
22 left-hand side, like --

23 Q. Oh, I'm sorry. All right. And do you  
24 know how long that filter is?

25 A. No. It's not very long.

1 Q. Do you have an estimate of how -- Can  
2 you estimate how long it is, feet?

3 A. I'd say 50 feet, 100 feet, something  
4 like that.

5 Q. And you say you have two of them or  
6 just one?

7 A. Yeah, there's two of 'em goes through  
8 there.

9 Q. All right. Are they both -- I mean  
10 where are they in relationship to these other --

11 A. Real close to each other, right in  
12 through there. They're -- Is that what you mean?

13 Q. Yes. And does the Federal Government  
14 pay you for those?

15 A. They emburse (sic) partial.

16 Q. Okay. How much did they pay you?

17 A. I think -- I'm not gonna say. There  
18 was different figures that, you know --

19 Q. Do you get paid annually?

20 A. It's be annually. I think it was,  
21 like, 90 percent. They paid up to 90 percent, I  
22 think is what it is.

23 Q. Are you getting paid? When did you  
24 put those in?

25 A. No. I just put it in this year.

1 Q. So does \$200 sound --

2 MS. BREWER: Objection.

3 Q. You don't know?

4 A. No, I don't know what it was. It was  
5 it just needed to be done and we decided to put it in  
6 and it did help keep the ground from eroding.

7 Q. What about do you participate in the  
8 Wetlands Reserve Program?

9 A. You mean that's like set aside?

10 Q. Maintain property as a wetlands. It's  
11 a governmental easement to maintain the property like  
12 that.

13 A. I do whatever they --

14 Q. You don't know, specifically?

15 A. No. No, I --

16 Q. Let me ask you this, maybe it's a  
17 better question: Other than the filter strip, the  
18 conservation, are you aware of any other governmental  
19 programs that involve your land that you're a part  
20 of?

21 A. No. No. You mean like -- No.  
22 There's just a -- Whatever the government comes out  
23 with each year, you know, that's -- I'm in on that.

24 Q. Okay. Well, do you know of anything,  
25 specifically, besides the conservation --

1           A.  No, no.  You mean, like, wetlands or  
2 anything like that?

3           Q.  Yes.

4           A.  No.

5           Q.  You don't know?

6           A.  (Witness shaking his head.)

7           Q.  Well, let me ask you, no or you don't  
8 know?

9           A.  No, I'm not in a wetland, you know,  
10 fields soon (sic).

11          Q.  All right.  When you purchased your  
12 property -- and I understand -- Let's go with the two  
13 that you bought in 1983; all right, 'cause there were  
14 two that -- one you bought in, I believe your  
15 Affidavit says you bought one in '97 and one in '98.  
16 So the two that you bought in 1990-- or 1983, when  
17 you bought those or even -- Did you -- Let me make it  
18 clear, did you occupy or farm those before you bought  
19 them?

20          A.  Yes.

21          Q.  All right.  When you -- We'll start  
22 with when you bought them.  When you bought them, did  
23 Mr. --

24          A.  Menchoffer?

25          Q.  Yeah, Menchoffer tell you that there

1 was any flooding on the -- that the property flooded  
2 at all?

3 MS. BREWER: Objection.

4 A. No.

5 Q. Did anyone tell you that there were  
6 flooding issues on the property?

7 MS. BREWER: Objection.

8 A. No.

9 Q. Okay. Did, before 1997, when the  
10 spillway was modified by the Department of Natural  
11 Resources, did you ever have any flooding on your  
12 property. And, again, I understand the two that you  
13 bought afterward, but --

14 A. We did, we definitely had some -- we  
15 definitely would have some --

16 Q. Do you know what caused that flooding?

17 A. Water.

18 Q. All right. Do you know where that  
19 water came from?

20 A. Rain.

21 Q. All right.

22 A. Ah, you know --

23 Q. Do you recall, before 1997, if any of  
24 your property flooded because of the river  
25 overtopping?

1 MS. BREWER: Objection.

2 A. Yes.

3 Q. It did?

4 A. Yes.

5 Q. Do you know how many times that  
6 happened?

7 A. No.

8 Q. Do you know why the river overtopped?  
9 Was that because of rain?

10 MS. BREWER: Objection.

11 A. Had to be.

12 Q. When you bought -- I mean you knew  
13 that -- Strike that.

14 Did you know that the State had  
15 modified the spillway in 1997? Were you aware when  
16 that occurred?

17 A. Yes.

18 Q. You bought the five-acre parcel which  
19 is -- It's in Exhibit C. It's the 26-0307 parcel,  
20 030700.0000. In 1997, do you remember whether you  
21 bought that before or after the spillway had been  
22 modified?

23 A. No.

24 Q. You don't remember?

25 A. I don't remember.

1 Q. Did you buy it knowing that the  
2 spillway was going to be modified?

3 A. No.

4 Q. But the one in 1998, then, that would  
5 have been after the spillway; you knew that one? You  
6 bought that one after the spillway had been modified?

7 A. Ninety-eight? Yes, I got -- Yeah,  
8 '97, when the spillway was there; right?

9 Q. Correct. Had you, for the ones that  
10 you bought in 1997 and 1998, had you occupied those  
11 properties?

12 A. Yes.

13 Q. Okay. So your property did flood some  
14 before the spillway was modified?

15 A. Yes.

16 Q. And you believe that was due to rain?

17 A. It'd also back up.

18 Q. Okay.

19 A. We would have some backup then, too.

20 Q. Do you know whether the existence of  
21 flooding on the property affected the value of the  
22 property?

23 MS. BREWER: Objection.

24 A. I would say it did. I mean --

25 Q. By the way, when I talk about

1 flooding, what's your -- If I talk about whether  
2 there was flooding, what does that mean to you? Do  
3 you interpret that as -- Do you understand that to be  
4 that the river overcrested or that you had standing  
5 water?

6 A. Well, the river overcrested --

7 Q. All right.

8 A. -- and backed up.

9 Q. All right. For purposes of this  
10 deposition, if I'm going to talk about flooding,  
11 unless I, specifically, only talk about overcresting,  
12 I'm talking about where you have water, standing  
13 water on your land, okay, not just when the river  
14 goes up. Just so we're on the same page there.

15 Do you know how many times, how  
16 frequently your property flooded before 1997?

17 A. No.

18 Q. Would it have been, perhaps, once a  
19 year?

20 A. I can't say. No, I can't, I can't --  
21 No, I --

22 Q. You know, I'm not asking you about any  
23 specific.

24 A. Yeah.

25 Q. Do you know about how much rain it

1 | took to flood before the spillway was modified?

2 | MS. BREWER: Objection.

3 | A. It depends on how much rain we had  
4 | before.

5 | Q. All right.

6 | A. And when the ground is saturated, it's  
7 | saturated and it don't take --

8 | Q. Would a 48-hour rain do it?

9 | MS. BREWER: Objection.

10 | A. How hard is it raining.

11 | Q. Okay.

12 | A. You know, is it drizzlin', rainin'.

13 | Q. Okay, fair enough. I think you  
14 | indicated there were times where your property --  
15 | And, again, this is all pre-1997, where your lane  
16 | would be flooded, but the banks were not overflowing;  
17 | correct? You did have times where your property was  
18 | flooded?

19 | A. There would be times I would have  
20 | some. I'm not gonna say -- But that's what that tile  
21 | was doing; it was taking it away.

22 | Q. Where, on your properties, was it  
23 | flooding before 1997?

24 | A. Actually, down through the middle.

25 | Q. Okay. On all of them?

1 A. No.

2 Q. Let's go through -- Let's do each of  
3 these.

4 A. Okay.

5 Q. Go to Exhibit A. That's that triangle  
6 parcel with your house on it.

7 A. Yes.

8 Q. Before 1997, if I ask you if it had  
9 ever been flooded, where would it be?

10 A. It'd be right in the middle.

11 Q. Right in the middle there.

12 A. Of the darkened area.

13 Q. Okay. So where you have it marked  
14 already?

15 A. Yes.

16 Q. Okay. Let's go to B then.

17 A. But not the whole area.

18 Q. Within that area?

19 A. Within that area, yes.

20 Q. All right. Is that area at a lower --  
21 Is that in a valley or a lower --

22 A. Yes, it's lower.

23 Q. Hang on. Let me finish. -- lower  
24 elevation?

25 A. Yes.

1 Q. All right. How about Exhibit B then?

2 Is that the --

3 A. Same, same as A.

4 Q. -- 50 acre? And then in the shaded  
5 area?

6 A. Yes, but not all the shaded area.

7 Q. Okay, what part?

8 A. How much? It would actually be in the  
9 middle of it.

10 Q. All right. And is that a lower  
11 elevation?

12 A. Yes.

13 Q. How about Exhibit C?

14 A. I don't ever think it got up there.

15 Q. And D?

16 A. I don't think it ever got up there,  
17 either.

18 Q. Before 1997, do you know how deep that  
19 water -- flooding got?

20 MS. BREWER: Are you asking on average  
21 or what are you asking?

22 MR. COLE: On average.

23 A. Oh, I would say maybe -- I would,  
24 roughly, say a foot.

25 Q. Do you know if it ever got worse than

1 | that? Was it ever deeper than a foot?

2 |           A. No, because I really never worried  
3 | about it that much, you know, because it drained away  
4 | very quick.

5 |           Q. Well, that's -- there's a -- All  
6 | right, all right. That leads to my next question.  
7 | Before 1997, on average, when you had flooding, how  
8 | long would the water stay there?

9 |           A. At the longest, probably half a day,  
10 | maybe.

11 |           Q. Really? Never more than a day ever?

12 |           A. No. It went away quickly if it  
13 | stopped raining, you know.

14 |           Q. All right. Before the spillway was  
15 | modified, did it flood more than once a year ever?

16 |           MS. BREWER: Objection. Are you  
17 | talking about all the properties?

18 |           MR. COLE: Any of the properties.

19 |           MS. BREWER: Did any of the properties  
20 | flood more than once a year?

21 |           MR. COLE: Yes.

22 |           A. I can't remember. There was years it  
23 | didn't flood at all. You know, there was years you  
24 | did get some.

25 |           Q. Before 1997, when you had flooding,

1 | did you incur any crop loss or any other damage?

2 | MS. BREWER: Objection.

3 | A. I cannot remember any.

4 | Q. Did you, again, before 1997, did you  
5 | ever seek or obtain any governmental assistance due  
6 | to flooding?

7 | A. No.

8 | Q. When the land was flooded, could the  
9 | property be used for other purposes, such as live  
10 | stock or agricultural purposes?

11 | MS. BREWER: Objection.

12 | A. Was it used for anything else besides

13 | --

14 | Q. Could it have been used for anything  
15 | else; do you think?

16 | A. No. It's always been --

17 | Q. Your house is, is it even with the  
18 | ground?

19 | A. No. It's a little bit more elevation  
20 | there.

21 | Q. Do you know how high it's elevated?

22 | A. No.

23 | Q. More than five feet up, less than five  
24 | feet?

25 | A. From what?

1 Q. From the ground.

2 A. Our house is -- Yeah. I'm gonna say  
3 -- Our house, itself?

4 Q. Yeah.

5 A. Not the basement?

6 Q. Right.

7 A. I'm gonna say it's probably two foot  
8 above the ground.

9 Q. And you do have a basement?

10 A. Yes.

11 Q. Do you know how far deep -- how deep  
12 that goes?

13 A. It's probably -- I'm gonna say it's  
14 seven foot, eight foot, something like that.

15 Q. Did you ever, again, before 1997, keep  
16 any records of flooding on your property --

17 A. No.

18 Q. -- and write it down?

19 A. No.

20 Q. Have you ever had crop insurance?

21 A. I had to this year.

22 Q. Why did you have to?

23 A. Because the government said you had to  
24 have crop insurance. I think everybody had to have  
25 it.

1           Q.    Is it everyone has to have crop  
2 insurance; that it or -- to get the benefit or  
3 anything --

4           A.    You had to have crop insurance this  
5 year to be in the program.

6           Q.    Okay, all right.  So that was a  
7 condition of the program?

8           A.    Yes.

9           Q.    That's the Conservation Program?

10          A.    Yes.

11          Q.    Can you tell me about your crop  
12 insurance policy?

13                MS. BREWER:  Objection.

14          A.    No.

15          Q.    Okay.  You don't know any of the  
16 terms?

17          A.    It was a minimum.

18          Q.    What do you mean by, "minimum?"

19          A.    I don't believe in insurance.  I just  
20 bought --

21          Q.    The minimum as in what protection it  
22 provides, how much it'd pay?  What do you mean by,  
23 "minimum?"

24          A.    It was minimum coverage; that's all I  
25 know.

1 Q. Okay. Do you know what you paid for  
2 that?

3 A. No, I don't know.

4 Q. Have you paid anything for it yet?

5 A. Oh, yes.

6 Q. How much have you paid so far?

7 A. I don't know. My wife takes care of  
8 that.

9 Q. Okay. Do you know who it's with?

10 A. The actual company, no; I don't know.  
11 I know where I got it, but the actual company --

12 Q. Well, who did you get it from?

13 A. Landmark at Chad.

14 Q. What do you mean, "at Chad?"

15 A. Well, it's a little town.

16 Q. Oh, okay.

17 A. It was on the elevator and that's it.

18 Q. Do you know anything about how the  
19 policy works?

20 A. No.

21 Q. Have you ever submitted a Claim? When  
22 you say -- You say you got it just last year?

23 A. Yes.

24 Q. When?

25 A. I got it before the deadline; that's

1 all I can remember.

2 Q. Do you remember what month, what  
3 season?

4 A. Well, it had to be before we planted.

5 Q. When was that?

6 A. Well, we planted in May. You know, we  
7 usually -- I think it was in the wintertime, you  
8 know.

9 Q. Do you ever keep track of what your  
10 crop yields are, your annual crop yields?

11 A. No.

12 Q. Do you know what it was -- Do you know  
13 what your crop yield was the year before or your best  
14 crop yield before the spillway came in?

15 MS. BREWER: Objection.

16 A. I never -- What it was --

17 Q. Do you know how much you make in any  
18 give year off your crops?

19 MS. BREWER: Objection.

20 Q. Do you know last year how much you  
21 made from your crops?

22 A. Well, I got to store it, so I can't  
23 tell you.

24 Q. You've got what?

25 A. I've grain stored --

1 Q. All right.

2 A. -- so I can't, you know, what I'm  
3 gonna sell it for. I haven't the year before. I've  
4 still got grain stored from then, too.

5 Q. Okay.

6 A. Yeah.

7 Q. But you've sold some of your crops in  
8 the past couple years?

9 A. Yes.

10 Q. Do you know what they're going for?

11 MS. BREWER: Objection.

12 A. Here a couple years ago, it was very  
13 good.

14 Q. Like, give me an example.

15 A. I think beans were, like, \$16 an acre  
16 -- or a bushel.

17 Q. Have you ever had your property valued  
18 or appraised?

19 A. No.

20 Q. Do you have an opinion as to what your  
21 property is worth?

22 MS. BREWER: Objection.

23 A. No.

24 Q. Can you think of anything besides the  
25 change of the spillway that has resulted in increased

1 water on your property?

2 A. No, I can't think of anything.

3 Q. Well, let me ask you this: Could a  
4 heavy rain contribute to flooding on your property  
5 like before?

6 MS. BREWER: Objection.

7 A. Yeah. Whenever we get a rain, you  
8 know, we get some like we did before, before '97.

9 Q. After '07, have you ever had flooding  
10 just because of the rain, but not because of the  
11 spillway?

12 MS. BREWER: Objection.

13 Q. Not from the Beaver Creek?

14 A. How much?

15 Q. So you have had some?

16 A. We have had some.

17 Q. All right. How bad were those?

18 A. Like it was before.

19 Q. Foot maybe?

20 A. Yeah, something like that.

21 Q. And I'll go back to an earlier  
22 question: Did you know when you purchased the  
23 property or when you acquired the property that it  
24 did have -- was susceptible to flooding?

25 MS. BREWER: Objection.

1 A. Yes.

2 Q. How often has the flooding occurred  
3 after 1997, after the spillway was built?

4 MS. BREWER: Objection.

5 A. Quite often for a few years.

6 Q. Okay. I see in your Affidavit -- Wait  
7 a minute, before I get to that, do you know when the  
8 last time your property was flooded? And when I say,  
9 "property," any of the parcels.

10 A. I believe it's '08.

11 Q. Do you know how many times it flooded  
12 in '08?

13 A. No, but I'm positive that was the year  
14 I had to replant three times.

15 Q. All right. You had to replant, but  
16 you don't know for sure whether it flooded three  
17 times?

18 A. Evidently, it probably did or I  
19 wouldn't be doing --

20 Q. You don't, specifically, remember?

21 A. Yeah. I mean, well, you know, we  
22 usually just don't replant because there was a  
23 reason. You know, there was a reason why you had to  
24 replant.

25 Q. Do you know when, in 2008 --

1 A. No.

2 Q. -- they flooded -- Hang on. Do you  
3 know when, in 2008, you had flooding because of the  
4 spillway?

5 A. No.

6 Q. You had no flooding then in 2009  
7 because of the spillway?

8 A. I don't believe.

9 Q. You've got, we'll say at least once in  
10 2008, you had flooding. How about the most recent  
11 time before 2008?

12 A. Recent time before that? I can  
13 remember we had a couple big ones, real big ones, you  
14 know, but far as when it does, it just does, you  
15 know.

16 Q. It's a particular one where the depth,  
17 since 1997 was, let's say, over three feet?

18 A. Yes. I believe it was '04 or '03, '03  
19 or '04, I'm not --

20 Q. Okay. And tell me about that flood.

21 A. It was pretty major.

22 Q. Okay. How deep did the water get on  
23 your property?

24 A. I'm gonna say --

25 Q. On your property?

1           A.    Yeah.  I'm gonna say it was, like,  
2 four foot, something like that.

3           Q.    And how long was the water on your  
4 property?

5           A.    Oh, boy!  This is gonna be just  
6 another -- week.  I'm just -- It could be less than  
7 that a little bit, could be more than that.  It's one  
8 of those things you just don't write down in your  
9 baby book.

10          Q.    Do you recall whether you had any  
11 flooding between 2003 or '04 and 2008; that's about a  
12 four-year period?

13          A.    I think I had one in '5

14          Q.    Do you know how deep the water got  
15 then?

16          A.    I don't believe it was quite as bad.

17          Q.    So not four feet, then; right?

18          A.    Yeah, I don't believe.  It wouldn't  
19 have been.

20          Q.    Two feet?

21          A.    I think it was -- I'm not gonna say.  
22 I hate -- It just -- You don't really, you know, you  
23 don't go out and measure it, you know, but you can  
24 see how wide it is.

25          Q.    You've never measured the depth on any

1 of these?

2 A. No.

3 Q. In the cases that you've identified --  
4 Do you recall any other flooding between '97 and this  
5 big one in either '03 or '04?

6 A. Oh, I'm sure there's been some, but --

7 Q. Do you recall, specifically?

8 A. No, I don't, you know.

9 Q. Has the flooding been greater than it  
10 had been before the spillway was modified?

11 A. Has it been what now?

12 Q. Has there been more flooding? Has it  
13 been heavier flooding?

14 A. Yes.

15 Q. In your Affidavit, I see figures --  
16 you indicated for the various parcels you've got the  
17 -- parcel A there --

18 A. Um-hum.

19 Q. -- you've got 1.25; parcel 2, 36.5;  
20 parcel 3, about an acre; parcel 4 about .75. How did  
21 you, if you didn't keep records, how did you know  
22 seven years ago or six years ago that it flooded this  
23 much?

24 A. Seven years ago?

25 Q. Yeah, back in '03 or '04.

1           A.    Oh, it didn't flood as much.  You mean  
2 before what date?

3           Q.    Your Affidavit says in '03, 2003 and  
4 then you give various -- you say the most -- most  
5 invasive which would be like the worst flood.

6           MS. BREWER:  Could you point him to a  
7 paragraph to clear this up a little bit?

8           MR. COLE:  Paragraph 9.  I thought I  
9 had said that.  If you want to look at  
10 that, you're welcome to.  It's on page 2,  
11 at the top of the page.  Bottom of page 2,  
12 top of page 3.

13          A.    Okay.

14          Q.    And I'm asking you how do you --

15          A.    This was the worst flood.

16          Q.    Okay.

17          A.    Yes.

18          Q.    Since 1997?

19          A.    Yes.

20          Q.    And how do you know, how do you know  
21 that acreage, that many acres was affected?

22          A.    I don't know.  We darkened where,  
23 approximately where I thought it was.

24          Q.    You were just doing that from memory?

25          A.    Yes.

1 MS. BREWER: Objection.

2 A. We didn't put no stakes down.

3 Q. Did you consult anyone else before you  
4 did that? Did anyone else -- Did you check with  
5 anyone else? Did anyone ever -- roped off or  
6 examined the area at all?

7 A. No, no.

8 Q. When, after 1997, when your property  
9 experienced flooding, do you know whether the Beaver  
10 Creek was always overtopped?

11 MS. BREWER: Objection.

12 A. After '97 and before --

13 Q. After 1997.

14 A. It was over the top then.

15 Q. Every time, as far as you know?

16 A. Over top of --

17 Q. When you had flooding on your property  
18 since 1997, on those instances where you did, had  
19 Beaver Creek always overtopped?

20 A. Oh, yes!

21 Q. Was the flooding in 2003 -- I  
22 understand you said it's a week, more or less -- what  
23 that a one-time event that year?

24 A. I can't really remember, really, you  
25 know.

1 Q. How did the flooding impact you. I  
2 mean what harm did -- befell you because of the  
3 flooding?

4 A. Well, it's crop land. I mean, you  
5 would get the erosion. I also get tons of fodder at  
6 one end of the field when it goes back in its banks,  
7 when Beaver goes back in its banks. I get,  
8 basically, the, you know, impact on the compaction  
9 that really hurts.

10 Q. Is any of your property permanently  
11 damaged? In other words, is any, since 1997, if all  
12 of your property was farmable, was any not farmable  
13 even when it's not flooded?

14 MS. BREWER: Objection.

15 Q. You understand that question? Let me  
16 rephrase that.

17 A. Yeah.

18 Q. Yeah. That was compound. I  
19 understand you can't farm it when it's -- when you  
20 got standing water. It's not flooded today; right?

21 A. Right.

22 Q. Are you able to farm all of your  
23 property today?

24 A. Yes.

25 Q. All right. Simple way to get through

1 a complicated issue.

2 A. Okay.

3 Q. Have you ever, because of flooding on  
4 your land, have you ever gotten any governmental  
5 assistance from State or County, local level, Federal  
6 Government?

7 A. No.

8 Q. Have you ever looked into that?

9 MS. BREWER: Objection.

10 A. No.

11 Q. Have you changed the way you farmed  
12 your land or used your land because of the spillway?

13 MS. BREWER: Objection.

14 A. Yes and no.

15 Q. Okay. Tell me about that.

16 A. Where it floods, I have to rip it up  
17 because it's compaction. Otherwise, if I put beans  
18 in, I usually no-tilled it.

19 Q. Okay. That's it?

20 A. You mean far as --

21 Q. What you do differently.

22 A. Yeah.

23 Q. How long does it take you to rip it up  
24 or uncompact it?

25 A. I can rip up, probably, about four

1 acres an hour.

2 Q. Do you have to do that with all the  
3 land or just some of the land that gets flooded?

4 A. Where it gets flooded.

5 Q. All of it?

6 A. Yes, sir.

7 Q. All right. So if you have -- Let me  
8 just get it straight. When you have flooding, do you  
9 have to go in and rip up all the land that's flooded  
10 in order to farm it?

11 A. Usually, I do.

12 Q. Did you do that in 2008?

13 A. I -- See, that'd been beans. I think  
14 I did, I think, 'cause I had beans in there that  
15 year.

16 Q. Do you keep records of your income  
17 statements or financial records from farming?

18 A. No.

19 Q. I assume you do for taxes.

20 A. For taxes, yes.

21 Q. Have you noticed that your income that  
22 you report on your taxes is lower since 1997 or have  
23 you noticed a difference in what you report?

24 MS. BREWER: Objection.

25 Q. If you haven't, that's fine.

1           A.    Yeah.  Well, I can't, you know, each  
2 year it seems different.  You know, one year, there's  
3 a -- it'll be good prices and then the fertilizer is  
4 high.

5           Q.    Can you say with certainty that the  
6 income you get from farming is diminished from  
7 flooding?

8           MS. BREWER:  Objection.

9           A.    Yes.

10          Q.    Okay.  How can you say that for  
11 certain if there are other factors involved?

12          A.    Because of the compaction when the  
13 combine goes through and the yields are not quite as  
14 good as they used to be when it floods.

15          Q.    Um-hum.

16          A.    It hurts the crops.  If it don't kill  
17 `em, it hurts `em real bad.

18          Q.    But do you know -- Can you quantify  
19 that, that all?

20          MS. BREWER:  Objection.

21          Q.    So you know it's gone down, but you  
22 can't tell me how much it's gone down; right?

23          A.    Right, yes.  I just can't, you know,  
24 `cause some of the ground, we put it all together.

25          Q.    What do you mean by that?

1           A.    The field, you know, that's one whole  
2 field and I can't -- I can see where the, the  
3 flooding part is less and that's my better ground,  
4 too.

5           Q.    Do you have an opinion as to what your  
6 property is worth today?

7           MS. BREWER:  Objection.

8           A.    No.

9           Q.    Have you looked at sales of nearby  
10 properties, anything like that?  If you had to sell  
11 your property, do you have an idea what you think you  
12 could get for it?

13          A.    I'm sure it's less than a lot of what  
14 the ground is going for.

15          Q.    How do you know that?  Less than what  
16 ground has gone for?

17          A.    Well, probably about four or five  
18 miles from me ground goes high.

19          Q.    The same identical ground that you  
20 have?

21          A.    No.  It don't flood.

22          Q.    Okay.  Same type of farmland?

23          A.    Actually, I got better ground.  Bottom  
24 ground is better ground.

25          Q.    Do you have an idea of what your

1 | property would be worth if the spillway had not been  
2 | changed?

3 | MS. BREWER: Objection.

4 | A. No. I'm sure it'd be worth more.

5 | Q. Before you got involved with this  
6 | lawsuit against the State, did you ever complain,  
7 | make any reports or take any actions against the  
8 | State or the Department of Natural Resources?

9 | A. No. Actually, I did complain to two  
10 | people, who was very involved in it, Leroy Johnston  
11 | and John Zumberg.

12 | Q. Can you spell that?

13 | A. No.

14 | Q. Okay.

15 | A. Can you?

16 | Q. No. Actually, I think I can 'cause I  
17 | think they've got some in the case, but I'll look  
18 | that up. Who's Mr. Johnston?

19 | A. He lives -- He farms along Beaver.  
20 | Actually, it's real close to Zumberg. They both farm  
21 | quite a bit along Beaver.

22 | Q. Was Mr. Johnston, when you say you  
23 | complained to him, could he do anything about it or  
24 | was he just --

25 | A. I think they both went to Columbus

1 different times and I think they got ahold of  
2 different people; I do know that 'cause there were  
3 different times there'd be something in the paper  
4 that they got ahold, you know -- tried to get  
5 somebody to do something about the situation.

6 Q. Anything besides talking to them? Did  
7 you take any action to try to --

8 A. John Zumberg, no.

9 Q. You just talked to these individuals;  
10 right?

11 A. Yes.

12 Q. You didn't call up ODNR; you didn't  
13 contact anyone from the State or any government  
14 officials?

15 MS. BREWER: Objection.

16 A. I'm just a little guy.

17 Q. Yes or no.

18 A. No.

19 Q. Okay. I'd like you to --

20 MR. COLE: Did I give you the  
21 supplemental one?

22 MS. BREWER: Um-um.

23 MR. COLE: Okay. Did I give him that?

24 MS. BREWER: You did not.

25 MR. COLE: Okay. I'd like to mark

1 this as Exhibit B. Off the record.

2 (Xerographic Document, Supplemental  
3 Affidavit of Robert E. Searight, was  
4 marked for identification Exhibit B.)

5 (Brief pause in the deposition.)

6 Q. I'm going to hand you what's been  
7 marked as Exhibit B. Go ahead and take a look at  
8 that.

9 (Witness complying.)

10 A. Okay. Oh, there is more?

11 Q. Yeah. Go ahead and take a look at the  
12 pictures.

13 A. Okay. I took a minute --

14 Q. By the way, let's make sure I did it  
15 -- Does it go down -- Go to the last page. Does  
16 yours go to 2006? Is that the last -- in the bottom  
17 right-hand corner?

18 A. Yes.

19 Q. Okay. Can you go ahead and identify  
20 this, sir?

21 A. Which one?

22 Q. Well, how about this one, the first  
23 two pages.

24 A. It's holes where the tile is blowed  
25 out.

Q. Oh, I'm sorry. I meant the actual

1 Affidavit, not the pictures yet.

2 A. Oh! What about --

3 Q. Go to the second page. This is  
4 something you just filled out a few days ago; right?

5 A. Yes.

6 Q. And that your signature there; you  
7 signed that?

8 A. Yes.

9 Q. All right. Why did you take these  
10 pictures now? Strike that.

11 Who took these pictures?

12 A. I did.

13 Q. You took them all?

14 A. Yes.

15 Q. When did you take these pictures? Did  
16 you take them all in the same day?

17 A. I think I did take `em all the same  
18 day.

19 Q. When was that?

20 A. Oh, I don't -- It was before we put  
21 the tile in. We just put the tile in. I can't say  
22 when we did put the tile in for sure.

23 Q. Give me your, I mean the best you can

24 --

25 A. I'm gonna say `05. That's just a big

1 | guess.

2 |           Q.    Okay.  I appreciate that and I don't  
3 | care -- I'm not gonna quiz you on when you put the  
4 | tile in.  These pictures, though, you can definitely  
5 | say are more than five years old; right?

6 |           A.    Yes.

7 |           Q.    All right.

8 |           A.    Yeah.

9 |           Q.    And you believe you took them more or  
10 | less on the same day or maybe within a day of each  
11 | other?

12 |           A.    Yes.

13 |           Q.    All right.  Why don't we just go ahead  
14 | to the first page.  That's the 1-9-9-8 at the bottom  
15 | right-hand corner.

16 |           A.    Okay.

17 |           Q.    Can you tell me, and you can go back  
18 | to the first exhibit and just tell me where these  
19 | are, where these are located

20 |           A.    I cannot tell you if it was on -- if  
21 | it's on Exhibit A -- It's all -- It's in between --  
22 | It's on A, B, you know, it's all of these in the  
23 | middle.  None on --

24 |           Q.    All right.  Let's do it this way.

25 |           A.    Okay.

1 MS. BREWER: I'm sorry. Can you  
2 finish? None on --

3 MR. COLE: I'm sorry. I thought he  
4 was done. Go ahead.

5 THE WITNESS: What's that?

6 MS. BREWER: You were saying these are  
7 pictures from A, B, none in --

8 THE WITNESS: C and --

9 Q. Okay. And that seems to be consistent  
10 with your Affidavit.

11 A. Okay.

12 Q. That does seem to be the -- It's just  
13 A and B.

14 A. Oh, okay!

15 Q. But other than that, you don't know,  
16 specifically, where --

17 MS. BREWER: Objection.

18 Q. -- the ones on this first page --

19 A. All these are on this A and B.

20 Q. Okay. But do you know anything more  
21 specifically where, within A and B you took those?

22 MS. BREWER: Objection.

23 A. It's all the same field. I mean, it  
24 is all along there.

25 Q. All right. All right. Why did you

1 take these pictures?

2 A. We wanted to get farmers to help pay  
3 for this.

4 Q. Tell me about that.

5 A. It was a tile project.

6 Q. Um-hum.

7 A. And different ones that the ground did  
8 run into helped pay for it.

9 Q. Who organized this? Tell me about  
10 this project. How was it organized?

11 MS. BREWER: Objection.

12 A. I and Rick Seafiring.

13 Q. Is he another property owner?

14 A. Yes.

15 Q. Does he own farmland?

16 A. Yes.

17 Q. How close to yours?

18 A. It's north of me.

19 Q. About how close?

20 A. Oh, it's just across the field or  
21 road; I'm sorry --

22 Q. Oh, on the other side of Irma (sic)?

23 A. Mudd Pike.

24 Q. Mudd Pike?

25 A. Yes.

1 Q. And what was the purpose of the  
2 project?

3 A. The tile was bad.

4 Q. On both properties?

5 A. Mainly on me more than him. Of  
6 course, it was not gettin' -- If mine was bad, it was  
7 hurtin' him.

8 Q. What was this project? Were there any  
9 others involved with this?

10 MS. BREWER: Objection.

11 A. Yes. There was other farms.

12 Q. Who else was involved?

13 A. A Canary, Kramer and -- oh -- Braun,  
14 Mrs. Braun.

15 Q. And what was the objective of this  
16 project? What was it's purpose?

17 MS. BREWER: Objection.

18 A. To replace this tile that was all  
19 blowed out and stuff.

20 Q. Why did -- Fair enough. I would  
21 understand why you wanted -- Do you think that could  
22 be done better as a group; is that why you did, why  
23 you organized a group for it?

24 A. Well they -- their water runs into  
25 that, too.

1 Q. So was it a common problem?

2 MS. BREWER: Objection.

3 A. What you mean, "a common problem?"

4 Q. Well, the bad tile or the --

5 A. Yeah, the tile was --

6 Q. Did all the members of that group  
7 share the same concern?

8 MS. BREWER: Objection.

9 A. Yes.

10 Q. You think these pictures were taken in  
11 `05. Was this after a recent flood?

12 A. No. I think they were taken before  
13 `05.

14 Q. Okay. Like, maybe `04?

15 A. I mean, I think it was before they put  
16 the tile in.

17 Q. Was it before the big flood in `03?

18 A. I don't think so.

19 Q. Okay. So after that, but before `05,  
20 somewhere in between there?

21 A. Yeah.

22 Q. Do you know when you took these  
23 pictures? Even if you don't remember the date, was  
24 it recently after a flood?

25 MS. BREWER: Objection.

1 A. No.

2 Q. Do you know how -- Would the '03 flood  
3 would have been the most recent one to your memory  
4 before you took these pictures? The reason I'm  
5 asking, you said it would have been after that flood,  
6 but before '05. That's not a whole lot of time.

7 MS. BREWER: I'm going to objection.

8 He said he doesn't remember.

9 MR. COLE: Well, okay.

10 A. Yeah. I can't remember exactly, you  
11 know.

12 Q. Is it your opinion that what these  
13 show, these pictures show result of flooding?

14 MS. BREWER: Objection.

15 A. Well, they didn't -- It had to be from  
16 something, you know, where -- they just didn't  
17 appear.

18 Q. Did the flooding damage the drainage  
19 tiles?

20 MS. BREWER: Objection.

21 A. I would say it did. Now, but I am not  
22 -- I know it was damaged. I can't --

23 Q. Did you recently provide these  
24 pictures to your attorneys?

25 A. Yes.

1 Q. Was it for the purpose of showing  
2 flooding on the property?

3 MS. BREWER: Objection.

4 A. That the tile was bad, it got bad, you  
5 know. I had pictures --

6 Q. Yeah.

7 A. -- and rumaged through the pictures.  
8 I had pictures of the flood and whatever happened to  
9 'em, I tore the house apart and --

10 Q. That's okay.

11 A. And I'm --

12 Q. I'm not asking you about pictures you  
13 don't have.

14 A. Yeah. That's when I found these.

15 Q. You submitted these pictures to show  
16 what the condition of the tile was; correct?

17 A. I showed what they -- what happened.

18 Q. All right. And that happened because  
19 of what, because of the flooding or because they'd  
20 been around so long?

21 MS. BREWER: Objection.

22 Q. Or do you know?

23 A. I don't know.

24 Q. Fair enough.

25 A. What they had, they had, you know,

1 with --

2 Q. Fair enough.

3 A. It had to be done.

4 MR. COLE: That's all I have.

5 Thank you very much, sir.

6 MS. BREWER: Off the record.

7 (Discussion held off the record.)

8 MS. BREWER: When the court reporter  
9 has finished typing up everything that happened here  
10 today, you have the right to read over it and then  
11 you can sign it to ensure that everything is correct  
12 or you can waive that right. You don't have to do  
13 that. I can't tell you which one to pick, but I  
14 would say that most people read it and then they sign  
15 it and that's what I would recommend that you do.

16 THE WITNESS: Okay, no problem.

17 MS. BREWER: Okay.

18 MR. COLE: Have a good day.

19 - - -

20 (At 3:41 o'clock, p.m., the deposition concluded.)

21 - - -

22  
23 Robert E. Searight  
Robert E. Searight

24  
25 Martha Brewer 3/15/10

MARTHA C. BREWER, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date  
Sec. 147.03 R.C.

C E R T I F I C A T E

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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 ROBERT E. SEARIGHT 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 ROBERT E. SEARIGHT; 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 21st day of February, 2010.

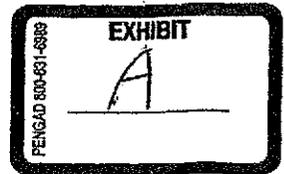


My Commission Expires: September 17, 2012      Edna M. Hawkins  
Notary Public - State of Ohio

E R R A T A S H E E T

I, Robert Searight, 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:   |
|------|-------|------------------------------------|
| 4    | 12    | Change Mudd to Muf passim          |
| 9    | 18    | Change wife to Centor Township     |
| 12   | 21    | scratch hump                       |
| 212  | 23    | change Dan to Orland               |
| 19   | 12    | change Jan to Orland               |
| 34   | 15    | change emburse to reimburse        |
| 36   | 10    | strike "fields soon"               |
| 38   | 8     | change river to creek, passim      |
| 39   |       | change did to does now-- I was     |
| 39   | 24    | confused- I # thought the question |
| "    | "     | was about Today                    |
| 41   | 15    | Change lane to land                |
| 48   | 13+14 | change Chad to Chatt               |
| 51   | 16    | after "some" minor ponding-        |
| 51   | 16    | not flooding                       |
| 63   | 10    | Johstor to Johsman                 |
| 63   | 11    | Zunberg to Zumberge                |
| 69   | 12    | Seutring to Sietring               |



AFFIDAVIT OF ROBERT E. SEARIGHT

STATE OF OHIO )  
 ) ss:  
COUNTY OF MERCER )

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

1. I am a Relator in this mandamus action 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 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300.
3. I have been an owner of Mercer County Parcel Numbers 26-011900.0000 and 26-030700.0200 since 1983. I have been an owner of Mercer County Parcel Number 26-030700.0000 since 1997 and Mercer County Parcel Number 26-030700.0300 since 1998.
4. Mercer County Parcel Numbers 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300 lie north 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 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300 have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

DON000609

6. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300 have flooded approximately fifteen times or approximately once per year. On each occasion, Mercer County Parcel Numbers 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300 were inundated with water at depths varying from a few inches to four feet.

7. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300 flood more rapidly and remain flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Numbers 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300 remained inundated with water for a period of three days to ten days.

8. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300 never flooded as frequently, never flooded over as large an area, and never flooded for as long.

9. To date, the most invasive flood occurred in 2003 with approximately 1.25 acres of Mercer County Parcel Number 26-011900.0000, 36.5 acres of Mercer County Parcel Number 26-030700.0200, 1 acre of Mercer County Parcel Number 26-030700.0000, and 0.75 acre of Mercer County Parcel Number 26-030700.0300 being flooded with approximately four feet of water for approximately ten days. True and accurate copies of black and white aerials from the Mercer County Auditor's website of Mercer County Parcel Numbers 26-011900.0000, 26-

DON000610

030700.0200, 26-030700.0000, and 26-030700.0300 are attached hereto as Exhibits A, B, C, and D. I have shaded in the area of each parcel that was flooded in 2003.

10. As a direct result of the flooding, Mercer County Parcel Numbers 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300 have suffered damage in the form of loss of crops, field erosion, the deposit of debris, drainage tile failure, and soil compaction.

11. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 26-011900.0000, 26-030700.0200, 26-030700.0000, and 26-030700.0300.

12. 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.**

  
\_\_\_\_\_  
Robert E. Searight

Sworn in my presence and subscribed before me this 25<sup>th</sup> day of August, 2009.

  
\_\_\_\_\_  
Notary Public

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

DON000611



**EXHIBIT D**  
**TO**  
**AFFIDAVIT OF ROBERT E. SEARIGHT**

DON000618

**EXHIBIT C**  
**TO**  
**AFFIDAVIT OF ROBERT E. SEARIGHT**

DON000616

**EXHIBIT B**  
**TO**  
**AFFIDAVIT OF ROBERT E. SEARIGHT**

( DON000614 )

**EXHIBIT A**  
**TO**  
**AFFIDAVIT OF ROBERT E. SEARIGHT**

DON000612

# Mercer County Ohio



## Legend

### Administrative

- Townships
- Neighborhoods

### Parcels

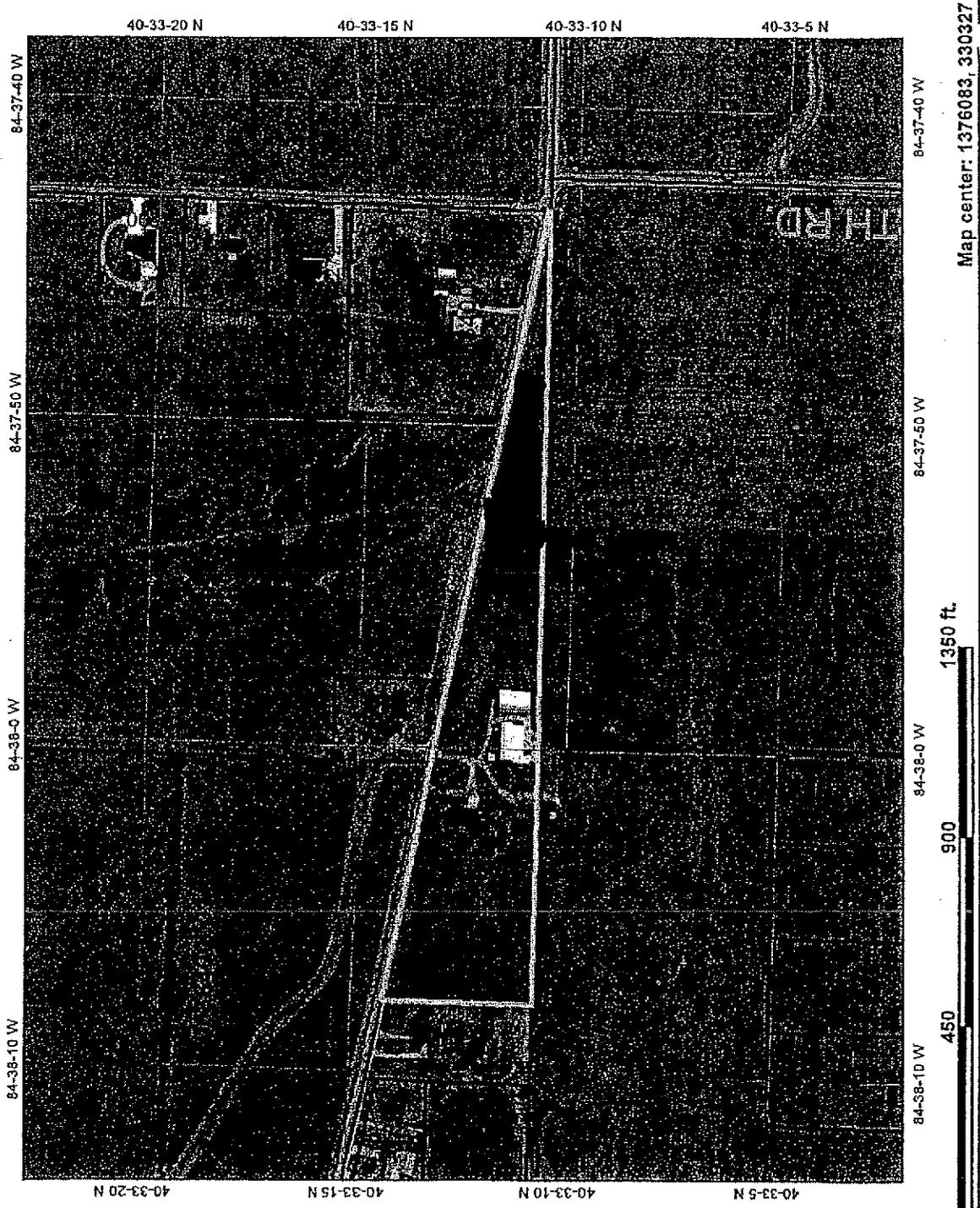
- Parcels

### Transportation

- State Highways
- US Highways

### Water

- Lake
- Streams



EXHIBIT

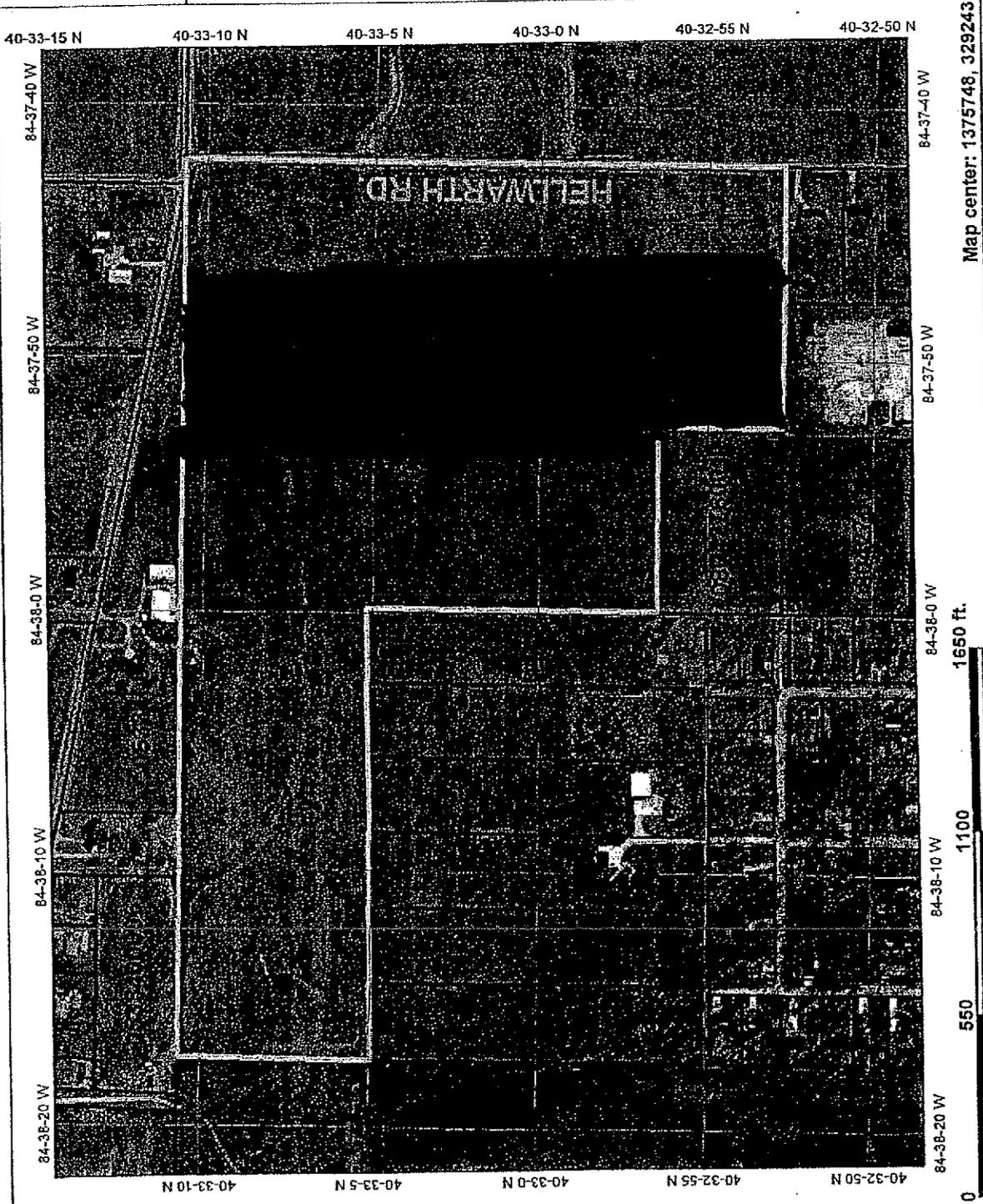
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This map is a user generated static output from an internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Robert E. Searight and Bonnie Searight  
 4358 Mud Pike  
 Parcel No.: 26-011900.0000 - 8.23 acres

# Mercer County Ohio



**Legend**

**Administrative**

- Townships
- Neighborhoods

**Parcels**

- Parcels

**Transportation**

- State Highways
- US Highways

**Water**

- Lake
- Streams

Scale: 1:5,600

**EXHIBIT**

**B**

Labels

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. Searight, aka Robert Searight and Bonnie Searight  
 0 Hellmarth Rd

DON000615

# Mercer County Ohio



## Legend

### Administrative

-  Townships
-  Neighborhoods

### Parcels

-  Parcels

### Transportation

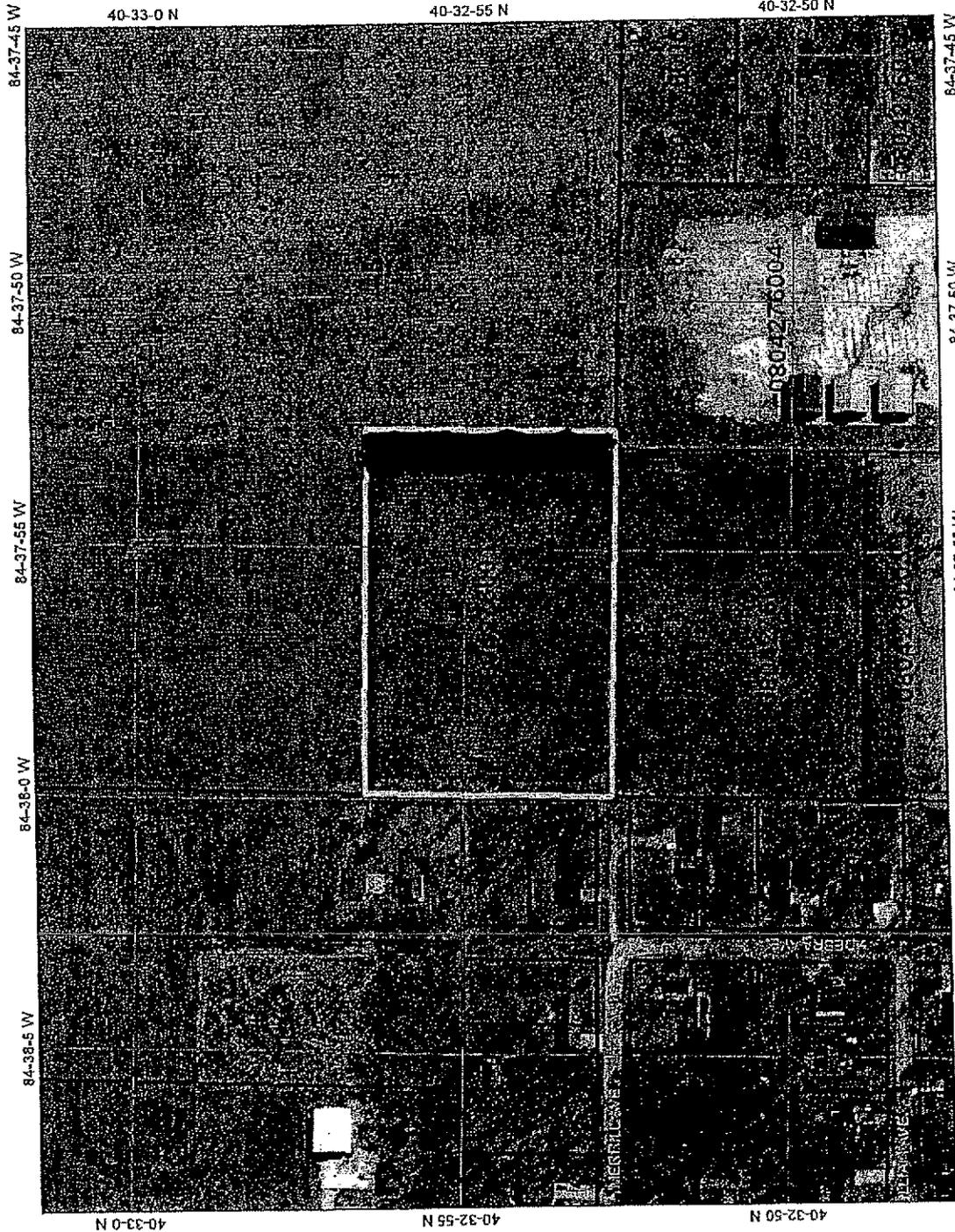
-  State Highways
-  US Highways

### Water

-  Lake
-  Streams



Scale: 1:3,000



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Robert E. Searight and Bonita S. Searight, aka Bonnie S. Searight

-0- Debra Ave.

EXHIBIT

C

Tables

7190000617

# Mercer County Ohio



## Legend

### Administrative

-  Townships
-  Neighborhoods

### Parcels

-  Parcels

### Transportation

-  State Highways
-  US Highways

### Water

-  Lake
-  Streams

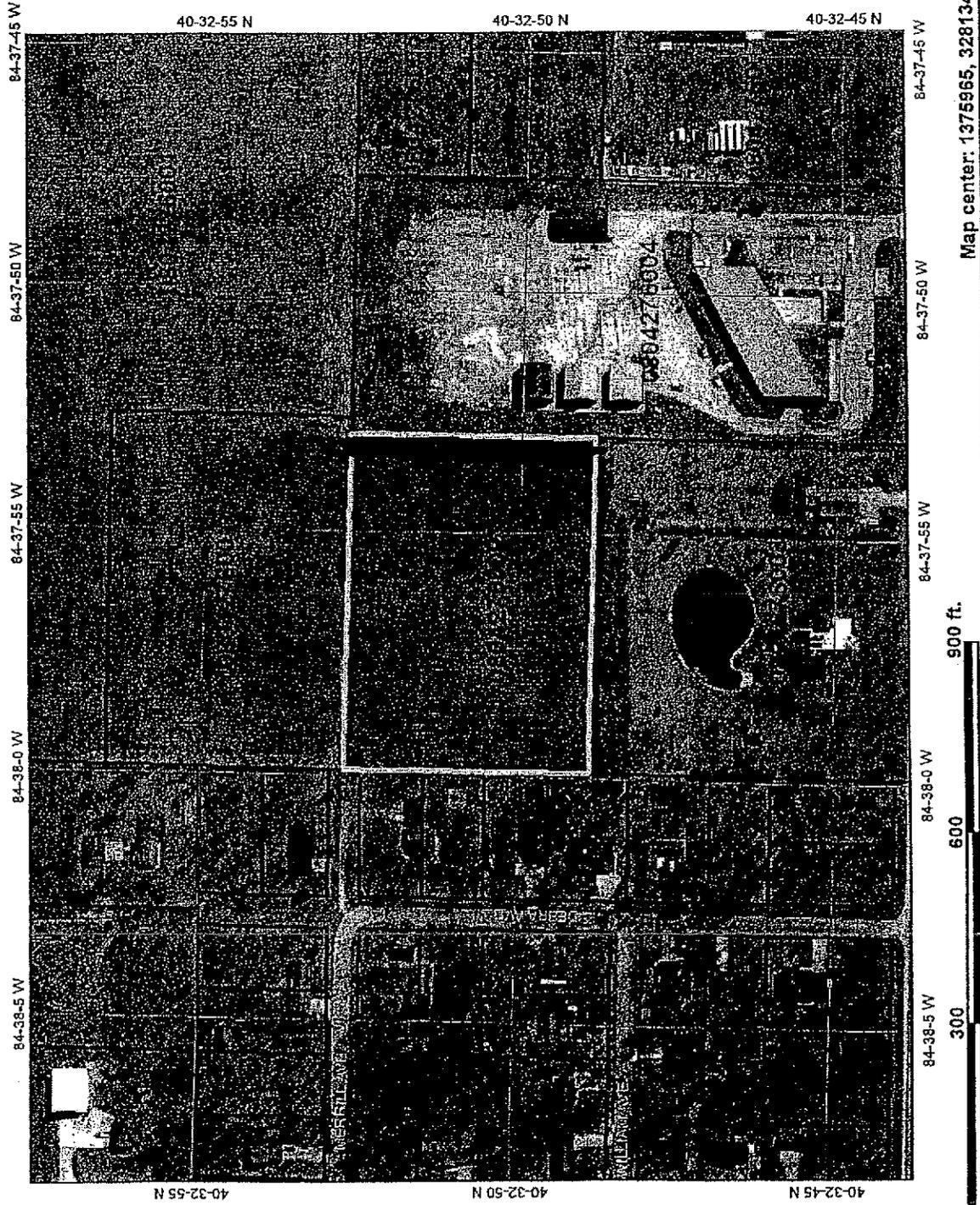


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EXHIBIT

D

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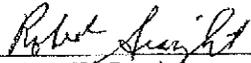
This map is a user-generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Robert E. Searight and Bonita S. Searight, aka Bonnie S. Searight  
 -0- Merrill Ave.

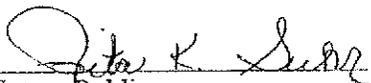


replacement of the western spillway of Grand Lake St. Mary's and its current management practices.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
Robert E. Searight

Sworn to before me and subscribed in my presence this 27 day of January, 2010.

  
\_\_\_\_\_  
Notary Public

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

**EXHIBIT 1 TO SUPPLEMENTAL  
AFFIDAVIT OF ROBERT E. SEARIGHT**

---

DON001997



EXHIBIT  
1

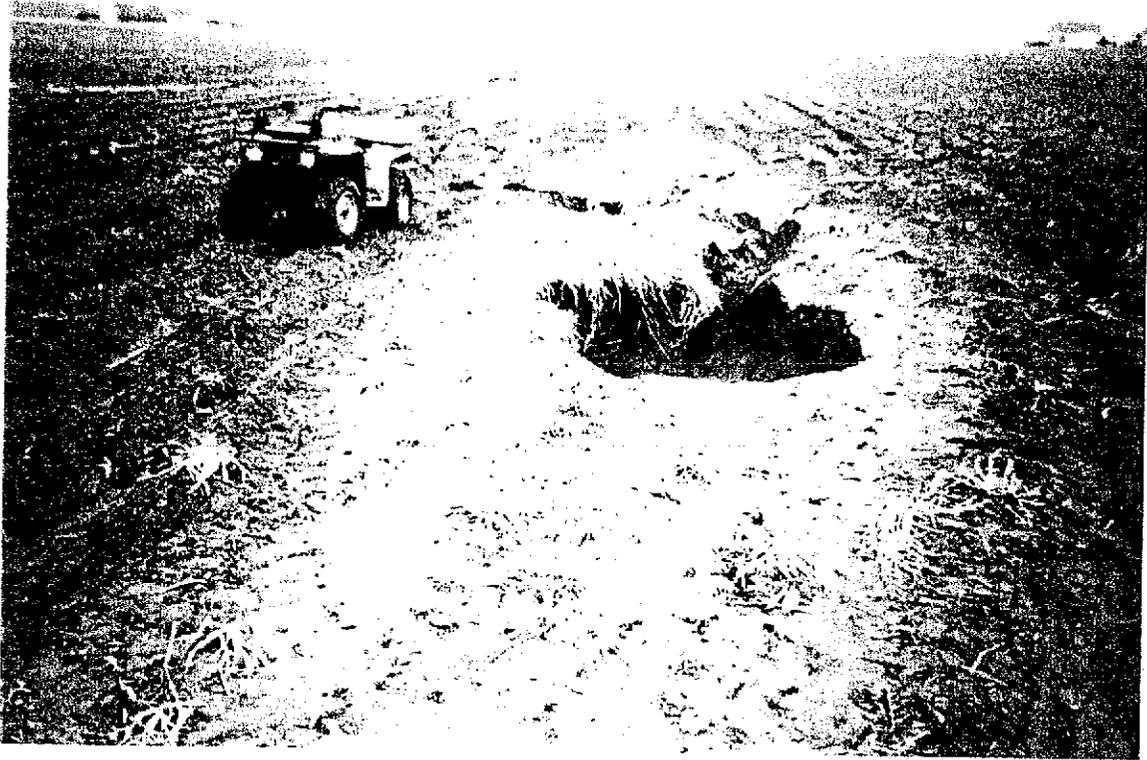
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DON001999



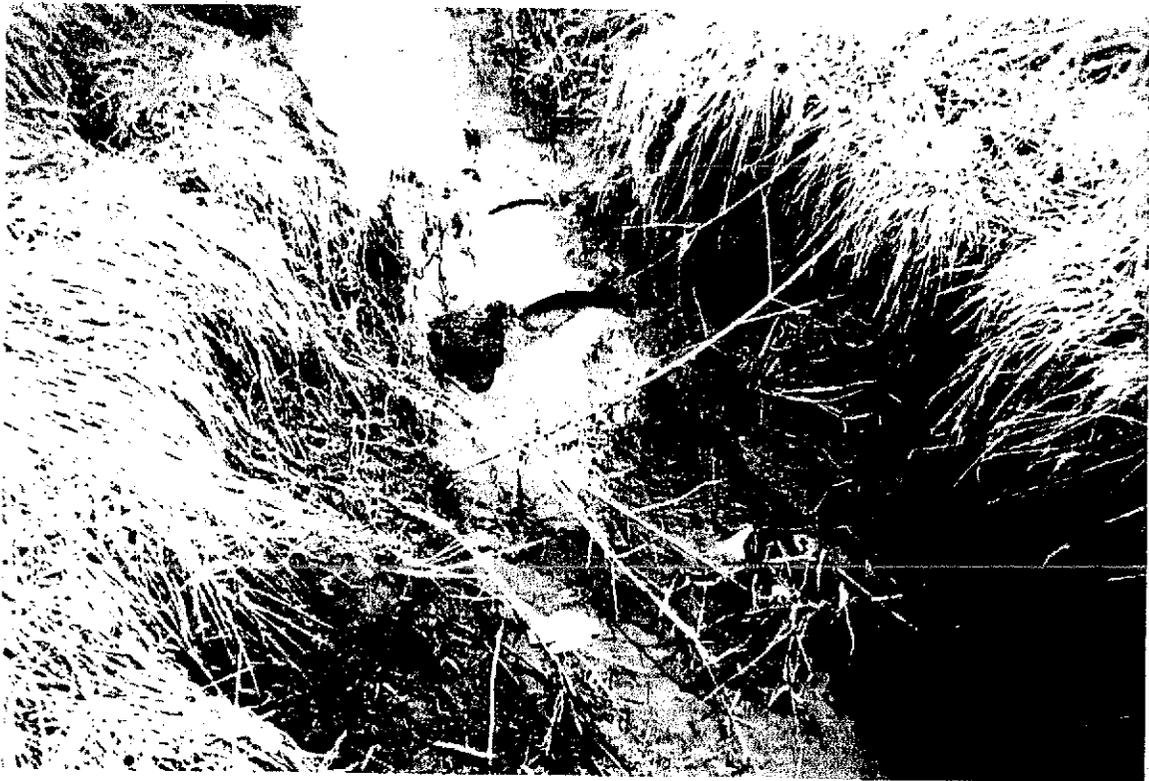
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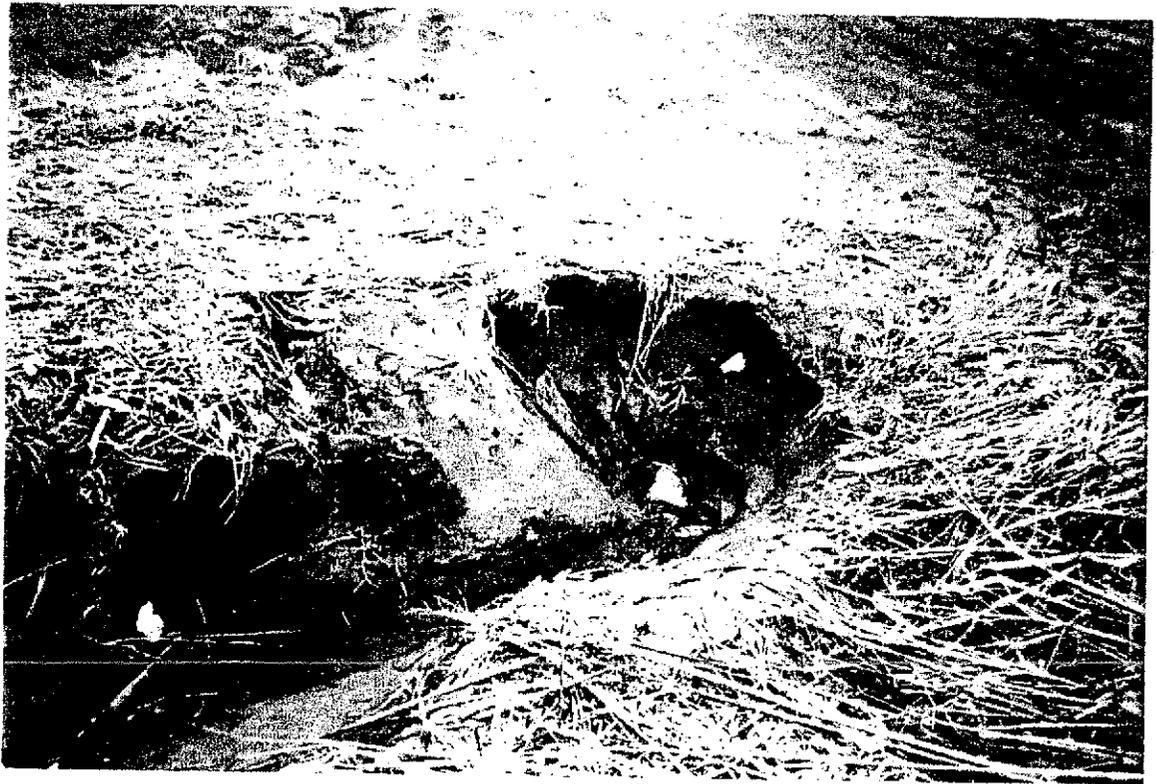
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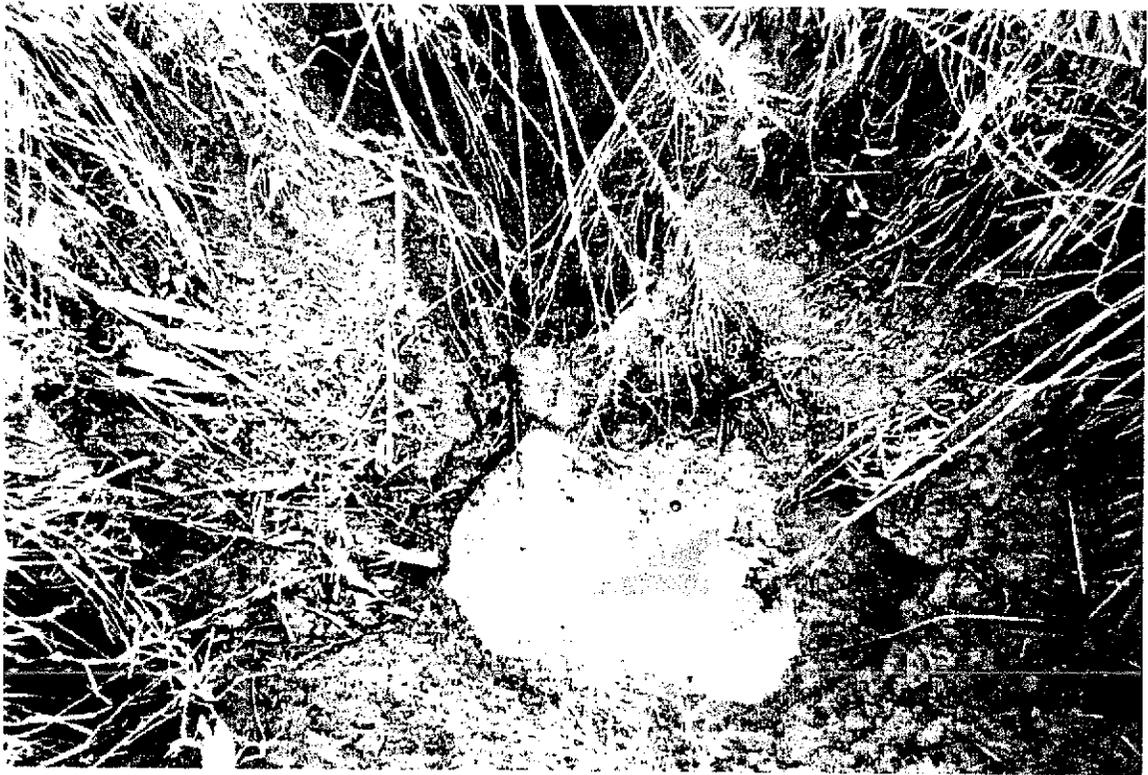
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DON002004



DON002005



DON002006

# TAB 48

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IN THE SUPREME COURT OF OHIO

- - -

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 DUANE SHEETS, 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 3, 2010, at 11:00 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  
www.OhioDeposition.com

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APPEARANCES:

On Behalf of Ohio Department of Natural

Resources:

Rachel H. Stelzer  
Assistant Attorney General  
Environmental Enforcement  
2045 Morse Road, Building D-2  
Columbus, Ohio 43229

On Behalf of Relators:

Thomas H. Fusonie, Esq.  
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         |
| Duane Sheets | -      | Ms. Stelzer-4 |

E X H I B I T S

|              |                           |        |
|--------------|---------------------------|--------|
| RESPONDENT'S | DESCRIPTION               | MARKED |
| A            | Affidavit of Duane Sheets | 40     |

1 DUANE SHEETS  
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. STELZER:

7 MS. STELZER: Mr. Sheets is being  
8 deposed today by agreement of counsel.

9 Q. My name is Rachel Stelzer. I'm an  
10 Attorney General on behalf of the State of Ohio  
11 Department of Natural Resources. Can you please  
12 state your name and address, Mr. Sheets?

13 A. Dwight Sheets 7431 Wabash Road,  
14 Celina, Ohio.

15 Q. Is that your home address?

16 A. Yeah.

17 Q. Should I call you Mr. Sheets?

18 A. Yes.

19 Q. Okay. Mr. Sheets, have you ever  
20 been deposed before?

21 A. Do what?

22 Q. Have you ever been deposed before?

23 MR. SHEETS: I don't know what  
24 she's talking about.

25 Q. Have you ever done exactly what

1 we're gonna do in a little bit---

2 A. No.

3 Q. Fair enough.

4 A. Okay.

5 Q. The purpose of this deposition  
6 today is so I can better understand the flooding  
7 that's occurred on your property.

8 A. Okay.

9 Q. It's important that -- 'cause I'm  
10 gonna ask you a series of questions, and it's  
11 important that when you answer you speak up  
12 clearly so the court reporter here can get down  
13 everything you're saying. It's also important  
14 that if you have any questions or don't understand  
15 the question I'm asking, that you go ahead and ask  
16 me to clarify. Can I get you to agree to do that?

17 A. Yes.

18 Q. Mr. Sheets, have you reviewed any  
19 documents in preparation for your deposition  
20 today?

21 A. I have looked over that and signed  
22 it after, that's all I've done.

23 Q. You're pointing to an affidavit?

24 A. My affidavit, I read it after we  
25 done it and agreed it was right.

1 Q. Okay.

2 A. To the best of my ability.

3 Q. Did you do that, you know, a couple  
4 months ago or did you do that in preparation for  
5 your deposition today?

6 A. I never prepared, I do nothing.

7 Q. Okay. Did you look at, did you  
8 look at -- So you filed two affidavits in this  
9 case, correct?

10 A. Correct.

11 Q. Okay. And did you look at those  
12 before, the minutes before, hours before you came  
13 to sit in here today for your deception?

14 A. I looked at it once, I think.

15 Q. Okay. Okay. Did you look at  
16 anything else?

17 A. No, I just kind of read over it to  
18 see what it said.

19 Q. Okay. Mr. Sheets, what is your  
20 job?

21 A. Farm, I drive truck.

22 Q. Okay. After high school, did you  
23 continue your education?

24 A. What did she say?

25 Q. After high school, did you go to

1 | anymore school?

2 |           A.    No.

3 |           Q.    Do you have any training in  
4 | agricultural or land drainage?

5 |                   MR. FUSONIE:  Objection.

6 |           A.    No.

7 |           Q.    Can you please describe the  
8 | location of the property that you own that you  
9 | allege has been taken by the state in this case?

10 |           A.    7431 Wabash Road.  That what you  
11 | need?

12 |           Q.    Um-hum.

13 |           A.    Okay.  And the other is across the  
14 | road, I don't have no address for.

15 |           Q.    The -- ah --

16 |           A.    There's like four, five acres on  
17 | one side of the road and 35 or 40 acres on the  
18 | other side of the road.

19 |           Q.    Is that, that four or five acres  
20 | across the road and the 35 acres, is that divided  
21 | into one parcel, parcel number?

22 |           A.    Yeah.  Let's see.  Yeah, it's on  
23 | the same parcel number, yeah, it is.

24 |           Q.    So you're alleging that that 39 or  
25 | 40 acre property has flooded and been taken by the

1 state?

2 A. Yeah, about four or five acres or  
3 whatever is in that corner has flooded, too.  
4 Floods on both sides of the road.

5 Q. Okay.

6 MR. FUSONIE: Do you have two  
7 tax parcel ID's?

8 MR. SHEETS: Yeah.

9 Q. Separate tax parcels. So four --  
10 the four or five acres across the road is one tax  
11 parcel?

12 A. Yeah.

13 Q. And the 35 acres is another?

14 A. Yeah.

15 Q. Okay. Thanks. How long have you  
16 owned this property?

17 A. I think it was '95 or '96 we done  
18 that, bought it off of mom there. Let's see -- I  
19 think -- around in there, '95, '96, '97, somewhere  
20 in there, I'm not quite sure.

21 Q. So some time between '95 and '97  
22 you bought all 40 acres that we're going to be  
23 talking about?

24 MR. FUSONIE: Objection.

25 A. There's 45 acres. Yes.

1 Q. Forty-five acres?

2 A. Yeah.

3 Q. Okay. I guess I don't understand.

4 So across the street is four or five acres, total,  
5 and on your side of the street there is 35 acres?

6 A. Right.

7 Q. Okay. And so where are the other  
8 five acres?

9 A. I guess I didn't have you enough.

10 Q. Okay. So 40 acres --

11 A. There's 40 acres -- and 40 acres on  
12 one side of the road and five, probably five acres  
13 on the other side of the road.

14 Q. Do you own any other property in  
15 the county?

16 A. Yeah.

17 Q. Where is that?

18 A. That's Linn Road and Fraham Pike.  
19 There's 75 acres over there I own, and then on  
20 Kable Road I own half of 40 acres with my brother,  
21 and on Wabash Road I own half with my brother on a  
22 40 acres farm, and that's it.

23 Q. Okay. So the 45 acres we're gonna  
24 be talking about in this case you believe you  
25 owned that property since '95 or '97?

1           A.    I've lived there -- Yeah, I've  
2 lived there all my life, but mom and dad had it  
3 before I did.

4           Q.    And you got it from your parents in  
5 '95?

6           A.    When mom passed away in '97 -- We  
7 done something, I think, before, I think a year or  
8 two before, I think we did, I don't remember quite  
9 all what we done did, but I know I've had it since  
10 '97, 'cause mom passed away in '97.

11          Q.    The 45 acres we're going to be  
12 talking about in this case, do you lease or rent  
13 that property?

14          A.    I farm it, my brother and I farm  
15 it.

16          Q.    Can you describe where that 45  
17 acres is in relation to Beaver Creek?

18          A.    The 40 acres is right up against  
19 it, and then there's another farm in between it on  
20 a five acre patch that floods the one across the  
21 road. There's like another 25 acre farm in  
22 between that and the creek. The other -- the 40  
23 acres is right up against the creek, right up  
24 against the beaver.

25          Q.    Okay. Can you tell me where the 45

1 acres is in reference to the Wabash?

2 A. The Wabash is right about -- it's  
3 joins up right on the back of our property, just a  
4 little bit past our property on my brother's. So  
5 it's about half a farm off.

6 Q. So your brother's farm is right  
7 next to your farm?

8 A. Yeah.

9 Q. So you're almost at the -- The 45  
10 acres you're talking about is almost at the  
11 confluence of the Beaver Creek and the Wabash?

12 A. Pretty close.

13 Q. What are the natural features on  
14 this 45 acres?

15 MR. FUSONIE: Objection.

16 Q. Are there any hills?

17 A. Wasn't hills on there. I don't  
18 know what she's talking about.

19 MR. FUSONIE: You can answer.

20 That's just -- If you understand the  
21 question you can answer the question.

22 A. I really don't know what you're  
23 talking about.

24 Q. Okay. So the 45 acres -- the 45  
25 acres we're talking -- you're talking about in

1 | this case --

2 |           A.    Okay.

3 |           Q.    -- are there any hills --

4 |           A.    No.

5 |           Q.    -- on that 45 acres?  Are there any  
6 | rivers that run through your property?

7 |           A.    Just beaver run across the end of  
8 | it.

9 |           Q.    It runs along the boarder of your  
10 | property?

11 |           A.    Yeah.

12 |           Q.    Okay.  I guess does the property  
13 | have any different elevations?

14 |           A.    I don't know -- it's pretty flat,  
15 | most of it is, I guess.

16 |           MR. FUSONIE:  Don't guess.

17 |           A.    Oh -- Okay.  It's pretty flat then.

18 |           Q.    Are there any man-made structures  
19 | on the 45 acres?

20 |           MR. FUSONIE:  Objection.

21 |           Q.    Have you built a home?

22 |           A.    No, the home -- I live on the 45  
23 | acres.

24 |           Q.    Um-hum.  So there's a house on the  
25 | 45 acres.  What else?

1           A.    There's a couple machine sheds and  
2 grain bin, couple grain bins.

3           Q.    Anything else?

4           A.    I don't -- No.

5           Q.    How is the 45 acres used?

6           A.    Farm.

7           Q.    To your knowledge has the 45 acres  
8 always been used as a farm?

9           A.    Yes.

10          Q.    So your parents used the 45 acres,  
11 farmed the 45 acres, too?

12          A.    Yes.

13          Q.    What portion of the 45 acres is  
14 tillable, what portion do you farm?

15                   MR. FUSONIE:  Objection.  That was  
16 two questions, tillable versus what  
17 farms.

18          Q.    How many acres of the 45 acres do  
19 you farm?

20          A.    There's -- I think the deed is 50  
21 acres or it or 55 acres, 50 acres, I think, on  
22 the 40, and then the other is 35 acres on the five  
23 acres.

24          Q.    I'm sorry, I don't understand.

25          A.    The 40 acre patch, the farm is 50

1 | acres, 55 acres, I think it is, and the other is  
2 | 35 acres.

3 |           Q.    Okay.  So the properties are larger  
4 | than 45 acres?

5 |           A.    Yeah.

6 |           Q.    The amount of acres that you're  
7 | suffering from flooding on is the 45 acres we're  
8 | talking about?

9 |           A.    Right.

10 |           Q.    Okay.  So on one side of the street  
11 | is the 50, 55 acre farm, correct, and the other  
12 | side, did you say 30?

13 |           A.    30 -- it's 35 acres.

14 |           Q.    Okay.  Okay.  So the 35 acre patch,  
15 | how much of that property is tillable, could you  
16 | farm?

17 |                   MR. FUSONIE:  Objection.

18 |                   MR. SHEETS:  Do I have to answer  
19 | something on that?

20 |                   MR. FUSONIE:  Yeah, if you  
21 | understand the question, you can answer  
22 | it.

23 |           A.    Oh.  There probably about 30, 30  
24 | acres, 30 acres.

25 |           Q.    On the 35 acre field, has that been

1 tiled?

2 A. Part of it is.

3 Q. How much of it is tiled?

4 A. Probably half.

5 Q. Did you tile it?

6 A. Dad did.

7 Q. Do you know when he did that?

8 A. Not for sure.

9 Q. Can you give me a decade?

10 A. It was in the '70's sometime, late  
11 '70's or early '80's.

12 Q. Have you had to redo any of the  
13 tiles since you bought the property in the  
14 mid-'90's?

15 A. One broke -- the tile broke down it  
16 was all worn. We repaired, if one broke down,  
17 that's all we've done.

18 Q. Okay. How many tiles broke down  
19 since the mid-'90's when you bought the property?

20 A. Not very many, maybe five or six.  
21 I don't have no trouble.

22 Q. So have you made any improvements  
23 to your land to alleviate any drainage problems?

24 A. I haven't.

25 Q. Are there any easements on your

1 property?

2 MR. FUSONIE: Objection. You can  
3 answer the question if you understand  
4 what an easement is.

5 A. There's a filter strip on that one  
6 patch, and there's a waterway that goes across the  
7 edge of one, the five acres, and the other one has  
8 got a filter strip on it.

9 Q. Okay. Let's take those one at a  
10 time. Where is the first filter strip?

11 A. That's on the 40, 40 acre, 40 acre  
12 one, on the bigger one.

13 Q. Okay. That's part of the  
14 Conservation Reserve Program?

15 A. The bank was washing out and it  
16 flood and so we put a filter strip in there to  
17 keep the -- for erosion and stuff mainly.

18 Q. How big is that filter trip?

19 A. Five acres.

20 Q. And so you receive rent for that,  
21 for keeping that filter strip in place?

22 A. Yeah.

23 Q. Okay. And you said you had another  
24 filter strip?

25 A. We got a waterway that goes across,

1 | you know, on that five acres. There's a waterway  
2 | that for goes across the end of it.

3 |           Q.    A waterway, so like a stream or  
4 | just a ditch?

5 |           A.    It ain't no the stream, it's just  
6 | -- I would say it's more like a ditch. It ain't a  
7 | ditch, just a place for the water to run out so it  
8 | don't run in the field.

9 |           Q.    So you put the ditch in?

10 |          A.    Dad did.

11 |          Q.    Do you know when he did that?

12 |          A.    Probably early '70's.

13 |          Q.    Okay. So there's a waterway on the  
14 | filter strip. Are there any other filter strips  
15 | on your property?

16 |          A.    No.

17 |          Q.    Of the two properties we're  
18 | talking about, the 35 acre and the 50ish acre  
19 | property, which property is your home on?

20 |          A.    The 50 acre one.

21 |          Q.    So the larger one?

22 |          A.    Larger property.

23 |          Q.    Was that your parent's home?

24 |          A.    Yes.

25 |          Q.    So were you born and raised in that

1 house?

2 A. Yes.

3 Q. Okay. I want to talk a little bit  
4 about the flooding that your property experienced  
5 prior to the new spillway being constructed in  
6 1997. So before 1997, did you experience any  
7 flooding on your property?

8 A. Some.

9 Q. Some. Did you say "some,"  
10 Mr. Sheets?

11 A. Yes.

12 Q. Okay. What does "flooding" mean to  
13 you?

14 A. A whole lot of water.

15 Q. How high does the water have to be  
16 for it to be flooded?

17 A. Oh, I'd say a foot. Ten inches to  
18 a foot is flooded. Six inches is flooded if you  
19 can't get out it when you need to be on it.

20 Q. When did flooding occur on your  
21 property prior to the new spillway being  
22 constructed in 1997?

23 MR. FUSONIE: Objection.

24 A. I don't know.

25 Q. You said that some occurred, I'm

1 just wondering when?

2 A. I really don't know how to answer  
3 again. Ah --

4 MR. FUSONIE: If you don't  
5 understand the question, you don't have  
6 to answer it.

7 MR. SHEETS: I don't have  
8 to answer if I don't understand?

9 MR. FUSONIE: Do you understand the  
10 question?

11 MR. SHEETS: I don't know when it  
12 flooded.

13 A. This water -- we just got -- it  
14 wasn't major floods before, it just water was --  
15 we had water. Nothing like we did after they  
16 redone the spillway. We got a lot more water now.

17 Q. So you don't know of any specific  
18 instances of flooding in the '90's?

19 MR. FUSONIE: Objection.

20 A. I don't understand. If you ask --

21 Q. Okay. Did you ever discuss  
22 flooding on the property with your parents?

23 A. No.

24 Q. Do you know if your parents  
25 believed that there was a flooding problem with

1 the property?

2 A. They had passed away before they  
3 put the spillway in.

4 Q. But before the spillway was put in,  
5 did you ever discuss flooding problems on the  
6 property with your parents?

7 A. We didn't have that much problem.

8 Q. So you said that flooding before  
9 the new you spillway, there was some flooding and  
10 it wasn't major. Can you tell me how often  
11 flooding occurred, once every few years, did it  
12 occur every few years?

13 A. Every few years, depending on how  
14 much water they had in the lake and how much rain  
15 we got.

16 Q. Okay. But would it be fair to say  
17 there was flooding every few years?

18 A. Oh, I suppose, yes.

19 Q. Did flooding occur before the  
20 construction of the new spillway every year?

21 A. No.

22 Q. Did it occur every two years?

23 A. No.

24 Q. Did it occur every three years?

25 A. No.

1 Q. Does every four sound right?

2 A. You're getting closer.

3 Q. Okay. So it would be fair to say  
4 that flooding occurred on your property before the  
5 construction of the new spillway every four years?

6 MR. FUSONIE: Objection. That's  
7 not what he said.

8 Q. Is there a time of year when  
9 flooding is particularly harmful to your property?

10 MR. FUSONIE: Objection. You can  
11 answer that question.

12 MR. SHEETS: Do what?

13 MR. FUSONIE: You can answer.

14 A. What was your question?

15 Q. Is there a time of year when  
16 flooding is particularly harmful to your property?

17 MR. FUSONIE: Objection.

18 MR. SHEETS: Should I answer?

19 MR. FUSONIE: Yeah. Unless -- I  
20 will be saying "objection" every now and  
21 then.

22 MR. SHEETS: Oh, okay.

23 MR. FUSONIE: Unless I tell you not  
24 to answer, you can go ahead and answer  
25 after I state an objection --

1 MR. SHEETS: Oh, okay.

2 MR. FUSONIE: -- if you understand  
3 the question.

4 A. It's worse -- If we get damages  
5 after we have our crops out before we get 'em  
6 harvested or if we can't get our crops out because  
7 it's flooded.

8 Q. When your property flooded, before  
9 the new spillway was constructed, what parts of  
10 your property flooded?

11 A. I would say a third to half of what  
12 flooded in 2003 when that big flood was.

13 Q. How many acres of your property  
14 flooded in 2003?

15 A. Forty-five acres.

16 Q. So you think about a third to half  
17 of that flooded in flood events before the new  
18 spillway was constructed?

19 A. Happens after the spillway was  
20 constructed.

21 Q. The 45 acres during the 2003 flood  
22 events --

23 A. Yeah.

24 Q. -- was after the spillway? Okay.  
25 And so I'm wondering what parts of your property

1 flooded before the new spillway?

2 A. Before the new spillway?

3 Q. Um-hum.

4 A. I'd say a forth of it. It -- Yeah,  
5 forth.

6 Q. What was the highest level the  
7 water reached?

8 A. After the spillway or before?

9 Q. Before the spillway, before the new  
10 spillway?

11 A. Two to three feet.

12 Q. How do you know?

13 A. It's my estimation.

14 Q. When your property flooded before  
15 the new spillway -- Or how long did the water  
16 remain on your land?

17 A. Three, four days.

18 Q. What was the longest amount of  
19 time water remained on your land?

20 A. After the spillway was in, I'd say  
21 10 -- a week to 10 days.

22 Q. What was the longest amount of time  
23 water remained on your land under the old  
24 spillway?

25 A. I just answered that.

1 Q. Oh, okay. So a week to 12 days was  
2 under the old spillway?

3 MR. FUSONIE: No.

4 A. No.

5 MR. FUSONIE: Objection.

6 Q. Could you tell me again then?

7 A. Three, four days. Three to four  
8 days before, and --

9 Q. Was the longest amount of time?

10 A. And 7 on 10 days after.

11 Q. So under the old spillway, how was  
12 your property marked, did you ever lose crops?

13 A. We probably lost -- we lost some.

14 Q. When did you lose crops?

15 A. I don't understand what you want to  
16 know or what, like a year or what are you, what  
17 are you wanting to know?

18 Q. A year, sure?

19 A. I can't recall what years it was.

20 Q. How many times did you lose crops?

21 A. I don't recall.

22 Q. Did you ever report your crop loss  
23 to a federal or state agency?

24 MR. SHEETS: Would that be crop  
25 insurance, is that a state agency?

1 MR. FUSONIE: If you don't

2 understand the question --

3 Q. We'll talk about crop insurance in  
4 a little bit. But did you ever try and get crop  
5 damage relief after a crop loss during flooding  
6 under the old spillway?

7 A. No.

8 Q. Under the old spillway do you think  
9 you loss crops five times?

10 A. When dad was doing it.

11 Q. Did you help your dad farm the  
12 property before?

13 A. Yeah. I'd say one or two times on  
14 the old spillway.

15 Q. What years were those?

16 A. I don't recall.

17 Q. Was in the '90's?

18 A. I think in the '80's, but I think  
19 we had a big flood in '81 or something like that  
20 or '80 or -- early '80's?

21 Q. In the early '80's were you helping  
22 your dad farm the property?

23 A. Yes.

24 Q. And did you lose crops in the early  
25 '80's?

1 MR. FUSONIE: If you don't recall,  
2 you don't recall?

3 A. I don't recall.

4 Q. Did you help your dad farm the  
5 property at any other time before 1997?

6 A. Yes.

7 Q. When?

8 A. As long as I -- as soon as I could  
9 help him farm. I helped him all my life.

10 Q. Okay. So it would be fair to say  
11 -- How many decades did you help your dad farm?

12 A. Decades, that's 10 years?

13 Q. Um-hum. Or how many years did you  
14 help your dad farm?

15 A. Probably 30 years.

16 Q. And the did the property suffer  
17 crop losses due to flooding at any time during  
18 that 30 years?

19 MR. FUSONIE: Objection. Asked and  
20 answered.

21 A. I don't recall.

22 Q. Did you yourself make any records  
23 of field conditions during that time you were  
24 helping your dad farm?

25 A. I don't understand your question.

1 Q. If flooding had occurred on your  
2 property during the 30 years you were helping your  
3 dad farm, did you make any record of that?

4 A. No.

5 Q. Do you know if you dad made any  
6 record of flooding on the property?

7 A. No.

8 Q. No, you don't know or, no, you  
9 didn't?

10 A. I don't know.

11 Q. Okay. Did your father carry crop  
12 insurance?

13 A. I'm not sure.

14 Q. Okay. So after the construction of  
15 the new spillway in 1997, how often has flooding  
16 occurred on your property?

17 A. Five or six times.

18 Q. When was the last time your land  
19 flooded?

20 MR. SHEETS: I think I told her the  
21 wrong year. I don't know what year it  
22 is.

23 MR. FUSONIE: Let's go off the  
24 record for a second.

25 (Off the record)

1 MS. STELZER: I guess, let the  
2 record reflect that Mr. Sheets was  
3 counseled by his attorney during the  
4 three or four-minute break.

5 Q. Let's return to that question,  
6 Mr. Sheets. When was the last time your land  
7 flooded?

8 A. 2009, is the best of my knowledge.

9 Q. When during 2009 did your property  
10 flood?

11 A. Spring and fall.

12 Q. The first time you had the flooding  
13 in Fall of 2009, do you recall what month your  
14 property flooded last fall?

15 A. No, I don't.

16 Q. How high did the water get?

17 A. Don't recall.

18 Q. Do you know how long the water  
19 stayed on your property?

20 A. A week.

21 Q. So how many acres were affected?

22 A. I don't recall.

23 Q. You mentioned also that flooding  
24 occurred in the Spring of 2009?

25 A. Yes.

1 Q. Correct?

2 A. Yes.

3 Q. How high did the water get then?

4 A. Don't recall.

5 Q. How long did the water stay on your  
6 property?

7 A. A week.

8 Q. How many acres were affected?

9 A. 15, 20, 15 to 20.

10 Q. Before the Spring 2009 flood  
11 event, when was the last time your property  
12 flooded?

13 A. I'm not -- I don't recall which  
14 years they did flood without going to look at my  
15 records.

16 Q. Did your property flood in 2008?

17 A. I don't recall without looking at  
18 my records.

19 Q. What records do you keep that  
20 record flooding?

21 A. I just have to go back and see if it  
22 flooded or not; if it rained, how much rain, that's  
23 only thing I got.

24 Q. In what form do you keep that?

25 A. I get 'em mainly off of -- Just

1 | don't really have nothing.

2 |           Q.    So there's nothing you can look at  
3 | that would help you remember when flood events  
4 | occurred?

5 |           A.    No.

6 |           Q.    So the last flood event you  
7 | remember is Spring 2009?

8 |           A.    We had some in '05 and '06, I  
9 | think.

10 |           Q.    '05 or '06 or a flood event in  
11 | both '05 and '06?

12 |           A.    Both.

13 |           Q.    Do you remember what season in 2006  
14 | there was a flood?

15 |           A.    Spring and fall on both of 'em, and  
16 | that's the way it got flooded 2003, so. The  
17 | flood, too, I can remember that one, that was that  
18 | big flood.

19 |           Q.    Let's talk first about the flood  
20 | in Fall of 2006. How high did the water get in  
21 | Fall of 2006?

22 |           A.    Don't recall.

23 |           Q.    Do you remember how long it stayed  
24 | on your property?

25 |           A.    I don't recall.

1 Q. Do you remember how many acres were  
2 affected in the Fall 2006 flood event?

3 A. I don't recall.

4 Q. And then you also mentioned a flood  
5 in Spring of 2006. In Spring 2006 how high did  
6 the water get?

7 A. Don't recall.

8 Q. Do you remember how long it stayed  
9 on your property?

10 A. Don't recall.

11 Q. Do you remember how many acres were  
12 affected?

13 A. Don't recall.

14 Q. So before Spring 2006, what was the  
15 last flood event?

16 A. That was -- Would you repeat the  
17 question?

18 Q. Yeah. Before the Spring 2006  
19 flood, what was the most recent flood event?

20 A. The flood in 2005.

21 Q. When in the year did that flood  
22 event occur?

23 A. That was in the spring.

24 Q. How high did the water get in the  
25 Spring of 2005?

1           A.    Eight feet, was the deepest spot, I  
2 think.  Is that 5 or 3?

3           Q.    I'm sorry, what, Mr. Sheet?

4           A.    No, it's nothing.  I was just  
5 trying to think in my head.

6           Q.    So in Spring 2005 you think the  
7 water was 8 feet deep?

8           A.    Yes.

9           Q.    What do you base that opinion on?

10           MR. FUSONIE:  Objection.

11           A.    Size, size the water was.  That's  
12 how high I believe it was.

13           Q.    Is it 8 feet deep everywhere?

14           A.    That's just the deepest spot  
15 closest to the creek.

16           Q.    What would be the shallowest point  
17 in that 2005 flood?

18           A.    Probably 6, 8 inches.

19           Q.    How long did the water stay on your  
20 property during the Spring 2005 flood?

21           A.    I would say 10 days.

22           Q.    And how many acres were affected?

23           MR. FUSONIE:  I can't help you  
24 answer that.

25           A.    I'd say 40, 45.

1 Q. Before the Spring 2005 when was the  
2 last flood event?

3 A. 2003.

4 Q. And when in the year?

5 A. Spring.

6 Q. So during the Spring 2003 flood,  
7 how high did the water get on your property?

8 A. Ten feet. That's -- I believe it  
9 was about same as the one 2005.

10 Q. And how long did the water stay on  
11 your property?

12 A. Ten days.

13 Q. And how many acres were affected by  
14 the Spring 2003 flood?

15 A. 45.

16 Q. And before the Spring 2003 flood,  
17 when was the last time your property flooded?

18 A. I don't recall any farther back  
19 than that.

20 Q. So you said you're close to the  
21 confluence of the Wabash and Beaver Creek,  
22 correct?

23 A. Correct.

24 Q. When you get flooding and when you  
25 experience flooding on your property, is the

1 Beaver Creek flowing out of bank?

2 A. Correct.

3 Q. Yes, it is flowing out of the bank?

4 A. Yes.

5 Q. Is the Wabash flowing out of the  
6 back when you experience flooding on your  
7 property?

8 A. Yes.

9 Q. Does the Beaver Creek -- Is the  
10 Beaver Creek flowing back in bank before or after  
11 a flooding goes down on your property?

12 A. I don't understand what you're  
13 talking about.

14 Q. Which water level goes down first,  
15 the flooding on your property or the out flow?

16 A. The creek goes down first.

17 Q. The creek goes down first. In the  
18 both the Wabash and Beaver Creek?

19 A. Yes.

20 Q. If the Beaver Creek water goes down  
21 first, how long after the Beaver Creek goes down  
22 do you still experience flooding on your property?

23 A. A week to 10 days.

24 Q. And if the Wabash goes down first,  
25 how long after the Wabash goes down are you still

1 | experiencing flooding on your property?

2 |           A.    A week to 10 days.

3 |           Q.    Have you ever experienced standing  
4 | water on your property when the banks of the  
5 | Beaver Creek or Wabash don't overflow at all?

6 |           A.    Yes.

7 |           Q.    When was the last time that  
8 | occurred?

9 |           A.    I don't recall what year it would  
10 | be.

11 |           Q.    Since the spillway, the new  
12 | spillway was put in in 1997, what harm have you  
13 | experienced in the flood event that have  
14 | occurred?

15 |           A.    We get loss of crops and we have  
16 | debris to pick up and --

17 |           Q.    Anything else?

18 |           A.    That would be it.

19 |           Q.    When floods occur on your property  
20 | is your property usable?

21 |           A.    Would you repeat the question?

22 |           Q.    When your property floods, what if  
23 | any part of your property is usable?

24 |           MR. FUSONIE:  Objection.

25 |           A.    When it's -- when it's flooded you

1 | can't use none of it.

2 |           Q.    Can you still use your home?

3 |           A.    Yeah.

4 |           Q.    Can you still drive in and out of  
5 | your property?

6 |           A.    Yes.

7 |           Q.    Are there any crops you can get to?

8 |           MR. FUSONIE:  Objection.

9 |           A.    Not if it's flooded.

10 |          Q.    Do all your crops flood?

11 |          A.    If it's not flooded it's so wet you  
12 | can't get into it.

13 |          Q.    Did you say you raise livestock on  
14 | your property, Mr. Sheets?

15 |          A.    I don't.

16 |          Q.    Does someone else?

17 |          A.    My brother rents my buildings for  
18 | me, my hog buildings.

19 |          Q.    How many hog buildings do you have  
20 | on your property?

21 |          A.    We don't have no hog buildings on  
22 | the property that floods.

23 |          Q.    Okay.  So on this, on these two  
24 | parcels that we're talking about or we've been  
25 | talking about today, they're aren't any hog

1 buildings?

2 A. No hog buildings.

3 Q. Are there any buildings other than  
4 your house?

5 A. There's the grain bin and the  
6 machine shed, is what I told you before.

7 Q. Have those buildings ever been  
8 flooded?

9 A. No.

10 Q. So do you believe the flooding has  
11 been worse since the construction of the new  
12 spillway in 1997?

13 A. I do.

14 Q. How has flooding been worse?

15 A. More water and more debris to pick  
16 up.

17 Q. Anything else?

18 A. No.

19 Q. Have you made adjustments in the  
20 use of your property as a result?

21 MR. FUSONIE: Objection.

22 A. We put the filter strip in.

23 Q. Anything else?

24 A. No.

25 Q. Do you currently carry crop

1 insurance on your property?

2 A. Yes.

3 Q. Since the new spillway was  
4 installed in 1997, have you submitted claims for  
5 crop loss due to flooding?

6 A. Yes.

7 Q. When did you do that?

8 A. I'd have to look at my crop  
9 insurance records and see what they are to know  
10 what years they was.

11 Q. How many times have you submitted  
12 crop loss claims from 1997, more than five times?

13 A. Yes.

14 Q. Six times? Approximately how many  
15 times have you submitted crop loss?

16 A. I'm calculating.

17 Q. Okay.

18 A. Probably 10 in 10 years 10 times.

19 Q. So 10 times since 1997?

20 A. Yes.

21 Q. Did you receive reimbursement each  
22 time?

23 A. Yes.

24 Q. What was your crop yield last year  
25 on the properties that we're talking about?

1           A.    One -- the five acre one, five  
2 acres one was I think 28, and I believe that other  
3 one was, to the best of my knowledge, was 38 to  
4 40.

5           Q.    Is that in bushels per acre?

6           A.    Yeah, bushels per acre.

7           Q.    What are you planting on the  
8 smaller property or what did you plant on the  
9 smaller property last year?

10          A.    It was both beans.

11          Q.    Have your crop yields changed after  
12 the construction of the spillway?

13          A.    I believe they have.

14          Q.    Why?

15          A.    Wet in the spring and wet in the  
16 fall, can't get the crops in and out when we  
17 should be able to.

18          Q.    Can you think of anything besides  
19 the change in the spillway that could have  
20 contributed to more water on your property?

21                   MR. FUSONIE:  Objection.  Calls for  
22 speculation.

23          A.    I think that was the main  
24 contributor in the spillway, in my opinion.

25          Q.    What do you believe the value of

1 your property is today?

2 A. Are you talking per acre?

3 Q. Sure.

4 A. \$4,000.00 an acre.

5 Q. I'm sorry.

6 A. 4000.

7 Q. Do you have any documentation of  
8 the value of your property today?

9 A. No.

10 Q. What is that \$4000 an acre based  
11 on?

12 A. In my opinion if I would try to  
13 sell it, that's what I would get because of the  
14 flooding.

15 Q. What do you mean "because of the  
16 flooding?"

17 A. The land has a potential to flood,  
18 and decreases the value of the property.

19 (Affidavit of Duane R. Sheets, marked  
20 for identification as Respondents -  
Duane R. Sheets - Exhibit A.)

21 Q. Mr. Sheets, I'm gonna hand you  
22 what's been marked Respondent's Exhibit A. If you  
23 could review the document. What is Exhibit A,  
24 Mr. Sheets?

25 A. That's an affidavit.

1 Q. It's your affidavit, correct?

2 A. Correct.

3 Q. And that is your signature on Page  
4 3 of this document, right?

5 A. Correct.

6 Q. And it's dated August 24th, 2009?

7 A. Correct.

8 Q. Did you write this affidavit,  
9 Mr. Sheets?

10 MR. FUSONIE: Objection. Vague.

11 A. I reviewed it.

12 Q. Who wrote this affidavit?

13 A. I --

14 MR. FUSONIE: Objection. Vague.

15 A. I supplied the information.

16 Q. Can you look at Paragraph 2 on the  
17 first page, please. Paragraph 2 talks about two  
18 different parcels in Mercer County that you own,  
19 correct?

20 A. Correct.

21 Q. Are those the two parcels numbers  
22 that we've been talking about today?

23 A. Correct.

24 Q. Are you alleging that any other  
25 parcels have been flooded and taken by the state

1 | in this case?

2 |           A.    No.

3 |           (Off the record)

4 |           MS. STELZER:  Back on the record.

5 |           Q.    Mr. Sheets, what do you hope to  
6 | accomplish from this lawsuit?

7 |           A.    I would like to see 'em fix the  
8 | problem.

9 |           Q.    How do you think the problem should  
10 | be fixed?

11 |           A.    Not let so much water out on us.

12 |           MS. STELZER:  Okay. I don't have  
13 | any further questions.

14 |           MR. FUSONIE: I don't have any  
15 | questions.  You, Mr. Sheets, if the  
16 | state orders a copy of everything that's  
17 | been said today, you'll have the right  
18 | to review that to correct any errors.  I  
19 | can't tell you that if you should do so,  
20 | but I advise everyone that they should  
21 | read their transcript.  You just need to  
22 | let the court reporter know whether you  
23 | want to do that or not.

24 |           MR. SHEETS: I want to do that.

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Duane R. Sheets  
Duane R. Sheets

- - -  
(At 11:55 a.m., the deposition concluded)  
- - -

Martha Brewer 9/15/10  
Notary Public Date

MARTHA C. BREWER, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date  
Sec. 147.03 R.C.

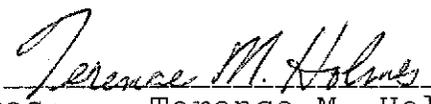
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C E R T I F I C A T E

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 DUANE R. SHEETS 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 DUANE R. SHEETS; 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 14th day of February, 2010.

  
\_\_\_\_\_

My Commission Expires: Terence M. Holmes  
July 28, 2012 Notary Public - State of Ohio

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E R R A T A S H E E T

I, Duane Sheets, 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:   |
|------|-------|--|
| 4    | 13    | change Dwight to Duane   |
| 11   | 2     | change its to it   |
| 13   | 21    | change 50 to 57  |
| 15   | 15    | delete one broke   |
| 16   | 12    | change bigger to smaller   |
| 17   | 5     | delete the   |
| 19   | 14    | change it just water was to it was just water                              |
| 33   | 8     | change 10 ft to 8 ft   |
| 38   | 1     | change none to most  |
| 39   | 23-24 | change to I think that the spillway was the main contributor in my opinion |
| 38   | 17    | change for to from   |
|      |       |  |
|      |       |  |
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|      |       |  |

6. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000 have flooded at least 5 to 6 times. On each occasion, Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000 was inundated with water, including at times at depths of at least 8 feet.

7. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000 flood more rapidly and remain flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000 remained inundated with water for periods of approximately a week.

8. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000 never flooded as much and never flooded over as large an area or for as long.

9. To date, the most invasive flood occurred in 2003 with approximately 45 acres of Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000 being flooded with at least 8 feet of water for at least a week to 10 days. A true and accurate copy of black and white aerials from the Mercer County Auditor's website of Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000 is attached hereto as Exhibit 1. I have shaded in the area of each parcel that was flooded in 2003.

10. Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000 also experienced severe flooding in 2005.

11. Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000 were again flooded as recently as the Spring of 2009.

DON000621

12. As a direct result of the flooding, Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000 have suffered damage in the form of loss of crops, field and bank erosion, and the deposit of sticks, crop waste, trash and other debris.

13. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 28-010900.0000 and 28-012900.0000.

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.**

Duane R. Sheets  
Duane R. Sheets

Sworn in my presence and subscribed before me this 24<sup>th</sup> day of August, 2009.

[Signature]  
Notary Public



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

DON000622

**EXHIBIT 1**  
**TO**  
**AFFIDAVIT OF DUANE R. SHEETS**

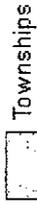
DON000623

# Mercer County Ohio



## Legend

### Administrative



Townships



Neighborhoods

### Parcels



Parcels

### Transportation



State Highways



US Highways

### Water



Lake



Streams

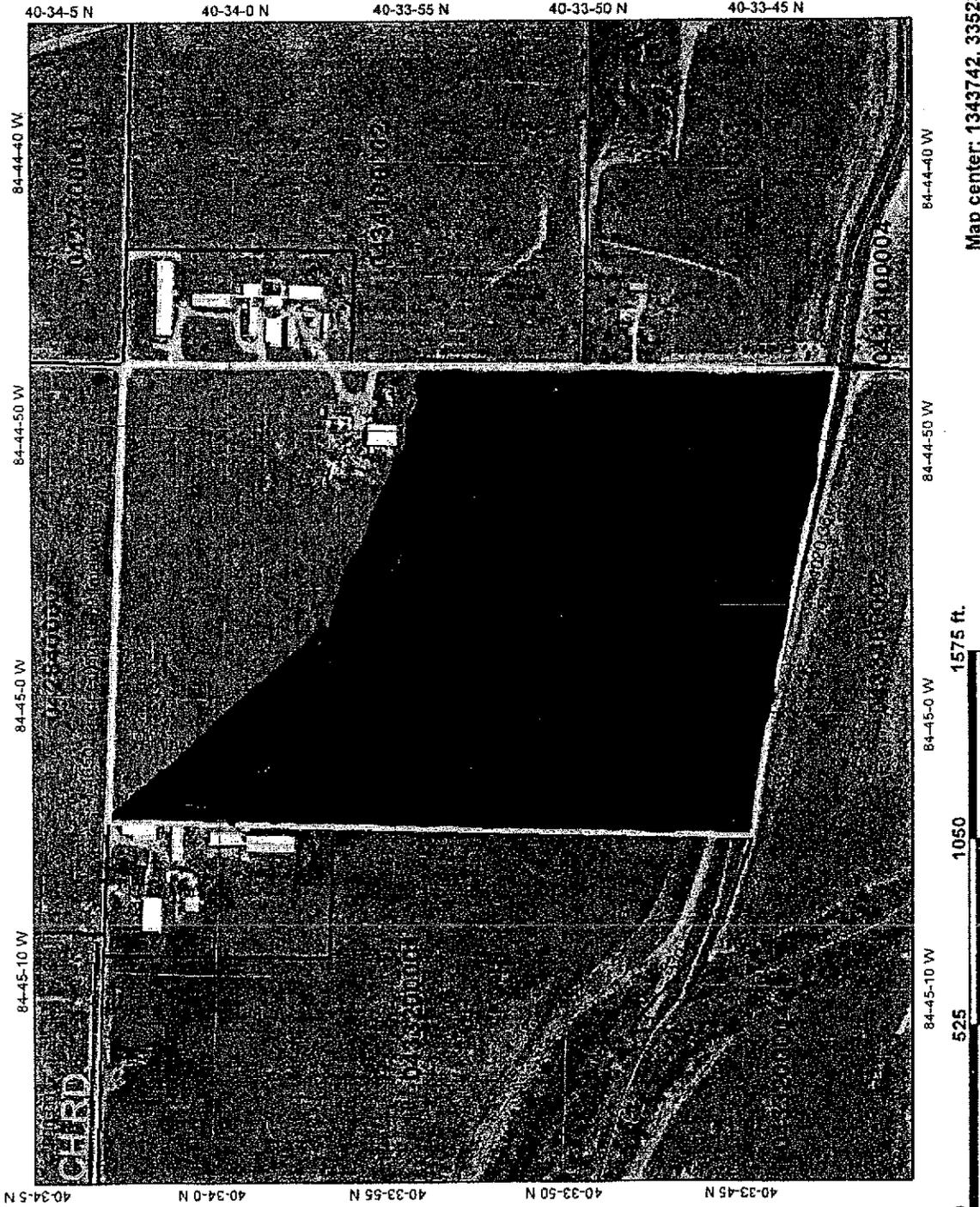
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EXHIBIT

1



Scale: 1:5,400



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.

Duane R. Sheets  
 7431 Wabash Rd.  
 Parcel No.: 28-010900.0000 - 57.45 acres

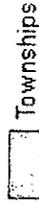
DON000024

# Mercer County Ohio



## Legend

### Administrative

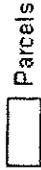


Townships



Neighborhoods

### Parcels

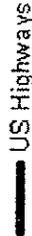


Parcels

### Transportation



State Highways

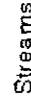


US Highways

### Water



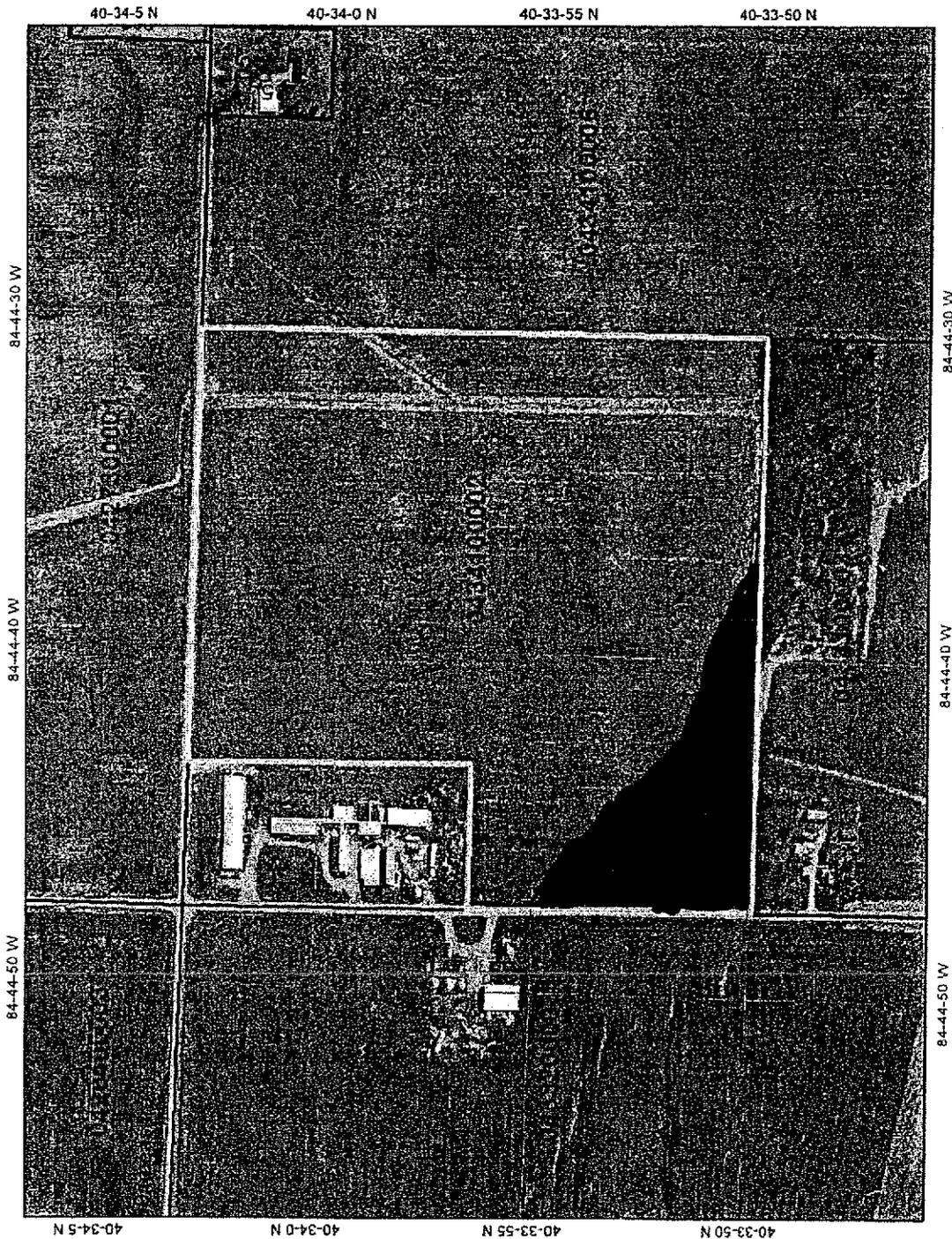
Lake



Streams



Scale: 1:4,500



Map center: 1345070, 335554

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Duane R. Sheets  
 -0- Wabash Rd.  
 Parcel No.: 28-012900.0000 - 35 acres

DON000625

# TAB 49

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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 MORSE ROAD  
COLUMBUS, OHIO 43229-6693

and

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

DEPOSITION of LINDA SHEETS, was taken  
by the Respondents as on cross-examination, pursuant  
to the Ohio Rules of Civil Procedure, and pursuant to  
agreement of counsel, at the Central Service  
Building, 220 West Livingston Street, Celina, Ohio  
45822, on Friday, February 5, 2010, at, 2:00 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:

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On Behalf of Ohio Department of Natural Resources:

Daniel J. Martin, Esq.  
Environmental Enforcement  
30 East Broad Street, Floor 25  
Columbus, Ohio 43215-3400

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:

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| Examinations  | DIRECT | CROSS |
| By Mr. Martin |        | 21, 4 |
| By Ms. Brewer | 20     |       |

E X H I B I T S

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LINDA SHEETS

of lawful age, a Relator herein, called as on  
cross-examination, being first duly sworn, as  
hereinafter certified, was examined and testified as  
follows:

CROSS-EXAMINATION

BY MR. MARTIN:

Good afternoon.

THE WITNESS: Hello.

MR. MARTIN: My name is Daniel Martin.

I'm an attorney, representing the State of  
Ohio and today we'll be taking your  
deposition and asking you some questions  
about the issues involving your property  
and the spillway, and since your husband  
got to go first and he was already on the  
hot seat, I don't think I'll be taking real  
long with you today, but I do have some  
questions for you, and the first thing I  
like to ask is whether you've had your  
deposition taken before?

THE WITNESS: Yes.

MR. MARTIN: Okay. Can you tell me  
what type of case it involved?

THE WITNESS: Oh, just this one here.

1 MR. MARTIN: Okay. That's quite all  
2 right. Other than this one, today, have  
3 you ever had a deposition?

4 THE WITNESS: No.

5 MR. MARTIN: Well, what I'll do is  
6 I'll just talk to you about some of the  
7 basic ground rules, maybe help you today.  
8 The first thing you may have noticed is  
9 that the court reporter swore you in, so  
10 although we're not in a courtroom, with a  
11 judge, you are under oath and we'll need  
12 you to answer things truthfully to the best  
13 of your ability. And when I ask questions,  
14 if you could answer with a verbal response,  
15 that'd be great because we all have a habit  
16 of maybe saying un-un or shaking our head  
17 or nodding our head and that's hard for the  
18 court reporter to translate that. She'll  
19 have to put nodded head affirmatively or  
20 something like that. So as best as you  
21 can, try to, you know, verbally respond to  
22 the question.

23 THE WITNESS: Okay.

24 MR. MARTIN: When I ask a question, I  
25 just ask that you give me an opportunity to

1 get my question out and then you wait to be  
2 able to answer. It's also good for you  
3 because it gives you the opportunity to  
4 hear my question rather than, maybe, jump  
5 into the conclusion and trying to answer it  
6 before I've finished stating the question  
7 and that helps the court reporter, because  
8 if we're both talking at the same time,  
9 then it gets hard for her to get the  
10 accurate transcript done.

11 And, you know, our goal today is to  
12 get accurate information, so I don't want  
13 to confuse you or mislead you in any way.  
14 So if I ask a question that you don't  
15 understand, feel free to let me know that  
16 and I can rephrase the question or ask it  
17 again, or if you just don't, you know, if I  
18 mumble or something and you just don't hear  
19 the question, by all means let me know  
20 that, 'cause I want to make sure you know  
21 what the question is, 'cause I'll assume  
22 that you do if you give an answer.

23 And those are, you know, pretty much  
24 the main guidelines. Do you have any  
25 questions?

1 THE WITNESS: No.

2 Q. Okay. I'd just ask for the record if  
3 you could state your name and spell it for the record  
4 for the court reporter.

5 A. Linda Sheets, L-I-N-D-A, S-H-E-E-T-S.

6 Q. And, Ms. Sheets, I just want to ask  
7 you a few background questions first. How long have  
8 you lived in Mercer County?

9 A. All my life.

10 Q. And what's your occupation.

11 A. I work at a work program. I run a jet  
12 press at a printing company.

13 Q. And before you started that job, what  
14 did you do?

15 A. I sewed and I was a stay-at-home mom.

16 Q. And when did you start working with  
17 your current employer?

18 A. In 1990.

19 Q. And how far did you go in school?

20 A. Or a senior -- Just high school.

21 Q. Senior in high school?

22 A. Um-hum.

23 Q. And beside high school, did you have  
24 any course work, take some classes anyplace?

25 A. I went to Wright State for one quarter

1 and then I dropped out.

2 Q. What did you study during that  
3 quarter?

4 A. Just basic, first year.

5 Q. Introductory courses and things?

6 A. Yes.

7 Q. Other than driver's license, fishing  
8 license, do you hold any special licenses or  
9 certificates of any type?

10 A. No.

11 Q. Mrs. Sheets, I'm going to hand you a  
12 document here. We'll mark it as Exhibit A.

13 (Xerographic Document, Affidavit of  
14 Linda Sheets, was marked for  
identification Exhibit A.)

15 And this is an Affidavit, provided to us by your  
16 attorneys and just direct your attention to page 3 --

17 (Witness complying.)

18 -- and is that your signature on the Affidavit?

19 A. Yes.

20 Q. And this Mrs. Suhr was the notary; was  
21 she?

22 A. Yes.

23 Q. And she witnessed you sign this?

24 A. Yes, she did.

25 Q. And did you talk to her at all about

1 the case when you met her to do the Affidavit?

2 MS. BREWER: Objection.

3 A. No, we didn't.

4 Q. Do you know that she's also a party to  
5 this case?

6 A. Yes.

7 Q. And let's go back to the first page.

8 I just want to confirm a few things, and looking at  
9 paragraph number 3, it states that your husband has  
10 owned the parcel identified there since 1972;  
11 correct?

12 A. Yes.

13 Q. And do you also own that parcel?

14 A. No. Well, I -- That's the parcel  
15 where our house is.

16 Q. Okay. So both you and Rodney own that  
17 parcel then; is that correct?

18 A. We both own it, but my name is not on  
19 the deed. I assume we both own it.

20 Q. And then there is a second parcel  
21 identified in number 4. It says, "I" -- meaning you  
22 -- "have owned since 1997 Mercer County Parcel Number  
23 28-011000.0000;" do you see that?

24 A. Yes.

25 Q. And is that still true?

1 A. Yes.

2 Q. And prior to 1997, were you familiar  
3 at all with that piece of property?

4 A. Yes.

5 Q. And how were you familiar with it?

6 A. It surrounds our house -- or two sides  
7 of our house.

8 Q. And your house, you live -- have you  
9 lived in there since 1972?

10 A. Yes.

11 Q. And did you have any familiarity or  
12 knowledge about property before you started living  
13 there?

14 A. No.

15 Q. If you could turn to an Exhibit that's  
16 attached to your Affidavit. It's stamped -- There's  
17 a number stamped at the bottom of the pages there and  
18 it's actually 630. It looks like you have it in  
19 front of you there. I know that map's a little hard  
20 to read because it's a copy of a copy, but does this  
21 piece of property on this aerial, does this look  
22 familiar to you at all?

23 A. Yes.

24 Q. And is this the property that you're  
25 an owner of?

1 A. Yes.

2 Q. Do you remember doing any shading on  
3 this map or the copy of this map?

4 A. Yes.

5 Q. And do you know, what does the shaded  
6 area represent?

7 A. The part where it floods.

8 Q. And does this show where it flooded in  
9 2003?

10 A. Yes.

11 Q. Is this meant to show that it floods  
12 this way all the time when it floods?

13 A. Yes.

14 Q. Is there any time you've had flooding  
15 that it did not cover the area that's shaded?

16 MS. BREWER: Objection.

17 A. Yes.

18 Q. Do you recall when that would have  
19 been?

20 A. It would have been before, before the  
21 spillway went in.

22 Q. And so before the spillway went in,  
23 there was some flooding, but not as much?

24 A. Right.

25 Q. Do you know what year the flood -- I'm

1 | sorry. Do you know what year the spillway was  
2 | modified?

3 |           A. 1997, I think.

4 |           Q. And there had been a spillway even  
5 | before 1997; is that correct?

6 |           A. I don't know.

7 |           MS. BREWER: Objection.

8 |           Q. Do you know if a spillway was built in  
9 | -- Strike that. Do you know if the spillway was  
10 | brand new in 1997 or was it modified in 1997?

11 |           A. It was made a lot bigger.

12 |           Q. And what facts or information do you  
13 | have that would support the conclusion that the  
14 | spillway was the cause of the flooding?

15 |           A. It's a lot worse now. It covers the  
16 | whole field and usually, the only time we get any  
17 | flood like that is when the spillway is full and the  
18 | lake's really high.

19 |           Q. So your information is based on your  
20 | individual experience and --

21 |           A. Um-hum, yes.

22 |           Q. -- observations?

23 |           A. Yes.

24 |           Q. Could you turn to page 3 in your  
25 | Affidavit, in paragraph 13, it talks about damage on

1 the two parcels and it indicates that you suffered  
2 damage in the form of crop losses. Can you tell me  
3 what crop losses you experienced, let's say in the  
4 2003 flood?

5 A. I really don't know. I don't  
6 remember.

7 Q. Okay. And in 2005, do you know if  
8 there was any crop losses that year?

9 A. I don't know. I don't take care of  
10 any of that.

11 Q. Okay. During any of these flood  
12 events, did you have any damage to your house that  
13 you live in?

14 A. No, we didn't.

15 Q. What about the hog houses?

16 A. It -- No, there wasn't no damage.

17 Q. And pole barn, was there any damage to  
18 the pole barn?

19 A. We had to take almost everything out  
20 of it so it didn't get wet.

21 Q. Okay. So was there any property  
22 inside the pole barn that was damaged or destroyed?

23 A. No, no.

24 Q. And what about the feed shed, was that  
25 damaged by the flooding?

1           A.    We emptied it, too.  Before the water  
2 got that high, we took everything out.

3           Q.    And did the water eventually get high  
4 enough that it would have flooded the feed shed?

5           A.    Yes.

6           Q.    Mrs. Sheets, do you have any  
7 information about the current value of your  
8 properties?

9           A.    No, I don't.

10          Q.    Do you know if there has been any  
11 appraisal taken of your real estate recently?

12          A.    No, there hasn't.

13          Q.    One thing I wanted to ask you about  
14 your husband's Affidavit, which I'll give you a copy  
15 of, it included two maps and he identified the page  
16 that you have open right now.  On Exhibit A of Rodney  
17 Sheets' Affidavit and it's page 635, there's a  
18 property identified there.  Does that look familiar  
19 to you at all?

20          A.    Yes.

21          Q.    Is that where your residence is at?

22          A.    Yes.

23          Q.    And your husband identified that as a  
24 property that was subject to flooding.  Are you in  
25 agreement with him that that property is subject to

1 flooding?

2 A. Yes.

3 Q. Okay, thank you. Let me put that one  
4 back real quick.

5 Is there any reason why, in your  
6 Affidavit, you didn't include that property as an  
7 area that was damaged by the flooding?

8 MS. BREWER: Objection.

9 A. My name is not on the tax paper, on  
10 the numbers on the tax paper, so I didn't put that on  
11 mine.

12 Q. Your husband testified that the Beaver  
13 Creek and Wabash River confluence lie at the back of  
14 the one of your properties; is that correct?

15 A. Yes.

16 Q. And is there an area -- Have you ever  
17 heard the term used by your husband, called the buoy?

18 A. Um-hum, yes, I have.

19 Q. And what's that term mean to you?

20 A. It's a lot of tree. It's a real hilly  
21 area that we can't farm.

22 Q. And that area is -- If you look at the  
23 map on your Affidavit. I know this map isn't real  
24 easy to read, but is that area a part of the area  
25 that's not shaded?

1 A. Yes, probably.

2 Q. Is there any of the area that's shaded  
3 on your map that would include the area you would  
4 consider to be part of the buoy?

5 A. No.

6 Q. Okay. Are you aware, Mrs. Sheets, of  
7 any damage from the flooding in the form of field and  
8 bank erosion?

9 A. Yes. They've redone the bank a couple  
10 of times.

11 Q. Is that in the area back where the  
12 Wabash and the Beaver come together?

13 A. Or -- It was more like over, just a  
14 little over -- It's more like right in here, more  
15 behind our house.

16 Q. Okay. If you could do a, maybe --  
17 I'll give you a pen here. Maybe if you could kind of  
18 circle that area for us.

19 A. It's kind of like right in this area.  
20 (Witness drawing on map.)

21 Q. Okay. That's fine. Just generally.  
22 Just kind of what I wanted to know what area that was  
23 -- where that was an issue at.

24 And are you aware of there being any  
25 problem with soil compaction on your properties

1 | because of the flooding?

2 |           A.    Yes.

3 |           Q.    And do you know where that would have  
4 | occurred?

5 |           A.    When the water goes down, it leaves it  
6 | pretty smashed.

7 |           Q.    Okay. Did you have any losses as a  
8 | result of that compaction?

9 |           MS. BREWER:  Objection.

10 |          A.    I don't know.

11 |          Q.    Mrs. Sheets, did you explore whether  
12 | there was any other causes for the flooding besides  
13 | the spillway?

14 |          MS. BREWER:  Objection.

15 |          A.    No, I haven't.

16 |          Q.    Okay. I think I'm finished up here,  
17 | but let me double check a few things, Mrs. Sheets, to  
18 | make sure I covered everything.

19 |                Do you know, Mrs. Sheets, if there is  
20 | any of your land that is in the Conservation Reserve  
21 | Program?

22 |          A.    Yes.

23 |          Q.    And what area of your land is Reserve  
24 | Program?

25 |          A.    It's what follows the bank or what

1 part of it would be following the buoy, the first  
2 section of land back by the Beaver.

3 Q. Would that be what's known as a filter  
4 strip?

5 A. Yes.

6 Q. Okay. But the area that's shaded  
7 there on your map, that whole area, is that farmed?

8 A. Yes, this would be all farmland.

9 Q. So the flooding only impacted the area  
10 where you farm; is that accurate?

11 A. The way it would flood here, too, this  
12 would be the worst -- or the lowest and that's why we  
13 put it in the strip.

14 Q. Okay. So I just want to clarify that  
15 the map on Exhibit 1 of your Affidavit, the shaded  
16 area doesn't represent the whole area of flooding  
17 then; is that correct?

18 A. No. I thought they just wanted the  
19 farmland.

20 Q. Okay. Who's they?

21 A. When I drew the map.

22 Q. Oh! Did someone request you to draw  
23 the map?

24 MS. BREWER: Objection.

25 A. No. When I colored in the map to show

1 | what flooded.

2 |           Q.    Okay.  Just so -- I want to make sure  
3 | that everything is clear for our record, the area  
4 | that floods, though, I thought you testified a moment  
5 | ago would also include this unshaded area here; is  
6 | that correct?

7 |           A.    Yes.

8 |           Q.    Okay.  So the shaded area that's  
9 | presently showing on the map does not show the whole  
10 | extent of the flooding then; is that true?

11 |           MS. BREWER:  Objection.

12 |           A.    Yes, yeah.

13 |           Q.    So that area in the back is actually  
14 | the deepest area of the flooding?

15 |           MS. BREWER:  Objection.

16 |           A.    No.  It -- The whole thing floods.  I  
17 | don't know if it'd be any deeper.

18 |           Q.    Okay.  That's fair enough but the area  
19 | that is in the back, is that the area that's closest  
20 | to the creek, Beaver Creek and Wabash?

21 |           A.    Yes.

22 |           Q.    Because the creek's in the back of the  
23 | property, not up by the road; right?

24 |           A.    Right.

25 |           Q.    Do you know if this land in the back,

1 by the creek is, if you know, is it lower? Is that a  
2 low point there?

3 A. No. I don't know.

4 Q. Okay. And in preparing that map, I  
5 don't want to ask about any conversation you may have  
6 had with any of your lawyers, but did someone ask you  
7 to help prepare the shaded area for that map?

8 MS. BREWER: Objection.

9 A. I was just asked what -- if I -- what  
10 I knew flooded and I know that floods.

11 Q. Okay. Who asked you?

12 MS. BREWER: Objection.

13 A. The lawyers did.

14 MR. MARTIN: Okay. I'm done with my  
15 questions.

16 MS. BREWER: I have a couple  
17 follow-up.

18 DIRECT EXAMINATION

19 BY MS. BREWER:

20 Q. Mrs. Sheets, you have shaded in all of  
21 the farmland that floods on your property; is that  
22 right?

23 A. Yes.

24 Q. Okay. So the portion that was not  
25 flooded is not farmland?

1 A. No.

2 Q. And it also floods?

3 A. Yes.

4 Q. But it's not the farmland that floods;  
5 is that right? I'm sorry. That was unclear. The  
6 portion that is not shaded is not farmland?

7 A. No.

8 Q. Okay. Do you think that the flooding  
9 has become worse since 1997?

10 A. Yes.

11 Q. Do you think that your property would  
12 be worth more if it didn't flood?

13 A. Yes.

14 MS. BREWER: I don't have anything  
15 else.

16 MR. MARTIN: Just a couple.

17 RECROSS-EXAMINATION

18 BY MR. MARTIN:

19 Q. What facts or information would make  
20 you feel that it's -- the property is worth less now?

21 MS. BREWER: Objection.

22 Mischaracterizing.

23 A. You couldn't really use it, except for  
24 farming and so --

25 Q. What other uses has the property been

1 used for, if you know, other than farming?

2 A. Just farming.

3 Q. So it wouldn't really change the use  
4 then. It could be used for farming in the future?

5 MS. BREWER: Objection. To the extend  
6 you know what he's asking you can answer.

7 A. It is farmland.

8 MR. MARTIN: No further questions.

9 MS. BREWER: Okay. When the court  
10 reporter goes home, she will type up  
11 everything that was said here and you have  
12 the right to look at it, read it over and  
13 make sure that everything you said was  
14 accurate and correct or you can waive that  
15 right and not read it and not sign it. I  
16 can't tell you which one to pick, but I can  
17 tell you that I advise my clients that they  
18 should take the opportunity to read and  
19 sign. Would you like to do that?

20 THE WITNESS: Sure.

21 MS. BREWER: Okay. Thank you.

22 MR. MARTIN: Thank you for your time.

23 (At 2:30 o'clock, p.m., the deposition concluded.)

24  
25

*Martha C. Brewer*  
MARTHA C. BREWER, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO 3/15/10  
My commission has no expiration date  
Sec. 147.03 R.C.

*Linda Sheets*  
Linda Sheets



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E R R A T A S H E E T

I, Linda Sheets, 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:

|           |           |                                       |
|-----------|-----------|---------------------------------------|
| <u>7</u>  | <u>11</u> | <u>change work program to factory</u> |
| <u>15</u> | <u>17</u> | <u>change buoy to bayou</u>           |
| <u>22</u> | <u>5</u>  | <u>change extend to extent</u>        |



**AFFIDAVIT OF LINDA SHEETS**

STATE OF OHIO )  
 ) ss:  
COUNTY OF MERCER )

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

1. I am a Relator in this mandamus action 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 Number 28-011000.0000.

3. My husband, Rodney Sheets, has owned since 1972 Mercer County Parcel Number 28-011100.0000.

4. I have owned since 1997 Mercer County Parcel Number 28-011000.0000.

5. Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 lie at the confluence of the Beaver Creek and Wabash River.

6. 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 28-011100.0000 and 28-011000.0000 have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

7. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-011100.0000 and 28-

DON000626

011000.0000 have flooded every year, and some years they have flooded several times. On each occasion, 28-011100.0000 and 28-011000.0000 were inundated with water at depths varying from approximately one to seven feet.

8. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 flood more rapidly and remains flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 remained inundated with water for a period of up to two week.

9. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 had less frequent flooding, never flooded as much, never flooded over as large an area, never flooded for as long.

10. To date, the most invasive flood occurred in 2003 with approximately 39.25 acres of Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 being flooded with approximately up to seven feet of water for approximately up to one week. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Number 28-011000.0000 is attached hereto as Exhibit 1. I have shaded in the area of Mercer County Parcel Number 28-011000.0000 that was flooded in 2003.

11. Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 also experienced severe flooding in 2005.

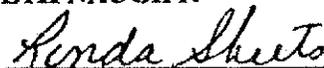
12. Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 were again flooded as recently as spring 2009.

13. As a direct result of the flooding, Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 have suffered damage in the form of crop losses, field erosion, bank erosion, the deposit of silt, sand, stones and other debris, soil compaction. In addition, two hog houses were flooded in 2003 and one other time since 1997, a pole barn flooded two or three times since 1997, and one time since 1997, the feed shed flooded.

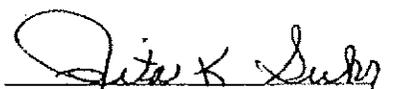
14. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000.

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.**

  
Linda Sheets

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

# Mercer County Ohio



## Legend

### Administrative

- Townships
- Neighborhoods

### Parcels

- Parcels

### Transportation

- State Highways
- US Highways

### Water

- Lake
- Streams

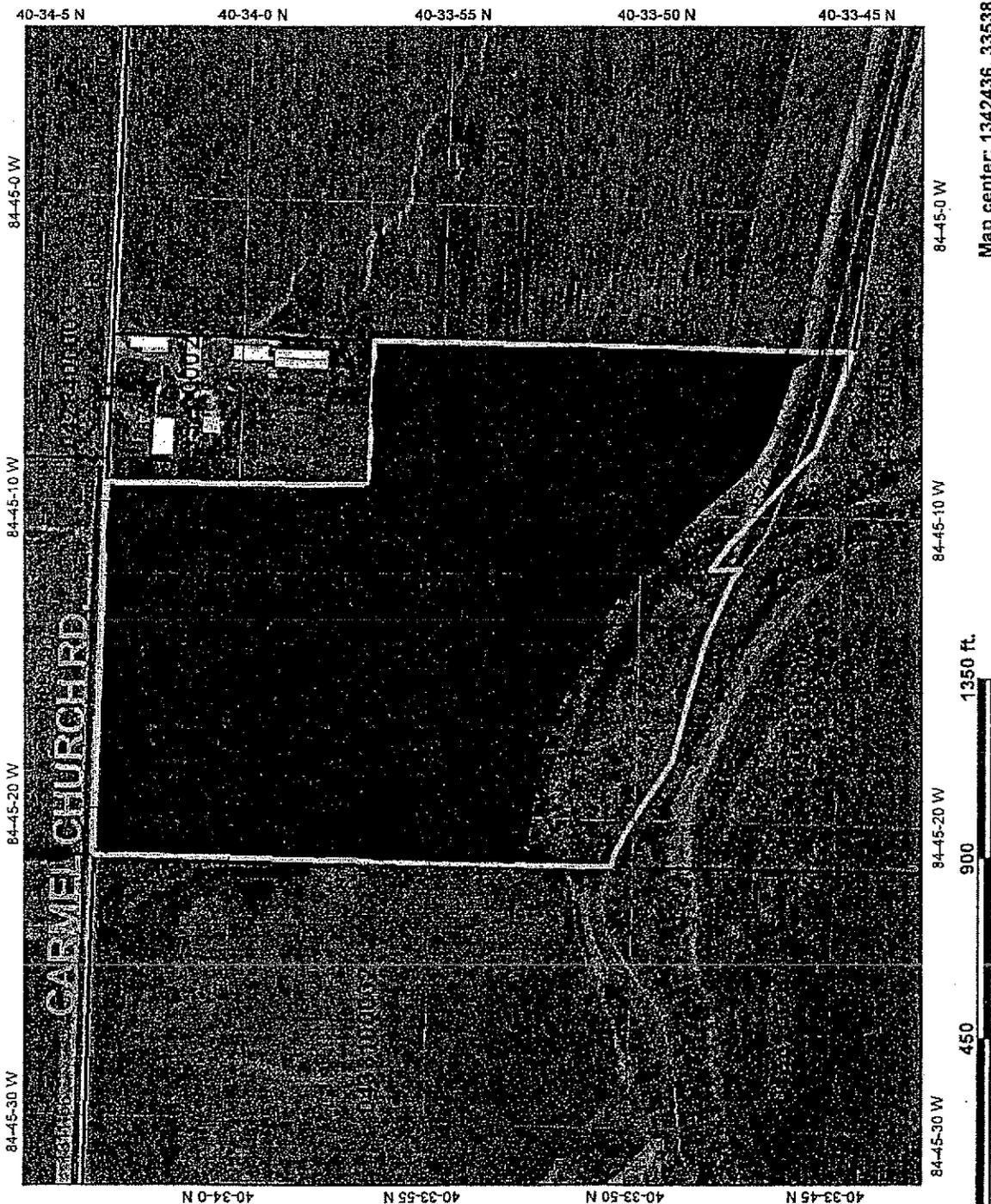


Scale: 1:4,800

EXHIBIT

1

Tables



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.

Rodney E. Sheets and Linda Sheets  
 -0- Carmel Church Rd.  
 Parcel No. 28-011000 0000 20 73

039000030

TAB 50

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 RODNEY SHEETS, was taken  
by the Respondents as on cross-examination, pursuant  
to the Ohio Rules of Civil Procedure, and pursuant to  
agreement among counsel, at the Central Service  
Building, 220 West Livingston Street, Celina, Ohio  
45822A, on Friday, February 5, 2010, at, 1:08 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:

Daniel J. Martin, Esq.  
Environmental Enforcement  
30 East Broad Street, Floor 25  
Columbus, Ohio 43215-3400

On Behalf of the Respondent:

Thomas H. Fusonie, Esq.  
and  
Martha C. Brewer,  
Attorney at Law  
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I N D E X

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| WITNESS: | RODNEY SHEETS |        |       |
|          | Examinations  | DIRECT | CROSS |
|          | By Mr. Martin |        | 4     |
|          | By Ms. Brewer | 28     |       |

E X H I B I T S

|              |                               |        |
|--------------|-------------------------------|--------|
| RESPONDENT'S | DESCRIPTION                   | MARKED |
| A            | Affidavit of Rodney Sheets    | 20     |
| B            | Certificate of Title and Deed | 16     |

- - -

1                   RODNEY SHEETS

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                   CROSS-EXAMINATION

7 BY MR. MARTIN:

8                   Good afternoon, Mr. Sheets.

9                   THE WITNESS: Hi!

10                  MR. MARTIN: My name is Daniel Martin.

11                  I'm an attorney, representing the State of  
12                  Ohio and today we'll be taking your  
13                  deposition, and the first question I  
14                  usually ask folks is whether you've had  
15                  your deposition taken before?

16                  THE WITNESS: No.

17                  MR. MARTIN: Okay. What I want to do  
18                  then is just go over a few guidelines to  
19                  help us this afternoon. The first thing I  
20                  advise folks is because the court reporter  
21                  has sworn you in, it's important that all  
22                  your answers to my questions be truthful  
23                  and to the best of your knowledge because  
24                  just like a courtroom-type proceeding,  
25                  you're under oath and you'll just need to,

1 you know, keep that in mind.

2 THE WITNESS: Okay.

3 MR. MARTIN: The questions I ask will  
4 be trying to get accurate information that  
5 we can put onto the record, so I don't want  
6 to mislead or confuse you. So if I ask a  
7 question that doesn't make sense or you  
8 don't understand or I'm mumbling and you  
9 just can't hear it, feel free to, you know,  
10 tell me to ask the question over again --

11 THE WITNESS: Okay.

12 MR. MARTIN: Or rephrase the question.

13 The court reporter will be taking down  
14 your testimony today, so it's important,  
15 when you answer, you provide a verbal  
16 answer. Head shakes or going uh-huh or  
17 something like that, which we all tend to  
18 do, is hard for the court reporter to put  
19 that down, into the record, so just to  
20 avoid any confusion, if the answer is yes  
21 or no, you want to make that a verbal  
22 rather than a head shake; okay?

23 THE WITNESS: Okay.

24 MR. MARTIN: And the other thing is  
25 just as I ask questions, give me an

1 opportunity to get the question out there  
2 and I'll try to avoid talking over you or  
3 interrupting you and I just ask, you know,  
4 that you try to do the same because that,  
5 there again, is hard for the court reporter  
6 to transcribe it if I'm asking a question,  
7 you're answering at the same time.

8 So those are sort of the general  
9 guidelines and, unless you have any  
10 questions, we'll go ahead and get started.

11 THE WITNESS: No, I don't have any.

12 Q. Okay. Could you just spell your name  
13 for the court reporter for the record.

14 A. R-O-D-N-E-Y, S-H-E-E-T-S.

15 Q. Okay. And Mr. Sheets, I just want to  
16 ask you some background questions first. How long  
17 have you lived in Mercer County?

18 A. All my life.

19 Q. And how long would that be?

20 A. I was born in '52.

21 Q. And what's your occupation, sir?

22 A. Farmer.

23 Q. And prior to farming, did you have any  
24 other job?

25 A. I used to do plumbing, plumbing and

1 heating.

2 Q. And what time period did you do that?

3 A. I think I quit, it was like '97, '98  
4 and we raise hogs and farming is what I do.

5 Q. And besides plumbing, did you have any  
6 other jobs that you held, I'll say, like after high  
7 school?

8 A. I was a carpenter for a few years. I  
9 was plumbing -- I did that plumbing for 20 or 21  
10 years and then I quit and went with a fairing house  
11 and made that my full-time job, I guess.

12 Q. When you were plumbing, did you work  
13 for someone or did you --

14 A. Yes.

15 Q. Okay. Who did you work for?

16 A. Consolidated Hunter.

17 Q. Okay. And again, I don't need to know  
18 about, you know, part-time jobs for summer and that  
19 type of thing, but besides what we talked about, any  
20 other jobs that held?

21 A. No. That was all I've ever done.

22 Q. And education, how far did you go in  
23 your schooling?

24 A. High school.

25 Q. High school? And where did you go to

1 high school?

2 A. Celina.

3 Q. And did you have any special area of  
4 study you concentrated in?

5 A. No.

6 Q. Besides -- Strike that. When you were  
7 a plumber, did you have a plumber's license?

8 A. No.

9 Q. Do you have any license or  
10 certificate, other than a driver's license?

11 A. No, just my CDL is all.

12 Q. And do you still have that?

13 A. Yes.

14 Q. Today, sir, what we'll be talking  
15 about, primarily, will be issues that have been  
16 raised about the landfill at Grand Lake St. Marys and  
17 damages or devaluation that your property has  
18 occurred (sic) as a result of the allegations that  
19 have been claimed and what I would first want to do  
20 is show you a exhibit, we'll call Exhibit A.

21 (Xerographic Document, Affidavit of  
22 Rodney Sheets, was marked for  
identification Exhibit A.)

23 That's a Affidavit you prepared. Actually, do you  
24 mind sharing that because -- Go off the record for a  
25 second.

1 (Discussion held off the record.)

2 Okay. Mr. Sheets, I've handed you  
3 what's been marked as Exhibit A, Affidavit of Rodney  
4 Sheets, and I just wanted to confirm a few things.  
5 Paragraph 2 there states that you're the owner --  
6 excuse me -- of some real estate described as Mercer  
7 County Parcel Numbers 28-011100.0000 and  
8 28-011000.0000. Do you still own those parcels?

9 A. Yes.

10 Q. And paragraph 3 says that you've owned  
11 that first parcel since 1972; correct?

12 A. Yes.

13 Q. And the other parcel since '97?

14 A. Yes.

15 Q. Have you split off any land and sold  
16 it out of those parcels?

17 A. No.

18 Q. Who, if you can recall, who did you  
19 buy the parcel, the 1972 parcel from?

20 A. My grandpa gave it to me.

21 Q. Your grandpa gave it to you?

22 A. Yes.

23 Q. And then in 1997, what about that  
24 parcel?

25 A. My mom, she died and --

1 Q. And you inherited that?

2 A. Yes.

3 Q. Okay. The parcel you received from  
4 your mother, are you the sole owner?

5 A. Yes.

6 Q. Okay. So you don't have interest you  
7 share with anyone else?

8 A. No.

9 Q. Okay. And if you would, sir, if you'd  
10 go ahead and turn to page 2 of your Affidavit, and  
11 I'm looking at paragraph 8, and the claim there says  
12 that after the replacement of the spillway, there's  
13 been more flooding and it's lasted for a longer  
14 period of time. Can you tell, for me, after 1997,  
15 what floods have occurred that you've observed on  
16 your property?

17 A. The one -- It seemed like it's every  
18 year, it'd flood, but the 2`03 and the 2`05 are the  
19 ones I really remember.

20 Q. Okay. And then paragraph 10, there on  
21 that page, it talks about the 2003 flood there. Can  
22 you tell me, in 2003, on, let's say the parcel  
23 numbers are pretty close here. I want to make sure I  
24 get `em right, 28-0111, how much acreage flooded in  
25 `03?

1           A.    Now, is that the farm or is that the  
2 house?

3           Q.    I'm not sure, sir.  You can refer, if  
4 you want.  There's maps attached to these.  Maybe we  
5 can look at those maps and that would help on the  
6 last two pages there of that Exhibit.

7                   THE WITNESS TO HIS COUNSEL:  Which one  
8 is that; do you know?

9           MS. BREWER:  If you don't know the  
10 parcel number, that's okay.  You can refer  
11 to them by their location or if you have a  
12 different way of referring to them, that's  
13 okay, too.

14          Q.    On the page number down in the lower  
15 right-hand corner, there's a little stamped, 635.  
16 Just -- That one, at least, appears to me, sir, it  
17 looks like it's got some buildings on that parcel.

18          A.    Yes.  Okay, that's -- Is that the one  
19 you was asking about?

20          Q.    Yeah.  It's got the three 1's, 111;  
21 yes, sir.  Do you recall how much of that acreage of  
22 that parcel was flooded in '03?

23          A.    Well, that, the whole thing was  
24 because when we walked out our back step, there was  
25 water there -- of our house.

1 Q. Out to the step of our house?

2 A. Yes.

3 Q. And do you live on this parcel, sir?

4 A. Yes.

5 Q. Okay. Did you have any water damage  
6 in your house?

7 A. Not the house, but everything else, we  
8 did.

9 Q. Did you have some out buildings?

10 A. We had a hog house, but we sold the  
11 hogs out of it. We was gonna sell some and we sold  
12 them out before the water came up, and we had a feed  
13 shed that was there that we had to move everything  
14 out of it.

15 Q. Okay.

16 A. And we had another hog house that the  
17 water got in, and then we had -- At that time, we had  
18 a machine shed and there was water in that. We had  
19 about six, eight inches of water in that.

20 Q. What was the deepest level of water on  
21 this piece of land, if you can recall?

22 A. I suppose probably a couple feet.

23 Q. Okay. And then if you go to the next  
24 page, there is a, another parcel there that's the --  
25 I'll just say it's the 0110. I won't read the whole

1 number, but it's the 110 parcel, I'll call it, and  
2 that parcel, can you recall how much of that acreage  
3 was flooded?

4 A. The whole thing.

5 Q. And I notice there is a shaded area on  
6 both these maps. Did you make these shaded areas?

7 A. Yes.

8 Q. Okay. And what's that represent?

9 A. What was flooded.

10 Q. Okay. So on this parcel, on the 110  
11 parcel, it looks like there is some area that was not  
12 flooded; is that correct, according to the shading?

13 A. No.

14 Q. So would it actually be all shaded; is  
15 that what it should be?

16 A. It should have all been shaded.

17 Q. How deep was this in 2003?

18 A. The deepest spot was seven feet, six,  
19 seven feet.

20 Q. Is this area used for farming?

21 A. Yes.

22 Q. Do you use it for any other use?

23 A. No.

24 Q. Do you have any -- Well, strike that.  
25 What type of crops do you plant on this piece?

1 A. Corn and soy beans.

2 Q. Do you know, in 2003, what you had  
3 planted?

4 A. No, I don't remember.

5 Q. In the 2003 flood, I know you said you  
6 had -- excuse me -- a building with some livestock.  
7 Did you lose any livestock as a result of this flood?

8 A. No.

9 Q. No?

10 A. No.

11 Q. Did you have any damage to any  
12 equipment as a result of that flood?

13 A. No. Everything -- We picked  
14 everything up and put it on wagons and took it  
15 someplace else that would have got damaged.

16 Q. Did you have any crop losses in '03?

17 A. Yes.

18 Q. And do you recall if there was any  
19 dollar amount assigned to those losses?

20 A. I don't remember.

21 Q. Did you put any claims in for crop  
22 insurance that year?

23 MS. BREWER: Objection. Go ahead.

24 Go ahead.

25 A. Yes.

1 Q. Did you receive any payment?

2 A. Yes.

3 Q. Let's talk about 2005. Did you have  
4 any crop loss that year?

5 A. I don't remember.

6 Q. Did you have any damage to your home  
7 or your outbuildings that year?

8 A. No.

9 Q. What about after 2005, did you have  
10 any other incidences of flooding?

11 A. In 2009 it flooded.

12 Q. And was that more or less than what  
13 you had in 2003?

14 A. It was just a little bit less. It  
15 wasn't quite -- It didn't come up to our back step  
16 like it did in 2003.

17 Q. Do you recall how deep it was in 2009?

18 A. No, I don't, no.

19 Q. But was it was less than the 2003  
20 flood?

21 A. Yes, just a little bit, not much, but  
22 a little bit.

23 Q. So in 2009, the parcel that's the --  
24 the 110 parcel that's the one that's the, mostly the  
25 farming area here, did that get completely flooded in

1 '09?

2 A. Yes or pretty well, I'd say. Maybe  
3 not quite all, but most of it did.

4 Q. Okay. I forget if I asked this, but  
5 did you have any crop damage in '09?

6 A. I don't recall.

7 Q. Okay. Let's go ahead and mark another  
8 document here that will be Exhibit B.

9 (Xerographic Documents, a Certificate  
10 of Transfer and a Deed, were marked  
for identification Exhibit B.)

11 And these were some documents that were provided to  
12 us by your counsel during the course of discovery and  
13 I just wanted to verify some things here of the  
14 ownership. The first of this -- first of these is a  
15 Certificate of Transfer from 1987 and it appears that  
16 you're a grantee under the Certificate of Transfer  
17 from Richard Sheets; do you see that?

18 A. Yes.

19 Q. And is Richard your father?

20 A. Yes.

21 Q. Okay. And are you able to tell from  
22 this which piece of property this is? There's a  
23 second page to it that might help, as well.

24 (Witness reviewing document.)

25 A. Evidently, that's the farm ground.

1 Q. It would be that ground?

2 A. Yes. Yeah, it is because the others  
3 was already in my name.

4 Q. Oh, I see! The other one was in '72?

5 A. Yeah, the other one was '72 and --

6 Q. And who is Duane Sheets?

7 A. My brother.

8 Q. Okay. Is he still -- It says here  
9 that he owns half of the remainder interest. Does he  
10 still hold that; do you know?

11 MS. BREWER: Objection.

12 A. No.

13 Q. Okay.

14 A. No, no, he does not.

15 Q. And Mildred, is that your mother?

16 A. Yes.

17 Q. Okay. We'll look at page 1059, on the  
18 bottom right, there's a second deed and this one, I  
19 just wanted to clarify the ownership on this parcel.  
20 This is one that indicates that the grantors include  
21 Rodney and Linda Sheets and Duane Sheets and the  
22 grantee is Mildred Sheets. Do you recall what  
23 property this was?

24 A. Does it have the number of -- on this  
25 here of what property that would be or not?

1 Q. I'm looking, too, sir, and I didn't  
2 see that. That's why I was --

3 A. Okay. No, I don't know.

4 THE WITNESS TO HIS COUNSEL: You don't  
5 know, either?

6 A. No, I don't know. No, I don't know.

7 Q. Okay. It did look like on the legal  
8 description, the acreage was identical, so I was just  
9 wondering if it was the same.

10 A. My -- There was another 40 acres that  
11 was my mom's that I inherited at the same time we  
12 done this and I wouldn't a thought it -- it could  
13 have been that if it's 40 acres; I don't know.

14 Q. That's fine. That's fair enough.

15 A. Okay.

16 Q. But the two parcels that you,  
17 yourself, are concerned about in terms of making a  
18 claim in this lawsuit are the two that we already  
19 identified on your Affidavit?

20 A. Yes, yes, that's all.

21 Q. Do you know, Mr. Sheets, before you  
22 acquired these two properties, had you heard anything  
23 from your family about any flooding on these parcels?

24 MS. BREWER: Objection.

25 A. They would flood a little bit.

1 Nothing like it did since the spillway.

2 Q. And did you farm any of this land  
3 before you purchased it?

4 A. Well, I helped my dad farm.

5 Q. Sure, um-hum.

6 A. Yeah and, you know, we farmed it  
7 probably since '88 or -- 'cause my uncle used to farm  
8 it and I think, I'm not for sure exactly when my dad  
9 started farming it. It was when my grandpa passed  
10 away and it was -- I don't remember for sure -- '85  
11 maybe.

12 Q. Do you remember when you were working  
13 with your dad or maybe farming that with your uncle,  
14 did you ever have a time when you couldn't use some  
15 of the land because of flooding?

16 MS. BREWER: Objection.

17 A. No. I don't remember.

18 Q. But you do remember that there was  
19 some flooding?

20 A. A little bit, but nothing like what it  
21 is now, 'cause we've never, since I've been there --  
22 that we've had water up to our house twice and that's  
23 been since the spillway.

24 Q. Do you know if the parcels we've been  
25 talking about today, do any of them have tile on

1 | them?

2 |           A.    Yes.

3 |           Q.    And what's the condition of the tile?

4 |           MS. BREWER:  Objection.

5 |           THE WITNESS:  Should I answer?

6 |           MS. BREWER:  Yes.  I'm sorry.  Just to  
7 | be clear --

8 |           THE WITNESS:  Okay.

9 |           MS. BREWER:  -- when I make an  
10 | objection, that's just a disagreement that  
11 | we are having, that I'm saving on the  
12 | record for the judge that the judge is  
13 | going to deal with it at some point.

14 |           THE WITNESS:  Okay.

15 |           MS. BREWER:  You should answer.  You  
16 | can just ignore me.

17 |           THE WITNESS:  Okay.

18 |           MS. BREWER:  Go ahead and answer  
19 | unless I tell you not to; okay?  Do you  
20 | remember the question.

21 |           Q.    Yeah.  What's the condition of the  
22 | tile there?

23 |           A.    They're clay tile and they're average,  
24 | I guess.

25 |           Q.    Any of it broken?

1 A. No.

2 Q. Are there any creeks or ditches on  
3 your property?

4 A. The Beaver and the Wabash, they meet  
5 at the back end of our property.

6 Q. Okay, so right -- the confluence of  
7 the two is in the back of your properties?

8 A. Yes.

9 Q. How much of your acreage is tillable?

10 MS. BREWER: Objection.

11 A. I really don't know. Most of it.  
12 Most of it, but the exact acreage, I don't know.

13 Q. Is there a portion that you,  
14 typically, don't plant?

15 A. Just a small -- There's a -- along the  
16 creek back, there's a -- where they've never farmed  
17 it and there's a few trees and we call it the buoy  
18 and it comes and nobody's ever farmed it. Just a  
19 little bit, not very much.

20 Q. And you said you have a name for that  
21 area. What was it called?

22 A. We just -- They always call it the  
23 buoy; I don't know why.

24 Q. Okay. About how -- and you don't have  
25 to give me exact acres, sir, but approximately, how

1 | many feet or how much of that property is that area  
2 | that's not planted?

3 |           A.    Not very much.  I'd say less than an  
4 | acre.

5 |           Q.    Okay.  It's right along where creek  
6 | and Wabash --

7 |           A.    Yeah, and I guess the reason why I do  
8 | not know is my uncle -- there's a area back there  
9 | that's not farming, but my uncle told me one time  
10 | don't worry about not farming all ground because the  
11 | boundary from our neighbor comes over there and he  
12 | says a lot of that is his.

13 |           Q.    Have you had any problem with erosion  
14 | on your property?

15 |           A.    It washed the ditch bank out one time  
16 | and we had to fill it back in.

17 |           Q.    About how much did you have to fill  
18 | in?

19 |           A.    We just dumped some concrete in it and  
20 | four or five loads, maybe; I don't know.

21 |           Q.    Do you know what the soil is, what  
22 | type of soils are on your properties?

23 |           MS. BREWER:  Objection.

24 |           A.    No.  No, I don't.

25 |           Q.    Do you have any part of your property

1 that you have in a Conservation Reserve Program?

2 A. We got a filter strip along the river  
3 and I don't think that's what you're asking though;  
4 is it?

5 Q. Well, that was going to be one of my  
6 next questions.

7 A. Okay, okay, okay, but that's what we  
8 have.

9 Q. Okay. So you do have a filter strip?

10 A. Yes.

11 Q. How wide is that filter strip, if you  
12 know?

13 A. I think 150 feet.

14 Q. And do you receive any type of payment  
15 for maintaining that strip?

16 A. Yes.

17 Q. How much do you get?

18 A. I think 550 or \$560 a year. But  
19 that's, I guess, not right. My brother and I, we  
20 farm together and our ASC payments for this here,  
21 he's got one on his property, which is adjacent to  
22 mine and the payment is half, half of his filter  
23 strip and half of my filter strip.

24 Q. I see. So your brother has adjacent  
25 property and you share the payment of the filter

1 strip?

2 A. Yes, and we're running through -- For  
3 the ASC, we're runnin' all on the -- one farm number.

4 Q. Oh, I see! Is there any portion of  
5 the property, that you're aware of, that's in any  
6 type of Wetland Reserve Program?

7 A. No, not that I know or -- In the  
8 Wetland Reserve?

9 Q. Yes, if you have an area that's  
10 wetland --

11 A. No, there is none.

12 Q. Okay. Are there any other programs  
13 that maybe you had participated in that you agree not  
14 to farm a portion of your land?

15 A. No.

16 Q. Okay. Do you have any --

17 A. On just this here or --

18 Q. On the two parcels --

19 A. Okay, no.

20 Q. -- at issue?

21 A. No.

22 Q. Do you have any of your property on  
23 these two parcels that's in a Farmland Preservation  
24 Easement?

25 MS. BREWER: Objection.

1 A. No.

2 Q. Do you recall how much you paid for  
3 your property that has the house on it?

4 A. I told you that, nothing.

5 Q. Oh, I'm sorry. Sorry; I already asked  
6 you that. What about the other piece of property and  
7 if I did ask you, forgive me.

8 A. No. I inherited that.

9 Q. You inherited both? Do you know, at  
10 the time that you received those properties, was  
11 there an appraisal as part of the probate process?

12 A. I don't remember.

13 Q. Mr. Sheets, did you have any  
14 photographs of the flooding conditions on your  
15 property?

16 A. We thought we did, but we could not  
17 find them.

18 Q. Did you have any other documents,  
19 maybe, like a diary or, like, a written statement of  
20 things at the time that they occurred?

21 A. No.

22 Q. Okay. Mr. Sheets, did you look at  
23 whether there were any other possible causes of the  
24 flooding, other than the spillway changes?

25 MS. BREWER: Objection.

1           A.    No.  I just figured there wasn't  
2 nothin' we could do with the water coming out.  You  
3 know, you could see the -- it was coming over the  
4 spillway.  Most of the time, whenever it floods, I  
5 take a drive up to Celina and it was pouring over --

6           Q.    Okay.  I'm sorry; I didn't mean to cut  
7 you off.

8           A.    It was pretty severe.

9           Q.    So you were able to visually observe  
10 the --

11          A.    Yes.

12          Q.    -- overflow?

13          A.    Yeah.  I just couldn't figure out --  
14 There was no sense -- I knowed, me in myself, I knew  
15 what it was.  There wasn't no sense checkin' anything  
16 else out.

17          Q.    We talked about some flooding in 2009.  
18 Can you recall what time of the year that that was?

19          A.    No, I don't.

20          Q.    Would it have been in the spring?

21          A.    I don't remember.

22          Q.    Okay.  Was it before you had planted  
23 any crops?

24          A.    I don't remember.

25          Q.    When was the last flood that you can

1 recall?

2 A. That 2009.

3 Q. Um-hum. Mr. Sheets, do you have any  
4 appraisals or other documentation that show the value  
5 of your properties today?

6 A. No, I don't.

7 Q. Do you have any documents or any type  
8 of records that would show us that your property has  
9 lost value as a result of the flooding?

10 A. No, I don't have anything.

11 Q. Okay. I think I'm done, but let me  
12 double check my notes here, make sure I asked  
13 everything I need.

14 Mr. Sheets, I talked to some other  
15 folks today and they indicated that there was actually  
16 some problems with drought in the last few years.  
17 Have you had any experiences with drought problems?

18 MS. BREWER: Objection.

19 A. Last year.

20 Q. So have you had some crop loss  
21 recently because of drought --

22 A. Last year we did.

23 Q. How about in 2007?

24 A. Yeah, probably -- or yes.

25 Q. Okay.

1 MR. MARTIN: Okay. I have no further  
2 questions for you.

3 MS. BREWER: Okay. I have just a  
4 couple questions.

5 DIRECT EXAMINATION

6 BY MS. BREWER:

7 Q. When we were looking at the map of  
8 your property, we were looking at this one that's the  
9 farm property and it's marked as page 635.1. The  
10 shading represents the part that was flooded; is that  
11 right?

12 A. Yes.

13 Q. Okay. And this part that's not  
14 flooded, that's also part of your property, is this  
15 where you farm? Do you farm on that part, this part  
16 that's not shaded in? I know the map is a little bit  
17 fuzzy.

18 A. Yes. It don't, the map don't look  
19 like it should be, like what it is. This here, I'm  
20 assuming is the river.

21 Q. Um-hum.

22 A. But I don't think it is because it  
23 stops here.

24 Q. Okay. It's hard to see on this map,  
25 but is the shaded part the part that flooded in --

1           A.    Yes, and I'm really thinkin' the river  
2 is comin' back here.

3                   (Pointing on map.)

4 I cannot tell for sure.

5           Q.    Okay, 'cause the map is what you're  
6 reading?

7           A.    Yes.

8           Q.    Okay, but does the shaded portion --

9           A.    Yes.

10          Q.    -- represent the part that flood in  
11 2003?

12          A.    Yes. It, it -- Yes, it is.

13          Q.    As far as you can tell from this fuzzy  
14 --

15          A.    Yeah, I know the shaded part is. It's  
16 just that wherever the river is --

17          Q.    Okay.

18          A.    -- and I think -- I was assuming that  
19 it was there, but see, our property goes clear back  
20 to the river.

21          Q.    Okay, but the shaded portion is the  
22 part that flooded in 2003?

23          A.    Yes.

24          Q.    Okay. Do you think that your property  
25 would be worth more if it didn't flood?

1 A. Definitely.

2 Q. Okay.

3 MS. BREWER: That is all the questions  
4 I have. Dan, do you have anything else?

5 MR. MARTIN: No, that's fine.

6 MS. BREWER: Okay. Mr. Sheets, when  
7 the court reporter goes home today, she'll  
8 type up a record of the conversation that  
9 you had. You have the right to read it and  
10 check to make sure that what you said was  
11 accurate and correct and if there are  
12 things that you need to correct, you can do  
13 that or you can waive that right and not  
14 read it and not sign it. I can't tell you  
15 which one you should pick, but I will tell  
16 you that I advise all of my clients that  
17 they should go ahead and take the  
18 opportunity to read it and sign it. Would  
19 you like to do that?

20 THE WITNESS: Okay.

21 MS. BREWER: Okay. Thank you.

22 MR. MARTIN: Thanks for your time  
23 today.

24 (At 1:47 o'clock, PM, the deposition concluded.)  
25

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A. Definitely.

Q. Okay.

MS. BREWER: That is all the questions I have. Dan, do you have anything else?

MR. MARTIN: No, that's fine.

MS. BREWER: Okay. Mr. Sheets, when the court reporter goes home today, she'll type up a record of the conversation that you had. You have the right to read it and check to make sure that what you said was accurate and correct and if there are things that you need to correct, you can do that or you can waive that right and not read it and not sign it. I can't tell you which one you should pick, but I will tell you that I advise all of my clients that they should go ahead and take the opportunity to read it and sign it. Would you like to do that?

THE WITNESS: Okay.

MS. BREWER: Okay. Thank you.

MR. MARTIN: Thanks for your time today.

(At 1:47 o'clock, PM, the deposition concluded.)

Rodney Sheets  
Rodney Sheets

MARTHA C. BREWER, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date  
Sec. 147.03 R.C.

*Martha C. Brewer* 2/15/10



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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 RODNEY SHEETS 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 RODNEY SHEETS; 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



**AFFIDAVIT OF RODNEY SHEETS**

STATE OF OHIO )  
 ) ss:  
COUNTY OF MERCER )

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

1. I am a Relator in this mandamus action 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 28-011100.0000 and 28-011000.0000.

3. I have owned since 1972 Mercer County Parcel Number 28-011100.0000.

4. I have owned since 1997 Mercer County Parcel Number 28-011000.0000.

5. Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 lie at the confluence of the Beaver Creek and Wabash River.

6. 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 28-011100.0000 and 28-011000.0000 have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

7. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 have flooded every year, and some years they have flooded several times. On each

DON000631

occasion, 28-011100.0000 and 28-011000.0000 were inundated with water at depths varying from approximately one to seven feet.

8. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 flood more rapidly and remains flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 remained inundated with water for a period of up to two week.

9. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 had less frequent flooding, never flooded as much, never flooded over as large an area, never flooded for as long.

10. To date, the most invasive flood occurred in 2003 with approximately 39.25 acres of Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 being flooded with approximately up to seven feet of water for approximately up to one week. A true and accurate copy of black and white aerials from the Mercer County Auditor's website of Mercer County Parcel Number 28-011100.0000 and 28-011000.0000 are attached hereto as Exhibit 1. I have shaded in the area of the parcels that was flooded in 2003.

11. Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 also experienced severe flooding in 2005.

12. Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 were again flooded as recently as spring 2009.

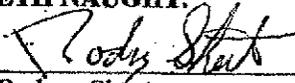
DON000632

13. As a direct result of the flooding, Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000 have suffered damage in the form of crop losses, field erosion, bank erosion, the deposit of silt, sand, stones and other debris, soil compaction. In addition, two hog houses were flooded in 2003 and one other time since 1997, a pole barn flooded two or three times since 1997, and one time since 1997, the feed shed flooded.

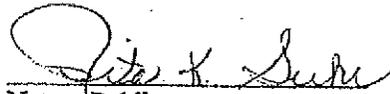
14. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 28-011100.0000 and 28-011000.0000.

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.**

  
\_\_\_\_\_  
Rodney Sheets

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

DON000633

**EXHIBIT 1 TO AFFIDAVIT  
OF RODNEY SHEETS**

DON000634

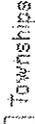
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# Mercer County Ohio

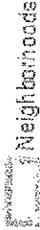


## Legend

Administrative



Townships



Neighborhoods

Parcels

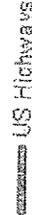


Parcels

Transportation

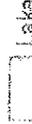


State Highways

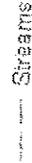


US Highways

Water



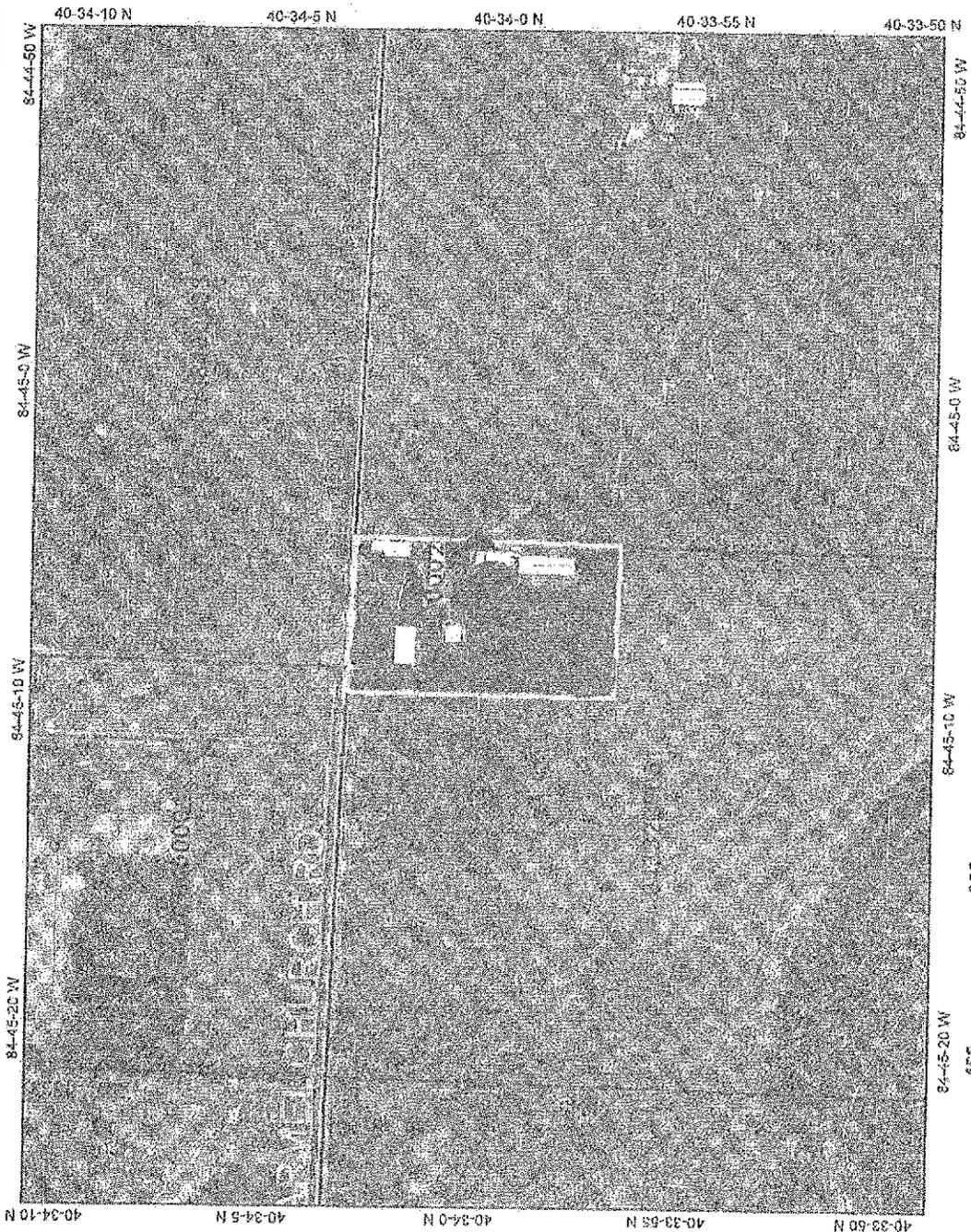
Lake



Streams



Scale: 1:4,700



Map center: 1342925, 388969

1360 ft.

900

450

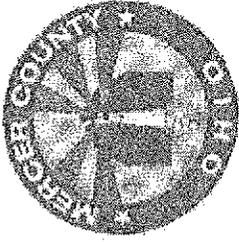
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This map is a user generated static output from an internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Rodney Earl Sheets  
1366 Carmel Church Rd.  
Parcel No.: 28-011100.0000 -- 5.61 acres

529000635 DON

# Mercer County Ohio



## Legend

### Administrative

- Townships
- Neighborhoods

### Parcels

- Parcels

### Transportation

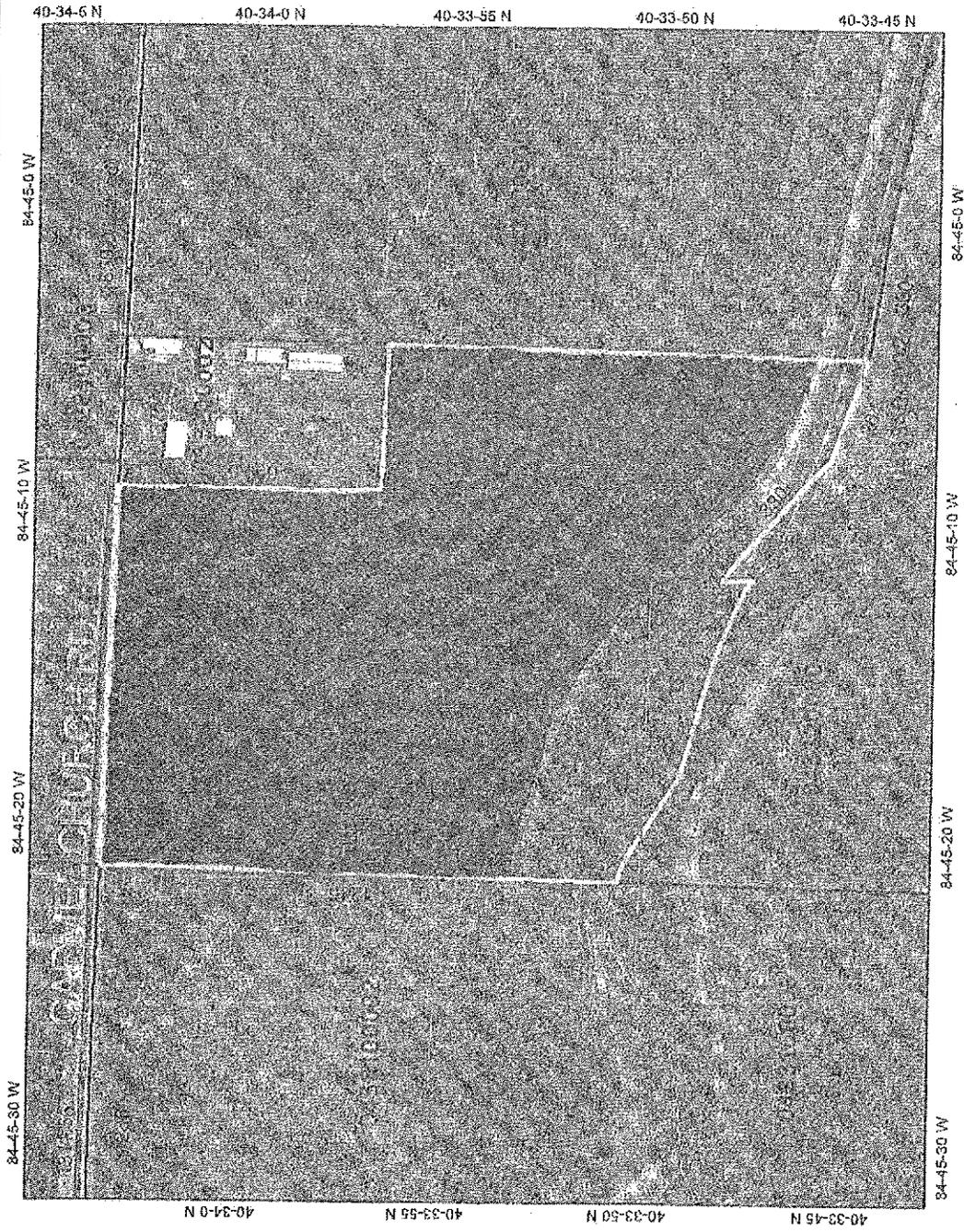
- State Highways
- US Highways

### Water

- Lake
- Streams



Scale: 1:4,800



Map center: 1342436, 335386

1350 ft.

900

450

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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.

Rodney E. Sheets and Linda Sheets

-0- Carmel Church Rd.

Parcel No.: 28-011000.0000 - 38.73 acres

EXHIBIT  
B

Prob 131 C

LEWIS BROTHERS, PUBLISHERS, SPRINGFIELD OHIO

127-0000 JIV

VOL 306 PAGE 782

PROBATE COURT OF Mercer COUNTY, OHIO

ESTATE OF Richard E. Sheets, DECEASED

Case No 22,276-87 Docket 33 Page \_\_\_\_\_

**CERTIFICATE OF TRANSFER**

Revised Code, Sec. 2113.61

NO. 1

Decedent died on October 9, 1987 owning the real estate described in this certificate. The persons to whom such real estate passed by devise, descent or election are as follows:

| Name              | Residence Address                          | Interest in Real Estate so Passing  |
|-------------------|--|---|
| Mildred L. Sheets | 7431 Wabash Rd.<br>Celina, OH 45822        | An undivided one-half interest and a life estate in an undivided one-half interest. |
| Rodney Sheets     | 1366 Carmel Church Rd.<br>Celina, OH 45822 | remainder to:<br>1/2 of remainder int.  |
| Duane Sheets      | 7431 Wabash Rd.<br>Celina, OH 45822        | 1/2 of remainder int.   |

~~remotion paragraph conveyance~~ For 5  
The Grantor and Grantee of this deed have complied with the provisions of Sec. 2113.61 of the Revised Code, Ohio.  
Deputy Auditor: B.M. Date: 6/22/88

APPROVED  
MERCER COUNTY TAX MAP DEPT.  
Date: 6-22-88  
M.B.

**TRANSFERRED**

**JUN 22 1988**

ROGER A. SCHWIETERMAN  
COUNTY AUDITOR  
MERCER COUNTY, OHIO

[Complete if applicable] The real estate described in this certificate is subject to a charge of \$ \_\_\_\_\_ in favor of decedent's surviving spouse, \_\_\_\_\_ in respect of the unpaid balance of the specific monetary share which is part of the surviving spouse's total intestate share.

DON001057

The real estate, the transfer of which is memorialized by this certificate, is described as follows [describe below, using extra sheets if necessary. If decedent's interest was a fractional share, be sure to so state].

**AN UNDIVIDED ONE-HALF INTEREST IN EACH OF THE FOLLOWING:**

**PARCEL NO. 1:**

Situated in the Township of Liberty, County of Mercer and State of Ohio, bounded and described as follows:  
Being the Northwest Quarter of the Northwest Quarter of Section 34, Town 5 South, Range 1 East, containing forty (40) acres of land, more or less, **LESS AND EXCEPT** a parcel beginning at the Northwest corner of Section 34; thence South 670 feet; thence East 325 feet; thence North parallel with the West section line 670 feet; thence West 325 feet to the place of beginning and containing 5 acres, more or less, in said exception, and containing after said exception 35 acres of land, more or less.

Last transfer of record appears in Volume 212, Page 561 of the Mercer County, Ohio, Deed Records.

**PARCEL NO. 2:**

Situated in the Township of Liberty, County of Mercer and State of Ohio, bounded and described as follows:  
All that part of the Southeast Quarter of the Northeast Quarter of Section 33, Town 5 South, Range 1 East, lying North of Beaver Ditch, described as follows:

Commencing at the northeast corner of said Southeast Quarter of the Northeast Quarter of said section; thence South 10.825 chains to the center of Beaver Ditch; thence North 78-1/2 degrees west, 15.46 chains; thence North 81-1/2 degrees west, 5 chains; thence north 6.93-1/2 chains; thence East 19.89 chains to the place of beginning and containing 17.45 acres of land.

Also the northeast quarter of the northeast quarter of said section 33, Town 5 South, Range 1 East, containing 40 acres of land, more or less. Containing in all 57.45 acres of land, more or less.

Last transfer of record appears in volume 202, Page 453 of the Mercer County, Ohio, Deed Records.

Parcel No. 1 was appraised for \$20,125.00;  
Parcel No. 2 was appraised for \$61,987.50.

This instrument prepared by:  
Meikle, Tesno & Luth, Attys., Celina, Ohio

June 22, 1988 /s/ Mark V. Klosterman  
DATE SIGNED Public Judge

**AUTHENTICATION**

I certify that the above document is a true copy of the original kept by me as custodian of the official records of this Court.

June 22, 1988 Anita C. Brudage  
DATE PUBLIC JUDGE

17598

PRESENTED FOR RECORD  
On the 22 day of June 1988  
at 5:30 o'clock P.M.  
recorded June 27, 1988  
In Mercer Co. Ohio, Record of

Patricia E. Grato veb  
RECORDER - MERCER CO., OH.  
Fee \$10.00

Vol. 306 pg. 782-3 n.j.l.



DON001058

OHIO WARRANTY DEED

That the Grantors, Rodney Sheets and Linda Sheets, his wife;  
and Duane Sheets, an unmarried man,

for valuable consideration paid, grant, with general warranty  
covenants, to the Grantee, Mildred L. Sheets

whose tax mailing address is 7431 Wabash Rd.  
Celina, OH 45822

the following real property:

PARCEL NO. 1:

Situated in the Township of Liberty, County of Mercer  
and State of Ohio, bounded and described as follows:

Being the Northwest Quarter of the Northwest Quarter  
of Section 34, Town 5 South, Range 1 East, containing  
forty (40) acres of land, more or less, LESS AND EXCEPT  
a parcel beginning at the Northwest corner of Section 34;  
thence South 670 feet; thence East 325 feet; thence  
North parallel with the West section line 670 feet;  
thence West 325 feet to the place of beginning and  
containing 5 acres, more or less, in said exception,  
and containing after said exception 35 acres of land,  
more or less.

Last transfer of record appears in Volume 306, Page 782  
of the Mercer County, Ohio, Deed Records.

PARCEL NO. 2:

Situated in the Township of Liberty, County of Mercer  
and State of Ohio, bounded and described as follows:

All that part of the Southeast Quarter of the Northeast  
Quarter of Section 33, Town 5 South, Range 1 East, lying  
North of Beaver Ditch, described as follows:

Commencing at the northeast corner of said Southeast  
Quarter of the Northeast Quarter of said section;  
thence South 10.825 chains to the center of Beaver Ditch;  
thence North 78-1/2 degrees west, 15.46 chains;  
thence North 81-1/2 degrees west, 5 chains;  
thence north 6.93-1/2 chains; thence East 19.89  
chains to the place of beginning and containing  
17.45 acres of land.

Also the northeast quarter of the northeast quarter  
of said section 33, Town 5 South, Range 1 East, con-  
taining 40 acres of land, more or less.

Containing in all 57.45 acres of land, more or less.

Last transfer of record appears in Volume 306, Page  
782, of the Mercer County, Ohio, Deed Records.

DON001059

...the... of this deed have  
complied with the provisions of S. C. Sec.  
19,20 Roger A. Schwietzman, Mercer  
County Auditor

Linda Sheets, wife of Rodney Sheets, BM 6/22/88  
Deputy Aud (Date)  
husband and under the

Grantors, release all rights of dower therein. VOL 306 PAGE 785  
Witness our hands this 20th day of June  
1988.

SIGNED AND ACKNOWLEDGED IN PRESENCE OF:

Joanne Jenkins  
Joanne Jenkins  
William Meikle  
William Meikle  
Joanne Jenkins  
Joanne Jenkins  
Faren G. Fleming  
Faren G. Fleming

Rodney Sheets  
Rodney Sheets  
Linda Sheets  
Linda Sheets  
Duane Sheets  
Duane Sheets

APPROVED  
MERCER COUNTY TAX MAP DEPT.  
Date 6-22-86  
By H. B.

STATE OF OHIO, COUNTY OF MERCER, SS:

Before me, a notary public in and for said County and State,  
personally appeared the above named  
Rodney Sheets and Linda Sheets, his wife, and  
Duane Sheets, an unmarried man,  
who acknowledged that they did sign the foregoing instrument  
and that the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and  
official seal, at Celina, Ohio this 20th day of  
June, 1988.



Joanne Jenkins  
Notary Public  
JOANNE JENKINS  
Notary Public - State Of Ohio  
My Commission Expires Feb. 7, 1990.

This instrument prepared by: Meikle, Tesno & Luth, Attys.  
100 N. Main St., Celina, Ohio

17599

OHIO HAPRAINTY DEED

Rodney Sheets  
et al

cc  
Mildred L. Sheets  
7431 Wabash Rd.  
Celina, OH 45822

TRANSFERRED

JUN 22 1988

ROGER A. SCHWIETZMAN  
COUNTY AUDITOR  
MERCER COUNTY, OHIO

REGISTERED FOR REC-OK  
On the 22 day of June 1988  
at Celina, Ohio  
Recorded June 23 1988  
In Mercer County, Ohio, Record of  
Deeds  
Patricia E. Grodzinski  
RECORDER - MERCER CO., OH  
June 21 1988  
Vol. 306 p. 784-5

DON001060

TAB 51

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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 MORSE ROAD  
COLUMBUS, OHIO 43229-6693

and

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

DEPOSITION of CAROL L. SIEFRING, was  
taken by the Respondents as on cross-examination,  
pursuant to the Ohio Rules of Civil Procedure, and  
pursuant to agreement of counsel, at the Central  
Service Building, 220 West Livingston Street, Celina,  
Ohio 45822, on Wednesday, February 10, 2010, at, 4:45  
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 Natural  
Resources:

4

Dale T. Vitale, Esq.  
Environmental Enforcement  
30 East Broad Street, Floor 25  
Columbus, Ohio 43215-3400

5

6

7

On Behalf of the Respondent:

8

Thomas H. Fusonie, Esq.  
and

9

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:      | CAROL L. SIEFRING |  |       |
| Examinations  | DIRECT            |  | CROSS |
| By Mr. Vitale |                   |  | 4, 17 |
| By Ms. Brewer | 15                |  |       |

E X H I B I T S

|              |                                 |        |
|--------------|---------------------------------|--------|
| RESPONDENT'S | DESCRIPTION                     | MARKED |
| A            | Affidavit of Carol L. Siefiring | 6      |

- - -

1 CAROL L. SIEFRING  
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 CROSS-EXAMINATION

7 BY MR. VITALE:

8 Q. Could you state your name for the  
9 record, and address, please?

10 A. Carol Siefring, 6973 Township Line  
11 Road, Celina, Ohio.

12 Q. And who is your spouse?

13 A. Ron Siefring.

14 Q. And how long have you lived at that  
15 address?

16 A. Since we were married in November of  
17 '77.

18 Q. What land in Mercer County do you own,  
19 in addition to the house on which you live now -- or  
20 in which you live now?

21 A. Well, the only one that I'm aware of  
22 is the one -- there's a parcel on 29 that I think I  
23 share ownership with Mark, Ron's brother.

24 Q. With Mark, not with your spouse?

25 A. Not with my spouse and -- correct.

1 Q. Okay. Is that -- Excuse me. How  
2 large, if you know, how large is that parcel?

3 A. I don't know.

4 Q. Does Mark farm that parcel?

5 A. Yes, Mark and Ron as their partnership  
6 farm that parcel.

7 Q. Is that parcel subject to flooding?

8 A. Yes.

9 Q. Do you have any knowledge of how often  
10 that parcel floods?

11 A. No, not really.

12 Q. What is the body of water that's  
13 closest to that particular parcel?

14 A. I don't know. In my terms, it would  
15 be the Beaver, but I know very little side things --

16 Q. Oh, there could be some streams, as  
17 well --

18 A. Right.

19 Q. -- but the largest one that you know  
20 of is the Beaver?

21 A. Yes.

22 Q. Do you know how close Beaver Creek is  
23 to that particular parcel?

24 A. To 29? To that parcel on 29?

25 Q. Yes, ma'am.

1 A. A half a mile.

2 Q. Okay.

3 (Xerographic Documents, Affidavit of  
4 Carol L. Sieftring, was marked for  
5 identification Exhibit A.)

6 Q. I'm showing you what has been marked  
7 as Exhibit A and can you tell me if you have seen  
8 that before?

9 A. Yes.

10 Q. And is that your Affidavit?

11 A. Yes, it is.

12 Q. On the second page, is that your  
13 signature?

14 A. Correct.

15 Q. It does identify two parcels in  
16 paragraph 2. To the best of your knowledge that's  
17 the accurate parcel identifications?

18 A. To the best of my knowledge that's how  
19 it was indicated, but I don't -- I can't,  
20 specifically, say those are the correct numbers.

21 Q. Okay. Do you know who gathered that  
22 information for you?

23 A. Ron and Mark because they farm those  
24 parcels.

25 Q. Now, one of the parcels is the parcel  
on which you live; is that right?

1 A. Yes. I'm assuming one of those is.

2 Q. And you are familiar with how often  
3 that parcel floods; is that correct?

4 A. Yes.

5 Q. How often does that happen?

6 A. Well, since '97, frequently. Prior to  
7 that, very infrequently. In fact, I remember,  
8 specifically, one of the first times that it did  
9 flood when my children were younger and one of our  
10 old-time neighbors said this is something I haven't  
11 seen in year, but I mean 30, 40 years and said you  
12 won't see this because it's such a rare thing. So  
13 after that, we've seen it. It's just kind of old  
14 news now. It's old news. It's nothing that  
15 surprises us since '97. You hate to say you get used  
16 to it, but we've gotten used to it, so --

17 Q. Every year?

18 A. No, not every year, but very  
19 frequently. It's -- It probably sticks in my  
20 memories more because it concerned me a lot when the  
21 children were young. You know, I had -- Of course,  
22 the crops were a concern, but for me, it was the  
23 water with the children. The resulting mess that it  
24 left with the debris, the field trash and not --  
25 'Cause -- I mean it would literally set there for

1 months, and the molds, when it was dug up to try to  
2 get rid of it, it was very concerning for health  
3 issues even and safety for the kids. It was deeper  
4 than the fence posts, the water --

5 Q. How tall were those, if you know?

6 A. Oh! I don't know, four feet, five  
7 feet.

8 Q. And that, when you say it was deeper  
9 than the fence posts, are you referring,  
10 specifically, to 2003?

11 A. I can't say, specifically, 2003. In  
12 my memories, it was more than -- it's been more than  
13 once it's been that deep, so --

14 Q. But 2003 was the worst year?

15 A. I can't say that for sure. I don't  
16 remember that for sure as being the worst year.

17 Q. Do you work with Ron or Mark in the  
18 actual farming of the property?

19 A. No.

20 Q. Do you have a separate --

21 A. Yes. I'm usually off the farm. I'm a  
22 loan processor at Farm Credit. That's my career and  
23 occupation.

24 Q. Did you ever complain to anyone about  
25 the flooding. Any government official -- Excuse me

1 -- any government officials about the flooding since  
2 1997?

3 A. No.

4 Q. Do you know when you purchased the  
5 parcel that you own with Mark?

6 A. No. Again, with the partnership that  
7 they have, any decisions made regarding any land  
8 purchases, equipment purchases, as well as anything  
9 else is made between the partnership. I know I  
10 signed the documents, but I'm -- It's usually --

11 Q. Here they are; please sign.

12 A. Yeah.

13 Q. Do you know if it was prior to or  
14 after 1997?

15 A. No, I don't remember.

16 MS. BREWER: I'm sorry. Just so I'm  
17 clear, you're asking about when the  
18 property that she owns with Mark was  
19 purchased?

20 MR. VITALE: That's correct.

21 MS. BREWER: And you don't remember if  
22 it was before or after '97?

23 THE WITNESS: I don't, I don't  
24 remember. I don't know.

25 MS. BREWER: Okay.

1 THE WITNESS: I can't say that for  
2 sure, no.

3 Q. You said your current occupation is  
4 processing loans at the Farm Credit Bureau?

5 A. Farm Credit Services.

6 Q. Services. What kind of loans are  
7 processed there?

8 A. Ag loans, consumer loans, equipment  
9 loans, operating loans.

10 Q. And on the basis of your working  
11 there, do you have knowledge of property values in  
12 Mercer County?

13 A. I have -- Yes, I definitely have more  
14 knowledge than what I had prior to working there.

15 Q. What's your knowledge of property  
16 value in Mercer County per acre?

17 A. From the properties from loan closings  
18 that I've just dealt with in the last several months,  
19 the average price per acre was 8,000-some into the  
20 \$9,000 range. One was 7500 but, again, eight to  
21 eight and a half would probably be a good average  
22 figure.

23 Q. Would that vary if it were unimproved  
24 or improved property?

25 MS. BREWER: Objection. To the extent

1                   you know what he's asking, you can answer.

2                   A.     That, I don't know, specifically, on  
3 those.

4                   Q.     In the real property purchases that  
5 you have knowledge of, is title insurance usually  
6 required?

7                   MS. BREWER:  Objection.

8                   A.     Not in Ohio.

9                   Q.     Is it common practice to get it in  
10 Mercer County?

11                   MS. BREWER:  Objection.

12                   A.     No.  There's title work done, but not  
13 title insurance.

14                   Q.     Are surveys done as a part of the real  
15 property purchase?

16                   MS. BREWER:  Objection.

17                   A.     There's an appraisal done.

18                   Q.     The property -- When you say,  
19 "appraisal," what do you mean?

20                   A.     Property that an appraiser will look  
21 at the property and determine its value.

22                   Q.     Does your particular agency use a  
23 particular appraiser for its loans?

24                   A.     We have both in-house and out-house  
25 appraisers.

1 Q. Have you had your property appraised  
2 recently?

3 A. Not that I'm aware of, but again, I  
4 don't know.

5 Q. Do you know how much you paid for the  
6 property -- I'm referring to the one on which you  
7 live -- how much you paid per acre for that property  
8 at the time of purchase?

9 A. No. That was purchased before I even  
10 knew Ron.

11 Q. And do you know anything about its  
12 value at the time that you acquired your ownership  
13 interest in it?

14 A. No.

15 Q. Do you know anything about the flood  
16 plain of Beaver Creek?

17 MS. BREWER: Objection.

18 A. No, and I'm not -- No.

19 Q. Have you ever seen a map that  
20 identifies the hundred-year flood area for Beaver  
21 Creek?

22 A. Not, specifically, Beaver Creek. I  
23 have seen flood maps, but --

24 Q. What flood maps are you familiar with?

25 MS. BREWER: Objection.

1           A.    Just flood maps -- I used to sell  
2 flood insurance.

3           Q.    In Mercer County?

4           A.    In areas where I sold insurance.  I  
5 can't say I remember if I ever sold any in Mercer  
6 County.

7           Q.    Where did you sell it?

8           A.    I was employed by an agency that did a  
9 lot of work out of the Hamilton area, Dayton and I  
10 don't remember some of the other areas -- the  
11 counties, south.

12          Q.    When you say you saw flood maps, who  
13 prepared those flood maps?

14          MS. BREWER:  Objection.

15          A.    They were NFIP maps.

16          Q.    I'm sorry?

17          A.    National Flood Program maps.

18          Q.    And you don't know what agency  
19 prepared those?

20          MS. BREWER:  Objection.

21          A.    Yeah.  I don't know.

22          Q.    How did you get access to those maps?

23          MS. BREWER:  Objection.

24          A.    They were provided by the insurance  
25 agency through the federal program that does the

1 flood insurance.

2 Q. Who was the common purchaser of flood  
3 insurance in the areas in which you worked?

4 MS. BREWER: Objection.

5 Q. Who were your customers?

6 MS. BREWER: Objection, relevance.

7 Flood insurance in Hamilton, Ohio, is not  
8 relevant to --

9 MR. VITALE: It might be.

10 A. Who were my customers. Someone who  
11 would purchase a home and the bank would perhaps  
12 require that they carry flood insurance would be an  
13 example of who may be a customer and that's the only  
14 time we sold flood insurance is if the bank required  
15 it. Well, I shouldn't say that.

16 Q. That was one of the times it was --

17 A. Correct.

18 Q. Understood. So based on your  
19 experience in Mercer County, are banks requiring  
20 flood insurance?

21 MS. BREWER: Objection.

22 A. I don't know.

23 Q. Do you know if flood insurance was  
24 required for either of the purchases of property that  
25 you own?

1 A. No.

2 Q. It was not required?

3 A. I don't know.

4 Q. Oh, you don't know?

5 A. If you could reword that. I'm not  
6 sure --

7 Q. Okay. Was flood insurance required  
8 for the purchase of your property on which you  
9 currently live.

10 A. I don't know.

11 Q. And was flood insurance required on  
12 the property that you own with Mark?

13 A. I don't know, but I can say that it's  
14 never been a requirement on the insurance or it would  
15 have been -- we would have had it, so --

16 Q. So you know that you don't have flood  
17 insurance on either of those properties?

18 A. We do not have flood insurance.

19 MR. VITALE: I don't think I have any  
20 other questions of Ms. Siefring.

21 MS. BREWER: Okay. I have a couple.

22 DIRECT EXAMINATION

23 BY MS. BREWER:

24 Q. You told Mr. Vitale about property  
25 values that you were aware of in the area through

1 your work at the Farm Credit Services Company and I  
2 think you said the average was between eight and  
3 nine, maybe 8,000, maybe 8500.

4 A. Um-hum.

5 Q. Are those properties that flood; do  
6 you know?

7 A. No. Those are properties that do not  
8 flood, but in -- as far as valuation, property is  
9 still within a 15-to-20 mile radius of our farm.

10 Q. Okay. So the properties that you know  
11 have been going for around 8-to-9,000 are within a  
12 15-to-20 mile radius of your property?

13 A. Yes.

14 Q. Do you know what properties that do  
15 flood in that same area are going for generally?

16 A. A property that was sold just last  
17 year, just right across the road from us, only went  
18 for 4-to-5,000 I believe. And then I know property  
19 north of us that also has flooding issues actually  
20 did not sell because it didn't meet the minimum which  
21 was under four, I believe.

22 Q. It didn't meet the minimum bid?

23 A. Yes.

24 Q. Okay. When you looked out your window  
25 in 2003, during the flooding, what did you see?

1           A.    Lots of water, lots of trash.  It was  
2  -- It's very stressful and, you know, it's hard not  
3  to make light of it when people say, well, you have  
4  lake-front property, once again to the point where  
5  there are actually boaters out in our field, fishing.  
6  So yeah, that part is -- And it's hard to say that  
7  you kind of get used to it, but yeah, I leave for  
8  work in the morning and come home and I have to take  
9  a different route to get home because everything's  
10 flooded to get back home, but -- so yeah, that part.  
11 And the, and you know, to root to see our farm  
12 picture in the paper because of the media coverage  
13 and -- which has happened several times, but --

14           Q.    Okay.

15           MS. BREWER:  I think that's all I  
16 have.

17                           REXCROSS-EXAMINATION

18 BY MR. VITALE:

19           Q.    The property to the north that didn't  
20 sell, was that the Sutter property?

21           A.    Yes.

22           Q.    And the property across the road, do  
23 you know whose property that was that you said went  
24 for 4-to-5,000?

25           A.    It had been owned by Howells, was the

1 last name.

2 Q. Howell?

3 A. Howell, I think was the prior owner's  
4 name.

5 MR. VITALE: That's all I have.

6 MS. BREWER: Okay. You have the right  
7 to read and review your transcript and check to make  
8 sure everything you said is accurate and correct or  
9 you can waive that right and not read it. I  
10 recommend to all of my clients that they do take the  
11 opportunity to read it and make sure it's correct and  
12 then sign. Is that what you would like to do?

13 THE WITNESS: Yes.

14 MS. BREWER: Okay. Thank you.

15 - - -

16 (At 5:15 o'clock, PM, the deposition concluded.)

17 - - -

18  
19 Carol Siefring  
20 CAROL SIEFRING

MARTHA C. BREWER, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date  
Sec. 147.03 R.C.

21  
22 Martha Brewer 3/14/10  
23 Notary

24  
25

ERRATA SHEET

I, CAROL SIEFRING, 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 14th day of March, 2010.

PAGE LINE CORRECTION OR CHANGE AND REASON:

| PAGE | LINE | CORRECTION OR CHANGE AND REASON:      |
|------|------|---------------------------------------|
| 7    | 11   | change year to years                  |
| 17   | 11   | change the to then - and root to look |
| 5    | 15   | change things to streams              |

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C E R T I F I C A T E

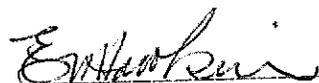
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STATE OF OHIO )  
                  ) SS:  
COUNTY OF MERCER)

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 CAROL L. SIEFRING 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 CAROL L. SIEFRING; 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 26th day of February, 2010.

My Commission Expires:  
September 17, 2012

  
\_\_\_\_\_  
Edna M. Hawkins  
Notary Public - State of Ohio

AFFIDAVIT OF CAROL L. SIEFRING

STATE OF OHIO )  
 ) ss:  
COUNTY OF MERCER )

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

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

2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-000100.0000 and 42-001000.0100.

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

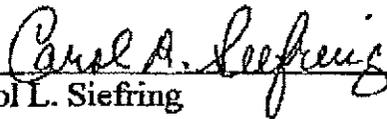
4. I own land which, since ODNR replaced the western spillway of Grand Lake St. Mary's in 1997, is subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

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

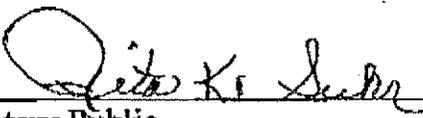


6. I have reviewed the Complaint and the facts relating to my real estate and the flooding of my land caused by ODNR from the western spillway of Grand Lake St. Marys and swear that those facts are true and accurate, based on personal knowledge.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
Carol L. Siefing

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

  
\_\_\_\_\_  
Notary Public

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

TAB 52

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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 JEFFREY A. SIEFRING, was  
taken by the Respondents as on cross-examination,  
pursuant to the Ohio Rules of Civil Procedure, and  
pursuant to agreement of counsel, at the Central  
Service Building, 220 West Livingston Street, Celina,  
Ohio 45822, on Friday, February 19, 2010, at 9:30  
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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(513) 342-2088  
(513) 342-1820  
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APPEARANCES :

On Behalf of Ohio Department of Natural  
Resources:

RACHEL H. STELZER,  
Attorney at Law  
Environmental Enforcement  
30 East Broad Street, Floor 25  
Columbus, Ohio 43215-3400

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:

|                |        |       |
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| Examinations   | DIRECT | CROSS |
| By Ms. Stelzer |        | 4     |

E X H I B I T S

| RESPONDENT'S | DESCRIPTION                   | MARKED |
|--------------|-------------------------------|--------|
| A            | Affidavit of Jeff A. Siefring | 45     |

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JEFF A. SIEFRING

of lawful age, a witness herein, as upon  
cross-examination, being first duly sworn, as  
hereinafter certified, was examined and testified as  
follows:

EXAMINATION

BY MS. STELZER:

Mr. Siefiring, you're being deposed  
today by agreement of counsel. My name is  
Rachel Stelzer and I represent the State of  
Ohio.

Q. Could you please state your name and  
home address for the record.

A. Jeff Siefiring, 3057 Kuhn Road,  
Coldwater, 45828.

Q. Should I call you Mr. Siefiring?

A. You can call me Jeff.

Q. Okay. Jeff, have you ever been  
deposed before?

A. No.

Q. Okay.

MS. STELZER: My purpose today is to  
get a better understanding of the flooding that's  
occurring on your property. It's important, as we go  
forward, that you speak loudly and clearly enough so

1 the court reporter can get down everything you're  
2 saying. It's also important that if you don't  
3 understand a question I ask, that you make sure you  
4 ask for clarification. Can I get you to agree to  
5 stop me and ask me for clarification if you don't  
6 understand my question?

7 THE WITNESS: Yes.

8 Q. Okay. Did you review any documents in  
9 preparation for your deposition today?

10 A. Yes.

11 Q. What were they?

12 A. My Affidavit.

13 Q. Okay. Your single Affidavit that you  
14 filed in this case?

15 A. Yes.

16 Q. Okay. Where are you currently  
17 employed?

18 A. Self employed.

19 Q. What do you do?

20 A. Farm.

21 Q. Did you pursue any further education  
22 after high school?

23 A. No.

24 Q. How old are you, Jeff?

25 A. Twenty-eight.

1 Q. Can you please describe the location  
2 of the property that you own that you allege has been  
3 flooded in this case?

4 A. Now would you like me to describe  
5 that?

6 Q. Do they have addresses?

7 A. No.

8 Q. Okay. Could you tell me the cross  
9 roads?

10 A. They are on -- It is on Township Line  
11 Road. It is north of Kuhn Road; it's not on the  
12 corner, but is just about quarter mile north of Kuhn  
13 Road, on Township Line.

14 Q. Okay. And so we're just going to be  
15 talking about one single property?

16 A. There is two parcel numbers.

17 Q. Two parcel numbers. But the parcels  
18 are abutting --

19 A. They're -- Yes. They're -- In my  
20 eyes, it's one farm, but it is two parcel numbers.

21 Q. In your eyes, is it, you know, one  
22 field then?

23 A. Yes, it is one field.

24 Q. Okay. So there's no roads cutting  
25 through your property?

1 A. No.

2 Q. Okay. You do not live on that  
3 property; you live in Coldwater; correct?

4 A. No. It's on that property, but it's  
5 -- There is four parcel numbers there. We're dealing  
6 with the two, but the one is -- where I live, is  
7 right there with it. It's all one, but there is four  
8 parcel numbers, but two are the only ones that flood.

9 Q. So four parcel numbers in total. How  
10 long have you owned those four parcels?

11 A. Well, three parcels, I've owned since  
12 '05 and the other one, I just purchased last year --  
13 yes, '09.

14 Q. When did you buy your home?

15 A. '09.

16 Q. '09. The three parcels you purchased  
17 in 2005, what acreage were those three?

18 A. It's 83 total acres. I don't know  
19 each parcel number. It was all -- I bought it all as  
20 one, so --

21 Q. Okay.

22 A. -- but it's -- I don't know each  
23 individual one.

24 Q. Okay. So of the 83 total acres, how  
25 many acres abut?

1 A. There's approximately 25.

2 Q. Okay. Who did you purchase the  
3 property from in 2005?

4 A. My father and uncle.

5 Q. What are their names?

6 A. Mark and Ron Siefring.

7 Q. Which is your father?

8 A. Mark.

9 Q. How long did Mark and Ron own the  
10 property before you?

11 A. I can't honestly give you -- I don't  
12 know for sure.

13 Q. Longer than 10 years?

14 A. Yes.

15 Q. Longer than 15 years?

16 A. I'm not sure on that one. It was my  
17 grandfather's before that, so I don't know when they  
18 bought it from my grandfather.

19 Q. Okay. Do you have an estimate of how  
20 long it's been in the family?

21 A. I'm thinking it's been about, I think  
22 since '80, something like that, but that is an  
23 approximate. I'm not --

24 Q. Okay. So in addition to these three  
25 parcels you bought in 2005 and your home in 2009, do

1 you own any other property in the area?

2 A. No.

3 Q. Do you rent any other property in the  
4 area?

5 A. Yes.

6 Q. Where is the property you rent?

7 A. It's in Mercer County. It's all over.

8 Q. Is it farmland, too?

9 A. Yes.

10 Q. Okay. How many different properties?

11 A. Approximately 10.

12 Q. Are any of those properties -- So do  
13 you consider those -- Strike that. Do you consider  
14 those 10 separate farms then or is this a situation  
15 where the 10 different properties are abutting and  
16 you can farm them all --

17 A. No. This would be like 10 different  
18 farms if you could -- Yes. It'd be 10 different --  
19 There's probably way more parcel numbers than --

20 Q. Okay, that's fine.

21 A. -- than what farms that -- I consider  
22 them one because I farm them all as one.

23 Q. Okay.

24 A. You know, different ones that I  
25 consider one.

1 Q. Um-hum. So, but 10 separate fields in  
2 different parts of --

3 A. Yes.

4 Q. Are they all in Mercer County?

5 A. Yes.

6 Q. Okay. Where are they in relation to  
7 the property you allege is flooded?

8 A. Some of is a few miles east of it;  
9 some is about 15 miles north, like right at the  
10 county line of Mercer and Vanwert; some is on 29,  
11 that is west of me.

12 Q. Okay.

13 A. Some is south of me, so it's just in  
14 various locations.

15 Q. Okay. Do any of those properties have  
16 flooding issues?

17 A. Yes.

18 Q. Which properties -- Who owns the  
19 properties that you believe have flooding issues?

20 A. Dr. Jerry Boley.

21 Q. How do you spell that last name?

22 A. B-O-L-E-Y.

23 Q. B-O-L-E-Y. Anyone else, just Mr.  
24 Boley -- Dr. Boley?

25 A. Yes, it's just -- Yeah. That's all I

1 farm for, and then the other -- and then his father,  
2 but they don't flood.

3 Q. Okay. So all of the other 10  
4 properties you farm are owned by Boley?

5 A. (Witness nodding his head up and  
6 down.)

7 Q. Okay.

8 COURT REPORTER: I didn't hear your  
9 answer.

10 MS. STELZER: Oh, yes; I'm sorry. As  
11 you, going forward, it's important that you  
12 answer yes or no audibly so --

13 THE WITNESS: Okay.

14 MS. STELZER: -- she's not going to  
15 get a head nod, so I'll ask you the  
16 question again.

17 Q. So all the properties that you rent in  
18 the area are owned by the Boleys; correct?

19 A. Yes, and plus there is one I just  
20 thought of that Mike Maharg owns.

21 Q. How do you spell that last name?

22 A. M-A-H-A-R-G.

23 Q. And does that property -- Has that  
24 property flooded?

25 A. No.

1 Q. Okay. Let's talk about the 83 total  
2 acres that you allege has flooded, in part or in  
3 whole, in this lawsuit. What is on that property?  
4 Are there any man-made structures?

5 A. There is buildings.

6 Q. Okay. What kind of buildings?

7 A. Steer barn, hog building. Now, this  
8 steer barn and the hog building are on a parcel that  
9 is not with them other two parcels that -- 'cause  
10 there's only two parcels in this that flood.

11 Q. Okay.

12 A. These other two parcels --

13 Q. Well, let's talk about -- Thank you.  
14 Let's talk about the parcel that isn't flooding. So  
15 you said that there is a steer barn and a hog barn  
16 there?

17 A. Um-hum and the grain bin, a feed mill.

18 Q. Okay. Anything else?

19 A. A horse barn.

20 Q. Okay. Anything else?

21 A. Shop.

22 Q. Um-hum.

23 A. And that should be about it.

24 Q. Okay. And how many acres,  
25 approximately, is that parcel?

1           A.    It's -- I'm not sure.  I'm not even  
2 gonna say because there's so --

3           Q.    Okay, that's fine.

4           A.    -- there's three parcels there and  
5 that's what I'm saying.  I don't know what each one  
6 is.

7           Q.    Okay.  You say that 25 acres of your  
8 property is flooding.  Where is that 25 acres?

9           A.    It is in the back end of the farm and  
10 towards the north end and there is some up front,  
11 along the road, along Township Line.

12          Q.    Where is our property in relation to  
13 Beaver Creek?

14          A.    It is approximately a mile and a half  
15 south.

16          Q.    How far away is the -- is Grand Lake  
17 St. Marys from your property?

18          A.    Approximately seven miles.

19          Q.    And how far away are you from -- or is  
20 the property from the Wabash River?

21          A.    Approximately five.

22          Q.    In addition to the buildings you've  
23 just named on the remainder of the property are the  
24 two parcels that you allege are flooding, are there  
25 any buildings?

1 A. No.

2 Q. Okay. What are on those two parcels?

3 A. Just farm ground.

4 Q. Just farm ground. Are there any

5 trees?

6 A. There is a little small woods.

7 Q. Is that woods even an acre?

8 A. It's probably a little over an acre.

9 Q. Okay. Are there any rivers or

10 streams, tributaries to either the Wabash or the

11 river that run through your property?

12 A. They do not run through my property,

13 no.

14 Q. Where are tributaries that run to the

15 Beaver in relation to your property?

16 A. One, the Kittle Ditch, is across the

17 road --

18 Q. Across what road?

19 A. Across Township Line Road.

20 Q. Okay.

21 A. Which is probably only 200 feet from

22 my property, and then there is the Baker Menchover

23 that is northeast of my place.

24 Q. How far northeast?

25 A. I'm guessing approximately 400

1 feet-to-500 feet.

2 Q. Does the water from your property  
3 drain to both these ditches?

4 A. Yes.

5 Q. Does water from your property drain,  
6 primarily to one of them?

7 A. I would -- I can't say that. I don't  
8 know the answer to that one.

9 Q. So you indicated that -- Strike that.  
10 You bought the property from Mark and Ron Siefiring in  
11 what year?

12 A. 2005.

13 Q. And since 2005, you indicated the  
14 property has been using -- used as farmland; correct?

15 A. Yes.

16 Q. Do you know what the property was used  
17 for before 2005?

18 A. Farmland.

19 Q. Okay. And for how long,  
20 approximately, has it been used for farmland?

21 A. I --

22 Q. Since it's been in your family --

23 A. Before that --

24 Q. Okay.

25 A. It's always been farmland as far as I

1 know.

2 Q. Okay. What crops did you plant last  
3 year?

4 A. I had corn. On that property? Is  
5 that --

6 Q. Yeah. Going forward, we're going to  
7 be talking about the property that you allege has  
8 been flooded?

9 A. Okay.

10 Q. So we won't be talking about  
11 properties that you rent, et cetera. So we'll be  
12 talking about these 83 total acres, 25 acres that you  
13 allege are flooding.

14 A. Okay.

15 Q. Okay?

16 A. The corn.

17 Q. The corn. Can you tell me about the  
18 drainage system on the property?

19 MS. BREWER: Objection.

20 Q. Is it tiled?

21 A. No.

22 Q. At all?

23 A. No.

24 Q. Have you thought about laying tile?

25 A. I've thought about it, yes.

1 Q. Okay. Why don't you lay tile?

2 A. Well, when it floods, there's no point  
3 in having tile because it's not going to do anything.

4 Q. Why not?

5 A. Well, when there's water and the  
6 creeks are backed up, tile does not work.

7 Q. The creeks you're talking about are  
8 Kittle Ditch and Baker Menchofer -- Menchofer. I'm  
9 saying that right?

10 A. Yes. Menchover.

11 Q. Menchover, okay. Have you thought  
12 about any other improvements that you can make to the  
13 land that would alleviate drainage problems?

14 MS. BREWER: Objection.

15 A. No.

16 Q. Does anything come to mind?

17 A. I don't understand what -- I mean,  
18 what do you want or --

19 Q. Oh, I don't want anything. I'm just  
20 asking if you've considered any improvements that  
21 could be made to the property that would alleviate  
22 drainage outside tiling, largely, because I don't  
23 know if there's any other improvements that could be  
24 made.

25 MS. BREWER: Objection.

1 A. Yeah, I don't know --

2 Q. Okay, okay, thanks. Do you  
3 participate in the Conservation Reserve Program?

4 A. No.

5 Q. Are there any filter strips on your  
6 property?

7 A. No.

8 Q. Do you participate in the Wetlands  
9 Reserve Program?

10 A. No.

11 Q. Do you know what that program is?

12 A. I'm not well aware of it, no.

13 Q. Okay. It's a program that requires  
14 property owners to maintain properties as wetlands. Do  
15 you have any wetlands on your property?

16 A. No.

17 Q. Okay. Before you acquired the  
18 property in 2005, from your father and uncle, what  
19 did you know about it?

20 A. I knew it flooded multiple times since  
21 1997. In 1998, I knew it flooded. In '03 and  
22 various times, but them were the big ones I recall,  
23 and it was in '05, when I was purchasing it. I don't  
24 remember if I bought it after or before that. It did  
25 flood in '05.

1 Q. Did you know anything else about the  
2 property?

3 A. No.

4 Q. Had you ever been on the property  
5 before?

6 A. Yes.

7 Q. When?

8 A. As a farm kid, I helped my dad, so --  
9 he owned it all the time, so I helped him.

10 Q. Okay. When did you start helping your  
11 dad farm the property?

12 A. I've always helped him --

13 Q. At what age?

14 A. We start when we can walk, so --

15 Q. Okay.

16 A. -- forever.

17 Q. Forever, okay. When you were helping  
18 your dad farm the property, so prior to 2005, how  
19 often did that require you to be on the property?

20 A. Well, whenever we had to do work on  
21 the farm.

22 Q. So approximately how many times a year  
23 is that?

24 A. Well, we got to work it; we got to  
25 plant it; we have to put 28 on it; we have to spray

1 it; we have to chisel it; we have to harvest it, 10,  
2 15 times. I --

3 Q. Ten, 15 times a year?

4 A. And I drive by it everyday when we had  
5 to go milk, so --

6 Q. Where did you grow up in relation to  
7 this property?

8 A. South on 219.

9 Q. How far south?

10 A. Four miles?

11 Q. And did you live there your entire  
12 childhood?

13 A. Yes.

14 Q. Did you live there until you bought  
15 your home near this property in 2009?

16 A. No.

17 Q. Okay. Where did you live in between?

18 A. A quarter mile east of my house, on  
19 219.

20 Q. Did you live anywhere else in between  
21 your childhood home and the home you bought in 2009?

22 A. Can you repeat the question?

23 Q. Did you live anywhere else in between  
24 the time you lived in your childhood home and the  
25 home you bought in 2009?

1 A. Yes, a quarter mile east on --

2 Q. In addition to the --

3 A. Yes, a quarter mile west -- sorry -- a  
4 quarter mile west of -- on 219.

5 Q. Okay.

6 A. I bought a house there.

7 Q. So you've kind of always lived in the  
8 area?

9 A. Yeah.

10 Q. Okay. Who lived in -- Strike that.  
11 Who did you buy your home from in 2009?

12 A. Tony Gizagee, I think is his name and  
13 I do not know how to spell that.

14 Q. Okay. Can you say it one more time.  
15 Gizagee?

16 A. Yeah, Gizagee. I think that's how you  
17 pronounce his name. I didn't really know him.

18 Q. Okay.

19 A. But I'm not sure how to spell it,  
20 either, but --

21 Q. Do you know how long he owned that  
22 property before --

23 A. It was -- There was a lot of problems  
24 with that house. There was a lot of -- He was only  
25 there a little time and it was repossessed and

1 different things.

2 Q. Okay. Do you know when the home was  
3 built?

4 A. No, I do not.

5 Q. Do you know anyone else that's ever  
6 lived there?

7 A. Yes.

8 Q. Who?

9 A. Mike Hall.

10 Q. When did Mike Hall live there?

11 A. I don't know that.

12 Q. More than 10 years ago?

13 A. Yes.

14 Q. Okay. Did he live there for any  
15 length of time? Longer than a year?

16 A. A long time, yes.

17 Q. How long is a long time?

18 A. A long time, I'm not show how many  
19 years?

20 Q. Okay. More than five?

21 A. Yes.

22 Q. More than 10?

23 A. Yes.

24 Q. Okay. Do you know -- have any idea  
25 when he moved out?

1 A. No, I do not.

2 Q. Was it in the '90's?

3 A. Yes.

4 Q. Do you remember late or early?

5 A. I do not know.

6 Q. Okay. But it's fair to say he hasn't  
7 lived there in about 10 years?

8 A. Yes.

9 Q. Did your uncle help your dad farm?

10 A. Yes.

11 Q. Do they farm all of the same  
12 properties?

13 A. Yes.

14 Q. Okay. Are the three of you -- do the  
15 three of you farm as a team? Do you --

16 A. I guess it would be fair to say as a  
17 team, but we're -- we don't own stuff together as in  
18 -- I don't own it or -- I don't know how to explain  
19 it; it's a very complex operation, but you could say  
20 as a team, yes.

21 Q. For example, the Boley's properties  
22 that you rent, does your father and uncle help you  
23 farm those?

24 A. Yes.

25 Q. All of them?

1 A. Yes.

2 Q. Okay. Do they pay rent to Mr. Boley,  
3 as well -- Dr. Boley, I think you said.

4 A. They have -- They rent ground from  
5 him, yes.

6 Q. But they don't rent the same  
7 properties?

8 A. They don't rent my properties, no.

9 Q. Okay. But they help you farm the  
10 properties you rent?

11 A. And then they have their farms.

12 Q. How many acres, total, do you farm in  
13 the area?

14 A. Myself?

15 Q. Um-hum.

16 A. Approximately 750.

17 Q. Fifteen or 50?

18 A. Seven hundred and fifty.

19 Q. Fifty. How many acres does Mark  
20 Siefring, approximately, farm?

21 A. Him and Ron farm together --

22 Q. Um-hum.

23 A. -- 800 acres, approximately.

24 Q. And so are any of your 750 acres  
25 overlapping with Mark and Ron's 800 acres?

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A. No.

Q. Okay. The properties you rent, do you  
cash rent them?

A. Yes.

Q. All of them?

A. Yes.

Q. Do you pay the same price everywhere?

A. Yes.

Q. So you rent all of Dr. Boley's  
property for the same price?

A. Yes.

Q. What price is that?

A. Do I have to answer that?

MS. BREWER: Yes.

Q. Yes.

A. Okay, 200 --

Q. Two hundred dollars an acre --

A. -- hundred dollars an acre.

Q. When did you start cash renting from  
Dr. Boley?

A. I'm thinking it was 1999.

Q. And has the price, the rental price  
remained the same since then?

A. No.

Q. Has it gone up or down?

1 A. It has increased.

2 Q. What did you -- Do you remember what  
3 you originally paid to rent from --

4 A. A hundred dollars an acre.

5 Q. And has it increased steadily since  
6 then or --

7 MS. BREWER: Objection.

8 A. Yes.

9 Q. Yes? Do you cash rent the Maharg  
10 property, too?

11 A. Yes.

12 Q. And what do you pay there?

13 A. A hundred dollars an acre.

14 Q. Of all the properties you rent, which  
15 property is closest to the properties we're talking  
16 about today, the property you own, that you allege  
17 has been flooded in this lawsuit?

18 A. The closest one would probably be Joe  
19 Boley's.

20 Q. And can you tell me where that  
21 property is in relation to the property you own?

22 A. It is a mile and a half east of me.

23 Q. How far away is that property from the  
24 Beaver Creek?

25 A. A mile.

1 Q. A mile south?

2 A. South, yes.

3 Q. And again, is there any flooding  
4 occurring on that property?

5 A. There has been a little bit, yes.

6 Q. How many acres is that property?

7 A. It's -- There is quite a few farms  
8 together as one, so, again, this is a --

9 Q. Okay. We're not talking about  
10 parcels. I'm just talking about the acreage,  
11 altogether, so don't worry about how many different  
12 parcels are involved.

13 A. There's approximately 150.

14 Q. Okay. And so that 150, how much of  
15 that property experiences flooding?

16 A. About two-to-three.

17 Q. Two-to-three acres?

18 A. Yes.

19 Q. And you rent that property, Joe  
20 Boley's property for 200 an acre, as well?

21 A. Yes.

22 Q. Why did you purchase the property from  
23 your father and uncle if you knew it flooded?

24 A. Because it's family owned ground and  
25 once you lose ground in Mercer County, there's a good

1 chance you'll never get it back.

2 Q. Was it appraised before you bought it?

3 A. No.

4 Q. How much did you pay for it?

5 A. Three thousand an acre.

6 Q. Did you think that was a fair price?

7 A. No.

8 Q. Why not?

9 A. It was lowered. They gave me a fair  
10 deal, as in a lower deal because I'm family. Fair to  
11 me, but it was not a fair market value.

12 Q. If it had not been appraised, how did  
13 you know what the fair market value of the property  
14 was?

15 A. We just -- As farmers, you just know  
16 -- You know what other sales have brought, so you can  
17 do your own assessment.

18 Q. Had properties recently sold in the  
19 area, other properties?

20 A. At that time?

21 Q. Um-hum, yeah, in 2005, when you bought  
22 the property?

23 A. I think there was, yes.

24 Q. And do you remember what those  
25 properties were selling for?

1 A. I don't recall?

2 Q. Do you think your property is worth  
3 less today than it was in 2005?

4 A. Yes.

5 Q. Why?

6 A. Because it floods more often and has  
7 continued to flood.

8 Q. Do you think your property floods more  
9 often now than it did in 2005?

10 A. No. It's been flooding as often --  
11 It's all been flooding since 1997 and it just  
12 continues to flood.

13 Q. When was the last time your property  
14 flooded?

15 A. 2009.

16 Q. When, in 2009?

17 A. I don't recall. I think it was the  
18 beginning part of the year.

19 Q. So it was still in the winter?

20 A. I don't recall.

21 Q. Fair to say winter or spring?

22 A. Yes.

23 Q. Do you remember how many acres were  
24 affected?

25 A. I don't recall.

1 Q. Do you remember how deep the water  
2 got?

3 A. No.

4 Q. This 25 acres that you said flooded,  
5 did that 25 acres flood in 2009?

6 A. No.

7 Q. What's that 25-acre number that you  
8 gave me earlier based on?

9 A. That was based on 2003. It's 25  
10 acres, 20-to-25.

11 Q. Twenty-to-twenty-five acres flooded in  
12 2003. What time of year was that flood?

13 A. I don't recall that either.

14 Q. Were you, personally, on the property  
15 in the 2003 flood?

16 A. Yes.

17 Q. Why?

18 A. To look at all the water and to see  
19 the damage of our crops -- or to see the damage of  
20 the ground.

21 Q. How long did water remain on the  
22 property in 2003?

23 A. It was five-to-seven days.

24 Q. Could it have been more than that?

25 A. It could have been more than that,

1 yes.

2 Q. Could it have been less than that?

3 A. I'm pretty sure it was five-to-seven,  
4 but, you know that's an approximate, so --

5 Q. Do you remember how deep the water was  
6 in 2003?

7 A. It was two-to-four.

8 Q. Two-to-four feet?

9 A. Feet, yes.

10 Q. And how do you know that?

11 A. Well, the road was so high and we knew  
12 how high it was above the road, so --

13 Q. And what road are you talking about?

14 A. Township Line.

15 Q. Okay, and was Township Line Road  
16 covered in the 2003 flood?

17 A. Yes.

18 Q. Do you remember how many days Township  
19 Line was covered?

20 A. I don't recall that.

21 Q. How did you get to your property in  
22 2003?

23 A. Drove --

24 Q. Or it wasn't your property; I'm sorry,  
25 but how did you get to the property in 2003?

1 A. Drove.

2 Q. Okay. Drove along what road?

3 A. Township Line, I --

4 Q. Were you able to get through the  
5 water?

6 A. No. We could get to Township Line and  
7 Kuhn Road.

8 Q. And then you had to get out of your  
9 car?

10 A. Yes, then we had to get out.

11 Q. I think you already told me, but the  
12 20-to-25 acres that flooded in 2003 where, on your  
13 property, are those -- is that 20-to-25 acres  
14 located?

15 A. Some is on the back end --

16 Q. What do you mean by "back end?"

17 A. The east boundary.

18 Q. Okay.

19 A. Some is at the front, meaning along  
20 Township Line Road.

21 Q. Okay.

22 A. And some is on the north property  
23 line.

24 Q. Why do you think these areas of your  
25 property flooded?

1           A.    Because they were the lower parts of  
2 the farm.

3           Q.    Was Beaver Creek overflowed in 2003,  
4 when your property flooded?

5           A.    Yes.

6           Q.    Is it your experience that the Beaver  
7 Creek has to be overflowing before your property will  
8 flood?

9           A.    It has to be full.

10          Q.    It has to be full.  So not necessarily  
11 out-of-bank, but full in-bank?

12          A.    Pretty much full.  It don't have to be  
13 over the bank.

14          Q.    Okay.  Do you know why your property  
15 floods when the Beaver is running full?

16          A.    Because the other two creeks that I  
17 previously stated back up and then they back across  
18 the road and on the back side, on the north side and  
19 back into my field.

20          Q.    Your experience on the property before  
21 1997, so before the new spillway went in, was it's  
22 the same sort of situation?  Did the Beaver -- When  
23 the Beaver was running full, did water stand on the  
24 property?

25          A.    No, not that I recall.

1 Q. Okay. Let's go back to the 2009 flood  
2 event you mentioned in the winter or spring. Do you  
3 remember any details about how long the water stayed  
4 on the property in that 2009 flood event?

5 A. I don't recall.

6 Q. Okay. Before that 2009 flood event,  
7 when was the last time your property flooded?

8 A. It was '08.

9 Q. And then in 2008, how many acres were  
10 affected?

11 A. I don't recall 'cause I don't, I don't  
12 pay that close of attention to know it exactly.

13 Q. Was more or less acres affected than  
14 the 2003 event?

15 A. Less.

16 Q. Okay. Is it fair to say that the 2003  
17 event was the biggest event?

18 A. Yes.

19 Q. Okay. Do you remember how long the  
20 water stayed on your property in 2008?

21 A. No.

22 Q. Do you remember how deep the water  
23 got?

24 A. No.

25 Q. Before 2008, what was the last flood

1 event you remember?

2 A. I recall it was the '05.

3 Q. And what time of year was that,  
4 generally?

5 A. I don't recall that, either. It  
6 happens so often, I don't remember what,  
7 specifically, time frames and what's goin' on.

8 Q. When you say, "it happens so often,"  
9 what does that mean? Approximately how many times a  
10 year since 1997, when the new spillway went in, does  
11 the property flood?

12 A. There's no set (sic) on each year.  
13 It's depending on the year.

14 Q. Does it always flood once a year?

15 A. I can't say that because I don't know  
16 every year. It just happens; I don't know.

17 Q. Okay. Would you say that it floods  
18 every two years?

19 A. Yes.

20 Q. So at least every two years?

21 A. And multiple times, sometimes during a  
22 year. It could happen two or three times.

23 Q. Do you remember the last year where  
24 your property flooded more than once?

25 A. I don't recall.

1 Q. In the last five years? Did that  
2 occur? In one of the last five years, did your  
3 property flood more than once that year?

4 A. I don't recall.

5 Q. Let's talk about the flooding on the  
6 property that occurred prior to the new spillway  
7 going in, so prior to 1997. Before 1997, how often  
8 did the property flood?

9 A. I'm not sure.

10 Q. But you were on the property, helping  
11 your uncle and father farm; correct?

12 A. That is correct.

13 Q. Why are you unsure as to the flooding  
14 that occurred before 1997?

15 MS. BREWER: Objection.

16 A. Because I wasn't that old.

17 Q. Okay.

18 A. My age isn't allowing me.

19 Q. True. In 1997, how old were you?

20 MS. BREWER: You and your math.

21 MS. STELZER: Yeah. I'd like to know.

22 But I don't like to have to do it myself,  
23 right. Okay, fair enough.

24 Q. Do you have any memory of flood events  
25 before 1997?

1 A. No.

2 Q. Occurring on the property?

3 A. No.

4 Q. Have you ever discussed flooding that  
5 occurred before the new spillway went in, in 1997,  
6 with your uncle or your dad?

7 A. Yes.

8 Q. What did they tell you?

9 A. They said they don't recall any  
10 flooding.

11 Q. Any flooding at all?

12 A. They said, "any flooding," so yes,  
13 that's what I'm assuming.

14 Q. What does flooding mean to you?

15 A. Damaging of crops, a lot of water.

16 Q. Okay. Do you see a difference between  
17 flooding and, perhaps, bonding or standing water?

18 A. Yes, I see a difference, yes.

19 Q. So before 1997, were there instances  
20 of standing water on the property, either in your  
21 personal knowledge or that your uncle and dad have  
22 told you about?

23 A. There probably could have been. I  
24 don't --

25 Q. Have you ever had any discussions with

1 your uncle or dad about standing water before 1997?

2 A. Not really, no.

3 Q. But it's possible that there were wet  
4 spots on the property at times before 1997?

5 MR. BREWER: Objection.

6 A. I can't say.

7 Q. Okay. Since the new spillway was  
8 constructed in 1997, did the flooding that you've  
9 experienced on your property depend at all on whether  
10 the Wabash River is flowing in-bank or not?

11 A. Repeat that, please.

12 Q. We've been talking about the  
13 tributaries to the Beaver Creek; correct?

14 A. Yes.

15 Q. And the effect of the Beaver Creek  
16 flowing in or out of bank on the flooding on your  
17 property. I'm wondering if the Wabash River, farther  
18 west, impacts your property at all, whether or not if  
19 it's flowing in- or out-of-bank has any effect on  
20 flooding on your property, to your knowledge.

21 A. If it's full, the Beaver can't go in  
22 it, so yes.

23 Q. So if the Wabash is flowing full and  
24 where the Beaver meets the Wabash, what happens?

25 A. The Beaver is full then, too.

1 Q. Does the Beaver back up?

2 A. It can, yes.

3 Q. Is the Beaver Creek on ditch  
4 maintenance; do you know, County Ditch Maintenance?  
5 Has it ever been cleaned out?

6 MS. BREWER: Objection.

7 A. Yes, I'm --

8 Q. Are there any trees along the Beaver?

9 A. Not that I'm aware of.

10 Q. Okay. Do you know if the County  
11 sprays or --

12 A. Yes. There's -- Yes. People pay tax  
13 and I don't know if I have to, but it --

14 Q. Okay.

15 A. There is tax assessments that you have  
16 to pay.

17 Q. Okay. And is the same thing done for  
18 the Wabash River?

19 A. I'm not aware.

20 Q. Okay. Are there trees along the  
21 Wabash?

22 A. Yes.

23 Q. Okay. So it doesn't, probably, it  
24 doesn't look like it's been cleaned?

25 MS. BREWER: Objection.

1 A. No.

2 Q. Do you think if the Wabash were  
3 cleaned, it would run faster?

4 MS. BREWER: Objection.

5 A. I don't know that.

6 Q. Okay. Do you think the status of the  
7 Wabash Creek -- Actually, strike that.

8 The flooding that you've experienced  
9 on your property since 1997, how has it impacted your  
10 property?

11 A. It has caused erosion --

12 Q. Okay.

13 A. -- compaction; it's -- it robs me of  
14 topsoil; I get trash.

15 Q. Anything else.

16 A. That is all I can think of.

17 Q. What do you do about erosion and  
18 compaction on the property?

19 MS. BREWER: Objection.

20 Q. Can you fix that?

21 A. No, not really.

22 Q. Okay. The trash and debris, I assume  
23 you just pick up.

24 A. Well, you just don't pick it up, no.  
25 You have to try and burn it and you have to do it

1 multiple times because it's wet and sometimes, you  
2 have go around it because you can't, depending on the  
3 time of year, if you gotta plant -- we have planting  
4 dates we have to meet, so we have to just go around  
5 it and try to burn it throughout the summer to get it  
6 to dry out, and the swimming pools and woods and all  
7 that junk, you can't pick up.

8 Q. The swimming --

9 A. Like little swimming pools, there's  
10 different trash --

11 Q. Oh, okay.

12 A. -- and stuff that you end up with all  
13 debris.

14 Q. Okay. How often have you experienced  
15 trash on your field as a result of flooding?

16 A. Quite often. It's a normal thing.

17 Q. Every time the property floods, you  
18 experience trash?

19 A. Yes.

20 Q. Do you carry crop insurance on the  
21 property?

22 A. Yes.

23 Q. Have you submitted crop insurance  
24 claims since 1997 --

25 MS. BREWER: Objection.

1 Q. -- I guess since you bought the  
2 property in 2005?

3 A. Yes.

4 Q. Okay. So since you bought the  
5 property in 2005, how many crop insurance claims due  
6 to flooding have you submitted?

7 A. I don't recall.

8 Q. But you have submitted one?

9 A. Yes.

10 Q. And more than one?

11 A. I'm not sure.

12 Q. Do you remember the year that you  
13 submitted a crop insurance claim due to flooding?

14 A. My father takes care of my crop  
15 insurance, so I'm not fully knowledgeable on it.

16 Q. Your father takes care of the crop  
17 insurance on all of the properties you farm?

18 A. Yes.

19 Q. Do you carry crop insurance on all the  
20 properties you farm?

21 A. Yes.

22 Q. Including the ones you rent?

23 A. Yes.

24 Q. Did you ever experience -- Excuse me.

25 Strike that. Did you ever report any of the harm or

1 damages that we've just been talking about to any  
2 State or Federal agency?

3 A. No.

4 Q. Did you ever talk to the Ohio  
5 Department of Natural Resources about the harm or  
6 damages you've experienced due to flooding?

7 A. No.

8 Q. Have you ever made any records, taken  
9 any pictures, written a diary or log about the  
10 flooding conditions that are occurring on your  
11 property?

12 A. No.

13 Q. Okay. What kind of records do you  
14 keep as a farmer?

15 A. As in what records are you referring  
16 to?

17 Q. What types of records do you have to  
18 keep --

19 MS. BREWER: Objection.

20 Q. -- or do you choose to keep?

21 A. We have to keep records for the crop  
22 insurance.

23 Q. Uh-huh.

24 A. And I guess I don't know --

25 Q. Is that it?

1 A. I'm sure there's more records.

2 Q. Do you, personally, keep any records  
3 for the properties you farm?

4 A. Yes. I keep spray records.

5 Q. Okay. Anything else?

6 A. I would keep any crop insurance, like  
7 I said previously, records.

8 Q. But your dad does that for you?

9 A. He does that, yes.

10 Q. Um-hum.

11 A. FSA records.

12 Q. What do those involve?

13 A. My father is the Power of Attorney and  
14 he takes care of them, too.

15 Q. Okay.

16 A. I'm sure there's other records that I  
17 probably just don't realize I keep that --

18 Q. Because your dad is doing them?

19 A. Yes.

20 Q. Okay.

21 A. And plus, there's some, probably at my  
22 house that I keep records, but I'm not sure. I can't  
23 think of `em at this point.

24 (Xerographic Documents, headed,  
25 Affidavit of Jeff A. Sieftring, was  
marked for identification Exhibit A.)

1 Q. Okay. Jeff, I'm going to hand you  
2 what's been marked Respondent's Exhibit A. If you  
3 could review that, please.

4 (Witness complying.)

5 Okay. This is your Affidavit, dated June 19th, 2009;  
6 correct?

7 A. Yes.

8 Q. Two pages and that's your signature on  
9 the second page?

10 A. Yes.

11 Q. Paragraph 2 refers to four different  
12 Mercer County parcel numbers.

13 A. Okay.

14 Q. Are those the properties that we've  
15 been discussing that you own today?

16 A. Yes.

17 Q. Discussing today that you own?

18 A. Yes.

19 Q. Okay. So one of these parcel numbers  
20 is where your home is located that you bought in  
21 2009?

22 A. Yes.

23 Q. And you stated that that -- there is  
24 no flooding occurring there; correct?

25 A. Yes, there's no --

1 Q. Okay. Do you know which parcel number  
2 your home is located on?

3 A. No.

4 Q. Okay. And then of the remaining three  
5 parcel numbers, those would be the three parcels you  
6 purchased in 2005?

7 A. That is correct.

8 Q. Okay. And you stated before that,  
9 only two of those parcels you're alleging have  
10 flooded due to the spillway; correct?

11 A. Yes.

12 Q. But you do not -- Do you know which --

13 A. No.

14 Q. Okay. Jeff, what do you hope to  
15 accomplish from this lawsuit?

16 A. I hope to get the flooding to stop;  
17 that they control the spillway in a better fashion  
18 and I hope to be compensated for my losses and the  
19 compaction and the destruction of my ground.

20 MS. STELZER: I don't have any further  
21 questions.

22 MS. BREWER: Let me just check and  
23 make sure that I don't have anything to  
24 clear up.

25 Okay. I don't have any questions,

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either.

You have the right to read and review your transcript. The court reporter will type it up and you can check it over to make sure everything you said was truthful and accurate and that, you know the dates weren't incorrect or there are no incorrect statements. Would you like to do that?

THE WITNESS: Yes.

MS. BREWER: Okay. Thank you.

- - -

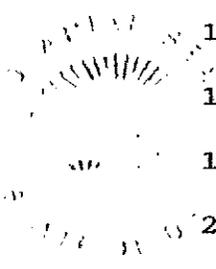
(At 10:26 o'clock, a.m., the deposition concluded.)

- - -

*Jeff A. Siefiring* 11/25/10  
Jeff A. Siefiring

*Rita K. Suhr*  
RITA K SUHR

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





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C E R T I F I C A T E

STATE OF OHIO )  
                  ) SS:  
COUNTY OF MERCER)

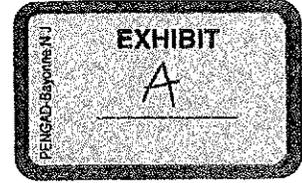
I, Edna M. Hawkins, the undersigned, a duly qualified and commissioned Notary Public within and for the State of Ohio, do hereby certify that before the giving of his aforesaid deposition the said JEFF A. SIEFRING was sworn to depose the truth, the whole truth and nothing but the truth; that the foregoing is the deposition given at said time and place by the said JEFF A. SIEFRING; 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 3rd day of April, 2010.

My Commission Expires: \_\_\_\_\_  
September 17, 2012                      Edna M. Hawkins  
Notary Public - State of Ohio

**AFFIDAVIT OF JEFF A. SIEFRING**

STATE OF OHIO            )  
                                  ) ss:  
COUNTY OF MERCER )



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

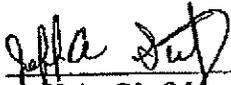
1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).
2. Specifically, I own real estate described as Mercer County Parcel Numbers 26-044100.0200, 26-044100.0100, 26-044100.0300, and 26-044100.0000.
3. I own lands that lie adjacent to or near Beaver Creek and/or adjacent to or near the Wabash River near its confluence with Beaver Creek.
4. I own lands which I believe, since ODNR replaced the western spillway of Grand Lake St. Mary’s in 1997, are subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

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

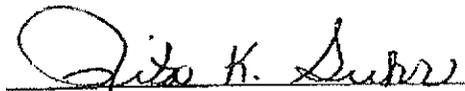
6. Since I have owned the property, my lands have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Marys.

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

**FURTHER AFFIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
Jeff A. Siefring

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

  
\_\_\_\_\_  
Notary Public

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