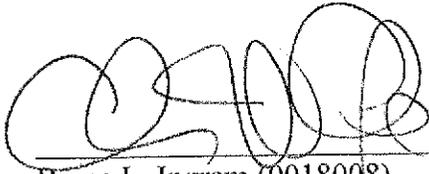


The parties to this action, by and through their respective attorneys, hereby jointly submit, for purposes of this action only, that each of the exhibits listed below are authentic for all purposes in this action:

<u>Tab</u>	<u>Description</u>
39	Deposition Transcript with Exhibits of Thomas Powell taken February 12, 2010
40	Deposition Transcript with Exhibits of Larry V. Pugsley taken February 19, 2010
41	Deposition Transcript with Exhibits of William Ransbottom taken February 19, 2010
42	Deposition Transcript with Exhibits of Thomas D. Rasawehr taken February 18, 2010
43	Deposition Transcript with Exhibits of Timothy Rasawehr taken February 19, 2010
44	Deposition Transcript with Exhibits of Carl W. Rose taken February 4, 2010
45	Deposition Transcript with Exhibits of Lucile M. Rose taken February 4, 2010
46	Deposition Transcript with Exhibits of Bonita S. Searight taken February 3, 2010

Dated: June 1st, 2010

Joint Exhibits Approved and Respectfully Submitted By:



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TAB 39

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 THOMAS POWELL,

Relator, was taken by the Respondents as on
cross-examination, pursuant to the Ohio Civil
Rules of Procedure at Central Service Building,
220 West Livingston Street, Celina, Ohio 45822, on
Friday, February 12, 2010, at 3:30 p.m., before
Terence M. Holmes, Professional Court Reporter,
and Notary Public within and for the State of
Ohio.

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

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C O N T E N T S

WITNESS	CROSS	DIRECT
Thomas Powell	W-4	B-43

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Diagram	15
B	Affidavit	20

1 THOMAS POWELL

2 of lawful age, a witness herein, having been duly
3 sworn, as hereinafter certified, was examined and
4 testified as follows:

5 CROSS-EXAMINATION

6 BY MS. WORLY:

7 Q. Sir, could you state your name for
8 the record, please?

9 A. Thomas Powell.

10 Q. Sir, my name is Mindy Worly and
11 I'm an Assistant Attorney General for the State of
12 Ohio and I'm representing ODNR, a defendant, in
13 this lawsuit. Have you ever had your deposition
14 taken before?

15 A. No.

16 Q. I'm gonna ask you questions and
17 you'll answer verbally because the court reporter
18 cannot take down a shake of the head or a hand
19 gesture.

20 A. Okay.

21 Q. If you can't hear what I say or
22 don't understand what I've asked, either ask me to
23 speak-up or ask me to repeat it or rephrase it.
24 If you answer a question, I'll assume you heard me
25 and understood me. Okay.

1 A. Okay.

2 Q. Now, I want you to only answer
3 questions based on your own personal knowledge,
4 don't guess, and I don't want to know anything
5 that any of your attorneys told you. Okay.

6 A. Okay.

7 Q. Any time you want to take a break,
8 just ask your attorney or ask me. The only thing
9 I ask you is that you let me -- if I've asked a
10 question, you finish answering the question before
11 we take a break. Is that fair?

12 A. Okay.

13 Q. Okay. Great. Now, are you the son
14 of Jerry and Betty Powell?

15 A. Yes.

16 Q. I just had the opportunity to talk
17 with them. Now, do you live at the Stine farm?

18 A. Yes.

19 Q. Okay.

20 A. It's my farm now.

21 Q. Just for clarification, when I
22 talked to your mom and dad we talked about three
23 different farms: The Stine farm, or the Stine
24 place is what I think they called it, the Home
25 place and -- I forget the other one, the Holdron

1 place. So if I call your farm the Stine farm,
2 will you know what I'm referring to or should we
3 call it something else?

4 A. Well, my farm would be something
5 else. Their -- Stine's own mine, too, but I just
6 own part of that farm.

7 Q. What should we call your place,
8 should we call it Tom's place?

9 A. Tom Powell, yeah.

10 Q. Tom's farm, is that fair?

11 A. Yeah, that's fair.

12 Q. All right. How big is Tom's farm?

13 A. That one is 13 acres.

14 Q. And is it 13 tillable acres?

15 A. No, they're probably about eight
16 tillable.

17 Q. Eight tillable. And do you farm
18 that acreage by yourself?

19 A. Yes, in partnership with dad.

20 Q. You're in partnership with your
21 dad?

22 A. Right.

23 Q. Okay. Now, do you own any other
24 property?

25 A. Yes.

1 Q. Where else?

2 A. On Leininger Road, I own 40 acres.

3 Q. And on what road is that?

4 A. Leininger.

5 Q. Can you spell that for me?

6 A. L-e-i-n-i-n-g-e-r.

7 Q. And where is that 40 acres on

8 Leininger Road located, where on Leininger?

9 A. Well, Leininger only runs for a
10 mile, so it's on the north side of the road, it's
11 the second farm in from the west.

12 Q. And when did you purchase that
13 farm?

14 A. 1980 or '81.

15 Q. And who did you buy it from?

16 A. Bill Freedman.

17 Q. Is Mr. Freedman still around?

18 A. Yes.

19 Q. Do you know where he lives?

20 A. On Leininger Road. He lives -- my
21 farm lays around his house. He sold the farm
22 around me, not his house.

23 Q. So he lives -- He's your
24 neighborhood, is that correct?

25 A. No. I don't liver on Leininger

1 | Road.

2 | Q. Okay. But he's a neighbor to your
3 | farm?

4 | A. Right. But that farm doesn't
5 | flood.

6 | Q. What farm doesn't flood?

7 | A. The Freedman farm.

8 | Q. So you call that the Freedman farm?

9 | A. Yeah.

10 | Q. Now, do you get any federal
11 | subsidies for any of the farm land that you farm?

12 | A. Just the FSA payments.

13 | Q. Tell me about the FSA payments?

14 | MS. BREWER: Objection.

15 | MS. WORLY: On the grounds of?

16 | MS. BREWER: It's vague. Which

17 | property are you talking about?

18 | What do you want about the FSA

19 | payment?

20 | MS. WORLY: Okay. Fair enough.

21 | Q. What properties do you get FSA
22 | payments for?

23 | A. Well, we get something off all the
24 | farms.

25 | Q. So all the properties get FSA

1 | payments, is that correct?

2 | A. Yes.

3 | Q. All the properties you own?

4 | A. (Witness nodding.)

5 | Q. Do the payments vary per farm or
6 | all the payments for the same purpose?

7 | A. They're all for the same purpose,
8 | but they vary by the number of acres.

9 | Q. So what is the purpose of the FSA
10 | payments?

11 | A. That's just the government program.

12 | Q. And what is the government program
13 | pay you for?

14 | A. I don't really know. They used to
15 | pay you for not planting the ground, but now it's
16 | different, and it's so complicated, I don't know
17 | if I could even explain it.

18 | Q. Okay. For how long have you been
19 | involved in the FSA program?

20 | A. Probably as long as they have been
21 | around, but I don't know when, you know.

22 | Q. Do you remember when --

23 | A. The programs change each year.

24 | Q. When did you get your first FSA
25 | check?

1 A. I suppose back in 1980.

2 Q. Did you have to make an
3 application?

4 A. Pardon.

5 Q. Did you have to make an
6 application?

7 A. Yeah, you have to certify your
8 crops every year.

9 Q. So you send paperwork every year to
10 the federal government with regards to all your
11 farms?

12 A. It's downstairs.

13 Q. Here in this same building?

14 A. Yeah.

15 Q. So you certify your crops?

16 A. Yeah, they want to know how many
17 crops, how many acres of what you plant..

18 MS. WORLY: Do we have that
19 paperwork, Martha?

20 MS. BREWER: I'm not even sure if
21 this relates to flooding, so I don't
22 know that it's been produced.

23 A. Yeah, we --

24 MS. WORLY: I'd ask you to produce
25 it, please?

1 MS. BREWER: Okay. We can talk
2 about that off the record.

3 MS. WORLY: Okay.

4 Q. So did you certify your crops in
5 2009?

6 A. Yes.

7 Q. And in 2008?

8 A. Yes.

9 Q. To your memory you certified the
10 crops every year since you became a member of,
11 began using the program, is that correct?

12 A. Yes.

13 Q. What do you do when you certify
14 your crops?

15 A. You just tell them the number of
16 acres you're planting.

17 Q. And is there a limit on the number
18 you can tell them?

19 A. Whatever number of acres you farm.

20 Q. So how many acres did you certify
21 for 2009?

22 A. I can't tell you right now, that's
23 all written down on paper, it's everything we
24 farm.

25 Q. Does it change by year?

1 A. Well, you certify your corn, you
2 certify your beans, you certify your wheat, so it
3 just depends on how many of each we put out. It
4 changes every year.

5 Q. So you certify it by each
6 individual crop?

7 A. Each crop.

8 Q. Do you remember if you certified
9 less acres of soybeans this year than you did last
10 year?

11 A. If I have, I can't recall that.

12 Q. You don't remember any specific
13 figures, is that correct?

14 A. No, I can't -- everything is
15 written down, I don't need to remember that.

16 Q. Okay. That's fair. Do you
17 remember how much the government paid you for
18 2009?

19 A. It would be on our tax form, but
20 now I don't know off the top of my head.

21 MS. WORLY: Do we have the tax
22 form, Martha?

23 MS. BREWER: Again, I don't even
24 know if this relates to the claim.
25 You'll have to talk to me off the

1 record.

2 MS. WORLY: Okay. I'd like you to
3 produce it, but we can talk about it
4 later.

5 Q. To your knowledge in 2009 did you
6 plant fewer acres than you did in 2008?

7 A. No.

8 Q. Did you plant more acres in 2009?

9 A. No.

10 Q. Same amount in 2009 --

11 A. Yeah, we didn't have farm or
12 subtract a farm, so you always planted the same.

13 Q. Would that be true for 2007?

14 A. Yeah.

15 Q. Would that be true for all the
16 years you've owned the farms?

17 A. Everything we've owned would be the
18 same, yeah. One year there were 40 acres ground
19 that got sold, so we lost that, but I can't tell
20 you what year that was.

21 Q. Can you tell me approximately what
22 year that was sold?

23 A. No, I couldn't.

24 Q. Do you know what decade it was
25 sold?

1 A. I can't say for sure the way time
2 goes. Like I say it might have been in this
3 decade, but I can't say for your.

4 Q. Do you know what the CRP is?

5 A. Yeah.

6 Q. Tell me what that is, please?

7 A. Conservation Reserve.

8 Q. Okay. Do you belong to that?

9 A. No.

10 Q. Do you have any filters on your
11 farm?

12 A. Not on my farm.

13 Q. And what about on the farm you
14 have on the Freedman Farm, no filters there
15 either?

16 A. No.

17 Q. On Tom's farm is there drainage
18 tile?

19 A. There's probably two.

20 Q. Two what?

21 A. Tile, one comes and drains the
22 house.

23 Q. And what about the other tile?

24 A. I didn't put it in so I can't say
25 what it does. There used to be a chicken house on

1 | the place, whether it's for that, I don't know. I
2 | do know that in the creek there's two tile come
3 | out.

4 | Q. And what creek are you referring
5 | to?

6 | A. The one that lays around their
7 | farm. It's doesn't have a name.

8 | Q. Should we call it the No Name
9 | Creek?

10 | A. I don't care what you call it.

11 | Q. All right. Have you ever had any
12 | discussions with anybody about putting more
13 | drainage tile on your farm?

14 | A. There's really not any reason to
15 | tile it.

16 | Q. And why is that?

17 | A. Well, our problem is coming from
18 | the creek. If we put more tile in they dump into
19 | that creek, then they wouldn't work. When the
20 | creek is full, the tile won't work.

21 | Q. So where does the water on your
22 | property drain?

23 | A. Into that creek.

24 | Q. Into the No Name creek?

25 | A. Right.

1 (Diagram, marked for identification
2 as Respondent's - Thomas Powell -
3 Exhibit A.)

4 MS. WORLY: Okay. Sir, I'd like to
5 have this marked as Deposition Exhibit
6 A, please?

7 Q. Sir, the court reporter is handing
8 you what's been marked as Deposition Exhibit A.
9 Can you tell me what that is, please?

10 A. This is our farm.

11 Q. And that's Tom's farm, is that
12 correct?

13 A. That is Tom's farm, yeah.

14 Q. Now, can you show me that diagram
15 where the creek flows?

16 A. This white line is the creek.

17 Q. Could you mark that in red for me,
18 please, there is a red pen right there? Does the
19 creek form at one of the boundaries of your farm?

20 A. Yeah.

21 Q. Do you know which direction the
22 water in that creek flows?

23 A. Which way it flows?

24 Q. Yes.

25 A. It flows to the east.

Q. Now, what portion of your farm are

1 | you claiming is flooded?

2 | A. This whole field right here.

3 | Q. Is that the portion that --

4 | A. Everything in the black.

5 | Q. Is that the portion that's

6 | bounded by the creek?

7 | A. Yes.

8 | Q. Are there any structures on that

9 | farm?

10 | A. Yes.

11 | Q. Which structures are there?

12 | A. There's four buildings and the

13 | house.

14 | Q. And where are the buildings

15 | located?

16 | A. Right there. There's one, there's

17 | one, here's one, here's one, and here's the house.

18 | Q. Can you put a B on the buildings

19 | and an H on the house, please? Now, where are the

20 | drainage tiles?

21 | A. There is one that runs right

22 | through here, and one back in here some place.

23 | Q. Can you also with the pen put D T

24 | where the drainage tiles are, please? Thank you.

25 | Now, in relation to your farm, where is the Beaver

1 Creek?

2 A. It would be about a mile to the
3 east of us, maybe a mile and a half at the most.

4 Q. And where would the Wabash River
5 be?

6 A. It's about probably quarter mile
7 north of us.

8 Q. Do you recall filing an affidavit
9 in this case?

10 A. Yes.

11 Q. Okay. Can you tell me the
12 substance of what you put in your affidavit?

13 MS. BREWER: Objection.

14 A. What do you mean the substance?

15 Q. Well, what do you claim in your
16 affidavit?

17 MS. BREWER: Objection.

18 A. I basically claim that because they
19 put that new spillway in, our land floods more
20 there than it ever did before.

21 Q. And which land are you claiming
22 that floods?

23 A. My farm.

24 Q. Just your farm?

25 A. Well, we've had water in the

1 | basement because of it, of our house.

2 | Q. It's the same parcel of land, isn't
3 | it? Your house sits on the same parcel of land as
4 | your farm?

5 | A. Right, right.

6 | Q. The reason I ask that is, on your
7 | affidavit I see different parcels of land listed.
8 | What parcels of --

9 | A. Well, the reason why they have that
10 | is 'cause right here is the Township Line. This
11 | is Liberty Township, this Washington, and we have
12 | a part of the section of Washington Township on
13 | our farm.

14 | Q. Okay.

15 | A. This line here isn't quite
16 | accurate. Our line is probably more over here.

17 | Q. All right.

18 | A. So this is Liberty township and
19 | this Washington Township, but it's still the same
20 | farm.

21 | Q. But I don't see any shading on the
22 | Washington Township portion?

23 | A. Well, on my affidavit there is.

24 | Q. Did you put the shading in this
25 | exhibit?

1 A. Yes.

2 Q. Should there be shading on the
3 Washington Township portion, as well?

4 MS. BREWER: Objection.

5 A. Yes, there is.

6 Q. And where is that shading?

7 MS. BREWER: Objection.

8 Q. You can answer.

9 A. I have it -- there ought to be
10 another picture, 'cause the way they have this
11 line is where the township line divides.

12 MS. WORLY: Okay. Can you please
13 mark this as Exhibit B.

14 (Affidavit, marked for identification
15 as Respondent's - Thomas Powell -
Exhibit B.)

16 Q. Mr. Powell, the court reporter has
17 handed you what's been marked as Deposition
18 Exhibit B. Is this the other picture you were
19 referring to?

20 A. Yes.

21 Q. Okay. Where is the shading in
22 Washington Township?

23 A. Right here.

24 Q. Can you mark that and put an F on
25 it for me, please?

1 A. F?

2 Q. Yeah, for flooding. And where in
3 Deposition Exhibit B does the creek flow?

4 A. Right here.

5 Q. Okay. So does the creek flow
6 adjacent to the area that's flooded?

7 A. Yes.

8 Q. Thank you. Now what years do you
9 claim your property was flooded as a result of the
10 spillway?

11 A. It's flooded almost every year some
12 time or another.

13 Q. Okay. And since what period of
14 time or during what period of time?

15 A. Well, since they put the new
16 spillway in 1997.

17 Q. Now, prior to 1997, did your
18 property flood?

19 A. If it flooded at all from when we
20 bought this farm, we didn't have a flood until
21 after '97.

22 Q. I'm sorry. From when you bought
23 what farm?

24 A. From when we bought this, my farm,
25 Tom's farm.

1 Q. Okay. In 1980?

2 A. No, this one was in '93.

3 Q. All right. Let's back up, 'cause
4 I'm confused. What farm did you buy --

5 A. The Freedman farm was bought in
6 1980 and that has nothing to do with this.

7 Q. Okay. When did you buy Tom's farm?

8 A. In '93.

9 Q. All right. Now, did Tom's farm
10 flood in '93?

11 A. It didn't flood in '93?

12 Q. Did it flood '94?

13 A. Not that I recall.

14 Q. Did it flood in '95?

15 A. Not that I recall.

16 Q. Did it flood in '96?

17 A. We did have -- I think it would
18 have flood in '96 because we have -- we got water
19 in our basement because our sump pump wouldn't
20 work, and I got the sump pump started, and then it
21 took the water out of the basement. We had to
22 replace the carpet, but since the spillway has
23 been in we've had water in the basement twice
24 'cause the sump pump can't get ahead of it. The
25 sump pump can't run fast enough to get the water

1 out, before '97 it would. So now we have to have
2 two sump pumps in the place.

3 Q. Now, when you purchased Tom's
4 farm, did you have any discussions with the
5 previous owner about flooding?

6 A. That was my aunt and uncle and I've
7 known you know for years and he never had a
8 problem with crop flooding like we have.

9 Q. Did he have flooding?

10 A. He's gone, so I don't know.

11 Q. Did you ever ask him?

12 A. No.

13 Q. Did he ever tell you he had
14 flooding?

15 A. No.

16 MS. BREWER: Objection.

17 Q. Did you visit the property prior to
18 buying it?

19 A. Yes.

20 Q. Did you visit and your aunt and
21 uncle when your a child?

22 A. Yes.

23 Q. Do you remember seeing flooding
24 when you were a child?

25 A. I can't recall.

1 Q. Okay. Now, what was the name of
2 your aunt and uncle that you purchased Tom's farm
3 from?

4 A. Hope and Jerome Stine.

5 Q. And they're both gone now?

6 A. No, she's still alive.

7 Q. Where does she live?

8 A. Celina.

9 Q. Do you know her address?

10 A. No.

11 Q. Do you know how long she lived on
12 that farm?

13 A. I can't say for sure.

14 Q. Do you ever remember her living
15 anywhere else?

16 A. Yeah. She lived on her farm. She
17 used to be Hope Rock till her husband died.

18 Q. When was she married?

19 A. I can't recall.

20 Q. Do you believe that Hope Stine
21 lived on that farm from 1990 until you purchased
22 it?

23 A. Yes.

24 Q. From 1985 until you purchased it?

25 A. That I can't say.

1 Q. Okay. But at least for several
2 years before you purchased it she lived there?

3 A. Yeah.

4 Q. So if we were to contact her she'd
5 be able to tell us whether it flooded or not?

6 A. I would say.

7 Q. Sir, do you have any pictures of
8 flooding that you've taken since you lived at --

9 A. There was a picture and it was
10 taken by dad.

11 Q. -- Tom's farm? Anything that
12 you've taken?

13 A. No. In 2003 we are too busy
14 worrying about getting water out of our basement
15 to be outside taking pictures.

16 Q. How long did you have water in
17 your basement in 2003?

18 A. It started on Saturday, it was in
19 there Saturday and Sunday, 'cause we were moving
20 my daughter, so we had to move her before I could
21 come home, and it was in there. Like I said
22 Saturday and Sunday, we drained it Sunday. We got
23 rain Sunday night, it was in there again Monday,
24 and we found a second sump pump run water or run
25 line up the stairs, and with the second sump pump

1 we were able to get ahead of the water finally.

2 Like I said, it took two sump pumps.

3 Q. Is that the only time your basement
4 flooded?

5 A. It flooded in 2005, also.

6 Q. Are those the only two times your
7 basement flooded?

8 A. Well in the original one I told you
9 about in 2006 when the sump pump didn't work.

10 Like I said when the sump pump we got it to
11 working, then it drained, it drained it.

12 Q. Now you have two sump pumps now,
13 is that correct?

14 A. Yes.

15 Q. Did you have two sump pumps in
16 2006?

17 A. Yes.

18 Q. Neither of them worked in 2006?

19 A. No, I'm sorry on the statement on
20 that. In 2006 we had one sump pump?

21 MS. BREWER: 2006 or 1996?

22 MR. POWELL: 2006. We had one --
23 we didn't own it in '96 or yes, we did.

24 Now I'm all screwed up.

25 MS. BREWER: That's okay. I'm just

1 trying --

2 MR. POWELL: In 2006 we had two
3 sump pumps.

4 MS. BREWER: And I'm just trying to
5 make it clear. I think you had -- it
6 flooded in 1996.

7 MR. POWELL: 1996, right, right,
8 I'm sorry.

9 Q. So it did not flood in 2006, is
10 that correct?

11 A. We didn't have water in the
12 basement, no.

13 Q. It was in 1996?

14 A. 1996 was the first time.

15 Q. And then 2003, and then 2005?

16 A. Yes.

17 Q. Other than Tom's farm and the 40
18 acre farm, are there any other farm properties
19 that you either farm or own?

20 A. There's none that I own, there's
21 other properties that we farm in the partnership.

22 Q. What else do you farm in the
23 partnership?

24 A. Well there's Hope Stine farm Ruth
25 Bucklow's farm Carl Rose, and then dad's farm.

1 Q. Any others?

2 A. No.

3 Q. Is the Freedman farm part of the
4 partnership?

5 A. Yes.

6 Q. And is Thomas farm part of the
7 partnership?

8 A. Yes.

9 Q. But that's for farming purposes
10 only, right?

11 A. Right.

12 Q. Not for ownership purposes?

13 A. Right.

14 Q. Has anyone ever advised you that
15 you should put down drainage tiles at Tom's farm?

16 A. No. Like I said they wouldn't
17 work.

18 Q. Have you ever had anyone come out
19 to see if they could make recommendations with
20 regards drainage tiles in Tom's farm?

21 MS. BREWER: Objection.

22 A. I don't need to have somebody come
23 out because I know it won't work.

24 Q. Did you go to college?

25 A. Pardon.

1 Q. Did you go to college?

2 A. No.

3 Q. Were you part of FFA in high
4 school?

5 A. Yes.

6 Q. Did you have courses in high school
7 or any discussions in FFA about drainage?

8 A. That's been 30 years ago.

9 Q. Did you have any discussions or
10 courses --

11 MS. BREWER: Objection.

12 Q. -- that he can recall?

13 A. I can't recall.

14 Q. What caused you to bring the
15 lawsuit against the state?

16 A. Basically 'cause the state refused
17 to draw the lake down.

18 Q. Now, I believe you testified you've
19 been flooded in 2003 and 2005 --

20 A. Yeah.

21 Q. -- as a result of this spillway, is
22 that correct?

23 A. Yes.

24 Q. Why did you wait until now to bring
25 the lawsuit?

1 A. Well, 'cause we were, I guess,
2 waiting to see if the state was gonna do anything
3 with the spillway. Those other guy's that filed
4 the suit and the state basically, you know, they
5 were gonna pay them, but they aren't gonna draw
6 the lake down. Well if they get flooded, I get
7 flooded. They wouldn't have to worry about us if
8 they would just take care of the lake.

9 Q. Now what makes you believe that
10 your flooding is a result of the lake rather than
11 the Wabash?

12 A. Well, basically this creek they
13 told you runs east, whenever the water won't come
14 out of the lake, that creek comes around and flows
15 west 'cause all the water is bushing this way.

16 Q. And what happens to the Wabash
17 during that same time period?

18 A. Well the Wabash comes up 'cause the
19 beaver is out.

20 Q. The Wabash flood because of the
21 beaver?

22 A. Sure.

23 Q. And the Wabash is a river, right?

24 A. Right.

25 Q. And the beaver is a creek, right?

1 A. Yes. But the beaver drains the
2 lake.

3 Q. Do you have crop insurance?

4 A. No.

5 Q. Do you have flood insurance?

6 A. No.

7 Q. Tell me why you don't have crop
8 insurance?

9 A. Well basically to buy crop
10 insurance on this farm we'd have to have crop
11 insurance on all of our farms and that wouldn't
12 pay because the biggest share farm would own the
13 problem of flooding. On Bucklow farm we don't
14 have problem, Hope farm we don't have problem, the
15 Freedman farm we don't have problem. So why buy
16 crop insurance for those just to cover this?

17 Q. Is there a requirement to cover
18 all farms --

19 A. Yes.

20 Q. -- in order to buy crop insurance
21 for --

22 A. If you don't buy crop insurance you
23 got to buy it for everything 'cause they're not
24 gonna just insure the ground that you're gonna
25 lose in flooding.

1 Q. But you don't own all the other
2 properties, can't you just buy crop insurance for
3 what you own?

4 A. No, you can't, you buy it as a
5 partnership. They don't care whether you own the
6 property or not.

7 Q. What about flood insurance, why
8 don't you have flood insurance?

9 A. What good would it do, do you think
10 that they would pay me for that?

11 Q. I guess I'm asking you, could you
12 not buy flood insurance just for Tom's farm?

13 A. Not that I know of.

14 Q. Do you have any records with
15 regards to the flooding that you claim is a result
16 of the spillway?

17 A. Has it in records.

18 Q. Diaries or calendars?

19 A. No.

20 Q. Do you recall what the rainfall
21 was like in 2003?

22 A. I don't remember how much it
23 rained, but I know it did rain quite a bit. Like
24 I said, when it initially started raining we
25 weren't home, we were moving my daughter from

1 Toledo to Warren, and dad called us home because
2 we had water in the basement.

3 Q. And how did your dad know that, do
4 you know?

5 A. Because he was feeding our dogs
6 while we were gone.

7 Q. What about in '05, do you know much
8 rain there was in on '05?

9 A. No, I don't, can't remember.

10 Q. In '06 was there a lot of rain --

11 MS. BREWER: Objection.

12 Q. -- do you recall?

13 A. I don't keep track of rainfalls.

14 Q. Did you flood in '09?

15 A. I think, yeah, we would have
16 flooded early this spring, probably late winter
17 early spring.

18 Q. Have you ever made any claims to a
19 federal agency with regards to flooding?

20 A. No.

21 Q. You ever made any claims to a state
22 agency with regards to flooding?

23 A. No.

24 Q. Now, we talked about your basement
25 flooding in 1996 and again in '03 and again in

1 '05, is that correct?

2 A. Yes.

3 Q. But the flooding that you shaded on
4 Deposition Exhibits A and B, what years did that
5 flooding occur?

6 A. This is '03.

7 Q. Okay. So you're pointing to
8 Deposition Exhibit A which would be --

9 A. Well, both these.

10 Q. Okay. All right. So A and B both
11 happened in '03, is that correct?

12 A. Yes.

13 Q. Did it happen any other time?

14 A. I would '05 would have probably
15 been close to as much, but '03 was the worst.

16 Q. So Deposition Exhibit, Exhibits A
17 and B represent '03 and perhaps some of '05, is
18 that correct?

19 A. Yes.

20 Q. Okay. In your affidavit you talk
21 about current lake level management practices,
22 what are you reference to?

23 A. That they want to keep the lake up
24 as full as it can be.

25 Q. And your affidavit says that your

1 | properties have been subject to inevitable
2 | increased severe flooding. What makes you think
3 | it's inevitable?

4 | A. Well, because every time we -- if
5 | that lake is full and we get an inch or two or
6 | rain we are gonna have water down on us.

7 | Q. In your affidavit you claim that
8 | you have suffered drainage tile failure as a
9 | result of this spillway. What drainage tile
10 | failure have you suffered?

11 | A. The tile that drains our house. It
12 | backs up into our house because that drainage tile
13 | can't work. The way that this drainage tile work
14 | is it dumps the water into the creek. Well if
15 | everything is full of water it don't have any
16 | place to dump the water.

17 | Q. Are there any ditches on Tom's
18 | farm?

19 | A. The creek you mean?

20 | Q. Just any ditches at all?

21 | A. There would be a ditch here along
22 | the road, the side ditch along the road, and then
23 | this here creek or you can call it a ditch.

24 | Q. Now, the ditch alongside of the
25 | road, who put that there?

1 A. I assume the State of Ohio.

2 Q. Has it been there since you
3 purchased the property?

4 A. Yes.

5 Q. Do you know what kind of soil is on
6 Tom's farm?

7 A. No, I can't say what it's called.

8 Q. Are there any easements on Tom's
9 farm?

10 MS. BREWER: Objection.

11 Q. If you know?

12 A. I don't know what you mean by
13 "easement."

14 Q. For telephone lines or for pipe
15 lines or anybody has the right to come on your
16 property for any use?

17 A. Nothing that I know of.

18 Q. Do you participate in the Wetland
19 Reserve Program?

20 A. No.

21 Q. Where did you grow up?

22 A. In Mercer County.

23 Q. And where did you live when you
24 were living in Mercer County?

25 A. On Leininger Road.

1 Q. Is that the farm that your mom and
2 dad live at currently?

3 A. No. It was across the road.
4 There's no house there now.

5 Q. So is that what your mom and dad
6 referred to as the "Home place?"

7 A. Yes.

8 Q. And you grew up there?

9 A. Yes.

10 Q. Do you recall it flooding when you
11 were a child?

12 A. You'd get flooded sometimes in the
13 early spring.

14 Q. How frequently?

15 A. I don't know.

16 Q. If I told you your mom told me that
17 it flooded almost ever spring, would that surprise
18 you?

19 MS. BREWER: Objection.

20 A. It would have been early spring.

21 Q. But you would agree we that?

22 MS. BREWER: Objection.

23 A. I can't say.

24 Q. Why do you think it flooded in the
25 early spring?

1 A. Usually because there would be ice
2 on the river and some times you get ice jams.

3 Q. Is there a time of year when
4 flooding is particularly harmful to crops?

5 A. Anything after they're planted.

6 Q. When do you plant your corn?

7 A. Usually we like to plant it at the
8 end of April.

9 Q. What about soybeans?

10 A. Beginning of May.

11 Q. What about wheat?

12 A. Plant that in the fall, September,
13 October.

14 Q. Do you know if Tom's farm has ever
15 been used for commercial purposes?

16 A. Not that I know of.

17 Q. Do you know how much you earned
18 from your farming operations last year?

19 A. No, I don't.

20 Q. Okay. Do you know whether it was
21 less than you earned in 2008?

22 A. I don't know.

23 Q. Do you know whether it was more in
24 the year 2008?

25 A. I don't know.

1 Q. You have no --

2 A. I don't look at tax records, I
3 don't know.

4 Q. Do you recall what your crop yield
5 was for 2009?

6 A. No, I can't say.

7 Q. Do you know whether your crop yield
8 for 2009 was higher or lower than 2008?

9 A. I guess that depends on what crop
10 you're talking about.

11 Q. Let's talk about corn. Do you know
12 whether the corn, the crop yield for corn?

13 A. Corn would probably been --

14 MS. BREWER: And I'm going to
15 instruct you not to guess, but to the
16 extent that you know, you can answer.

17 A. Okay. Well I can't say then for
18 sure.

19 Q. And you don't know whether the crop
20 yield for corn was higher or lower in '08 or in
21 '09?

22 A. I can't say for sure.

23 Q. How about for beans, do you know
24 what your crop yields was for beans in '09?

25 A. Everywhere or just on one farm?

1 Q. Do you keep figures collectively or
2 just per farm?

3 A. Well, everything is collectively,
4 but when you combine you kind of know how that
5 field is doing.

6 Q. Well let's just look at Tom's farm
7 first. Do you know what the crop yield was for
8 beans in '09?

9 A. This was beans in '09 but I'd say
10 maybe 43 bushel an acre.

11 Q. Do you know whether that was more
12 or less than the crop yield for '08?

13 A. Well, it would had to be during
14 '08.

15 Q. Do you know whether it was more or
16 less in crop yield for beans in '07?

17 A. I can't say.

18 Q. Okay.

19 A. I can tell you it was more in '03
20 and '05 because both those years we lost a whole
21 field of beans; we didn't get a crop.

22 Q. And this is on Tom's farm?

23 A. Right.

24 Q. Did you replant?

25 A. It was too late.

1 Q. Were you able to plant wheat that
2 year in '03 and '05?

3 A. Yes.

4 Q. In both years, '03 and '05?

5 A. Not on this farm.

6 Q. But you were able to plant wheat in
7 '03 and '05?

8 A. Yes.

9 Q. Do you have any livestock on Tom's
10 farm?

11 A. No.

12 Q. Do you keep records with regards to
13 your crop yields?

14 A. No.

15 Q. Would they be reflected on your
16 income tax reports?

17 A. Well we don't sell necessarily the
18 same year. We try to average out so we don't have
19 to pay much taxes one year and then not have so
20 much the next, so sometimes we hold crops over.

21 Q. Do you store them some place?

22 A. Yes.

23 Q. Would you have storage records?

24 A. No.

25 Q. Where do you store crops?

- 1 A. On the farm.
- 2 Q. Do you have storage sheds?
- 3 A. Yes.
- 4 Q. Would that be called a storage bin?
- 5 A. Well they would be grain bins,
- 6 yeah.
- 7 Q. And the grain bins store wheat?
- 8 A. No.
- 9 Q. Corn?
- 10 A. Corn and beans.
- 11 Q. And soybeans?
- 12 A. Yeah.
- 13 Q. Okay. What do you believe is the
- 14 value of Tom's farm today?
- 15 A. I don't know, what somebody offers,
- 16 I guess, I don't have no idea.
- 17 Q. What did you purchase it for in
- 18 1993?
- 19 A. I don't know what difference that
- 20 makes.
- 21 Q. Well you're claiming there's a loss
- 22 of value with regard to Tom's farm?
- 23 A. Well but when we bought in '93 it
- 24 ought to be worth more than that now, but it might
- 25 not be. It's only worth what somebody will offer.

1 Q. What did you pay for it in '93?

2 A. I would say we probably paid like
3 \$150,000.00.

4 Q. For how many acres?

5 A. Thirteen, but that's including the
6 buildings and the house.

7 Q. And you have no idea what it's
8 worth today?

9 MS. BREWER: Objection.

10 A. I'm not a realtor.

11 Q. And no discussions pending on
12 current value, is that correct?

13 A. No.

14 MS. WORLY: Just give me a minute.
15 I have for further questions.

16 MS. BREWER: I have a couple points
17 of clarification.

18 DIRECT EXAMINATION

19 BY MS. BREWER:

20 Q. You mentioned that in 1996 your
21 basement flooded, is that right?

22 A. Yes.

23 Q. When your basement flooded, was the
24 entire shaded area on Respondent's Exhibit A and B
25 flooded, also?

1 A. I can't remember that.

2 Q. Okay. Was the reason it flooded
3 because your sump pump wasn't working?

4 A. Right.

5 Q. Do you think that the value of your
6 property has been impacted by the flooding?

7 A. I would say it has.

8 Q. And why do you think that?

9 A. Well who wants to buy -- you know,
10 who wants to buy a ground you can't farm every
11 year, and plus we've had water in the basement
12 now, so that's something you'd have to -- when we
13 bought the place there had been no water in the
14 basement 'cause they never -- You know they didn't
15 hope they never have a problem with water in the
16 basement, so now it's something -- it's the
17 history of the place, so it can't be worth as much
18 if that didn't happen.

19 Q. How old is your Aunt Hope now?

20 A. She's in her middle '90's.

21 MS. BREWER: Okay. I think that's
22 all.

23 MS. WORLY: Nothing.

24 MS. BREWER: You have the
25 opportunity to read and check your

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affidavit (sic) to make sure everything
you said is correct and is accurate and
then you can sign it to verify that it
is correct and accurate or you can waive
that right. I recommend to my clients
that they do take the opportunity to
read the transcript. Would you like to
do that?

MR. POWELL: Yes.

MS. BREWER: Okay. Thank you.

MS. WORLY: Thank you for your
patients.

MR. POWELL: Thank you.

MS. WORLY: I appreciate it.

Thomas Powell

Thomas Powell

- - -
(At 3:56 p.m., the deposition concluded)
- - -

Martha Brewer 3/31/10

Notary Public

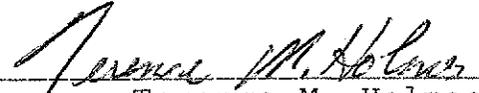
MARTHA C. BREWER, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.02 R.C.

C E R T I F I C A T E

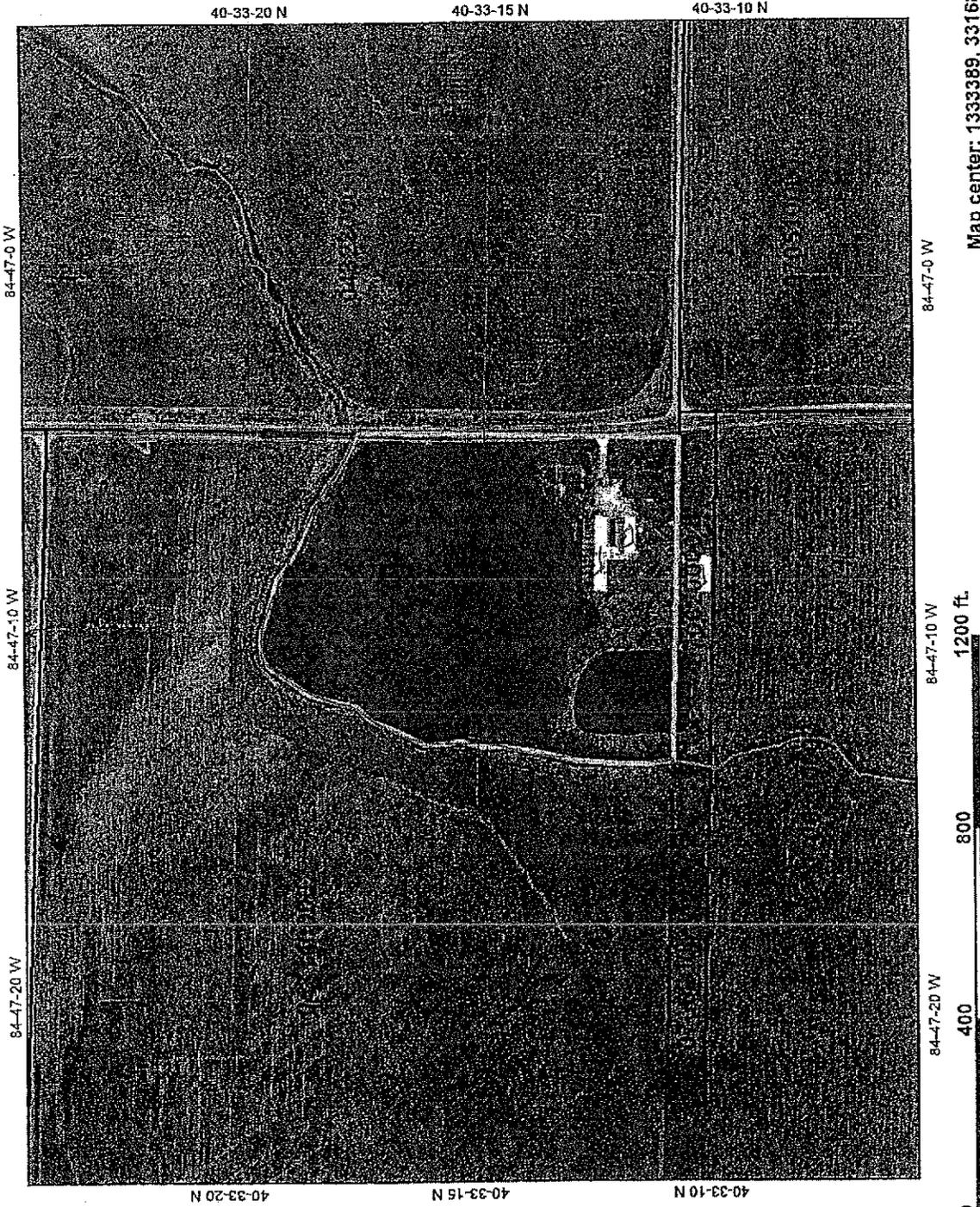
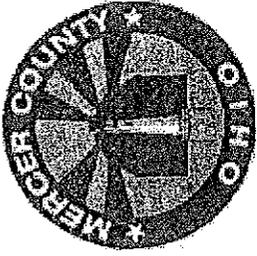
1 STATE OF OHIO)
2) SS:
3 COUNTY OF MERCER)

4 I, Terence M. Holmes, the
5 undersigned, a duly qualified and commissioned
6 notary public within and for the State of Ohio, do
7 hereby certify that before the giving of his
8 aforesaid deposition, the said THOMAS POWELL was
9 by me first duly sworn to depose the truth, the
10 whole truth, and nothing but the truth, that the
11 foregoing is the deposition given at said time and
12 place by said THOMAS POWELL; that said deposition
13 was taken in all respects pursuant to agreement
14 and stipulations of counsel hereinbefore set
15 forth; that said deposition was taken by me in
16 stenotype and transcribed into typewriting by me;
17 that I am neither a relative of nor attorney for
18 any of the parties to this cause, nor relative of
19 nor employee or any of their counsel, and have no
20 interest whatever in the result of this action.

21 IN WITNESS WHEREOF, I have hereunto
22 set my hand at Cincinnati, Ohio, this 14th day of
23 March, 2010.

24 
My Commission Expires: Terence M. Holmes
25 July 28, 2012 Notary Public - State of Ohio

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

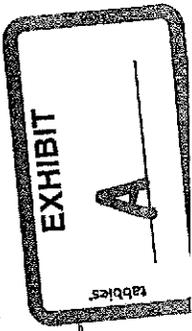
Transportation

- State Highways
- US Highways

Water

- Lake
- Streams

Scale: 1:4,000



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

Thomas L. Powell and Brenda S. Powell
7009 St. Rt. 49
Parcel No.: 28-010400.0100 - 11.62 acres

Respondent's A

6. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-010400.0100 and 42-014000.0100 have flooded approximately fifteen times, or at least once per year. On each occasion, Mercer County Parcel Numbers 28-010400.0100 and 42-014000.0100 were inundated with water at depths varying from six inches to six feet.

7. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-010400.0100 and 42-014000.0100 flood more rapidly and remain flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Numbers 28-010400.0100 and 42-014000.0100 remained inundated with water for a period of two to ten days.

8. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 28-010400.0100 and 42-014000.0100 rarely flooded, never flooded as much, never flooded over as large an area, and never flooded for as long.

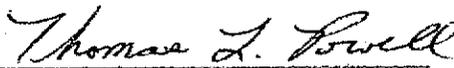
9. To date, the most invasive flood occurred in 2003 with approximately 8 acres of Mercer County Parcel Number 28-010400.0100 and 0.25 acres of Mercer County Parcel Number 42-014000.0100 being flooded with approximately one foot to ten feet of water for approximately at least ten days. True and accurate copies of black and white aerials from the Mercer County Auditor's website of Mercer County Parcel Numbers 28-010400.0100 and 42-014000.0100 are attached hereto as Exhibits A & B. I have shaded in the area of each parcel that was flooded in 2003.

10. Attached hereto as Exhibit C is a photograph that truly and accurately depicts the flooding of Mercer County Parcel Number 28-010400.0100 in 2003.

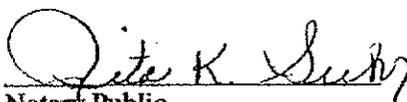
DON000563

11. Mercer County Parcel Numbers 28-010400.0100 and 42-014000.0100 also experienced severe flooding in 2005.
12. Mercer County Parcel Numbers 28-010400.0100 and 42-014000.0100 were again flooded as recently as Spring 2009.
13. As a direct result of the flooding, Mercer County Parcel Numbers 28-010400.0100 and 42-014000.0100 have suffered damage in the form of loss of crops, field and bank erosion, the deposit of silt and other debris, drainage tile failure, and soil compaction.
14. As a direct result of the flooding, our home located on Mercer County Parcel Number 28-010400.0100 was inundated with water and suffered severe damage.
15. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 28-010400.0100 and 42-014000.0100.
16. 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.


Thomas L. Powell

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


Notary Public

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

EXHIBIT A
TO
AFFIDAVIT OF THOMAS L. POWELL

DON000565

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

Transportation

- State Highways
- US Highways

Water

- Lake
- Streams



Scale: 1:4,000



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Thomas L. Powell and Brenda S. Powell
 7009 St. Rt. 49
 Parcel No.: 28-010400.0100 - 11.62 acres

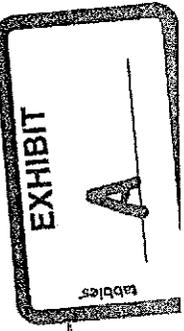
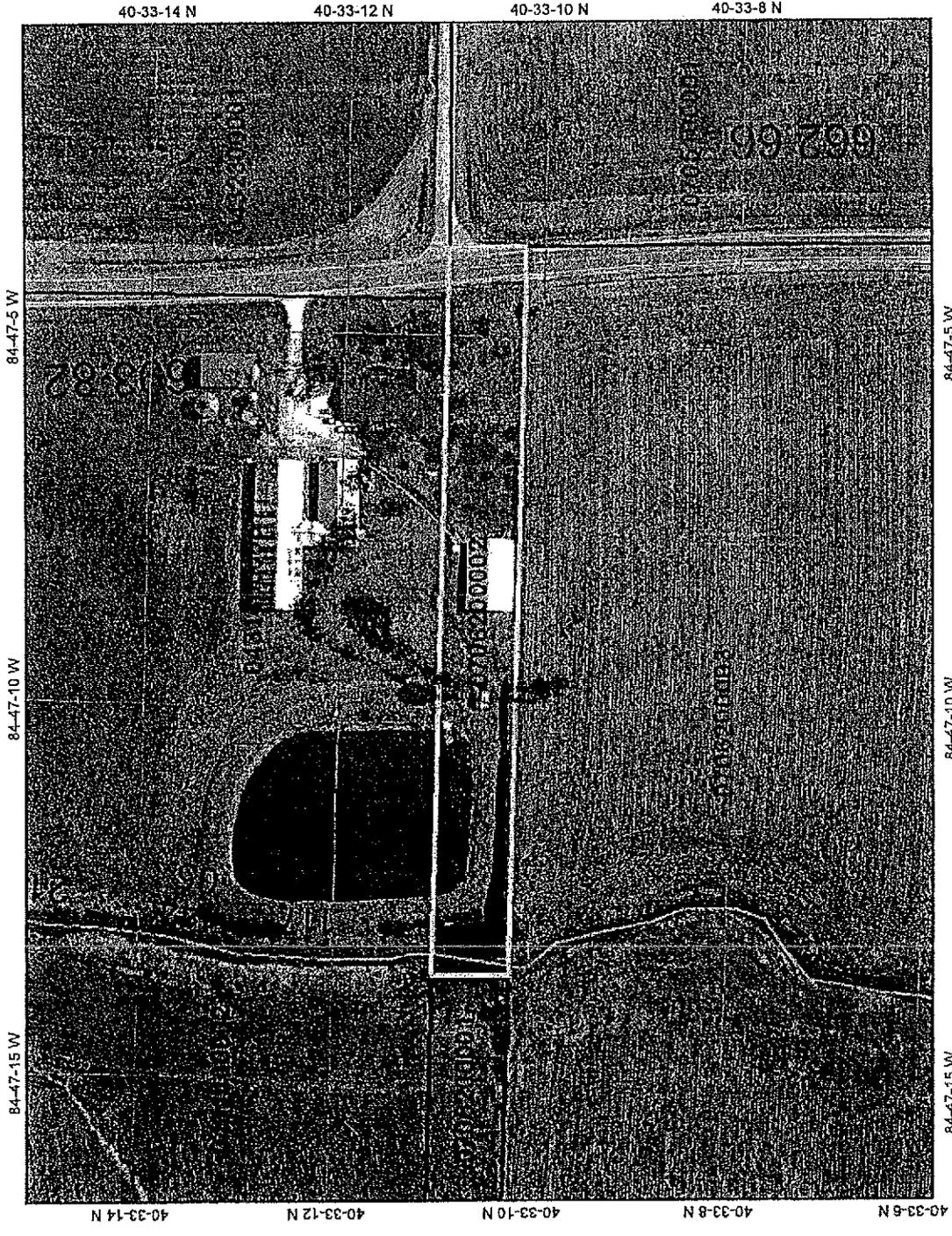


EXHIBIT B
TO
AFFIDAVIT OF THOMAS L. POWELL

DON000567

Mercer County Ohio



Legend

- Administrative**
 - Townships
 - Neighborhoods
- Parcels**
 - Parcels
- Transportation**
 - State Highways
 - US Highways
- Water**
 - Lake
 - Streams

Scale: 1:2,000

Map center: 1333399, 331215

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Thomas L. Powell and Brenda S. Powell
-0- St. Rt. 49
Parcel No.: 42-014000.0100 - 1.42 acres

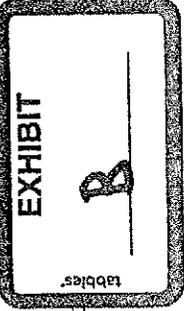


EXHIBIT C
TO
AFFIDAVIT OF THOMAS L. POWELL

DON000569



EXHIBIT
C

tabbles

DON000570

TAB 40

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 LARRY V. PUGSLEY,

Relator, was taken by the Respondents as on
cross-examination, pursuant to the Ohio Civil
Rules of Procedure at Central Service Building,
220 West Livingston Street, Celina, Ohio 45822, on
Friday, February 19, 2010, at 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

1 APPEARANCES:

2 On Behalf of Ohio Department of Natural
3 Resources:

4
5 William J. Cole
6 Senior Assistant Attorney General
7 Executive Agencies
8 30 East Broad Street, Floor 26
9 Columbus, Ohio 43215-3400

10 On Behalf of Relators:

11 Thomas H. Fusonie, Esq.
12 Attorney at Law
13 Vorys, Sater, Seymour and Pease LLP
14 52 East Gay Street
15 Columbus, Ohio 43216-1008

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C O N T E N T S

WITNESS	CROSS	DIRECT	RECROSS
Larry Pugsley	C-4	F-45	C-46

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of Mr. Pugsley	7
B	Drawing map	45

1 WILLIAM PUGSLEY

2 of lawful age, a witness herein, having been duly
3 sworn, as hereinafter certified, was examined and
4 deposed as follows:

5 CROSS-EXAMINATION

6 BY MR. COLE:

7 Q. Mr. Pugsley, my name William Cole,
8 I'm one of the attorneys for ODNR in this case. I
9 gonna to take and your deposition, I just want to
10 go over just a couple ground rules. Please don't
11 start to answer a question until I'm finished
12 asking it and I'll do my best not to interrupt
13 you, all right.

14 A. Okay.

15 Q. If I ask a question you don't
16 understand or you're confused or you want me to
17 clarify, just let me know or ask your attorney and
18 I'll do my best. I'm not trying to trick you on
19 anything like that. If you -- Please do give
20 verbal answers, yes, no, don't nod your head or
21 give ah-huhs because it's being transcribed. And
22 I really don't think we're gonna be here that
23 long, but if you need to take a break, it's no
24 problem, let me know. Just if there's a question
25 pending though I'd like you to go ahead and answer

1 that before we can take a break. Do you have any
2 questions?

3 A. No, sir.

4 Q. Can you tell me where you live,
5 what your address is?

6 A. My address 3201 Saddlebrook and
7 that's all one word, S-a-d-d-l-e-b-r-o-o-k,
8 Findlay, F-i-n-d-l-a-y, Ohio 45840.

9 Q. And what is your educational
10 background?

11 A. I have a couple associate degrees.
12 I have a bachelors degree.

13 Q. In what subject is that?

14 A. I have an associates. I have an
15 Associates in Accounting and Associate in
16 Business. I have a Bachelor of Arts with emphasis
17 in economics.

18 Q. Where did you get your BA from?

19 A. From Bluffton College was in,
20 Bluffton University now.

21 Q. Any education, any formal
22 education beyond that?

23 A. No, sir.

24 Q. Do you have any education or
25 schooling in agriculture?

1 A. Let me back up one.

2 Q. Yes, sure.

3 A. I do have a Bachelor of Laws Degree
4 from Lasalle Extension University out of Chicago,
5 Illinois that I picked that up when I got -- I was
6 in the Army 1966 to '68, and then I went to Ohio
7 State for five quarters, and then flowing that
8 then I took this law course through Lasalle, and
9 that was prior to my bachelors, and prior to one
10 of my associate degrees.

11 Q. So you have a Bachelor of Law
12 degree?

13 A. LLB they call it--

14 Q. Does that -- did that --

15 A. I do not practice law.

16 Q. Did that entitled you to take the
17 bar exam?

18 A. In some states as I understand.

19 Q. But you've never been an attorney?

20 A. I have never practiced law.

21 Q. Did you ever take the bar exam?

22 A. No, sir.

23 Q. All right. Have you had any
24 schooling or formal education including any
25 classes in agriculture?

1 A. No, sir.

2 Q. How about engineering?

3 A. No, sir.

4 Q. Land drainage, water movement,
5 hydrology or hydraulics?

6 A. No, sir.

7 Q. Are you married?

8 A. Yes, sir.

9 Q. Who's your spouse?

10 A. Her name is Sharon K. Pugsley.

11 Q. Children?

12 A. We had two sons, we lost our oldest
13 son that vehicle accident in 1990, our youngest
14 son lives in Ohio.

15 Q. Does he live in Mercer County?

16 A. No, sir.

17 (Affidavit, marked for identification
18 as Respondent's - Larry V. Pugsley -
Exhibit A.)

19 Q. All right. Mr. Pugsley, I'm gonna
20 ask you -- You have filed or you have not filed,
21 but your attorneys have provided me with an
22 affidavit, and I'm gonna mark that as Exhibit

23 A. You can go ahead and take a look at
24 that.

25 MR. COLE: You don't need one, Tom,

1 do you?

2 Q. Take a quick look at that. Make
3 sure there's a Page 2 on that. Sir, on Page 2 is
4 that your signature?

5 A. Yes, it is.

6 Q. All right. And do you know who
7 typed up this affidavit?

8 A. I don't actually know who typed it,
9 no, sir.

10 Q. Did you provide information that's
11 in this affidavit to anyone before it was typed
12 up?

13 A. I had conversation with someone
14 from the Vorys law firm and they --

15 MR. FUSONIE: I want to make sure
16 you don't disclose anything that one of
17 my colleagues may have said to you in a
18 conversation.

19 Q. You don't need to tell me anything
20 that was said, but keep going?

21 A. And to the best of my recollection
22 then I received this affidavit to be signed in the
23 presence of a notary.

24 Q. Did you review this before you
25 signed it?

1 A. Yes, sir.

2 Q. Now, as you look at this affidavit,
3 it's not very long, is there anything that you see
4 in this affidavit that now may not be accurate,
5 and I'm not saying that you lied, but either facts
6 changed or you maybe realized wait a minute I said
7 this and that wasn't accurate?

8 A. I believe it to be accurate.

9 Q. All right. In Paragraph 2 you
10 identify three different lands, parcel numbers
11 there, the 42 I'm gonna abbreviate 0038 the 420034
12 and 42-0032. Actually and then there's 00.0100,
13 is that correct?

14 A. Yes, that is correct.

15 Q. All right. Do you know own -- are
16 you aware of what these three parcels are, are you
17 familiar with these lands?

18 A. I cannot identify specifically the
19 acreage with each number, but I could with tax
20 records.

21 Q. All right. Have you ever been on
22 these lands?

23 A. Yes, sir.

24 Q. When is the last time you were
25 there on any of 'em?

1 A. October 2009.

2 Q. Do you own -- Do you have an
3 estimate of how many acres are in these parcels?

4 A. I can't. I know how many acres
5 are in each of the three parcels, but I cannot
6 identify the acreage with the number.

7 Q. All right. That's fine. Can you
8 tell me the three parcels and their approximate
9 acreage then?

10 A. Yes. There is one parcel has 18
11 point 2 acres, another parcel has 44.2 acres, and
12 another parcel has just one acre.

13 Q. I'll tell it you what, from this
14 point forward I'll refer to them by their acreage,
15 and you know you can visualize the 18 acre, the 44
16 acre, the one acre parcel?

17 A. Yes, sir.

18 Q. All right. Well, we'll do it that
19 way. Do you own, other than those three parcels,
20 do you own any other land in Mercer County?

21 A. No, sir.

22 Q. Okay. Do you know own any other
23 land anywhere?

24 A. Yes, sir.

25 Q. And where is that?

1 A. I own land in Allen County and
2 Hancock County.

3 Q. Is -- Tell me about the -- briefly
4 tell me about the land in Allen County, what kind
5 of land is that?

6 A. The land in Allen County is farm
7 land, also, no buildings.

8 Q. What about Hancock?

9 A. My residence, personal residence.

10 Q. Is there any land with that or is
11 it just residence?

12 A. It's a lot in a subdivision, 100 by
13 150.

14 Q. All right. I think you sort of
15 indirectly said, are the three acres that you own
16 in Mercer County are they all farm land?

17 MR. FUSONIE: Three parcels?

18 Q. Excuse me, yes, yes the three
19 parcels?

20 A. The three parcels? The one acre is
21 basically farm land but not farmed.

22 Q. Why not?

23 A. It's where a house sat at one time
24 and it's partially grown up trees.

25 Q. The house is gone?

1 A. House is gone, yes, sir.

2 Q. When did the house disappear or
3 when did the house, I assume was demolished?

4 A. More than 10 years ago.

5 Q. Does the, does the one acre parcel
6 have any current use to it, is it used for
7 anything?

8 A. Ingress and egress to the field.

9 Q. To one of the other parcels?

10 A. To one of the other parcels, yeah.

11 Q. Where are the 18 acre and the 44
12 acre, 18.2 and 44.2 acre parcels in relation to
13 each other?

14 A. They, in relation to each other
15 they are across from each other with the Wabash
16 River between them.

17 Q. I'm gonna ask you, because there
18 was no -- Some of the landowners in this case had
19 exhibits. Would you be able, to the best of your
20 knowledge, to, and don't worry so much about
21 scale, to the best you can, try to draw that, and
22 put -- and when you're done, if you can put also
23 where the Wabash is on there. Just go ahead and
24 take your time. Just so we have something visual
25 to work on.

1 A. Okay. This would be Route 20.

2 Q. And I'll ask you specific
3 questions. So you can go ahead and mark Route --
4 I don't want --

5 (Off the record)

6 COURT REPORTER: Back on the
7 record.

8 MR. COLE: Back on the record.

9 Mr. Pugsley has drawn an amended
10 not-to-scale, which is understandable.
11 I've asked him to draw approximate
12 location and a drawing of the parcels in
13 relation to one another and I appreciate
14 that.

15 Q. Let me ask you a couple things.

16 MR. COLE: He's also -- This will
17 be marked as an exhibit. I'm not gonna
18 do yet until we're ready to submit it.

19 Q. But while we're looking at it,
20 Mr. Pugsley the northern end of the 18.2 acre
21 parcel, what is this line here?

22 A. It's not a square parcel.

23 Q. This is just the boundary line?

24 A. Yes, sir.

25 Q. Okay. And I see the Wabash River

1 separates the two parcels.

2 A. Uh-huh.

3 Q. What is bordering the 44.2 acres to
4 the north?

5 A. Someone else's property.

6 Q. Okay. How about to the east?

7 A. Someone else's property.

8 Q. And then we have Route 29 --

9 A. Yes, sir.

10 Q. -- on the bottom. And then is this
11 just a, again, boundary here between the one acre
12 and --

13 A. Well, I didn't have the one acre
14 drawn but it's, it's a notch, it's a notched out
15 one acre.

16 Q. That's fine.

17 A. That's the way it is.

18 Q. Okay. How long -- Well, let's see

19 A. As opposed to, as opposed to being
20 part of -- as opposed to being part of this.

21 Q. Okay.

22 A. It is a separate one acre.

23 Q. It is separate than the --

24 A. Accounts for the separate tax
25 statement.

1 Q. All right. I think I can see it
2 from here. We'll keep going. How long have you
3 owned the 44.2 acre parcel?

4 A. I came -- I'm a fourth generation
5 owner. It went from my great grandfather to my to
6 my grandfather to a life-time estate to my
7 grandmother, and when she acquired the life time
8 estate at my grandfather's passing, then my mother
9 and my uncle each owned and undivided one-half
10 interest, and my mother passed away in February of
11 19, February 11th of 1998, that's when I came into
12 possession.

13 Q. All right. 1998?

14 A. Yes, February of 1998.

15 Q. Now is that the same situation for
16 the 18 acre?

17 A. Yes.

18 Q. All right. And the one acre. Yes,
19 sir. All right. So you acquired ownership of all
20 3 at the same time in 1988?

21 A. Yes, sir.

22 Q. And that was through --

23 A. My mother's passing, yes.

24 Q. All right. Is the property in your
25 name alone, is it in you and your wife's name?

1 A. No, sir, it is in my name, it is in
2 my aunt's name. Emily M. Powell and my name Larry
3 V. Pugsley, and we each own and undivided one half
4 interest.

5 Q. In all three?

6 A. In all three, yes, sir.

7 Q. Anyone else have an and ownership
8 interest?

9 A. No, sir, other than possible legal
10 interest through marriage.

11 Q. Sure, understood, understood. All
12 right. So your wife other than perhaps a dower
13 interest, it's not in her name though?

14 A. No, sir.

15 Q. Do you know rent or lease any
16 property from anyone?

17 A. Do I personally rent --

18 Q. Yes?

19 A. -- any property, no, sir.

20 Q. Do you rent any property that you
21 own to anyone?

22 A. Yes, sir.

23 Q. Tell me about that?

24 A. Let me clarify.

25 Q. Sure.

1 A. It's -- I'm calling it rent, it's
2 farming on shares.

3 Q. Okay. Can you tell me about that
4 arrangement, who is that to?

5 A. I don't have -- I haven't talked to
6 the gentleman that farms, and I don't know if I
7 have right to use his name without talking to 'em,
8 but I think it's pretty common knowledge of--

9 MR. FUSONIE: Yeah, you have to add
10 -- Yeah, you should answer that
11 question.

12 A. Okay. His name is Mike Highley,
13 yes.

14 Q. I think he's been mentioned --

15 A. Well that's what I gathered
16 from --

17 Q. I don't think he's gonna be
18 surprised.

19 A. Okay.

20 Q. That's all right. That's all
21 right. And what arrangement do you have with
22 Mr. Highley?

23 A. We share the in input costs and we
24 share the crop.

25 Q. Is that on a 50-50 basis?

1 A. Yes, sir.

2 Q. Are the 44.2 acres and the 18.2
3 acres are those, is that farm land?

4 A. Yes, sir.

5 Q. Is it strictly farm land?

6 A. Yes, sir.

7 Q. As far as you know has it always
8 been the farm, farm land?

9 A. To going back since my time of
10 remembrance, yes, sir.

11 Q. And Mr. Highley farms, does the
12 actual farming on these parcels?

13 A. Yes, sir.

14 Q. Does anyone else farm these
15 parcels?

16 A. No, sir.

17 Q. Do you have a writing or oral
18 agreement with Mr. Highley?

19 A. Just oral, we don't have anything
20 written.

21 Q. You say you pay 50-50 for the
22 machinery input in the farming?

23 A. I pay for the seed the fertilizer
24 and any of the spraying and any of the drying and
25 when he delivers it to the elevator, the crop to

1 the elevator then they put half of it in my name
2 and he will ask me do you want to sell it or what
3 do you want to do with it.

4 Q. So do you split the proceeds 50-50?

5 A. Yes, sir.

6 Q. How long has he been farming the
7 property under this arrangements?

8 A. Either Mike or his father have been
9 farming since prior to my mother's passing, so.

10 Q. You say she passed in the mid
11 '90's, '98?

12 A. Yes, sir. Probably -- Let's say, 15
13 plus years.

14 Q. Is that -- Is this arrangement on a
15 definite term, is for a specific period of time
16 are is it just on-going?

17 A. Just on-going, we don't -- we do
18 not have anything specified in writing or
19 anything.

20 Q. Is there any other payment involved
21 any other arrangement, does he pay you anything?

22 A. No, sir.

23 Q. Do you have any other property
24 rights on any other property, even if you may not
25 be the fee owner in Mercer County, other than

1 these parcels?

2 A. No, sir.

3 Q. Where are these, where are these
4 properties in relation to the west side of Grand
5 Lakes-St. Mary's where the spillway is?

6 A. They are west of the spillway.

7 Q. How far?

8 A. I do not know.

9 Q. Do you have an estimation?

10 A. I could drive it, but I do not
11 know.

12 Q. More than a mile?

13 A. More than a mile, yes, sir.

14 Q. More than five miles?

15 A. I don't know that it would be more
16 than five miles, but I know more than a mile.

17 Q. Do you know whether any of these
18 parcels are in a flood plain?

19 A. Not to my knowledge.

20 Q. Have you ever heard that or been
21 told that by anybody?

22 A. No one has ever told me that.

23 Q. You ever see a FEMA major map or
24 anything like that?

25 MR. FUSONIE: Objection.

1 A. No.

2 Q. Just -- Counsel can object unless
3 he instructs, you can go ahead and answer, but you
4 should let him make his objection. It's important
5 to us.

6 A. I have never seen a
7 FEMA map indicating any flood plain parcels
8 affecting this particular property in Mercer
9 County. Now I might have seen pictures of flood
10 plain maps in Hancock County through the
11 newspaper.

12 Q. All right. Then you can recall --

13 A. I'm not -- what I guess I'm saying
14 is I --

15 Q. But for these parcels?

16 A. No, sir.

17 Q. Oh, okay. Unless I, at this point,
18 unless I specifically indicate we're only going to
19 talk about these parcels here.

20 A. Well you asked me if I had ever
21 seen a FEMA flood plain map.

22 Q. That's correct.

23 A. And I wanted to be clear that --

24 Q. I appreciate that. Thank you. Are
25 there any manmade structures on these properties

1 | currently?

2 | A. No, sir.

3 | Q. Okay. Other than the house that
4 | was raised from the one acre parcel, have there
5 | ever been to your knowledge any buildings or other
6 | manmade structures on these properties?

7 | A. No, sir.

8 | Q. What -- Do you know what the
9 | typography of these parcels are? Let me ask --
10 | Well, all right, let me break that down.

11 | A. I'm not familiar with typography.
12 | I know that has to do with elevations, I believe
13 | --

14 | Q. Yeah.

15 | A. -- or something like that.

16 | Q. Let me ask you this: Are these
17 | parcels flat?

18 | A. I would consider them flat, yes,
19 | Yes, sir.

20 | Q. Are there any hills or any -- Are
21 | there any hills on any of these properties that
22 | you know of?

23 | A. There is a hill. As you come in
24 | off of the highway you go down a slight hill on
25 | this corner.

1 Q. Okay. You indicates a slight?

2 A. The corner where the one acre
3 would --

4 Q. You want to draw maybe just a line
5 and write the word "hill" there?

6 A. Well--

7 Q. Yeah, I don't care where you write
8 it word "hill" just so we can designate it. Any
9 other hills that you're aware of?

10 A. No, sir.

11 Q. All right. On any of the parcels?

12 A. No, sir.

13 Q. Do you know the elevation or how
14 high that hill is?

15 A. No, sir.

16 Q. More than--

17 A. It is not like, you know, you see
18 elevations, you're up so many feet, nothing
19 significant.

20 Q. Do you know if it would be more
21 than five feet?

22 A. Five feet would probably be the max
23 maybe.

24 Q. Okay. How about -- Do you know how
25 broad that hill is, is it a -- how far out does it

1 expand into your property?

2 A. Twenty feet perhaps.

3 Q. And is that -- That hill is just on
4 the northern side of the road where your property
5 is?

6 A. To my knowledge, yes, sir. I'm not
7 familiar with the other side of the road.

8 Q. That's fine.

9 A. I never paid any attention to what
10 they have over there.

11 Q. Is -- For the 18 and the 44, you
12 indicated both had been farmed. Are all -- Do you
13 know whether all of the acreage is farmable, is
14 there -- And let me ask you, do you know if there
15 is any part of either of these parcels that cannot
16 be farm?

17 MR. FUSONIE: Objection. You can
18 go ahead, yeah.

19 A. Nothing, no obstructions to my
20 knowledge to farming, no, sir.

21 Q. Okay. In your affidavit, and I'm
22 asking about -- Well, let me go back before I ask
23 you that. Where are these properties in relation
24 to the Wabash River? I mean, excuse me, Beaver
25 Creek?

1 A. I do not have knowledge of Beaver
2 Creek. My --

3 Q. Do you know where it is?

4 A. I don't know where it is.

5 Q. You indicate that -- your affidavit
6 says you believe since the spillway was replaced
7 in 1997 -- I'm going on Paragraph 4 here, that
8 your property has been subject to this persistent
9 increased flooding. How did you become aware of
10 that?

11 A. I became aware of it, of the
12 potential cause through conversation with other --
13 conversation with another landowner and
14 Mr. Highley.

15 Q. When did that conversation take
16 place?

17 A. Some time in 2009.

18 Q. Is that the first time you became
19 aware of the potential for increased flooding?

20 A. For the potential for increased
21 flooding?

22 Q. Yes.

23 MR. FUSONIE: That's not what he
24 said.

25 Q. Well that's what I'm asking,

1 | separate question.

2 | A. Okay.

3 | Q. But let me -- I'm gonna --

4 | A. I was aware of the potential for
5 | increased flooding prior to that time.

6 | Q. All right. Well let me -- What
7 | did you -- You talked about -- you're talking
8 | about a conversation you had with Mr. Highley and
9 | other landowners in 2009. What did you learn at
10 | that conversation?

11 | A. Well, more specifically the details
12 | outlined in the complaint regarding the
13 | construction of the spillway and the management of
14 | that spillway in regards to releasing water from
15 | Grand Lakes-St. Mary's.

16 | Q. Who approached you about joining
17 | this lawsuit?

18 | A. I do not recall who I talked to
19 | first, but it was either Mr. Highley or Mr. and
20 | Mrs. Doner. When did you first learn about
21 | flooding on your property because of the spillway?

22 | A. I first learned of flooding I
23 | believe to be attributable to the spillway in
24 | 2009.

25 | Q. So am I correct that you did not

1 know about any flooding on your property before
2 2009?

3 A. I knew about flooding, but I didn't
4 know that the probable cause was the spillway.

5 Q. All right. When did you first
6 learn about flooding at all on your property?

7 A. I don't have any specific date
8 and/or year, and of course the most obvious is
9 2003, and when you farm on shares, I'm not
10 directly involved in the management, and so you
11 either have a crop or you do not have a crop, and
12 2003 was a year without a crop, without a bean
13 crop or a corn crop, and without going back
14 specifically and maybe trying to find figure out
15 from tax records and personal records, I cannot
16 identify specific years.

17 Q. Do you -- Were you aware of any
18 flooding on your property before 2003, and I mean
19 any flooding, whatsoever?

20 A. Nothing jumps out to me as a
21 specific dates and time or year, but I am certain
22 that minimal flooding occurs periodically and has
23 throughout the years.

24 Q. But were you aware when that
25 happened or did you find out about that later?

1 A. I was made aware of it in 2003,
2 specifically.

3 Q. Okay. In 2003 then -- I'm sorry,
4 were you finish answering?

5 A. From Mr. Highley.

6 Q. Well, Mr. Highley told you about
7 flooding in 2003. I assume he told you about the
8 floods that occurred that year, correct?

9 A. Yes.

10 Q. Did he tell you about flooding that
11 happened before that?

12 A. Probably so, yes, sir. I just do
13 not recall any specific instances or any to that
14 magnitude that has occurred in '03.

15 Q. Have you ever lived in Mercer
16 County?

17 A. No, sir.

18 Q. How often do you visit or go to see
19 these parcels?

20 A. Once or twice a year.

21 MR. FUSONIE: What time frame are
22 you talking about with that question?

23 MR. COLE: How many times per year?

24 MR. FUSONIE: Well there's a, maybe
25 decades to cover there?

1 Q. Well since you've own it?

2 A. Once or twice a year.

3 MR. FUSONIE: That only over 12
4 years.

5 MR. PUGSLEY: Yes, sir.

6 Q. Did you visit those parcels before
7 you own it?

8 A. Yes, sir.

9 Q. Okay. Why did you visit them
10 before you owned it?

11 A. It's been in my family for a long
12 time. As I think I indicated earlier, I'm a
13 fourth generation owner.

14 Q. Correct?

15 A. And I was -- my great grandfather
16 was alive when I was born, so down through the
17 generations and also family in visiting family we
18 would visit the farm.

19 Q. Are you aware whether prior to
20 1997, okay, that's, and I'll tell you that's when
21 the spillway was changed. Before the spillway was
22 changed, were you aware if either -- any of these
23 parcels flooded at all?

24 A. I'm not aware, I'm not aware of
25 that occurring.

1 Q. You never saw, you never visited
2 and saw standing water on these parcels?

3 A. No, sir I never have.

4 Q. And just so I'm clear, when I'm
5 talking "flooding" I mean standing water for a for
6 a period of time on the land. Had that ever been
7 reported to you that there was flooding I.E.
8 standing water on your property before 1997?

9 MR. FUSONIE: Objection.

10 A. No, sir.

11 Q. Did you first learn about flooding
12 on your property in 2003, to the best of your
13 recollection?

14 A. Yes, sir.

15 Q. Do you know or have you been told
16 what parts of these parcels have flooded?

17 A. I have not been specifically told
18 what part or parcels were flooded except for in
19 2003 there was no crop, and on the bill for my
20 share of the input cost, Mr. Highley indicated
21 that we were flooded.

22 Q. Was as far as you know was 2003 the
23 worst flooding on your property since 1997?

24 A. To the best of my knowledge, yes,
25 sir.

1 Q. Do you know how much of the 18
2 acres was flooded in 2003?

3 A. No, sir.

4 Q. Do you know how much of the 44
5 acres was flooded in 2003?

6 A. No, sir.

7 Q. Okay. Do you know how much of any
8 of these parcels were flooded and where they were
9 flooded in any given year?

10 A. No, sir, I do not have that
11 knowledge.

12 Q. Have you ever when you actually
13 gone and visited the sites, have you ever seen
14 standing water on any of these parcels?

15 A. No, sir I have not.

16 Q. Have you ever -- Has anyone ever
17 taken pictures and shown you water on these
18 parcels?

19 A. I have not seen pictures.

20 Q. So is it fair to say your only
21 knowledge has been word of mouth?

22 MR. FUSONIE: Hold on. For what
23 time frame?

24 MR. COLE: Since 1997?

25 MR. FUSONIE: Well, he's visited

1 once or twice a year, he testified to
2 that.

3 MR. COLE: Right, but when he's
4 visited he's --

5 Q. I think you indicated you haven't
6 seen it?

7 MR. FUSONIE: Well that --

8 A. I have not seen it under water, no,
9 sir.

10 Q. But you have a claim against the
11 State --

12 A. Yes, sir.

13 Q. -- for damage due to flooding. And
14 what I'm asking what is: What is the basis of
15 your knowledge that your property is flooded?

16 A. Based upon knowledge received from
17 the gentleman who farms it for me --

18 Q. Mr. Highley. Anyone else?

19 A. There are other individuals who are
20 indicating the probable cause.

21 Q. Are they?

22 A. And --

23 Q. Go ahead.

24 A. And the explanation appears highly
25 credible.

1 Q. Who are those other persons, do you
2 know their names?

3 A. Mr. and Mrs. Doner.

4 Q. Is that Wayne and Janet?

5 A. I think she goes by January, yes,
6 sir.

7 Q. Anyone else?

8 A. No, sir.

9 Q. Do you know anything about the soil
10 on these parcels?

11 A. No, sir.

12 Q. Do you know anything about whether
13 the land is tillable, how much of these parcels
14 are tillable?

15 A. I think you've answered, otherwise
16 I'll withdraw that question.

17 Q. Do you know anything about an
18 existing drainage on the property, drainage
19 systems?

20 A. I don't know about the drainage,
21 no, sir.

22 Q. Have you ever been aware either by
23 visual inspection or -- Has anyone ever told you
24 about flooding on any of these properties before
25 1997?

1 MR. FUSONIE: Objection as to form.

2 Q. Do you understand my question?

3 A. I believe I understand your
4 question.

5 Q. Okay.

6 A. Would you repeat it?

7 Q. All right. I'll repeat it. Are
8 you aware or did you have a reasonable belief that
9 some of this property that's in this exhibit here
10 had any flooding before 19, before the damn was
11 modified in 1997?

12 MR. FUSONIE: Objection.

13 A. I do not have any specific
14 knowledge on any flooding prior to 1997.

15 Q. Did Mr. Highley ever talk about
16 flooding before 1997?

17 A. Not to me, sir.

18 Q. Do you know if there are any
19 easements on your property?

20 A. I am not aware of any specific
21 easements, but I'm sure the highway has an
22 easement.

23 Q. All right. Does anyone other than
24 yourself, your, is it your aunt, did you say?

25 A. It's my aunt's by marriage.

1 Q. And Mr. Highley and highway, other
2 than highway easement, are you aware of anyone who
3 has property interest in these parcels?

4 MR. FUSONIE: Objection.

5 Q. Do you know of anyone else?

6 A. I'm not aware of anyone else. I
7 can't imagine unless it would be as we said --
8 touched upon earlier I believe through marriage.

9 Q. Yes. All right. Fair enough. Do
10 you know what the Conservation Reserve Program is?

11 A. I could not explain it to you, no,
12 sir.

13 Q. All right. Do you have any filter
14 strips on your property?

15 A. No, sir.

16 Q. It's a program where the Federal
17 Government requires that when they reimburse you,
18 but you don't know anything about that program?

19 A. No, sir, not to speak intelligently
20 about it.

21 Q. You don't participate in that
22 program, do you?

23 A. No, sir.

24 Q. By the way, are decisions about
25 the land made jointly with you and your aunt?

1 A. No, sir. Her decisions are made
2 between her and Mr. Highley, and my decisions are
3 made between Mr. Highley and myself.

4 Q. Do you know what the Wetlands
5 Reserve Program is?

6 A. I have could not explain it to you.

7 Q. You don't participate in that?

8 A. No, sir.

9 Q. Are you aware of any damage to
10 your land other than crop loss due to flooding?

11 A. I'm not specifically aware of any
12 damage. It is my understanding, just from hearing
13 people talk, that damage does occur with the
14 flooding process through the soil.

15 Q. Okay. And what kind of damage is
16 that?

17 A. Deposits of unfavorable elements
18 and/or replacement of better elements with less
19 favorable elements.

20 Q. Have you ever observed any damage
21 to your land due to flooding visually observed any
22 damage to your property because of flooding?

23 A. Visually, no, sir.

24 Q. Has anyone, including Mr. Highley
25 or otherwise, reported or told you that your land

1 is permanently damaged because of flooding?

2 MR. FUSONIE: Objection.

3 A. No one has ever told me that it's
4 permanently damaged, No, sir.

5 Q. Have you experienced a reduction
6 in crop sale proceeds since 1997?

7 A. Yes, sir.

8 Q. Okay. Do you know how much, how
9 they've been affected?

10 A. I reviewed 2003 and essentially in
11 2003 we had a wheat crop, but the corn and the
12 soybeans were, should I say washed out.

13 Q. Whatever they were?

14 A. So that, that's the only that's --

15 Q. So which crops survived?

16 A. The wheat survived and I'm assuming
17 that the wheat survived because it came off prior
18 to July.

19 Q. So that you're saying the flood
20 occurred in July?

21 A. That's what I was told by Mr.
22 Highley, yes, sir.

23 Q. All right. Do you know whether
24 it's in dollar figures or percentages or however
25 you can describe it, How the crop yield and the

1 | revenue you've collected has dropped down because
2 | of the spillway and because of the flooding?

3 | MR. FUSONIE: Objection as to form.

4 | Q. Do you see where I'm getting at?

5 | A. I understand your question, and
6 | there are so many variables, and with prices of
7 | crops and yields due to a number of given factors
8 | that I do not have specifics other than. As I
9 | refer back to '03, basically got just one crop and
10 | that was wheat.

11 | Q. Has Mr. Highley or anyone told you
12 | what they think you could get off the crops if
13 | there wasn't the flooding problems?

14 | A. No, sir, we never talked in those
15 | terms because we have had good years.

16 | Q. Do you know since 1997, and we can
17 | do it maybe year-by-year, do you know how
18 | frequently these lands have flooded?

19 | A. No, sir, I do not.

20 | Q. You do remember an 2003 flood. Do
21 | you know about either firsthand or second-hand of
22 | any flooding on your property since 2003?

23 | A. I do not know firsthand visually,
24 | but I'm sure that if I went back over records,
25 | some would be indicated, based upon yield and

1 notes from Mr. Highley.

2 Q. When you joined this lawsuit, which
3 would have been some time last year --

4 A. Yes, sir.

5 Q. -- how many times did you believe
6 your property, how many separate occasions do you
7 believe your property had been flooded since 1997?

8 A. I did not give that a thought, and
9 I do not have a specific number.

10 Q. Well, in your affidavit you
11 indicate in Paragraph 4 and 6 that the property
12 has been subject to continuing flooding and in six
13 that it's -- yeah, that this property has been
14 subject to continuing flooding. And I assume
15 "continuing" would mean more than once?

16 A. Uh-huh, yes, sir.

17 Q. And I'm curious what the basis for
18 that belief was?

19 A. Well the basis is reduced crop
20 production.

21 Q. In 2003?

22 A. In '3 and I'm sure in other years
23 prior to and following, given the fact that there
24 are many variables go into the production of a
25 crop, and it's only ultimately by the grace of God

1 that we have a crop ultimately anyway, taking into
2 consideration the construction and management of
3 the spillway explains in my opinion the reason why
4 we should continue to expect further reductions in
5 production.

6 Q. Your farm, your parcels continue to
7 be farm today, right?

8 A. Yes, sir.

9 Q. They have continuously been farm
10 since 1997, correct?

11 A. Yes, sir.

12 MR. FUSONIE: Objection.

13 Q. You have, except for 2003, and even
14 -- Well, in every year since then, you have had
15 crop production and proceeds, correct?

16 A. That's correct, Yes, sir.

17 Q. Have you ever valued these parcels
18 or had them appraised by anyone?

19 A. No, sir.

20 Q. Do you have any opinion of what
21 their value is?

22 A. You mean to sell them?

23 Q. Yeah or otherwise? Do you have an
24 opinion of what their worth on the market?

25 A. Not specifically, these parcels I

1 am aware of what some land goes for in other
2 areas.

3 Q. Why don't you tell me about those?

4 A. It's -- there's land that's selling
5 for over \$4000 an acre.

6 Q. Where is that?

7 A. In Hancock and Allen County.

8 Q. Are you aware, and how do you know
9 that?

10 A. I just know it from conversations
11 and newspaper, transfers, real estate transfers.

12 Q. Have you looked at any sales, land
13 sales and transfers in Mercer County?

14 A. No, sir.

15 Q. Do you believe the land sales that
16 you have looked at in Hancock and Allen County
17 where land is comparable to your properties in
18 Mercer County?

19 MR. FUSONIE: Objection. Calls for
20 speculation, lack of foundation.

21 Q. Okay. He's done.

22 A. I have no, no reason to think that
23 land or to believe that land would be less
24 valuable in Mercer County. I -- it has in some
25 times years been quite productive.

1 Q. Has anyone ever told you that the
2 land is worth less because of what was done to the
3 spillway?

4 A. No one has come up and looked me in
5 the eye and told me that my land is worth less,
6 but no one has approached me with the intent of or
7 the interest in valuing it for purchase or
8 otherwise.

9 Q. Do you have any plans to sell the
10 property?

11 A. Not at this time. I'm fourth
12 generation owner and it has sentimental value to
13 me.

14 Q. Have you been told or do you know
15 if any of your crops have been destroyed due to
16 flooding since 2003, since that flood?

17 A. I do not recall specific times or
18 dates. I would have to go back on records to
19 answer that question.

20 Q. Did you -- Okay. Have you ever
21 looked at records or of one time and forgotten or
22 you just haven't looked at all?

23 MR. FUSONIE: Objection.

24 A. Once.

25 Q. Go ahead, once.

1 A. Once the year is done then the
2 yield is in. You do not -- I have not
3 specifically gone back and studied what or why and
4 -- Well it's not a major, it's not a major source
5 of income for me. So I suppose it has not been
6 that critical for me to do any real in-depth
7 study.

8 Q. Has Mr. Highley or anyone else ever
9 talked about the flooding on your property either
10 how deep the water gets, how long it stayed on
11 there, what it's done, any facts surrounding any
12 flooding on your property?

13 MR. FUSONIE: Objection.

14 A. He probably has but I haven't -- I
15 haven't retained the extent of the information.
16 Basically I've looked at it like it's a loss, so
17 it's a loss, you know suck it up and go on.

18 Q. You ever experienced any drought
19 costs on your property, crop damage due to
20 drought?

21 A. Nothing comes to mind specifically,
22 no, sir.

23 Q. Do you recall, other than 2003,
24 any facts about any flood that have occurred on
25 your property since 1997?

1 A. No, sir. And the '03 is because I
2 was made, was brought to my attention several
3 years later and caused me to look back and --

4 Q. You first learned about -- Just so
5 I'm clear. You first learned about 2003 flood in
6 2009, right?

7 MR. FUSONIE: That's
8 mischaracterizing his testimony.

9 MR. COLE: Well he can correct.

10 MR. FUSONIE: He already testified
11 that he learned about it around 2003
12 when the crop loss was related to him.

13 A. Yeah.

14 Q. Did you --

15 A. I was aware of it. You're aware of
16 it when you don't have a crop you're aware of it.

17 Q. Were you told it --

18 A. -- most immediately?

19 Q. Were you told in 2003 that you had
20 the crop loss, were you told that was because of
21 flooding?

22 A. Yes. Yes, sir.

23 Q. All right. Do you ever crop
24 insurance?

25 A. No, sir.

1 Q. Did you ever have crop insurance?

2 A. No, sir.

3 Q. You ever keep any records of
4 flooding on your property?

5 A. No, sir.

6 Q. Did Mr. Highley ever keep records?

7 A. I'm not aware.

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

9 MR. FUSONIE: I got a couple
10 questions, but first, are you gonna mark
11 this as Exhibit B, the map?

12 MR. COLE: Thank you.

13 (Drawing, map, marked for identification
14 as Respondent's - Larry V. Pugsley -
Exhibit B.)

15 MR. COLE: Are you gonna ask him to
16 mark anything else on it?

17 MR. FUSONIE: No.

18 A. Yeah, we'll mark the exhibit as
19 Exhibit B. Thank you, counsel.

20 DIRECT EXAMINATION

21 BY MR. FUSONIE:

22 Q. Mr. Pugsley, just a few questions.
23 When did you first start visiting the three
24 parcels in Mercer County?

25 A. I visited them since back in

1 1950's.

2 Q. And between 1950's and 1998 just
3 approximately how many times a year would you
4 visit those parcels on average?

5 A. I think I -- there was a time I
6 spent a summer there and, but you factor
7 everything in, I would still say two to three
8 times a year.

9 Q. Ever since the 1950's. So about
10 40, 45 years on average two to three times a year
11 you would visit these parcels?

12 A. Yes, sir.

13 Q. And would those visits be at, you
14 know, different times of the year?

15 A. Probably mostly in the summer or
16 fall, yes, sir.

17 Q. Okay. Did you ever visit it during
18 the spring time in those 40 years?

19 A. I have no recollection of a spring
20 visit, but could you have occurred.

21 Q. So you recall visits in the summer
22 and in the fall?

23 A. Yes, sir.

24 MR. FUSONIE: I don't have any
25 other questions.

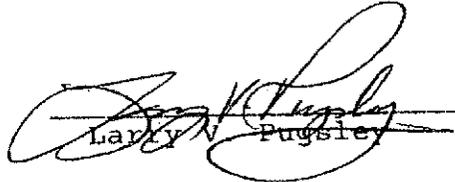
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review the transcript to correct any errors in the transcript. I can't tell you to do so, I can only recommend that you take the opportunity. You need to let the court reporter know now if you'd like to read your transcript or not?

A. Yes, I would like to read my transcript.

MR. COLE: Thank you very much.

MR. PUGSLEY: Thank you, sir.



Larry V. Pugsley

- - -
(The deposition was concluded)
- - -

ERRATA SHEET

I, Larry V. Pugsley, 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 23rd day of April, 2010.

PAGE	LINE	CORRECTION OR CHANGE AND REASON:
4	1	William Pugsley should be Larry V. Pugsley
5	19	"was in" should be "which is"
6	5	"--" should read "out of the service"
6	7	"flewings" should be "following"
7	23	delete "A." this ^{is} part of the question
13	1	Route "20" is "29" (Route 29)
16	2	Correct name "Emily M." is M. Leone Powell
16	3	"and" should be "an"
17	23	eliminate "in" to correct sentence
22	11	"typography" should be "topography"
27	14	delete "nd" to correct sentence
28	14	delete "has" to correct sentence
33	5	"January" should be "Jan" (name)
33	15	"A." should be "Q" (Question not Answer)
36	6	delete "have" to correct statement
36	14	"through" should be "to"
38	8	"than." should be "than that" (sentences connectives)

ERRATA SHEET

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I, Larry V. Pugsley, 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 23rd day of April, 2010.

PAGE LINE CORRECTION OR CHANGE AND REASON:

- 40 25 comma after "parcels" not "specifically"
- 41 4 -- "should be "common knowledge"
- 41 11 newspaper should be "newspapers"
- 41 24 -- "should read "know that"
- 41 25 delete "times" to correct statement
- 43 11 "I'm a fourth" not "I'm fourth"
- 44 2 "aware of the probable cause" should follow ^{"made"} A.
- 44 18 -- most" should be "Almost"
- 46 20 "it" should be between "but" and "could"
- 47 9 "em" should be "them" (2 times)

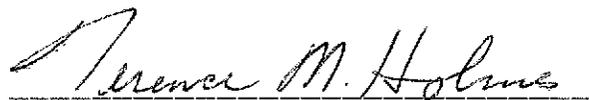
C E R T I F I C A T E

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STATE OF OHIO)
) SS:
COUNTY OF MERCER)

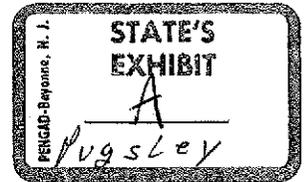
I, Terence M. Holmes, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do hereby certify that before the giving of his aforesaid deposition, the said LARRY V. PUGSLEY was by me first duly sworn to depose the truth, the whole truth, and nothing but the truth, that the foregoing is the deposition given at said time and place by said LARRY V. PUGSLEY; 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 4th day of April, 2010.



My Commission Expires: Terence M. Holmes
July 28, 2012 Notary Public - State of Ohio

AFFIDAVIT OF LARRY V. PUGSLEY



STATE OF OHIO)
) ss:
COUNTY OF HANCOCK)

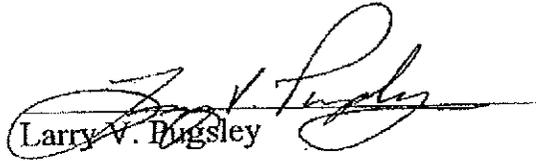
My name is Larry V. Pugsley, I am over the age of 21, and I am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

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

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

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

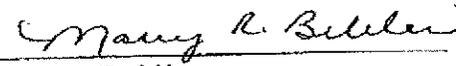
FURTHER AFFIANT SAYETH NAUGHT.


Larry V. Hugsley

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



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


Notary Public



N

44.2 ACRES

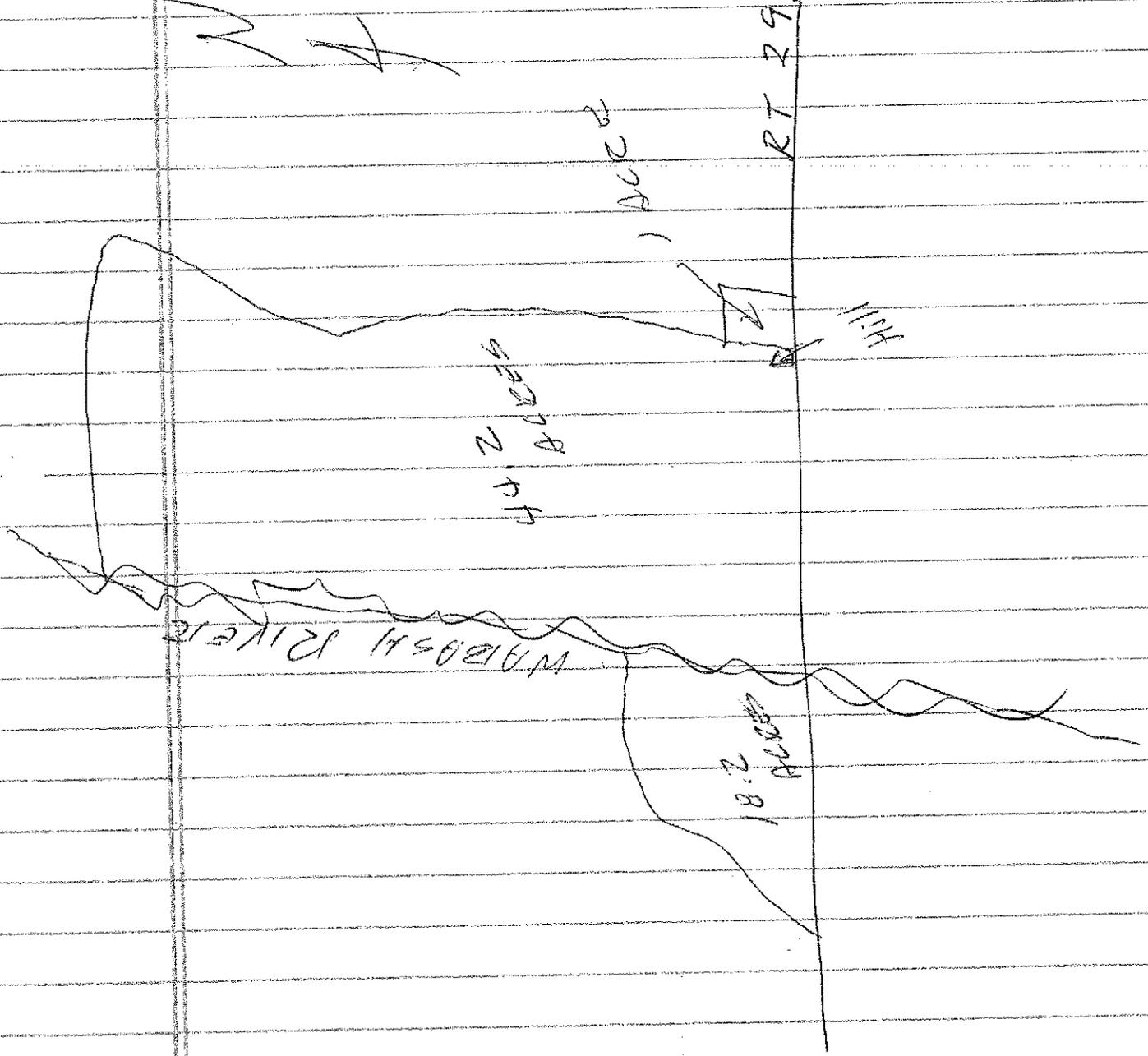
ACRES

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WABASH RIVER

18.2 ACRES



TAB 41

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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 WILLIAM RANSBOTTOM, 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, 3:25
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

5

RACHEL H. STELZER,
Attorney at Law
Environmental Enforcement
30 East Broad Street, Floor 25
Columbus, Ohio 43215-3400

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7

8

On Behalf of the Respondent:

9

THOMAS H. FUSONIE, ESQ.
and

10

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:

Examinations	DIRECT	CROSS
By Ms. Stelzer		4
By Mr. Fusonie	28	

E X H I B I T S

RESPONDENT'S DESCRIPTION MARKED

A	Affidavit of William Ransbottom	21
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WILLIAM RANSBOTTOM

of lawful age, a witness herein, called as upon
cross-examination, being first duly sworn, as
hereinafter certified, was examined and testified as
follows:

EXAMINATION

BY MS. STELZER:

Mr. William Ransbottom is being
deposed today by agreement of counsel. Mr.
Ransbottom, my names is Rachel Stelzer. I
represent the State of Ohio.

Q. Could you please state your name and
address for the record.

A. Bill Ransbottom, 410 Corona Avenue,
Oakwood, Ohio, 45419.

Q. Mr. Ransbottom, have you ever been
deposed before?

A. Yes.

Q. When?

A. Approximately 10 or 12 years ago, in
Oklahoma City. It was over an injury suit against
the company I worked for.

Q. Okay. Any other times?

A. No.

Q. Okay. My purpose today is to get a

1 better understanding of the flooding that's occurring
2 on your property. It's important, going forward,
3 that you speak loudly and clearly so the court
4 reporter can get down everything you're saying. It's
5 also important that if you are asked a question that
6 you don't understand, that you stop me and ask for
7 clarification. Can I get you to agree to do that?

8 A. Yes. Is the level I've been speaking
9 at okay?

10 Q. Seems sufficient. Okay. Have you
11 reviewed any documents in preparation for your
12 deposition today?

13 A. I looked at the Affidavit from a few
14 months ago.

15 Q. The Affidavit that you submitted in
16 this case?

17 A. Yes.

18 Q. Okay. Have you looked at anything
19 else?

20 A. There were attachments to that
21 Affidavit.

22 Q. Okay. Anything other than your
23 Affidavit?

24 A. No.

25 Q. Where are you employed?

1 A. I work for National Trail Local
2 Schools, New Paris, Ohio.

3 Q. And what do you do?

4 A. I'm an Intervention Specialist for
5 seventh grade special needs students, in K through 12
6 special, special needs students.

7 Q. Okay. Going forward, is it okay if I
8 call you Bill?

9 A. Yes.

10 Q. Okay. Bill, could you please describe
11 the location of the property that you own, that you
12 allege has been flooded in this case?

13 A. The property is off of Wabash Road and
14 Mudd Pike, about 15 minutes from here to the west.

15 Q. Off of Wabash Road and Wabash --
16 excuse me -- and Mudd Pike Road?

17 A. Yes.

18 Q. Where is the Wabash River in relation
19 to this property?

20 A. I believe -- I'm an absentee owner, so
21 I'm not being evasive, but many of my answers are
22 based on coming up here once a year or twice a year
23 for a couple hours. I believe it's about a parcel
24 away.

25 Q. How many acres are we talking about?

1 A. It's in the Affidavit. I think
2 approximately 165.

3 Q. And how long have you owned that
4 property?

5 A. I have a half ownership in it that I
6 received in 19 -- I'm sorry; I'm blanking out, but it
7 was in the late '90's.

8 Q. Okay.

9 A. It's in the Affidavit.

10 Q. Okay. Who else has an ownership in
11 this 165 acres?

12 A. My aunt is the other co-owner.

13 Q. And your aunt's name is?

14 A. Jean Karr.

15 Q. Could you spell Karr.

16 A. K-A-R-R, sorry.

17 Q. That's okay. Does your aunt live on
18 the property?

19 A. No.

20 Q. Is there a residence on the property?

21 A. No.

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

24 A. No.

25 Q. If -- Or excuse me. How far away,

1 approximately, is this 165 acres from the Beaver
2 Creek?

3 A. I can't answer that. I've been by the
4 Beaver Creek; I've been by the Wabash River and I've
5 been by Mudd Creek many times in the last 10 or, you
6 know, 12 years, but I'm not sure of the distance.

7 Q. You said you were an absentee owner.
8 Have you -- Are you from the Celina area?

9 A. No.

10 Q. Where are you from?

11 A. I was born in the Ozarks.

12 Q. Okay.

13 A. And I think with my family, my
14 father's family, is from Mercer County, although
15 nobody in the family has lived there since -- I don't
16 know -- the '50s or '60's.

17 Q. Do you own any other property in
18 Mercer County?

19 A. No.

20 Q. Do you rent any other property in
21 Mercer County?

22 A. No.

23 Q. Have you, at any time, ever owned any
24 other property in Mercer County, outside this 165
25 acres?

1 A. Me, personally?

2 Q. Yes, please.

3 A. No.

4 Q. Since you bought the property in the
5 late-'90's --

6 A. Ma'am.

7 Q. Please?

8 A. I did not buy the property.

9 Q. Oh, I'm sorry. Correct me. How did
10 you acquire the property?

11 A. From my father.

12 Q. Okay. How long did your father own
13 the property before transferring it to you?

14 A. He inherited his half, as my aunt did,
15 from my grandmother and I believe that was 1982. I
16 may be off by a year or so.

17 Q. Do you know how long your grandmother
18 owned the property prior to that?

19 A. It has been in the family, at least,
20 since John Ransbottom, and I believe that's been over
21 a hundred years, to the best of my knowledge.

22 Q. So there's no man-made structures or
23 buildings on this 165-acres. What are the natural
24 features of the property?

25 A. Could you rephrase that?

1 Q. Sure. Are there woods or trees on the
2 property?

3 A. Yes.

4 Q. Okay. Where are those located?

5 (Witness chuckling.)

6 A. There's a wood lot in one corner.

7 Q. Is it an acre?

8 A. I believe it's more than that.

9 Q. Okay. Do you know how much more?

10 A. Not exactly ma'am.

11 Q. Okay. Is this 165 acres divided into
12 different parcels?

13 A. There are two parcels.

14 Q. Okay. Do you know the acreage of each
15 respective parcel?

16 A. One is around 22 acres and the other
17 is a 140 -- low 40's.

18 Q. Okay. And were both parcels
19 transferred to you in the late-1990's at the same
20 time?

21 A. Yes.

22 Q. Okay. So there's a wood lot on the
23 property. Are there any water courses, waterways
24 running through the property?

25 A. Yes.

1 Q. Do they have names?

2 A. If they do, I'm not --

3 Q. Okay.

4 A. I'm not trying to be evasive. I just

5 --

6 Q. No. Were they man made?

7 A. No. I don't believe so.

8 Q. Okay. So you believe that they're

9 naturally occurring on the property. How many?

10 A. If you look at the Affidavit maps that

11 I sent in, there's one prominent one on the large

12 parcel.

13 Q. Do you know where that waterway drains

14 to?

15 A. No, ma'am.

16 Q. Do you know if it drains to the

17 Wabash?

18 A. I assume it does since that's the

19 major river in the area, but not from personal

20 experience.

21 Q. When was the last time you were

22 physically on the property?

23 A. Last June or July, I took a drive with

24 the renter around those parcels and around this part

25 of the -- that part of the county. Excuse me.

1 Q. June or July of 2009?

2 A. Yes.

3 Q. Before that time, when was the last
4 time you were on the property, driving around the
5 property?

6 A. I'm on it at least once a year,
7 usually, in June or July. I may have been on it
8 between those months. If I'm in the area, usually,
9 we stop and see the Highleys.

10 Q. Okay. Previous to acquiring the
11 property, in the late-'90's, were you -- had you been
12 on the property before?

13 A. Yes.

14 Q. Okay. How often?

15 A. As a little boy which would have been
16 in the '50's and maybe the early '60's, maybe a
17 couple of times a year some years. We lived in the
18 west and went back often. In the '70's, throughout
19 that decade, maybe a few times. I'm not sure what
20 years or times of year.

21 Q. What is this 165 acres used for?

22 A. It's rental property, cash rent
23 property for our family and the tillable parts are
24 rented.

25 Q. How many acres of this 165 are

1 tillable?

2 A. I may be off by a couple of acres
3 without going and checking, you know, the last
4 agreement, but around 135 acres.

5 Q. And you said that you cash rent the
6 property?

7 A. Yes.

8 Q. Who is your renter?

9 A. Bob and Pat Highley.

10 Q. How long have they rented the
11 property?

12 A. I'm not sure when it started, but I
13 believe in the 1970's.

14 Q. Since you acquired the property, have
15 they always been your renter?

16 A. Yes.

17 Q. Do you know how much they cash rented
18 the property for prior to the late '80's, when you
19 acquired the property?

20 A. No.

21 Q. Okay. Since you acquired the property
22 in the late-'90's, how much have they cash rented the
23 property for?

24 A. It's approximately \$10,000 a year,
25 total.

1 Q. Is that broken down to a per acre --

2 A. Yes, and I'd have to go check a number
3 to tell you.

4 Q. But it's \$10,000 --

5 A. Between my aunt and I.

6 Q. The 135 tillable acres?

7 A. Um-hum. And again, I'm not sure of
8 the accuracy of that number?

9 Q. Of the \$10,000 number?

10 A. Um-hum, yes.

11 Q. Are you sure of the 135 tillable acre
12 number?

13 A. I believe I told you I was within a
14 few acres of that.

15 Q. Okay. Thanks.

16 A. I think that's, I think that's
17 accurate.

18 Q. Is there a written lease agreement
19 with Bob and Pat Highley?

20 A. We exchange an agreement every year.

21 Q. Has the cash rent rate been consistent
22 -- been the same since you acquired the property in
23 the late-'90's?

24 A. I think there has been one change and
25 that was in the past year and it went up it might

1 have been a dollar or two dollars an acre.

2 Q. So you increased the per-acre amount
3 within the last year or so?

4 A. For this coming -- this year's rent.

5 Q. This growing season?

6 A. Yeah.

7 Q. Okay. To your knowledge, has this
8 property been used as farmland since it's been in
9 your family?

10 A. To my knowledge, yes.

11 Q. Do you know anything about the
12 drainage system that's on the property?

13 A. I do not.

14 Q. So do you know which property is
15 tiled?

16 A. I know there are drainage tiles on the
17 property.

18 Q. Do you have an idea of the percentage
19 of the property that's tiled?

20 A. No, I don't.

21 Q. Do you know if your renters, if Bob
22 and Pat Highley, participate in the Conservation
23 Reserve Program?

24 A. I'm not aware of it. They may or may
25 not.

1 Q. How about the Wetlands Reserve
2 Program?

3 A. Not to my knowledge, but again, I may
4 not be aware of it.

5 Q. Do you have any recordkeeping
6 requirements or do Bob and Pat Highley keep you
7 apprised of what's occurring on the property?

8 A. We talk several times a year on the
9 phone.

10 Q. And what is the typical content
11 conversation?

12 MR. FUSONIE: Objection, vague.

13 Q. But you can answer it if you are able
14 to.

15 A. In specific, what would you be
16 interested in?

17 Q. Are you talking about, you know, crop
18 yield?

19 A. That has been discussed, not every
20 call.

21 Q. Are you usually negotiating in the
22 cash rent amount?

23 MR. FUSONIE: Objection.

24 A. No.

25 Q. Do you discuss flooding that's

1 occurring on the property with Bob and Pat Highley?

2 A. Yes.

3 Q. Are you talking to Bob and Pat or just
4 one or the other?

5 A. Depends on the call, but one or the
6 other or both, depending.

7 Q. Does anyone help Bob or Pat -- Bob and
8 Pat -- excuse me -- farm the property, to your
9 knowledge?

10 A. I believe their son does, one of their
11 sons.

12 Q. Do you know their son's name?

13 A. Mike.

14 Q. Mike Highley?

15 A. Yes.

16 Q. Okay. An allegation in this lawsuit
17 involves or alleges that the changes to the spillway
18 in 1997 increased flooding on your property. Do you
19 have an understanding of the flooding that occurred
20 on your property prior to 1997?

21 A. No.

22 Q. Okay. Do you have an understanding of
23 the flooding that's occurring on your property after
24 the spillway was changed in 1997?

25 A. Yes, but perhaps not to the extent

1 that many of the people you're deposing do.

2 Q. What is your understanding of the
3 flooding that occurs on your property now, since the
4 spillway was changed in 1997?

5 A. To the best of my knowledge, the
6 property floods up to three times a year. It
7 involves debris, compaction, soil degradation,
8 erosion and has affected the crop yields of that
9 acreage and the quality of the land.

10 Q. Do you have first-hand knowledge of
11 anything you've just described?

12 A. I've seen debris on the acreage; I've
13 seen compaction; I've seen -- I'm distinguishing
14 between gravel and rock and sand versus debris as in
15 trees, that sort of thing; I've seen that, as well.

16 Q. Okay.

17 A. I've seen some erosion, though again,
18 I'm not here regularly, so I can't say to the extent
19 of it.

20 Q. And what is the rest of your
21 understanding of the flooding that's occurring on
22 your property based on?

23 A. Anecdotal reports from the renter.

24 Q. From both Pat and Bob Highley?

25 A. Yes.

1 Q. And what have they told you about the
2 flooding that's occurring on your property?

3 A. Pretty much what I've just told you.

4 Q. Do you know if Bob and Pat Highley
5 carry crop insurance?

6 A. I believe they do.

7 Q. Are you aware of any crop insurance
8 claims due to flooding that they've made since 1997?

9 A. I believe they have, but again, I'd
10 refer you to them.

11 Q. Have you ever seen any pictures of
12 flooding that's occurred on your property?

13 A. Yes.

14 Q. Who took those pictures?

15 A. I'm not sure.

16 Q. Who showed you those pictures?

17 A. I believe I got them from the
18 Highleys.

19 Q. What flood events did those pictures
20 -- were you led to believe those pictures depicted?

21 A. Well, I saw the acreage that year, so
22 I'm pretty sure it was 2003.

23 Q. Have you seen pictures from any other
24 flood events?

25 A. Not to my memory.

1 Q. The pictures of the 2003 flood that
2 you've seen, are you certain that it was your
3 property?

4 A. Yes.

5 Q. Okay. And what did those pictures
6 show?

7 A. It showed the parcel that's a--- I
8 apologize for the way I'm explaining this. Again,
9 I'm not up here very often. It showed the parcel
10 around the curve from the Highley's house flooded up
11 to road level and the reason I remember it so well is
12 that parcel is approximately six feet below road
13 level.

14 Q. How far away do the Highley's live
15 from your 165 acres?

16 A. If that's the parcel around the curve,
17 I would guess about a mile, maybe less as the crow
18 flies, but that's me guessing. I don't --

19 Q. You're guessing where the Highley's
20 live or you're guessing --

21 A. No, ma'am. I'm guessing how far away.
22 I was trying to answer your question.

23 Q. Okay, thank you. I was trying to be
24 clear.

25 A. Me, too. I'm not used to this as you

1 are.

2 (Xerographic Document, Affidavit of
3 William Ransbottom, was marked for
4 identification Exhibit A.)

5 Q. I'm going to hand you what's been
6 marked Respondent's Exhibit A. If you would review
7 that, please.

8 (Witness complying.)

9 Exhibit A is your Affidavit, dated August 24th, 2009;
10 correct?

11 A. I believe so, yes.

12 Q. And on page 3 is your signature?

13 A. Yes.

14 Q. Okay. Paragraph 2 of your Affidavit
15 references two Mercer County parcel numbers. Are
16 those parcel numbers the 165 or so acres we've been
17 talking about today?

18 A. Yes.

19 Q. Can you turn to Exhibit A to your
20 Affidavit, please.

21 (Witness complying.)

22 A. Yes.

23 Q. Your Affidavit indicates that Exhibit
24 A is a map that reflects the parts of your property
25 that flooded during the 2003 flood; correct?

A. Yes.

1 Q. Did you shade Exhibit A to your
2 Affidavit.

3 A. Yes.

4 Q. How did you know which portion of this
5 map to shade?

6 A. In the large parcel, the only part
7 that wasn't flooded was where there used to be a
8 house many years ago which is down -- Again, I'm not
9 familiar with the view, but in the lower left corner.

10 Q. The lower left corner of this map?

11 A. Yes.

12 Q. The unshaded portion is where a house
13 used to be; is that what you're saying?

14 A. Well, actually, I did the reverse.
15 You'll note at the top that I've got a flooded, not
16 flooded key.

17 Q. So the shaded area stops where?

18 A. The shaded area, that little block
19 down in the lower left.

20 Q. And you testified earlier that you
21 weren't physically -- Well, strike that. Were you
22 physically on the property in 2003, when it flooded?

23 A. I was there that summer, after it had
24 flooded.

25 Q. Okay. When you were physically on the

1 property, were there any -- did any water remain
2 standing on the property?

3 A. Yes.

4 Q. Okay. How many acres were covered
5 when you were, physically, on your property in 2003?

6 A. I tried to indicate on these aerial
7 views to the best of my memory what was flooded which
8 was most of the property.

9 Q. Were you able to access your property
10 in 2003 from any of the roads?

11 A. We drove -- I'm pausing because I'm
12 not sure if there was a road blocked or -- that we
13 had to avoid, but the water was up past the edge of
14 that large parcel -- the edge of the road -- I'm
15 sorry -- at the time I was there to the best of my
16 memory.

17 Q. My copy of Exhibit A to your Affidavit
18 is cut off. How many acres is the parcel that's
19 reflected in Exhibit A?

20 A. I think I said earlier low 140's. I
21 believe, 143 maybe, 141, something like that.

22 Q. And how many acres was not then?

23 A. I guess around an acre. Again, to the
24 best of memory.

25 Q. During the 2003 flood, how many times

1 were you, physically, on your property?

2 A. I believe just once.

3 Q. Was anyone with you?

4 A. Bob Highley.

5 Q. Okay. Could you flip to Exhibit B to
6 your Affidavit --

7 A. Yes.

8 Q. -- which a second parcel reflecting
9 23.85 acres; correct?

10 A. Yes.

11 Q. And you've shaded this map, as well?

12 A. Upper right corner in a -- I'll call
13 it a dagger-like, but a blade-like strip from that
14 upper right corner, down to what looks like a water
15 course.

16 Q. Did you, personally, shade this map,
17 Exhibit B?

18 A. Yes.

19 Q. Did anyone help you?

20 A. No.

21 Q. And this is also based on your
22 first-hand, personal knowledge of being on-site at
23 the 2003 flood event?

24 A. Being on the roads around the land,
25 yes.

1 Q. Thanks.

2 A. Again, to the best of my memory. It's
3 been several years.

4 Q. Exhibit B to your Affidavit is three
5 pictures; correct?

6 A. Yes.

7 Q. And were these the pictures you were
8 inspecting earlier?

9 A. Yes.

10 Q. And again, do you know who took these
11 pictures?

12 A. I don't know who took them and I'm not
13 sure if I got them from the Highleys, but they would
14 be the most likely people that I would have received
15 them from.

16 Q. Do you have any idea when these
17 pictures were taken?

18 MR. FUSONIE: Objection, asked and
19 answered.

20 Q. You testified earlier that these were
21 of the 2003 flood; correct?

22 A. I believe they are of the 2003 flood,
23 based on what I saw and based on the water being over
24 the road. They match up with my memory.

25 Q. Okay, but do you know what day, in the

1 summer of 2003, these pictures were taken?

2 A. No.

3 Q. How do you know that this top picture
4 on the first page of Exhibit B is your property?

5 A. The site line down the road, with the
6 tree line on -- I'm sorry -- I'm waiving my arm. I
7 apologize. The site line down the road, with the
8 tree line on the right and the tree line on the left
9 being so far behind it, it's recognizable as our
10 property.

11 Q. So are you absolutely certain that
12 that is your property?

13 A. I'm confident that that's our
14 property, yes.

15 Q. And the second picture, how do you
16 know that that is your property, the second picture,
17 on the first page of Exhibit B?

18 A. Same reason. There's a curve in the
19 road there and when you come around it, that's the
20 site, that tall tree that's in the center of the
21 picture.

22 Q. And are you certain that that second
23 picture, on page 1 of Exhibit C is, in fact, your
24 property?

25 A. Yes, I believe so.

1 Q. And then the final picture of Exhibit
2 C, the third picture, how do you know that's your
3 property?

4 A. The same, from memory, that that looks
5 the other parcels, the tree line behind it.

6 Q. When you were physically on your
7 property, in 2003, during that flood event, was there
8 more or less water than is reflected in these three
9 pictures?

10 A. I'm not sure. I've seen the pictures
11 now for a number of years. I'm not positive. In my
12 mind, they're comparable, but I've seen the pictures
13 more than I saw the property that year.

14 Q. Do you have any documentation of the
15 value of your property, the current value of your
16 property?

17 A. Define correct.

18 Q. Other than -- No, not correct,
19 current.

20 A. Oh, current; I'm sorry.

21 Q. Um-hum.

22 A. There's an annual tax statement that
23 comes out from the County. And as far as that being
24 current, I'm not sure. Again, the relationship
25 between the families has been so long that we've

1 never tested the market.

2 Q. Do you know if the property has been
3 appraised in the last 10 years?

4 A. I don't believe so.

5 Q. What do you hope to accomplish in this
6 lawsuit?

7 A. I would like the State to stop
8 flooding our land.

9 MS. STELZER: Tom, I don't have any
10 further questions.

11 MR. FUSONIE: Okay.

12 MS. STELZER: Probably Tom will have a
13 couple more questions.

14 EXAMINATION

15 BY MR. FUSONIE:

16 Q. Outside of the July, 2003, flooding of
17 your property, have you seen your, actually seen your
18 property flooded?

19 A. Yes.

20 Q. And when?

21 A. Again, I'm not sure of exact dates,
22 but I'm in the county every year, you know, one, two,
23 sometimes three times and most years, there has been
24 water on the property at some acreage.

25 Q. Since you've owned the property since

1 1999, there has been some flooding on the property
2 when you've visited most years?

3 A. To the best of my memory.

4 Q. Okay. And I believe you testified
5 that most years, when you visit, it's June or July?

6 A. Usually.

7 Q. Okay. Are there other specific flood
8 events on your property that kind of stand out?

9 A. 2005 there was a lot of talk about
10 flooding and the only reason I remember the date is
11 it was so recently after the big flood.

12 Q. Okay. And that was one that you,
13 visually, observed, as well?

14 A. I was up here in 2005.

15 Q. Okay. When you were visiting the
16 property prior to 1999, in the '50's, '60's and
17 '70's, did you ever observe any flooding on the
18 property?

19 A. In the '50's, '60's and '70's, I
20 wasn't thinking about farms. I was very young and,
21 no; I don't remember. There could have been, but I
22 don't remember.

23 Q. Are you confident that you would have
24 remembered a flood event, like the flood event in
25 2003 if it had occurred in the '50's, '60's and

1 '70's?

2 A. If there had been something -- Yeah.
3 If there had been something like that, I would have
4 remembered.

5 Q. Okay. How did the 2005 flood event
6 compare to the 2003, based on your visual
7 observations of each?

8 A. To the best of my memory, it wasn't as
9 extensive. There was a lot of water over the fields;
10 I'm not sure how deep. To the best of my memory,
11 Exhibit A is the first picture -- I'm sorry. I'm
12 getting ready to point again -- the water was not up
13 over the road.

14 Q. Were approximately -- Were more than
15 half of the tillable acres flooded in 2005, based on
16 your visual observations?

17 A. To the best of my memory, I'll say
18 about half or more, but again, I was up, I saw it and
19 I think so.

20 Q. Okay. So the one hour or so that you
21 were there in 2005, that's your testimony, based on
22 the visual observation from where the flooding was
23 that hour that you saw it?

24 A. To the best of my memory.

25 Q. Could have been worse before that; you

1 just were there to know?

2 A. Yes.

3 Q. Do you believe, Mr. Ransbottom, that
4 you would charge the Highleys less rent if the
5 property was not subject to the flooding that has
6 occurred on it since 1997?

7 A. Less rent?

8 Q. Do you believe they -- Sorry. Strike
9 that question. That was a poor question. End of a
10 long day.

11 Do you believe you would charge the
12 Highleys more rent if the property was not subject to
13 the flooding that has occurred on it since 1997?

14 A. I'm going to give you a -- what's not
15 going to sound like a direct answer and it's based on
16 the relationship with the Highleys. The Highleys and
17 our family have dealt with this land together for
18 several decades. If it were someone else, I would
19 say yes.

20 Q. Okay. And do you believe that the
21 fair market value of your property has been impacted
22 by the fact that it's subject to the flooding since
23 1997?

24 A. Keeping in my mind the comment I made
25 earlier about the value, market value, I think was

1 the term used, I'm not sure what the market value is,
2 but it is an asset and any damage to an asset affects
3 the market value, so I'll say yes to that.

4 Q. Okay. Because the flooding is damage
5 to your asset?

6 A. Yes.

7 Q. And the erosion caused by the flooding
8 is damage to your asset?

9 A. Yes, the erosion and other -- correct.

10 Q. Have you walked the banks of the
11 Wabash River as it's adjacent to your property?

12 A. No, I have not.

13 Q. Okay. You have, visually, observed
14 erosion of your property, based on the flooding
15 that's occurred?

16 A. Erosion along the waterway banks, yes.

17 Q. Of the waterway which is the unnamed
18 waterway across --

19 A. It could be any or all of several
20 waterways around the -- If you've spent time with Bob
21 Highley, you know he talks about a lot of things.

22 Q. So you, visually, observed the erosion
23 of the banks of the waterway that cuts across your
24 property with Mr. Highley?

25 A. Yes.

1 Q. And based on those observations,
2 you've noticed bank erosion that's occurred since
3 2003 or because of the 2003 flood?

4 A. Yes.

5 MR. FUSONIE: I don't have any other
6 questions, Rachel.

7 MS STELZER: Neither do I.

8 MR. FUSONIE: All right. Mr.
9 Ransbottom, if the State's attorneys order
10 a written transcript of this deposition,
11 you have the right to review it and correct
12 any errors in the transcript. I can't tell
13 you to do that. I can only make the
14 recommendation that you take the
15 opportunity to read the transcript. You
16 need to let the court reporter know now
17 whether you would like to read the
18 transcript or not.

19 THE WITNESS: I would like to read the
20 transcript.

21 MR. FUSONIE: Thank you.

22 MS. STELZER: Thank you very much.

23 THE WITNESS: Thank you.

24

25 (At 3:58 o'clock, p.m., the deposition concluded.)

ERRATA SHEET

I, William Ransford, 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 8th day of May, 2010.

PAGE	LINE	CORRECTION OR CHANGE AND REASON:
4	10	change names to name
6	5	Add period after student. Delete , in K through 12 special, special needs students.
6	14	Change Mudd to Mud
6	16	Change Mudd to Mud
6	16	Delete Road
8	5	Change Mudd to Mud
26	6	Change waiving to waving
26	7	Change site to sight
30	25	Add it between could and have
31	1	Change were to weren't
31	24	Delete my
32	9	After other add negative effects.
32	20	After the ^{around the} add property that I saw riding around with Bob Highley.
32	21	After things add about the property and surrounding farms.
33	9	attorneys (capitalize the A)

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William Ransbottom 5/8/10
William Ransbottom

Bronwen Owsley 5/8/10
My Commission expires Nov. 30, 2013



BRONWEN OWSLEY, Notary Public
In and for the State of Ohio
My Commission Expires Nov. 30, 2013

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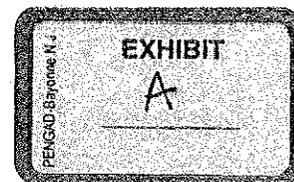
STATE OF OHIO)
) SS:
COUNTY OF MERCER)

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 WILLIAM RANSBOTTOM 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 WILLIAM RANSBOTTOM; 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 WILLIAM RANSBOTTOM



STATE OF OHIO)
) ss:
COUNTY OF MERCER)

My name is William Ransbottom. 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 an owner of real estate described as Mercer County Parcel Numbers 28-013400.0000 and 28-013500.0000.
3. I have been an owner since 1999 of Mercer County Parcel Number 28-013400.0000 and 28-013500.0000.
4. Mercer County Parcel Number 28-013400.0000 and 28-013500.0000 lie adjacent to the Wabash River and Beaver Creek near their confluence.
5. Since I began owning the property in 1999, Mercer County Parcel Number 28-013400.0000 and 28-013500.0000 have been subject to continuing, persistent, frequent, and inevitable increased severe flooding.
6. Specifically, Mercer County Parcel Numbers 28-013400.0000 and 28-013500.0000 have flooded approximately multiple times, including, but not limited to, July, 2003 and January, 2005. In 2003, Mercer County Parcel Numbers 28-013400.0000 and 28-013500.0000 were inundated with water at depths varying from approximately one to six feet.

DON000571

7. To date, the most invasive flood occurred in 2003 with approximately 142 acres of Mercer County Parcel Number 28-013400.0000 being flooded with approximately one to six feet of water. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Number 28-013400.0000 is attached hereto as Exhibit A. I have shaded in the area of the parcel that was flooded in 2003.

8. To date, the most invasive flood occurred in 2003 with approximately 22 acres of Mercer County Parcel Number 28-013500.0000 being flooded with approximately one to six feet of water. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Number 28-013500.0000 is attached hereto as Exhibit B. I have shaded in the area of the parcel that was flooded in 2003.

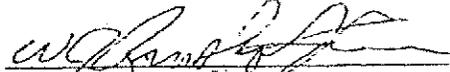
9. Attached hereto as Exhibit C are photographs that truly and accurately depict the flooding of Mercer County Parcel Numbers 28-013400.0000 and 28-013500.0000 being flooded with approximately one to six feet of water.

10. As a direct result of the flooding, Mercer County Parcel Numbers 28-013400.0000 and 28-013500.0000 have suffered damage in the form of field and bank erosion, the deposit of silt, sand, stones, and other debris, soil compaction, and the destruction of trees, bushes, shrubs, vines and saplings.

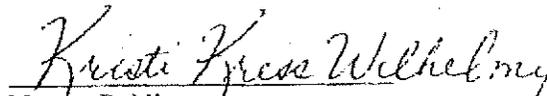
DON000572

11. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 28-013400.0000 and 28-013500.0000.

FURTHER AFFIANT SAYETH NAUGHT.


William Ransbottom

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


Notary Public

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

DON000573

EXHIBIT A
TO
AFFIDAVIT OF
WILLIAM RANSBOTTOM

DON000574



Legend

Administrative

Townships

Neighborhoods

Parcels

Parcels

Transportation

State Highways

US Highways

Water

Lake

Streams

EXHIBIT



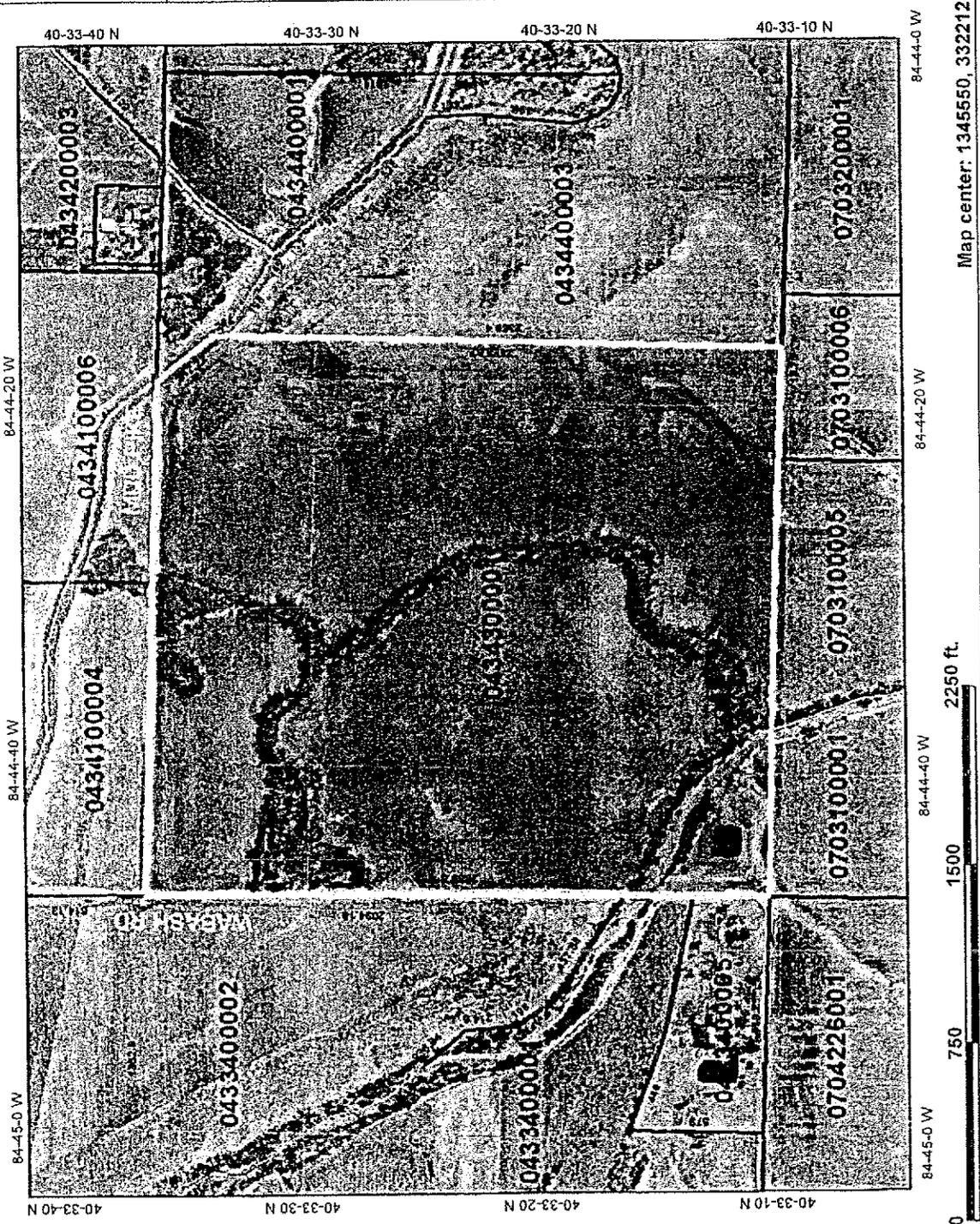
TABLET

Scale: 1:8,000



Flooded
Not Flooded

Mercer County Ohio



2250 ft.

1500

750

0

Map center: 1345550, 332212

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.

William J. Ransbottom (1/2) and Jean A. Karr, Trustee of the
Jean A. Karr Revocable Trust Dated 10-9-01 (1/2)
-0- Mud Pike

EXHIBIT B
TO
AFFIDAVIT OF
WILLIAM RANSBOTTOM

DON000576

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Mercer County Ohio

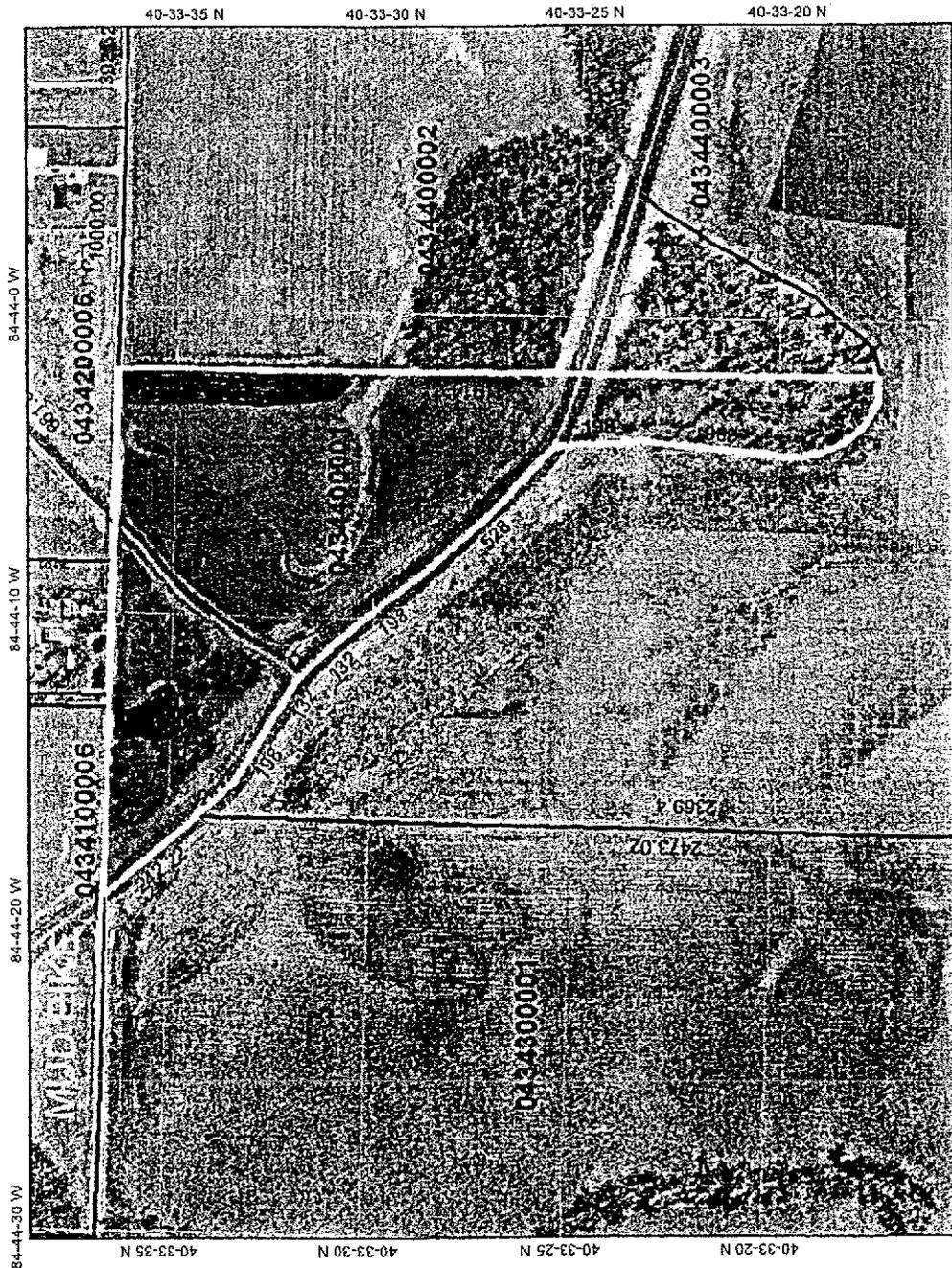


Legend

- Administrative
 - Townships
 - Neighborhoods
- Parcels
- Transportation
 - State Highways
 - US Highways
- Water
 - Lake
 - Streams

EXHIBIT
B

Scale: 1:5,000



Map center: 1347211, 332523

Scale: 0 500 1000 1500 ft

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.

William J. Ransbottom (1/2) and Jean A. Karr, Trustee of the
 Jean A. Karr Revocable Trust Dated 10-9-01 (1/2)
 -0- Mud Pike
 Parcel No.: 28-013500.0000 - 23.85 acres

EXHIBIT C
TO
AFFIDAVIT OF
WILLIAM RANSBOTTOM

DON000578



DON000579





DON000580

TAB 42

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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 THOMAS D. RASAWEHR, 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 Thursday, February 18, 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
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

5

Rachel H. Stelzer,
Attorney at Law
Environmental Enforcement
30 East Broad Street, Floor 25
Columbus, Ohio 43215-3400

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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: THOMAS D. RASAWEHR

Examinations	DIRECT	CROSS
By Ms. Stelzer		4, 39
By Ms. Brewer		37

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of Thomas D. Rasawehr	35

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THOMAS D. RASAWEHR

of lawful age, a witness herein, as upon
cross-examination, being first duly sworn, as
hereinafter certified, was examined and testified as
follows:

CROSS-EXAMINATION

BY MS. STELZER:

Good morning. My name is Rachel
Stelzer. I'm here on behalf of the State
of Ohio.

THE WITNESS: Um-hum.

MS. STELZER: Ohio Department of
Natural Resources.

Q. Could you please state your name and
address for the record.

A. My name is Thomas D. Rasawehr,
R-A-S-A-W-E-H-R, and I live in Celina, on 614 North
Ash Street, Celina, Ohio, 45822.

Q. Should I call you Mr. Rasawehr?

A. That's fine.

Q. Okay. Have you ever been deposed
before?

A. No.

Q. Okay.

MS. STELZER: Well, my purpose today is to

1 get a better understanding of the flooding that's
2 occurring on your property.

3 THE WITNESS: Um-hum.

4 MS. STELZER: It's important that you
5 speak clearly and loudly so the court
6 reporter can get down everything you say.

7 THE WITNESS: Okay.

8 MS. STELZER: It's also important that
9 if you have a question, if you don't
10 understand something, you let me know.

11 THE WITNESS: Um-hum.

12 MS. STELZER: Can I get you to agree
13 to stop me if you don't understand a
14 question?

15 THE WITNESS: Yes.

16 Q. Have you reviewed any documents in
17 preparation for your deposition today?

18 A. Only my Affidavit.

19 Q. And you only submitted one Affidavit
20 in this case; correct?

21 A. Yes.

22 Q. Where are you employed?

23 A. At Crown Equipment, in Celina, Ohio.

24 Q. And how long have you worked there?

25 A. I worked there over 20 years.

1 Q. And what, exactly, do you do?

2 A. A test engineer.

3 Q. Did you pursue education after high
4 school?

5 A. Yes. There was, like, a one-year of
6 heating/air-conditioning, in Ft. Wayne, Indiana and
7 then there was two years at Lima Technical College,
8 in Lima, Ohio.

9 Q. Okay. Could you please describe the
10 location of the property that you own that you allege
11 has been flooded in this case?

12 A. Yes. It's about approximately seven
13 miles west of Celina, on State Route 29. It is on
14 the northwest corner of the intersection of 28 and
15 Erastus Durbin Road.

16 Q. Do you live on that property?

17 A. No. We cash rent that property.

18 Q. Cash rent it to who?

19 A. To Mike Highley.

20 Q. Anyone else?

21 A. No.

22 Q. How much do you cash rent it for?

23 A. Eighty-five dollars an acre.

24 Q. How many acres are we talking about?

25 A. Eighty acres or 79 -- or approximately

1 79-to-80 acres and then I own that jointly with my
2 brother and my sister.

3 Q. Do you rent the entire 79 or 80 acres
4 to Mike Highley?

5 A. Yes.

6 Q. And that's the entire property;
7 there's no more acreage out there?

8 A. Correct.

9 Q. How long have you three owned this
10 property?

11 A. Since 1984, I believe.

12 Q. Do you know who owned the property
13 before you?

14 A. Yes. Lavone and Paul Nickel owned the
15 property and at that time, dad farmed it.

16 Q. The Nickles are your parents?

17 A. There actually was an older couple
18 that, actually, my dad farmed that property for their
19 dad and then, basically, he farmed for them and they
20 were older and then when they passed on, they left
21 the farm to us kids. So they were -- It was an older
22 couple and they didn't have any children.

23 Q. Okay. How long did your dad own that
24 property?

25 A. I -- Many years. I don't know.

1 Q. For longer than a decade?

2 A. I believe so, yes.

3 Q. Do you think 20 years?

4 A. It's very possible.

5 Q. Is that 79 or 80 acres divided into
6 separate tax parcel numbers?

7 A. No.

8 Q. It's one single parcel number?

9 A. Yes.

10 Q. Do you own any other property outside
11 this 79 or 80 acres we'll be talking about and the
12 home address you gave us at the beginning of the
13 deposition?

14 A. No.

15 Q. Do you lease or rent any other
16 property in the area?

17 A. No.

18 Q. Can you describe where the 79 or 80
19 acres is in relation to the Beaver Creek?

20 A. Beaver Creek runs right through the
21 property. There's a field that's on the north side
22 of Beaver and then there's the remaining part of the
23 property is on the south side of Beaver and so
24 Beaver, actually, you know, cuts right through the
25 property.

1 Q. How many acres are on the south side
2 of the Beaver?

3 A. On the south side?

4 Q. Approximately.

5 A. Approximately, I would say probably,
6 say, 60.

7 Q. How far away is your property from the
8 Wabash?

9 A. Approximately two-to-three miles.

10 Q. What is on your property?

11 A. Just farm ground. There's primarily
12 farm ground and then there is a little, a little
13 house that someone else lives in and, you know, we
14 sold a little -- There used to be a house setting
15 there and that house burnt down and then we,
16 basically, sold that little section, you know, to
17 someone and so as far as what we own, it's just farm
18 ground.

19 Q. Okay. So no man-made structures at
20 all?

21 A. No.

22 Q. Are there any trees on the 79 or 80
23 acres?

24 A. Some in the ditch banks. There's a
25 creek that runs -- that connects to Beaver and there

1 are some trees, I think in that, in that ditch bank,
2 but nothing as, you know, like something that you
3 would plant.

4 Q. The creek that connects to the Beaver,
5 does that have a name?

6 A. I believe it's Big Run.

7 Q. Is it natural or man-made?

8 A. Natural.

9 Q. Are there any other water courses
10 running on the property?

11 A. No.

12 Q. Is your property pretty flat?

13 A. Relatively flat. There's, you know, I
14 think towards the north there's a little higher
15 ground there, but there's -- it's -- I guess it's a
16 relative thing, so it's relatively flat. There's
17 some hills there.

18 Q. Is the property -- Strike that. You
19 mentioned that the property is used for farm land.
20 Approximately how long, to your knowledge, has it
21 been used as farmland?

22 A. Probably -- That's a pretty open --
23 Could you be more specific?

24 Q. Sure. Well, I'll just rephrase. To
25 your knowledge, how long has the property been used

1 for farmland?

2 A. Forever.

3 Q. Has there been any other use of the
4 property to your knowledge?

5 A. No.

6 Q. Is it good farmland?

7 MS. BREWER: Objection.

8 A. It's good farmland, yes.

9 Q. What crops were farmed last year?

10 A. Actually, I don't have -- I know that
11 Mike farms with corn and beans and wheat and,
12 actually, I don't, you know, actually, pay attention
13 to what Mike plants on the ground since he cash rents
14 it.

15 Q. Okay. Do you know if anyone helps
16 Mike?

17 A. Yes. I think his dad helps.

18 Q. Um-hum.

19 A. And I think, you know, his family
20 helps him, as well.

21 Q. Can you describe the drainage system
22 on your land?

23 A. Probably it's, you know, clay tile and
24 there's -- I'd be guessing, but I believe there's
25 some plastic tile in there, too.

1 MS. BREWER: And I will instruct you
2 not to guess.

3 THE WITNESS: Okay.

4 MS. BREWER: You can give estimates or
5 approximates, but you don't need to guess.

6 THE WITNESS: Okay.

7 Q. Do you know if the entire property is
8 tiled?

9 A. Yes.

10 Q. Did you install those tiles?

11 A. We installed some tile, yes.

12 Actually, to be more specific, that occurred when dad
13 was farming it and not during the time period that we
14 farmed it -- or I mean that we owned it.

15 Q. So since you were given the property
16 in 1984, you haven't done any tiling?

17 A. Tiling, no.

18 Q. So is it fair to say that your dad
19 tiled the whole property?

20 A. Lavone and Paul Nickel, when they
21 owned it, you know, the tiling was done then.

22 Q. Please?

23 A. Lavone and Paul Nickel.

24 Q. Thanks. Do you know if or do you
25 participate in the Conservation Reserve Program?

1 A. No.

2 Q. How about the Wetlands Reserve
3 Program?

4 A. No.

5 MS. BREWER: No, you don't or no, you
6 don't know.

7 THE WITNESS: No, we don't.

8 Q. You do not participate in either of
9 those programs?

10 A. We do not.

11 Q. Do you know if Mike Highley
12 participates in those programs?

13 A. I do not, no.

14 Q. So when was the last time you were out
15 on the property?

16 A. It was probably -- I don't know the
17 last time it was. It was approximately a year or
18 two, couple years. I've been past there, but as far
19 as goin' out there and walking on the property, I
20 haven't.

21 Q. So the last time you were, physically,
22 on the property was two years ago, you think?

23 A. Approximately.

24 Q. Do you know what time of year that
25 was?

1 A. No.

2 Q. What season?

3 A. No.

4 Q. Do you remember why you were out there

5 two years ago-ish?

6 A. Well, sometimes, we do four-wheeling

7 and stuff like that, so it could be related to that.

8 Q. So four-wheeling at some point when

9 there's not crops planted?

10 A. Correct.

11 Q. So what seasons would that be, winter?

12 A. Yeah. It could be -- Well, actually,

13 it'd probably be, like, spring and summer and --

14 Well, summer, there is some crops, but I mean there

15 is crops, but fall.

16 Q. How many times have you been

17 four-wheeling on your property, approximately?

18 A. Many times.

19 Q. How many is many?

20 A. At, you know, in the mid-`80's,

21 early-`90's, it was probably multiple times a week,

22 so it could be, you know, several times a week.

23 Recently, it -- rare.

24 Q. How many times do you think you've

25 been out to the property in the past 10 years?

1 A. That would be --

2 THE WITNESS TO HIS COUNSEL: Is it
3 okay to guess or --

4 MS. BREWER: You can estimate if you
5 can. You don't need to guess, though.

6 A. I would estimate approximately 25
7 times.

8 Q. So approximately 25 times, you've,
9 physically, been walking around the property in the
10 past 10 years?

11 MS. BREWER: Objection. Go ahead.

12 A. I would say that it's actually being
13 around the property.

14 Q. Okay. I'm interested in how many
15 times you've physically been on the property in the
16 last 10 years; sorry if I wasn't clear.

17 A. I would say, you know, 15-to-20 times,
18 maybe.

19 Q. And then you mentioned that you have
20 occasion to drive by the property; correct?

21 A. Up until, I think it was 2008, when
22 mom passed away, we did. She lived about a mile away
23 from there.

24 Q. How much of your property can you see
25 from the road?

1 A. You can see -- Basically, you can see
2 the entire south portion of the property and then the
3 north part is across Beaver, so you can, essentially,
4 see the whole thing.

5 Q. I'd like to talk about the flooding
6 that occurred on your property prior to the new
7 spillway being put in, in 1997.

8 A. Um-hum.

9 Q. So how often, prior the spillway
10 construction did flooding occur on your property?

11 A. There was some flooding with, I guess,
12 with the old spillway, there was some flooding, some
13 flooding in the spring and -- but I believe, you
14 know, since the new spillway has been put in that
15 it's definitely been worse. It seems like that it
16 lasts longer and that more of the property floods.

17 Q. You mentioned that flooding occurred
18 most often in the spring.

19 A. Um-hum.

20 Q. Why did flooding occur at that time?

21 MS. BREWER: Objection.

22 A. I think because the lake is, the lake
23 is high and there is -- when the spring thaw and the
24 water -- when the lake is full, it basically, goes
25 over the spillway, so that creates more flooding from

1 Beaver.

2 Q. Prior to the construction of the new
3 spillway, did the property flood once every few
4 years?

5 A. I guess to maybe to some degree, it
6 flooded, you know, you know, that a way. I think
7 that it's definitely worse since the new spillway.

8 Q. Okay, but I want to talk before the
9 spillway.

10 A. Uh-huh.

11 Q. So would there be ponding on the
12 property every year?

13 A. No. We, you know, we trapped, you
14 know, the Beaver ditch when, you know -- You know,
15 that was before the spillway and Beaver would,
16 actually, you know, it would go up, but it would go
17 down pretty fast and so, you know, my sense is that
18 it doesn't go down as fast as it used to, you know.

19 Q. Before the new spillway was installed,
20 did your property flood when the Beaver Creek
21 overflowed its banks?

22 A. Yeah. When the Beaver Creek
23 overflowed its banks, it flooded the property.

24 Q. Okay. Did the Beaver Creek have to be
25 out of bank before your property would flood?

1 A. Yes.

2 Q. Did your property ever flood before
3 the Beaver Creek was out of banks?

4 A. No. That was the principle reason
5 that it flooded was the Beaver Creek.

6 Q. What would go down first, the water on
7 your property or the Beaver Creek?

8 A. Beaver Creek goes down, you know, so
9 all the flooding that occurs is generally due, you
10 know, as a result of the Beaver Creek flooding.

11 Q. When the water would recede and the
12 Beaver Creek would go back down in bank, would you
13 still have water on your property?

14 A. Then it would go down, so you know,
15 the, you know, the whole issue of flooding is as a
16 result of when Beaver Creek floods and as soon as
17 Beaver Creek goes down, then the water goes down.

18 Q. Does it happen at the same time?

19 A. They're directly related, so it
20 happens fairly quickly.

21 Q. So prior to the new spillway being put
22 in, how long after the Beaver Creek was back in bank
23 did flooding go down on your property?

24 A. Right away. I mean it, you know, the
25 Beaver Creek would, when we were trapping, Beaver

1 Creek would be, you know, it could go up and then,
2 you know, we couldn't trap and then, you know,
3 probably in a day or so we could be right, you know,
4 back out there trapping again, and so Beaver Creek
5 would, actually, go down very fast.

6 Q. So prior to the new spillway, when
7 flooding did occur, what parts of your property
8 flooded?

9 A. It would be the, it would be the
10 south, southeast -- the southeast field and then
11 across from Big Run Ditch, the -- that south field
12 there and then over on the north side, of, you know,
13 some of that, but it wasn't as much as, you know, as
14 we've seen, you know, after the spillway.

15 Q. So is it correct to say that on -- the
16 property on both sides of the Beaver Creek flooded,
17 that portion; is that what you're describing?

18 A. To a lesser degree than it does now.

19 Q. Okay.

20 A. Yes.

21 Q. How many acres were affected by
22 flooding in flood events prior to the new spillway?

23 A. I guess my estimate would be that it
24 would be probably one-third of what it floods now.
25 So, you know, today we, you know, I guess we think

1 that it's about two-thirds of the property floods as
2 a result of the new spillway and one-third of that
3 was what it used to be. I'm --

4 MS. BREWER: Don't look at me to do
5 the math.

6 THE WITNESS: No, no.

7 Q. Who is the we you're talking about?
8 You said, "we think," the property floods.

9 A. Would be me and my siblings.

10 Q. Okay. Okay, let me see if I can do
11 the math. So your property is 79 or 80 acres --

12 A. Yep.

13 Q. -- and two-thirds of the property --

14 A. Would be, yeah, 60 acres.

15 Q. Is around what you believe floods
16 after the spillway --

17 A. Right.

18 Q. -- right? And so --

19 A. One-third of that would be 20 acres.

20 Q. That was, actually, easy math.

21 A. Yeah.

22 Q. I could have done that. I wish you
23 could have given me something --

24 Okay. So around -- Prior to the new
25 spillway being put in --

1 A. Um-hum.

2 Q. -- around 20 acres of your property

3 would flood; correct?

4 A. That would be my estimate, yes.

5 Q. And were those 20 acres located on

6 both sides of the Beaver Creek?

7 A. Yes. It would include both sides.

8 Q. What was the highest level waters

9 reached during flood events during flood events

10 before the new spillway was put in?

11 A. I don't know.

12 Q. When your property flooded, how long

13 would the water remain on the land?

14 A. Before the spillway?

15 Q. Yes, please. Before the new spillway.

16 A. I think that it would be there maybe a

17 day or so.

18 Q. Did it ever stay on the property for

19 longer than a day?

20 A. I don't know.

21 Q. What was the longest amount of time

22 water remained in your land before the new spillway

23 was put in?

24 A. I don't know.

25 Q. What was the largest flood event you

1 remember before the new spillway was put in?

2 A. I guess I don't know what date that
3 would be. I don't recall what date that would be.

4 Q. But it's accurate to say you were on
5 the property more often before the new spillway was
6 put in; correct?

7 A. Yes.

8 Q. Did any large flood events occur in
9 the early '90's?

10 A. I don't recall.

11 Q. So before the new spillway was
12 installed, what damage or harm did your property
13 experience from the flood events?

14 A. There could be some crop loss, but I
15 don't think it was, you know -- I think that's about
16 it because it seemed like we didn't really have a lot
17 of issues with the ground prior to the spillway.

18 Q. To your knowledge, did the property
19 ever suffer drainage tile failure?

20 MS. BREWER: Pre-'97?

21 Q. Pre-'97?

22 A. Pre-'97, no.

23 Q. Erosion due to flooding before 1997?

24 A. No. We didn't have -- I don't believe
25 'cause when we were farming it pre-spillway,

1 generally, we didn't really do anything special to
2 the ground that a way. After the spillway, I think
3 we had an issue in two or three spots in the field,
4 where a tile blew out.

5 Q. You said, "we were farming." When did
6 you, personally, farm this property?

7 A. Well, actually, I was assisting. You
8 know, dad farmed the property and I drove tractor on
9 it.

10 Q. For how many years did you do that?

11 A. Up until dad retired and that would
12 have been -- I don't recall what year he retired, but
13 that was -- that would have been in the early '90's,
14 so I would have approximately, you know, 17 years or
15 so.

16 Q. So in helping your dad farm for that
17 17 years, how many times a week were you at the
18 property?

19 A. Well, in the spring of the year, you
20 know, we would spend, you know, several days farming
21 it.

22 Q. Um-hum.

23 A. And then in the summer, we would be
24 cultivating it and in the fall we would be harvesting
25 and plowing. So that would probably be 15-to-20 days

1 a year.

2 Q. Okay. So I want to talk a little bit
3 more about harm or damage --

4 A. Um-hum.

5 Q. -- that the property experienced
6 before the new spillway, and you mentioned that you
7 remember some crop loss. Can you recall specific
8 years where crop loss occurred?

9 A. This is --

10 Q. Pre-new spillway.

11 A. No, I don't recall specific years.

12 Q. Of the 17 years that you worked on the
13 farm with your dad, how many times did crop loss
14 result from flooding?

15 A. I would estimate maybe, you know,
16 maybe -- on average, you know one in five years there
17 might be some crop loss, as far as, you know, maybe a
18 small area would have to be replanted or something
19 like that.

20 Q. So in the 17 years that you helped
21 your dad farm the property, crop loss only occurred
22 three times?

23 MS. BREWER: I'm going to object to
24 that, but you can answer if you know and
25 I'm going to instruct you again not to

1 guess.

2 Q. Well, I just attempted to do the math
3 for you.

4 A. Yeah.

5 Q. You said that you farmed the property
6 for 17 years.

7 A. Yeah.

8 Q. You estimated that one in every five
9 years crop loss resulted --

10 A. Um-hum.

11 Q. -- from flooding, so is it fair to say
12 that every three years -- or excuse me -- three times
13 --

14 A. The math is correct.

15 Q. Thank you.

16 A. Yes.

17 Q. Would you say -- Is that a --

18 A. To be accurate, I think it occurred
19 probably more than that, so --

20 Q. How much more?

21 A. Maybe five times.

22 Q. So during the 17 years that you helped
23 your dad farm the property, you remember crop loss
24 occurring five times due to flooding?

25 A. Yes, to a, you know, sometimes to a

1 lesser degree. It might have been a small area that
2 would have to be replanted or something like that,
3 but, you know, not a, you know, a crop loss to the
4 entire field. It would be, you know, related to a
5 small area that would have to be replanted.

6 Q. Pre-1997, new spillway being
7 installed, did flooding ever cause debris to be left
8 on your land?

9 A. Yes.

10 Q. What types of debris?

11 A. Some drift wood.

12 Q. Anything else?

13 A. That was, predominantly, you know, the
14 kind of matter that was, you know, you know, on the
15 property and, you know, that was, actually, prior to
16 Beaver being actually -- You know, they went through
17 and cleaned out Beaver and after that, we didn't have
18 that issue, so you know, there was -- You know, when
19 we were farming it, Beaver had not been -- they
20 hadn't gone through Beaver and, actually, removed a
21 lot of the trees and stuff on the ditch bank and then
22 later on, that happened.

23 Q. Do you know when they cleaned the
24 Beaver?

25 A. I don't recall what year that was.

1 Q. Do you remember if it was in the
2 '80's?

3 A. I believe it was in the '80's.

4 Q. Do you remember late-'80's,
5 early-'80's?

6 A. I believe mid-'80's.

7 Q. How does drift wood debris impact
8 farming operations?

9 A. It increased costs to -- because of
10 the additional labor that it takes to clear the
11 debris from the field and that slows down the, you
12 know, time to plant the crop. And then if it occurs
13 when the crop is on the field, then it becomes more
14 difficult because you end up damaging crop to remove
15 it, but --

16 Q. Did your dad or you carry crop loss
17 insurance?

18 A. No.

19 Q. During the time you helped your dad
20 farm?

21 A. No.

22 Q. To your knowledge, did you report your
23 crop loss during the years you helped your dad farm
24 to any federal or state agency?

25 A. No.

1 Q. Did you or your dad or anyone helping
2 you farm the property make any records of property
3 conditions or field conditions?

4 A. No.

5 Q. Pictures, diary, calendars of field
6 conditions?

7 A. No.

8 Q. Okay. Let's talk about flooding that
9 occurred on the property after the new spillway was
10 constructed in 1997.

11 A. Um-hum.

12 Q. How often has flooding occurred since
13 the new spillway was put in?

14 A. Probably the best, you know, the -- We
15 cash rent the ground and probably Mike Highley could
16 best answer those questions. He cash rents it and
17 since I don't have -- don't go out there as
18 frequently, he could better answer those questions, I
19 believe.

20 Q. Since the new spillway was put in, in
21 1997, have you ever, physically, been on the property
22 when it's been flooded?

23 A. I've been out past the property, like
24 in 2003. The 2003 flood, you know, I was out, out
25 around there, actually. I was at my mom's house and

1 then -- It's just down the road there.

2 Q. So you were on the road that abuts
3 your property?

4 A. On 29 that, you know, passes, you
5 know, on the south side of the property.

6 Q. Just one day during the 2003 flood?

7 A. I was probably past there, you know,
8 maybe, approximately two times or three.

9 Q. On consecutive days?

10 A. Yes, because we were out there -- Her
11 basement flooded, so we were out there about three
12 days.

13 Q. What was your mother's address?

14 A. 2604 State Route 29, West Celina,
15 Ohio, 45822.

16 Q. What time of year was the 2003 flood?

17 A. I believe it was in July.

18 Q. From the road, in your car, I assume;
19 correct?

20 A. Yes.

21 Q. Did you get any sense of how many
22 acres were affected on your property, so on this 79,
23 80 acres, in the 2003 flood?

24 A. That would be the, almost the
25 two-thirds of the property flooded at that time

1 'cause it was major.

2 Q. Have there been any other flooding
3 events since the new spillway was put in that you
4 have, personally, witnessed on your property?

5 A. No. I just don't go out that way that
6 often, so --

7 Q. During the 2003 flood, what harm or
8 damage did the property experience?

9 A. There was some major crop loss and on
10 that year, we -- our -- Mike Highley, that cash rents
11 the property, he requested that we give him a
12 reduction in the cash rent for the property and we
13 did that.

14 Q. How much did you reduce the rent by?

15 A. By approximately a thousand dollars.
16 That would be a thousand dollars of the total cash
17 rent that he pays to all three of us, so --

18 Q. He pays a certain price per acre;
19 correct?

20 A. Yeah. He pays approximately \$6,000 a
21 year and he paid that year, approximately 5,000.

22 Q. Thanks. During the 2003 flood, do you
23 know how long the water stayed on your property?

24 A. No, I don't.

25 Q. Do you know how deep the water was?

1 A. It was very deep, but I don't -- I
2 can't estimate how, you know, what the water depth
3 was.

4 Q. Did you take any pictures of the 2003
5 flood?

6 A. I did not.

7 Q. Did you write down any notes?

8 A. No.

9 Q. Any sort of record of the 2003 flood?

10 A. No, I did not.

11 Q. Do you know if Mike Highley carried
12 crop insurance during 2003?

13 A. I do not know that.

14 Q. What do you believe is the value of
15 your property today?

16 A. I could estimate it to be
17 approximately, maybe \$4,000.

18 Q. \$4,000 an acre?

19 A. Yes.

20 Q. Have you recently had the property
21 appraised?

22 A. No.

23 Q. So what is that estimate based on?

24 A. It's based on when mom passed away, we
25 sold her farm and we got \$4700 an acre for her

1 property and that's with a house and a grain bin and
2 a pond and that property is, you know, probably
3 three-quarters of a mile from there and that Big Run
4 Creek that is connected to Beaver runs through mom's
5 property.

6 Q. Three-quarters of a mile in what
7 direction?

8 A. To the west.

9 Q. To the west of your property?

10 A. Yeah. It would be west and north.

11 Q. Do you think the value of your
12 property would be different had the spillway not been
13 constructed in 1997?

14 A. Yes, with less frequent, less severe
15 flooding, it would be worth more.

16 Q. How much more.

17 A. There was some property that was sold
18 by Buelah Pierstorff that was sold for \$8,000 an acre
19 and that was my guess. I would estimate -- I'm not
20 sure what the location -- It was within driving
21 distance or within farming distance of our property
22 and that went for \$8,000 an acre, so --

23 Q. You don't know in which direction from
24 your property?

25 A. It is -- Yes, it is north and east

1 from our property.

2 Q. Approximately how many miles?

3 A. Approximately four-to-five miles.

4 Q. In what year did Mike Highley begin
5 cash renting your property?

6 A. It was right at or around the time the
7 spillway was installed and I don't know if it was
8 before or after.

9 Q. So sometime in the late-'90's?

10 A. Yes.

11 Q. And did he approach you and your
12 siblings about renting the property?

13 A. Actually, our dad was, you know, he
14 was friends with Bob Highley and Mike was farming and
15 dad really liked the way that Bob Highley farmed and
16 wanted, and wanted Mike Highley to farm our property,
17 so --

18 Q. Is Bob Highley Mike's dad?

19 A. Yes.

20 Q. So your dad approached Mike about
21 farming the property?

22 A. I don't recall who approached who, but
23 that was still part of dad's, you know, what dad
24 wanted to happen was for Mike to farm the ground.

25 Q. How was the cash rent amount reached?

1 Who was involved in those negotiations?

2 A. I think dad at that time, played a big
3 role in, you know, in negotiating that, you know,
4 since, you know, it was, basically, me, my brother
5 and my sister it was just easier for him to -- and
6 plus he was an old farmer and that was his area of
7 expertise.

8 Q. So were you involved in the
9 negotiations at all?

10 A. No.

11 Q. Did you talk to Mike Highley before he
12 began to cash rent the property?

13 A. Yes. We knew Mike. You know, we grew
14 up and knew Mike and weren't really -- I wouldn't say
15 close friends, but we were acquaintances, yeah.

16 Q. Did you tell Mike Highley about the
17 flooding on the property before he entered into the
18 cash rent agreement?

19 A. He had lived in that area, you know,
20 all his life, so he, every time they went to town,
21 they drove past there, so he was, you know, familiar
22 with the area.

23 Q. Do you know where Mike Highley lived?

24 A. Yeah. When he grew up, he lived on
25 Wabash Road and now, he lives on Burrville Road.

1 Q. Approximately how far away is your
2 property from Mike Highley's childhood home, on
3 Wabash Road?

4 A. Approximately, say, two-to-three
5 miles.

6 Q. But you never, personally, told Mike
7 Highley that the property flooded before he began to
8 cash rent it; correct?

9 A. Correct.

10 Q. To your knowledge, did your dad?

11 A. I don't know.

12 Q. To your knowledge, did anyone else,
13 either of your siblings?

14 A. I don't know.

15 (Xerographic Document, headed,
16 Affidavit of Thomas D. Rasawehr, was
marked for identification Exhibit A.)

17 Q. I'm going to hand you what's been
18 marked Respondent's Exhibit A. Take a look at that,
19 please.

20 (Witness complying.)

21 A. Um-hum.

22 Q. Now, paragraph 2 references two
23 different Mercer County parcel numbers.

24 A. Um-hum.

25 Q. Today, we've been talking about an.

1 80-acre parcel that you own?

2 A. Yes.

3 Q. Which, if you know, which of those two
4 parcel numbers is that 80-acre parcel?

5 A. That's the first one, 42-001300.0000.

6 Q. And this other parcel number, the 27,
7 et cetera --

8 A. Yeah. That is my residence.

9 Q. Okay. And are you alleging in this
10 lawsuit that your residence has been taken by the
11 State of Ohio due to flooding?

12 A. No, no.

13 Q. And real quickly, Exhibit A is your
14 Affidavit, dated the 19th of June, 2009; correct?

15 A. Yes.

16 Q. What do you hope to accomplish from
17 this lawsuit?

18 A. Primarily, you know, for the State of
19 Ohio to fix the spillway so it doesn't flood our
20 property. That would be, that would be, you know, if
21 that were to occur, that would be sufficient.

22 MS. STELZER: I don't have any further
23 questions. I guess, perhaps --

24 Q. What are your siblings' names?

25 A. Timothy D. Rasawehr.

1 Q. Um-hum.

2 A. And Karen Pierstorff.

3 Q. Okay. Thanks.

4 MS. STELZER: I think that's it for
5 me.

6 MS. BREWER: I have just a couple of
7 follow-up questions.

8 DIRECT EXAMINATION

9 BY MS. BREWER:

10 Q. How long have you lived in Mercer
11 County?

12 A. All of my life.

13 Q. Okay.

14 A. Forty-seven years.

15 Q. Okay.

16 A. Forth-eight.

17 Q. You mentioned that your mom lived
18 about a half a mile or three-quarters of a mile away
19 from the property that floods?

20 A. Correct.

21 Q. Okay. So would you have to drive past
22 the flooded property to visit your mom?

23 A. No. She was -- The flooded property
24 was actually west of where my mother lived.

25 Q. Okay. You mentioned that the cash

1 rent on that property goes for \$6,000 a year. Is
2 that divided by acre or is there a per-acre price
3 that you charge?

4 A. Yeah. The per-acre price is \$85 an
5 acre and then the, you know, the approximately 6,000
6 which it's \$85 an acre, so it's not quite 6,000.

7 It's divided by three per.

8 Q. Okay. How long have you been charging
9 \$85 an acre?

10 A. We -- That's the price that Mike has
11 always paid.

12 Q. Since the late-1990's when he began
13 cash renting?

14 A. Yes.

15 Q. Okay. Why haven't you raised that
16 price?

17 A. Because the, you know, it's hard to
18 raise the price of cash rent when the ground is
19 flooding.

20 Q. Do you know what other people, who
21 don't have flooded property charge for cash renting
22 similar property?

23 A. Yes. The, I think, the -- there --
24 it's some ground that's been cash rented for, like,
25 \$150 an acre. My brother-in-law, his parents are

1 cash renting their ground for \$150 an acre.

2 Q. And where is their property, related
3 -- Where is their property located in relationship to
4 your property that floods?

5 A. Approximately four-to-five miles
6 northeast of our property.

7 Q. Okay. And does that property flood;
8 do you know?

9 A. No.

10 Q. Okay.

11 MS. BREWER: I think that's all I
12 have.

13 RE-CROSS-EXAMINATION

14 BY MS. STELZER:

15 Q. The property that you just told us
16 cash rents for \$150 an acre, that's four-to-five
17 miles away --

18 A. Um-hum.

19 Q. -- who owns that property?

20 A. That would be Edson Pierstorff.

21 Q. Any relation to your sister?

22 A. He is my sister's father-in-law.

23 Q. And have you ever, physically, been on
24 Mr. Pierstorff's property?

25 A. Yes.

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Q. How often?

A. Approximately 10 times.

Q. Do you know how long Mr. Pierstorff has owned the property?

A. No, I do -- I do not, no.

Q. And is he a party to this lawsuit?

A. No.

MS. STELZER: I don't have any further questions.

MS. BREWER: Okay. You have the right to read and review the transcript.

THE WITNESS: Um-hum.

MR. BREWER: I would recommend to all of my clients that they take that opportunity to do so. Would you like to do that?

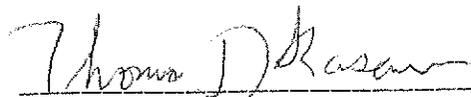
THE WITNESS: Yes.

MR. BREWER: Okay. Thank you.

THE WITNESS: Thank you.

MS. STELZER: Thanks.

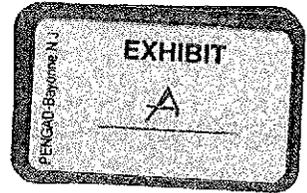
(At 10:22 o'clock, a.m., the deposition concluded.)


Thomas D. Rasawehr

MARTHA C. BREWER, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration date
4/15/10
Mrasawehr

AFFIDAVIT OF THOMAS D. RASAWEHR

STATE OF OHIO)
) ss:
COUNTY OF MERCER)



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

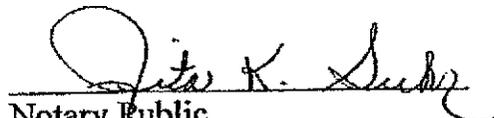
1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources ("ODNR").
2. Specifically, I am an owner of real estate described as Mercer County Parcel Numbers 42-001300.0000 and 27-286400.0000.
3. I own lands that lie adjacent to or near Beaver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

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

FURTHER AFFIANT SAYETH NAUGHT.


Thomas D. Rasaweher

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


Notary Public

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

TAB 43

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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 TIMOTHY RASAWEHR,
Relator, was taken by the Respondents as on
cross-examination, pursuant to the Ohio Civil
Rules of Procedure at Central Service Building,
220 West Livingston Street, Celina, Ohio 45822, on
Friday, February 19, 2010, at 9:30 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

1 APPEARANCES:

2 On Behalf of Ohio Department of Natural
3 Resources:

4
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10 On Behalf of Relators:

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C O N T E N T S

WITNESS	CROSS	DIRECT	RE CROSS
Timothy Rasawehr	C-4	F-50	C-53

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit	27
B	Map Drawing	50

1 TIMOTHY RASAWEHR
2 of lawful age, a witness herein, having been duly
3 sworn, as hereinafter certified, was examined and
4 deposited as follows:

5 CROSS-EXAMINATION

6 BY MR. COLE:

7 Q. Mr. Rasawehr, could you state and
8 spell your name for the record?

9 A. My name is Tim Rasawehr and it's
10 spelled -- last name is R-a-s-a-w-e-h-r.

11 Q. And where is your address, sir,
12 where do you live?

13 A. I live in -- I live in St. Mary's.

14 Q. Okay.

15 A. 703 Celina Road.

16 Q. Zip on that is?

17 A. 45885.

18 Q. And I want to just go over a very
19 few quick ground rules. I'm taking your
20 deposition. You're a Relator in this case. You
21 and others are sewing the Department of Natural
22 Resources, claiming a taking of your property by
23 flooding. I'm just gonna ask you some questions.
24 If you don't understand the question, if it's
25 confusing, let me know and I'll try -- I'm not

1 | trying to confuse you.

2 | A. Okay.

3 | Q. Or tell your attorney and I'll try
4 | to rephrase the question.

5 | A. Okay.

6 | Q. If you need to take a break -- I
7 | don't think we're gonna be here that long this
8 | morning, but if you do, it's no problem.

9 | A. Okay.

10 | Q. The only condition I put on that
11 | is, if a question is pending, go ahead and answer
12 | that question before you take a break.

13 | A. Okay.

14 | Q. Please let me finish the question
15 | before you start answering.

16 | A. Sure.

17 | Q. I'll try my best not to interrupt
18 | you, as well, and be sure to give verbal answers.
19 | Head nods and ah-huhs -- because he's transcribing
20 | that. And the other thing is, if your attorney
21 | says an objection, you're normally permitted to
22 | answer unless he instructs you not to. So let him
23 | make his objection and make his statement and then
24 | you can go ahead and answer the question. You
25 | have any questions for me before we begin?

1 A. No.

2 Q. All right. Can you tell me your
3 educational background?

4 A. I have an Associates Degree in
5 Mechanical Engineering, Applied Science from Lima
6 Tech, and that was pretty much it.

7 Q. Okay. So say you have a high
8 school degree?

9 A. Of course.

10 Q. And the Associates Degree is the
11 furthest formal education you've had?

12 A. That's correct.

13 Q. All right. Do you have any
14 schooling or training in agricultural?

15 A. Just in high school like Low Ag.

16 Q. What about engineering?

17 A. Just in -- with the
18 Associates Degree.

19 Q. Can you tell me a little bit about
20 that?

21 A. Okay. Basically it was a degree
22 that there was like physics and there was like
23 mechanical drawing and there was some machine
24 design classes and that's kind of the scope of it,
25 just a basic Associates Degree.

1 Q. Did any training in engineering as
2 it relates to land or real estate, anything like
3 that?

4 A. No.

5 MR. FUSONIE: Objection.

6 Q. How about do you have any training
7 or education in water movement or hydrology or
8 hydrolics or anything like that?

9 MR. FUSONIE: Objection.

10 A. There was a class with the
11 Associates Degree that had hydrolics and
12 pneumatics. So, you know, it was like calculating
13 flow and minor issues but not associated with like
14 land.

15 Q. You took that class while you were
16 at Lima Tech?

17 A. Yes.

18 Q. Have you held any jobs that involve
19 hydrology or hydrolics, any sort of engineering
20 expertise or involvement?

21 A. No.

22 MR. FUSONIE: Objection. Pause
23 before answering. Let me get that in.

24 MR. RASAWEHR: Okay.

25 MR. FUSONIE: Thank's.

1 Q. Are you married, sir?

2 A. No.

3 Q. Were you married?

4 A. No.

5 Q. Okay. Ever been married? I just
6 asked you that. I'm sorry. I withdraw. All
7 right. Let's talk about the property that you
8 own. Now I have marked -- this is Exhibit A. If
9 you go ahead and take a look at that, just for a
10 second, it's pretty straight-forward. And is that
11 an affidavit that you signed, sir?

12 A. That is correct.

13 Q. That's your signature on Page 2?

14 A. That is correct.

15 Q. All right. And was this affidavit
16 prepared, did somebody else type this up?

17 MR. FUSONIE: Objection. Compound
18 question, vague.

19 Q. Do you understand my question?

20 MR. FUSONIE: Which one?

21 Q. Do you understand my question?

22 MR. FUSONIE: Which question?

23 MR. COLE: The question I asked.

24 MR. FUSONIE: You asked two
25 questions.

1 MR. COLE: All right. So you're
2 not permitting him to answer it?

3 MR. FUSONIE: You asked prepared or
4 did someone type this up? That was two
5 questions you asked. So the record is
6 clear, which one do you want him to
7 answer?

8 Q. I'd like you to answer both.

9 A. Okay. I did not.

10 MR. FUSONIE: Well ask them both.
11 Ask one and then ask the second one so
12 the record is clear.

13 MR. COLE: All right. Counsel, you
14 can object, but you can't tell me what
15 questions to ask.

16 MR. FUSONIE: Objection.

17 MR. COLE: I assume you're letting
18 him answer?

19 MR. FUSONIE: Yeah, he can answer.
20 If he understands the questions, he can
21 try to answer.

22 Q. Do you understand my question, sir?

23 A. I understand the question about me
24 not typing it up which I did not type it up.

25 Q. All right, sir. Did somebody else

1 prepare this affidavit?

2 MR. FUSONIE: Objection. Vague.

3 A. I'm not sure.

4 Q. Let me withdraw that. Did you
5 prepare this affidavit?

6 MR. FUSONIE: Objection. Vague.

7 A. What do you mean by "prepare?"

8 Q. Did you tell somebody as they were,
9 as they were typing it up what to put down?

10 A. No.

11 Q. All right. Where did you sign the
12 affidavit?

13 A. I signed it at the Holiday Inn.

14 Q. Do you know who typed up this
15 affidavit?

16 A. No.

17 Q. Okay. Do you know whether your
18 attorneys typed up this affidavit?

19 A. Yes, I'm sure that they did.

20 Q. All right. In Paragraph 2 there
21 you indicate that you are an owner of some real
22 estate described as Mercer County parcel number
23 42-001300.0000, correct?

24 A. That's correct.

25 Q. All right. Where is that property

1 located?

2 A. Okay. About eight miles west of
3 Celina on 29. It's on the north side of the road.

4 Q. It abuts Route 29?

5 A. It -- Yeah. 29. It's just, yeah,
6 right on, right off 29. Erastus-Durbin is right
7 at the corner.

8 Q. The rest of it is in Durbin?

9 A. It's actually at the corner of 29
10 a Erastus-Durbin.

11 MR. FUSONIE: It's a road.

12 A. Yeah. Erastus-Durbin is a road.

13 Q. Can you go ahead, do you know how
14 that's spelled? I'm just thinking of him?

15 A. Oh, E-r-a-s-t-u-s-D-u-r-b-i-n.

16 Q. All right. How many acres is that
17 parcel, do you know?

18 A. 78.5.

19 Q. How long have you owned that
20 property?

21 A. We inherited that property in 1984.

22 Q. And tell me how you inherited that?

23 A. The property was owned by LaVaughn
24 and Paul Nickels, and my father farmed that
25 property and they left that property in their will

1 to the, to my father's children, and so when we
2 were born we were, we would have been to receive
3 that when LaVaughn and Paul passed away.

4 Q. And, sir, you're saying "we" and we
5 had a little talk before we went on the record,
6 who do you know by "we?"

7 A. My sister Carolyn Pierstorff and my
8 brother Tom Rasawehr, and so there's like -- that
9 property is actually by the third.

10 Q. The three of you own that property,
11 you each have a third interest?

12 A. That's correct.

13 Q. All right. Are there -- Do you
14 have any other siblings?

15 A. No.

16 Q. And just so I'm clear, the Nickels
17 was the prior owner, correct?

18 A. That's correct.

19 Q. Was the property conveyed to your
20 father or was it conveyed directly to you?

21 A. To us.

22 MR. FUSONIE: Objection.

23 Q. Okay. Was your father alive in
24 1984?

25 A. Yes.

1 Q. Okay. Is he still alive?

2 A. No.

3 Q. When did he pass?

4 A. He passed away in 1998.

5 Q. Do you know how long the prior
6 owner, the Mr. Nickels who owned that property
7 beforehand, owned that property?

8 A. I guess that would have been LaVaughn
9 was the, was the heir of the property, and she
10 inherited it from her father Lisle Spriggs.

11 Q. Okay.

12 A. And dad farmed it when it was owned
13 by Lisle Spriggs, also.

14 Q. All right. Do you know how long
15 LaVaughn Nickel owned the property?

16 A. No, I -- I don't, because I don't
17 know when her father passed way.

18 Q. She -- As far as you know she
19 inherited it from her father?

20 A. That's correct.

21 Q. All right. And the other person
22 was Spriggs, did you say?

23 A. Yeah. Her father was Lisle
24 Spriggs.

25 Q. As far as you know, were there any

1 | other prior owners at the same time Ms. Nickel and
2 | Mr. Spriggs held the property?

3 | A. No.

4 | Q. Do you own any other real estate
5 | besides that parcel?

6 | A. I own my home that I live in now in
7 | St. Mary's.

8 | Q. And just so I'm clear, are you --
9 | Other than the parcel that's identified in your
10 | affidavit --

11 | A. Uh-huh.

12 | Q. -- are you claiming any other
13 | property you own has been damaged or taken by
14 | flooding?

15 | A. No.

16 | Q. Besides the home itself, how much
17 | land do you own with that on your residence?

18 | A. Do you mean besides?

19 | Q. Well, you've got the building that
20 | you live in, the house, correct?

21 | A. Yes.

22 | Q. Is it just the house or do you
23 | have --

24 | A. It's just the house.

25 | Q. Okay. What do you do, sir?

1 A. I work at Thieman Stamping.

2 Q. Where is that?

3 A. That's in New Bremen, Ohio.

4 Q. And what's stamping, what kind of
5 industry is that?

6 A. It's pretty much a job shop as far
7 as doing -- made to print fabrications where we
8 make like basis for robots for material handling,
9 frames or we make parts for crown, we make parts
10 for motor man, we parts for Grob, we make parts
11 for Komatsu, we have -- make parts to order. We
12 don't design anything, we just manufacturer.

13 Q. What do you do there?

14 A. I -- it's engineering and
15 programming and estimating.

16 Q. You do that with the company?

17 A. That's correct.

18 Q. Do you lease any property?

19 A. No.

20 Q. Let me just state it another way.

21 Do you lease any of your property to someone else?

22 A. No.

23 Q. What's the --

24 A. I guess we have cash rent from the
25 farm, but I guess I wasn't thinking that you meant

1 that.

2 Q. Okay. I'll get to that, but
3 thank's for mentioning that. Do you know whether
4 you have any other rights in any other properties
5 besides the two you've indicated?

6 A. No.

7 MR. FUSONIE: Objection. Vague.

8 Q. The parcel that you've identified
9 here, could you describe the nature of that
10 property, what's it like?

11 MR. FUSONIE: Objection. Vague.

12 A. It's agricultural ground. It's got
13 beaver running through it. It's mainly just
14 agricultural.

15 Q. When you say "agricultural" is it
16 farm land?

17 A. Farm land, yes.

18 Q. What do you grow there?

19 A. Corn, beans, wheat.

20 Q. Do you do that on a rotation basis
21 or?

22 A. I don't actually do that.

23 Q. Okay. Is the farm -- When it's
24 farmed is that how it's done as far as you know?

25 A. That's correct.

1 Q. Who does the farming on the
2 property?

3 A. Mike Highley.

4 Q. And does he -- Is he a tenant on
5 the property?

6 A. He cash rent the property.

7 Q. Can you tell me about that?

8 A. We cash rent the property to Mike
9 for \$85.00 an acre and he just pays \$85.00 an acre
10 cash rent for the farm.

11 Q. Is that annually, monthly?

12 A. He actually pays twice a year. We
13 get paid once in the spring and once in the fall.

14 Q. For a total of \$85.00 or \$85.00
15 each time?

16 A. No. For a total of \$85.00.

17 Q. So \$85.00 a year?

18 A. \$85.00 a year --

19 Q. Per acre.

20 A. -- that's correct.

21 Q. And does he farm the entire parcel?

22 A. That's correct.

23 Q. All 78 and a half acres?

24 A. That's correct.

25 Q. Is there a term on that, on that

1 agreement arrangement?

2 A. I don't know.

3 Q. Is there a set term that he's --
4 has this arrangement with you or is it renewable?

5 A. Actually we don't have any
6 contracts.

7 Q. It's a verbal agreement?

8 A. It's a verbal agreement, yes.

9 Q. How long has Mr. Highley been
10 farming your property?

11 A. 1996 is the year that --

12 Q. Okay. Has anyone else farmed your
13 property?

14 A. No.

15 Q. Does he do it all by himself, does
16 he have other people help him?

17 MR. FUSONIE: Objection.

18 A. I don't know.

19 Q. Is Mr. Highley's arrangement with
20 you and -- is that arrangement with you, your
21 brother and your sister?

22 A. That's correct.

23 Q. All right. Does that arrangement
24 that you have with him entitle him to the proceeds
25 or the proceeds?

1 A. Yes.

2 Q. All right. Go ahead.

3 A. Yes, he pays \$85.00 and if he makes
4 money you know whatever, whatever cash crop comes
5 off of there, why that's his.

6 Q. He's entitled to everything that he
7 gross on the land?

8 A. That's correct.

9 Q. Is your parcel level?

10 MR. FUSONIE: Objection. Vague.

11 A. I wouldn't say that it's perfectly
12 level.

13 Q. Can you describe the topography of
14 that?

15 A. I guess --

16 Q. Let me try to break it down, if
17 that's okay. Are there hills on your property?

18 A. Yes.

19 Q. All right. Do you know how many?

20 A. It's more of a general, like a
21 slope where it, it. It seems like there's one
22 high spot and that would be on the northwest
23 corner, and that's pretty much it.

24 Q. Does the entire -- is the entire
25 parcel sloping from that high spot?

1 A. I would say that that's pretty
2 accurate.

3 Q. Do you know the grade, do you know
4 how much it slopes?

5 A. No, I don't.

6 Q. Have you ever had someone measure
7 that or?

8 A. No.

9 Q. Does the, does the slope of the
10 land, if you know, impact the ability to farm the
11 property?

12 MR. FUSONIE: Objection.

13 A. I'm not sure what you mean by
14 "impact."

15 Q. Let me ask you this: Do you know
16 if Mr. Highley could grow more or do something
17 different with the property if it wasn't sloped?

18 MR. FUSONIE: Objection.

19 A. Yeah, I'm unclear on --

20 Q. Has Mr. Highley ever told you that
21 he could grow more crops or do something else with
22 the property that he's doing now if it was more
23 level?

24 MR. FUSONIE: Objection.

25 A. No.

1 Q. No, he's not? Are you familiar
2 with the shape of your property?

3 A. Yeah.

4 Q. Would you be able to draw that, and
5 don't worry so much about the sale?

6 A. Okay.

7 Q. And if you can go ahead, when you
8 draw it, also indicate where the river is, where
9 the road, where the abutting features are?

10 MR. FUSONIE: Just so the record is
11 clear.

12 MR. COLE: Yes.

13 MR. FUSONIE: You're asking him to
14 draw an approximation of the boundary
15 of the parcel where the beaver is?

16 MR. COLE: That's correct.

17 A. This right here would be 29, and
18 then --

19 Q. If you just -- why don't you just
20 go ahead and draw it and then you can label.

21 A. Okay.

22 Q. And we'll end up making that an
23 exhibit.

24 A. Okay.

25 Q. I'm not saying you can't talk, but

1 | we'll, I'll have you -- I think it would be better
2 | if you just identified it.

3 | A. And this right here, that would be
4 | the shape.

5 | Q. All right. And then -- Okay. Go
6 | ahead. Actually there it is.

7 | (Off the record.)

8 | A. That should go around there and
9 | then goes like this. I guess I don't know what
10 | more you want.

11 | Q. Can you just write what's on that
12 | side of it, if that's a road or is it just another
13 | parcel there?

14 | A. Okay. This is State Route 29
15 | Erastus-Durbin. Darrell Kuhn lives here.

16 | Q. Why don't you just say Kuhn
17 | Property, whatever, it's up to you. And then how
18 | about on that side?

19 | A. Actually I'm not sure who owns
20 | that?

21 | Q. If you want, put "land" if you
22 | don't put -- that's fine?

23 | A. Land.

24 | Q. And if you could put one more
25 | thing. If you could put an arrow to north, is it?

1 A. Okay. North would be.

2 Q. All right. All right. Thank you.

3 I'm gonna -- I might refer to some things, so I'm
4 gonna -- Can you see this okay? Okay.

5 MR. COLE: Okay. We're back on.

6 Q. You had indicated previously that
7 that there was a hill on your property, the high
8 point was in the northwest corner, so would that
9 be --

10 A. Oh, actually I got that wrong. I'm
11 sorry.

12 Q. That's fine. Can you indicate,
13 maybe put "hill" where that is?

14 A. It runs like this. This is hill.

15 Q. All right. So it's kind of
16 southwest corner?

17 A. Southwest corner, yeah, sorry.

18 Q. Do you -- And is the area that
19 you've marked as hill here in the southwest, that,
20 is that a slope from north to south there?

21 A. It pretty much slopes, yeah, down
22 this way and down this way, also.

23 Q. All right. So.

24 A. And then is a property that we sold
25 off where there used to be a house.

1 Q. Do you know who owns that, that's
2 this little bit in the middle?

3 A. Yeah, I don't remember his name,
4 sorry.

5 Q. So why don't you go ahead and shade
6 that so we'll know that's marked. Now the rest of
7 your property here, the rest of the parcel that's
8 not in the area that you've designated hill. Does
9 the rest of the this slope, as well?

10 A. It's -- it's actually -- it slopes
11 down but it's -- there may actually be another
12 high spot right here.

13 Q. Okay.

14 A. 'Cause that's close --

15 Q. You've indicated the northeast
16 corner if there's a high spot?

17 A. There used to be a driveway there
18 and --

19 Q. What you've indicated -- you have
20 the Beaver Creek indicated which is pretty close
21 to the northern northwest boundary and then it
22 goes through the eastern part of your property.
23 You also have -- is that Big Run?

24 A. Big Run.

25 Q. Big Run, what is that?

1 A. That's that creek that runs off of
2 beaver.

3 Q. All right.

4 A. Or creek.

5 Q. So it literally starts with the
6 beaver and goes south?

7 A. That's correct.

8 Q. Do you know anything about the soil
9 on your property?

10 MR. FUSONIE: Objection.

11 A. Nothing real technical.

12 Q. What do you know about the soil on
13 your land?

14 A. That it's good, I mean it's, it's
15 been productive as far as raising crops.

16 Q. Do you know if the composition of
17 it?

18 A. I'd say that it's normal silt clay
19 loan type soil.

20 Q. Is that throughout the entire
21 property, as far as you know?

22 A. I'd say, yes.

23 Q. Is there some that might not been
24 there?

25 A. Well there's like pockets that may

1 | be, might a little more sandy which, and there may
2 | be parts that have a little more clay, but I don't
3 | remember exactly where those are at.

4 | Q. Do you know if there's a
5 | concentration within your property of a certain
6 | type of soil different from the rest?

7 | MR. FUSONIE: Objection.

8 | Q. Is it pretty uniform throughout?

9 | MR. FUSONIE: Objection.

10 | A. I don't remember.

11 | Q. I think you've indicated is the
12 | part that you have up here in the northeast corner
13 | the high point and then the hill, does
14 | Mr. Highley farm that, as well?

15 | A. Yes.

16 | Q. Okay. How far from Grand Lake-St.

17 | Mary's is your property?

18 | A. Eight miles.

19 | Q. And that's in -- is that west of

20 | it?

21 | A. West, that's correct.

22 | Q. Between 1984 when you inherited the
23 | property until 1997 when the spillway was changed,
24 | do you know about that?

25 | A. Yes.

1 Q. All right. Between that time, '84
2 through '97 -- So in other words, when you had the
3 property before the spillway was changed, did your
4 property ever experience flooding? And just let
5 me state that flooding would be, you know, any
6 level standing water that would be visible?

7 MR. FUSONIE: Objection.

8 A. There may have been minor flooding,
9 but I don't recall anything that actually killed
10 any crops.

11 Q. If there was minor flooding, would
12 that have been caused by rain, as far as you know?

13 MR. FUSONIE: Objection.

14 A. Yes.

15 Q. Okay. Before 1997 do you ever
16 recall whether Beaver Creek over flowed water onto
17 your property?

18 A. I don't remember.

19 Q. Do you remember before 1997 whether
20 the Big Run creek ever flooded on your property?

21 A. I don't have any recollection.

22 (Affidavit, marked for identification
23 as Respondent's Tim Rasawehr -
Exhibit A.)

24 MR. COLE: I'm gonna go ahead and
25 mark this as Exhibit A.

1 Q. Do you know whether any of this
2 property is in a flood plain?

3 A. I don't know.

4 Q. Can you identify for me, and you
5 feel free to go ahead and mark it. Since 1997
6 when your property has flooded from Beaver Creek,
7 can you indicate the parts that have been flooded?

8 A. Oh, since 1997?

9 Q. Yes.

10 A. Like in 2003?

11 Q. Yes, yeah, 2003 would be fine.

12 A. It would definitely be this area
13 right here.

14 Q. All right.

15 A. It would be all of this.

16 Q. All right. And just so the record
17 -- you're indicating all of the property except
18 the southwest portion that you've identified as
19 "hill," correct?

20 A. That's correct.

21 Q. All right. All right.

22 A. Yeah.

23 Q. Okay. Are there any manmade
24 structures on your property?

25 A. No.

1 Q. And I'm not talking about the farm
2 equipment that might be on there?

3 A. Yeah, yeah.

4 Q. No permanent structures?

5 A. No, no, like buildings or, no.

6 Q. Right. Okay. Are there any trees
7 on the property?

8 A. In Big Run there would be trees
9 growing in, you know, in Big Run. Beaver they
10 cleared out the trees.

11 Q. When were the trees cleared out?

12 A. It would have been in the mid
13 '90's, some time, I don't know exactly.

14 Q. Were they, were the trees cleared
15 before the damn was changed in '97?

16 A. I don't, I don't recall the timing.

17 Q. Are there any ditches on the
18 property?

19 A. I'm not sure what you mean by
20 "ditch."

21 Q. Depressions in the land where the
22 land goes down lower than the rest of the
23 property?

24 A. There is a waterway, you know,
25 there is a waterway, but.

1 Q. Can you go ahead and indicate that?

2 A. It's something like that.

3 Q. Can you go ahead and put "waterway"
4 there?

5 A. Okay.

6 Q. And tell me about the land and the
7 waterway or surrounding waterway?

8 A. Actually I don't know anything
9 about the waterway. My -- Mike Highley would be a
10 good one to ask about the waterway.

11 Q. All right. Very good. Thank you.
12 Has the property ever been used for anything other
13 than farming, as far as you know?

14 A. No.

15 Q. As far as you know, is all of the
16 land tillable?

17 A. Yes.

18 Q. What do you know about the drainage
19 on your land?

20 A. There is, there are tiles that are
21 in the field.

22 Q. Okay.

23 A. And that's about it.

24 Q. All right. Are they throughout
25 your property?

1 A. I don't know how extensive they
2 are.

3 Q. Most of the property?

4 MR. FUSONIE: Objection. Go ahead.

5 A. I don't know.

6 Q. Do you know what those tiles are
7 made of?

8 A. Clay.

9 Q. Do you know when -- How long have
10 those tiles been there?

11 A. I don't know.

12 Q. Were they there before you owned
13 the property?

14 A. Yes.

15 Q. Okay. Do you know who put them
16 there?

17 A. Dad would have helped put them in.
18 I don't know. I don't know.

19 Q. Do you know whether that the
20 drainage is consistent with the industry
21 standards?

22 MR. FUSONIE: Objection.

23 A. I don't know what --

24 MR. FUSONIE: Vague.

25 Q. Go ahead and answer.

1 A. I don't know.

2 Q. Have you ever contemplated making
3 any changes to your property or any changes to
4 your property?

5 A. No.

6 Q. Do you know whether there are any
7 easements on your property?

8 A. No.

9 Q. No, you don't know or, no, there
10 are none?

11 A. I know of no easement.

12 Q. Do you or your brother or sister
13 participate in a program called the Conservation
14 Reserve Program?

15 A. No.

16 Q. Do you have any -- So do you have
17 any filter strips or anything like that on your
18 property?

19 A. No.

20 Q. Have you ever heard of the Wetlands
21 Reserve Program?

22 A. No.

23 Q. So you don't know whether your
24 property or your brother or sister are involved
25 with that program at all?

1 A. They aren't.

2 Q. Are not?

3 A. They are not.

4 Q. When you acquired the property in
5 1984, do you recall anyone telling you about water
6 or flooding on the property?

7 A. There never was a problem until
8 about 2003.

9 Q. Now you say there never was a
10 problem, that was that someone told you there was
11 never a problem or you just never had a problem?

12 A. I never -- I don't recall any
13 issues with flooding until 2003. That was --

14 Q. Go ahead, you can finish. That was
15 it?

16 A. Well that was, you know -- I guess
17 that's it.

18 Q. Okay. Before 1997 when the --
19 before 2003, do you know how much rain has to fall
20 in order for the property to flood?

21 MR. FUSONIE: Objection.

22 A. No.

23 Q. I believe you testified earlier
24 there had been some minor flooding on your
25 property before the spillway was changed, is that

1 right?

2 A. Yeah. There may have been some
3 minor. Normally in the winter or spring you end
4 up with more rain, and there would have been some
5 minor flooding, but.

6 Q. Do you know how deep -- Again, and
7 all these questions right now deal prior to the
8 damn being modified.

9 A. Yes.

10 Q. The spillway being modified. Do
11 you know how deep the flooding would be before
12 then?

13 A. It wouldn't have been very deep
14 because all of the, all of the drift wood and the
15 trash was always along the beaver real close.

16 Q. This is before 1997?

17 A. That's correct. I mean it was
18 minor.

19 Q. Can you quantify it, how much feet,
20 inches, and to the best you can recall?

21 A. I can't. I don't.

22 Q. All right. That's fine. Do you
23 know how long it would stay flooded when it did
24 flood before 1997?

25 A. My brother and I trapped beaver,

1 and when it would flood it would rise fast and it
2 would go down fast. You didn't have any prolonged
3 periods of flooding. It would always -- it would
4 rain if it went -- When beaver went up, it went up
5 fast, when it went down, it went down fast.

6 Q. All right. Let me ask you this: I
7 think --

8 A. Which, you know, that may not be
9 flooding. I mean, I was talking about beaver
10 coming up and going down, and that doesn't
11 necessarily mean that it's going out of the banks,
12 that means that, you know, you get rain. The
13 water comes up, doesn't necessarily go out of the
14 banks, but then it goes down fast.

15 Q. All right. I'm gonna -- I
16 apologize if I asked this before, but I'm gonna
17 ask it again. Before 1997, do you recall whether
18 -- on your property whether Beaver Creek ever over
19 flowed onto your land?

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

22 A. There was drift wood that would be
23 right along the beaver and that would indicate
24 that beaver had come up, and it was always real
25 close to the bank. It was never out in the field.

1 It was always so -- I don't know if how much of
2 that you can call "flooding." You know how far
3 out in the field does it get before you have to
4 call it a flood.

5 Q. Well, and the question I had for
6 you, although I appreciate you trying to explain
7 that is: Did it ever go over bank when I say "by
8 the beaver flooding?"

9 A. Okay. Over bank, that was you --

10 Q. Before 1997, that you recall?

11 A. Yes.

12 Q. Okay. Do you know when that
13 happened?

14 A. I don't remember dates or years.

15 Q. Okay. When it did you know how
16 many times it over, it over topped, went over bank
17 before 1997?

18 A. I don't know.

19 Q. At least once or twice?

20 A. It must have been at least once.

21 Q. All right. And when it over
22 topped, do you know how long the water stayed on
23 your property?

24 A. It was very short time. It would
25 be -- It was never, never sat on the property

1 long.

2 Q. Less than a week?

3 A. Oh, yeah, we're talking days.

4 Q. Two or three days?

5 A. A day, maybe.

6 Q. Okay. Is the bank level uniform
7 throughout Beaver Creek to your property to the
8 river bed, if you know?

9 MR. FUSONIE: Objection.

10 A. I don't know.

11 Q. All right. Do you know how,
12 normally how the distance between the edge of the
13 bank and the water level is when it's not raining?

14 MR. FUSONIE: Objection.

15 A. There's no consistency to that.

16 Q. You're right. That was a bad
17 question. Sorry about that. When, before 1997
18 when the Beaver Creek did over top, do you know
19 how deep the water got on your property?

20 A. It wouldn't have been deep. I mean
21 it would have been just close to the banks.

22 Q. Less than 6 inches?

23 A. Easily less than 6 inches.

24 Q. Less than 3 inches?

25 A. I would rather say less than 6.

1 Q. All right. How about Big Run,
2 again before 1997, do you recall whether Big Run
3 ever over flowed, the water went off bank onto
4 your land?

5 A. Whatever beaver does Big Run does.

6 Q. So it would have, as well, do you
7 recall?

8 A. It's would have, yes.

9 Q. Same -- Again, before '97, the same
10 level of flooding that you just testified to as
11 far as Beaver Creek?

12 A. Yeah, very minor.

13 Q. When your property flooded before
14 1997, did you have any damage to your land?

15 A. No.

16 Q. Any damage to crops interfere with
17 the ability to grow food?

18 A. Not to my knowledge, no.

19 Q. Have you ever before 1997, did you
20 ever get any sort of governmental assistance
21 because of flooding?

22 A. No.

23 Q. You ever keep any records of
24 flooding on your property?

25 A. Never, no.

1 Q. Have you ever had crop insurance?

2 A. No.

3 Q. And when I say you, or your brother
4 or sister?

5 A. No.

6 Q. Okay. Do you know what the crop
7 yield for your property was this past year, do you
8 know anything about that?

9 A. No.

10 Q. Or any year?

11 A. No.

12 Q. Have you ever had your property
13 valued or appraised?

14 A. Not, no, I don't know that we ever
15 have.

16 Q. Is any property near yours been
17 developed for residential or commercial purposes?

18 MR. FUSONIE: Objection. Vague.

19 A. Not to my knowledge.

20 Q. How close is the nearest property
21 that would be used for either residential or
22 commercial purposes?

23 A. I don't know.

24 Q. Well, there's some residential
25 commercial use around the Grand Lake, correct?

1 A. That's correct.

2 Q. So 8 miles --

3 A. Eight miles, yeah.

4 Q. But let me ask you this: Let's say
5 within a two-mile radius all directions, as far as
6 you know, is the land there all farm land?

7 A. It's all farm land.

8 Q. All right. Let's talk about after
9 the spillway?

10 A. Okay.

11 Q. All my questions so far or were or
12 most of them were before the spillway has changed,
13 now let's go to after the spillway. I believe you
14 testified that you had flooding from the Beaver
15 Creek since '97, was the first time 2003 that you
16 recall?

17 A. That was the biggest.

18 Q. All right.

19 A. And that's the one that I remember.

20 Q. Okay. Do you remember any flooding
21 from Beaver Creek or Big Run before 19, before
22 2003?

23 A. I don't remember.

24 Q. Tell me about what happened in
25 2003?

1 A. Well, 2003 there was major flooding
2 rain day.

3 Q. I'll ask some. I appreciate that.
4 And again I think you testified that all of your
5 property except the southwest hill corner were
6 flooded?

7 A. Yes. Yeah, pretty much two-thirds
8 of the farm was.

9 Q. All right. You don't recall how
10 deep the water got?

11 A. I don't know.

12 Q. More than six feet?

13 A. I don't know.

14 Q. Okay.

15 A. I don't know. I wasn't real
16 concerned with, you know, the flooding on the farm
17 'cause we had other concerns with my mom's house
18 which was getting some flooding.

19 Q. Where is her house in relation to
20 this?

21 A. It would be right here.

22 Q. Oh, so almost -- You've marked that
23 with an X?

24 A. Yes.

25 Q. You want to say "mom's house?"

1 A. Sure.

2 Q. Just so everything is marked?

3 A. Yeah.

4 Q. Did you have to get her out of
5 there?

6 A. We ended up taking her out, yes.

7 Q. That's fine. How many, how many --
8 Do you recall what times a year it flooded in
9 2003?

10 A. It was like summer -- I mean
11 summer.

12 Q. And was -- did both -- Did Beaver
13 Creek over top in 2003?

14 A. Yes.

15 Q. Did Run Creek over top in 2003?

16 A. Yes.

17 Q. How long was the water on your
18 land?

19 A. I know that I seen water on the
20 land, it was like four days that I seen it, and I
21 wasn't around to actually see it after that, so --
22 I know that it was, it was there for four days,
23 after that I don't know how long it was, because,
24 ah --

25 Q. You were helping mom?

1 A. I was helping mom, yes, and there
2 was time to go back to work and --

3 Q. I understand.

4 A. Okay.

5 Q. Did you know if anyone else kept a
6 record of how long the water was on your property?

7 A. I don't know.

8 Q. Did you have one big flood in 2003?

9 A. It seemed like there was two.

10 Q. Do you know when the second one
11 occurred?

12 A. It was like right land running, it
13 was like boom, boom.

14 Q. Almost consecutive?

15 A. Yes.

16 Q. So you say consecutive, just so I'm
17 clear, Beaver Creek would have over topped, then
18 it went down, then it went up again, is that what
19 you're saying?

20 A. Yeah.

21 Q. But in close proximity time wise to
22 each other?

23 A. Yeah, that's what I remember, which

24 --

25 Q. All right. Let's move forward from

1 | 2003.

2 | A. Okay.

3 | Q. Do you recall any other times that
4 | your property had flooding from Beaver Creek or
5 | Big Run?

6 | A. No, I don't 'cause I don't live in
7 | the area.

8 | Q. Okay.

9 | A. I knew about 2003 because I went
10 | out to help mom and that's -- I had to replace the
11 | sump pumps. I knew what was going on then, but --

12 | Q. Sump pump on her property, on her
13 | grounds?

14 | A. Yes, that's correct.

15 | Q. Now when it flooded in 2003, did
16 | you ever get any sort of governmental help or
17 | assistance?

18 | A. No.

19 | Q. And again when I say "you" I mean
20 | you --

21 | A. Yes.

22 | Q. -- or your brother or your sister?

23 | A. Yeah, I understand.

24 | Q. What harm to your land did the 2003
25 | flood cause?

1 A. It killed the crops. Mike who
2 farms the land, why, we actually received less
3 cash rent that year. He asked us if we would help
4 him out because he wanted that -- tried to break
5 even on the, you know, on his expenses, so we cut
6 him a break on cash rent that year.

7 Q. Do you know if he had to replant
8 after that?

9 A. I don't, I don't know what he did.
10 It may have been too late to replant.

11 Q. When -- I'm not a farmer, do you
12 know when planting normally occurs?

13 MR. FUSONIE: Objection. Vague.

14 A. With soybeans, you know, there's a
15 point where, you know, you can't replant because
16 they won't mature, and with corn, you know, you
17 have to have so much sun, you know, for corn. You
18 know, there's like cut-off dates where you just
19 want to stop, which I don't know clearly what they
20 are.

21 Q. Do you happen to recall what was in
22 the ground when that 2003 flood hit?

23 A. No.

24 MR. FUSONIE: I think he said there
25 were two 2003 floods.

1 Q. How about the second one?

2 A. No.

3 MR. COLE: Thank you, Counsel.

4 MR. FUSONIE: Just so the recorder
5 is clear.

6 MR. COLE: Sure.

7 Q. Because of flooding have you made
8 any changes to your land?

9 A. No.

10 Q. Has Mr. Highley made any changes to
11 the land?

12 A. The waterway -- Mike has had
13 something to do with that, and I don't, I don't
14 know, I wasn't involved with any decisions to do
15 that or, so I don't know anything about that.

16 Q. You know -- Is the waterway
17 naturally occurring or is it manmade?

18 A. Manmade.

19 Q. How long is it?

20 A. I honestly don't know, I haven't
21 been out there to look at it.

22 Q. Do you know how deep it is?

23 A. Don't know a thing about it.

24 Q. Okay. Other than he did something
25 to it?

1 A. He did something to it. I know
2 that he did something, and --

3 Q. And believe he did that because the
4 flooding?

5 MR. FUSONIE: Objection.

6 A. I don't -- I don't know.

7 Q. When did he -- Whenever he did do
8 it, when did that happen, do you know?

9 A. It's been recently.

10 Q. Past year?

11 A. Yeah.

12 Q. Well, 2009?

13 A. I would say, yes.

14 Q. Do you have any personal opinion
15 of what your property is worth?

16 A. My mom, her farm sold in 2000. I'm
17 trying to remember what year it was, 2006 I
18 believe and it went for \$4700.00 an acre, and that
19 was with a house and a grain bin and a pond, and
20 that seems really low for you know what it was.

21 Q. Who owns the property now?

22 A. Wow, I wish I could remember the
23 name. I'm drawing a blank on their name.

24 Q. Okay. Was that a, like a ordinary
25 sale, a market sale?

1 A. It was an auction.

2 Q. Do you know why the property was
3 sold?

4 A. Because mom was in a nursing home
5 and we kind of did what we had to do.

6 Q. When you say "we" you and your
7 brother and sister?

8 A. That's correct. She was in
9 assistant living and that's expensive.

10 Q. So you decided to put the property
11 up for auction?

12 A. That was her decision.

13 Q. You helped to carry out those
14 wishes?

15 A. That's correct.

16 Q. Are you aware of any other
17 surrounding property values from any sales or
18 anything?

19 A. There was Pierstorff that had farm
20 ground that sold, I would say within four or five
21 mile radius that went for 8000.

22 Q. 8000 an acre?

23 A. Yes.

24 Q. Is that farm land?

25 A. That's farm land.

1 MR. FUSONIE: Which direction?

2 MR. COLE: Yeah.

3 A. North, it would be north.

4 MR. COLE: Good question.

5 A. North and east.

6 Q. North and east. All right. Do you
7 know how many acres that was?

8 A. I'm not sure about the acreage, I
9 think it was 80 but I'm not sure.

10 Q. Do you know whether that Pierstorff
11 parcel had also experienced flooding?

12 A. No. It was out in the middle of,
13 you know, flat ground.

14 Q. So you say, no, it did not flood?

15 A. No.

16 Q. Any other sales that you're aware
17 of, of nearby property?

18 A. No, none that I'm aware of.

19 Q. Have you ever tried to sell your
20 property?

21 A. No.

22 Q. Before you got involved with this
23 current lawsuit, did you ever take any action or
24 complain to the state because of the spillway?

25 A. No.

1 Q. Do you know why?

2 A. Well I guess I knew that, you know,
3 there was a lawsuit that had been enacted, and at
4 that point it looked like maybe the ODNR would be
5 doing something to fix the problem and they never
6 did, and you know there was actually hope that
7 maybe they would fix the problem.

8 Q. Were you ever involved with any
9 discussions with anyone about fixing the problem?

10 A. No.

11 (Map, marked for identification as
12 Respondent's - Tim Rasawehr -
Exhibit B.)

13 MR. COLE: I'll go ahead and mark
14 this, Tom, as Exhibit B.

15 Q. Thank you.

16 A. Okay.

17 MR. FUSONIE: I have a few
18 questions.

19 DIRECT EXAMINATION

20 BY MR. FUSONIE:

21 Q. Tim, how much do you, and your
22 brother and sister cash rent the property now to
23 Mike Highley?

24 A. \$85.00 an acre.

25 Q. And how long has that price been

1 the amount -- how long has that been the rent
2 price?

3 A. That has been the rent price since
4 he started farming it.

5 Q. In 1996?

6 A. That's correct.

7 Q. Do you have any knowledge of any
8 other agricultural property in Mercer County
9 that's being cash rent and for how much?

10 A. My brother-in-law's mother and
11 father they cash rent their farm to Kieth Houts
12 for \$150.00 an acre.

13 Q. And where is that property located?

14 A. That would be on Run Pike and 118
15 at the corner, and so that would be north and
16 east.

17 Q. Of your parcel?

18 A. That's correct. And it's flat and
19 it doesn't flood.

20 Q. Okay. Do you believe that the
21 amount that you cash rent your parcel for has been
22 affected by the flooding that that property is
23 subject to?

24 A. Yes, absolutely.

25 Q. And how has it been impacted?

1 A. We don't get the cash rent that we
2 could normally get if there wasn't this threat of
3 flooding all the time.

4 Q. Okay. Your mom's house, how long
5 did she live at that property?

6 A. Since 1978.

7 Q. Okay. Did you ever live at that
8 property?

9 A. Yes.

10 Q. How long did you live there?

11 A. Since 1978. We actually lived down
12 here before then so?

13 Q. So, just so the recorder is clear,
14 you've marked another X to the east of your mom's
15 property on State Route 29?

16 A. That's correct.

17 Q. And so the recorder is clear, you
18 want to write first or parent's home?

19 A. Okay. Parent's. Okay. First, and
20 then we moved down here second.

21 Q. Okay. How long did you live at the
22 first parent's home?

23 A. Since 1962.

24 Q. And how far away is first parent's
25 home from mom's house?

1 A. Half a mile.

2 Q. Half mile farther east on State
3 Route 29?

4 A. That's correct.

5 Q. When did you move away to
6 St. Mary's?

7 A. It would have been in the '90's.

8 Q. Prior to 1997?

9 A. Yeah, it would have been, probably
10 it would have been late '80s early '90s. I'm not
11 sure exactly about the timing there, but it was a
12 job-related move.

13 Q. So from the first time that you
14 started living in this general area on State Route
15 29 until you moved away to St. Mary's in the late
16 '80's early '90's, did you ever observe any heavy
17 rain in that area?

18 A. Yes. Yes, I did.

19 MR. FUSONIE: Okay. That's all I
20 had.

21 MR. COLE: Let me just do a couple
22 follow-ups.

23 RECROSS-EXAMINATION

24 BY MR. COLE:

25 Q. What do you think you could get for

1 cash rent if you didn't have flooding problems?

2 A. I think that we could get \$150.00
3 an acre.

4 Q. How far -- your brother -- who is
5 your brother in-law's who are your
6 brother-in-law's parent's that Mr. Fusonie is
7 asking about?

8 A. Benson and Marge Pierstorff.

9 Q. I should know this, but are they
10 involved in this, are they parties to this
11 lawsuits?

12 A. No.

13 Q. Oh, no, they wouldn't be. How far
14 is --

15 MR. FUSONIE: I'm sorry, what was
16 that? I didn't get that part?

17 MR. COLE: I said they wouldn't be.
18 Because their property is not flooding.

19 Q. You say that's northeast from your
20 property?

21 A. Yes.

22 Q. How far?

23 A. I'd say about five miles.

24 Q. Who farms that property?

25 A. Kieth Houts.

1 Q. Did Mr. Houts have any prior
2 relationship with your brother-in-law's parents?

3 A. No.

4 Q. How about Mr. Highley, did he have
5 any family or any prior relationship with him?

6 A. Well dad and Bob Highley were
7 friends.

8 Q. His father and your father?

9 A. His father and my father, yeah.

10 Q. Are you friends with Mr. Highley?

11 A. Not -- there's no social or we
12 don't call each other or there's no. No. I would
13 say that we're -- there's friendliness --

14 Q. Well sure.

15 A. -- when we see 'em, but there's no
16 --

17 Q. And you say he's been farming your
18 property since 1996?

19 A. That's correct.

20 Q. What did you -- what was the
21 arrangement, what was the rent or the, the
22 cash-rent situation when you hired him?

23 A. It was the same.

24 Q. In '96?

25 A. Yes.

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Q. It's never changed?

A. It's never changed.

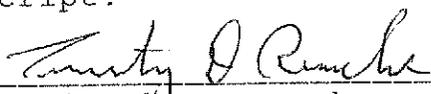
MR. COLE: All right. That's all.

MR. FUSONIE: Tim, when the state attorneys orders a copy of the transcript of this deposition, you have the right to review the deposition transcript for any errors and to correct those errors. I can't tell you to do that; I can only recommend that you do.

MR. RASAWEHR: Okay.

MR. FUSONIE: You have to tell the court reporter now if you would like to read the transcript or not.

MR. RASAWEHR: I would like to read the transcript.



Timothy Rasawehr

- - -
(At 11:00 a.m., the deposition was concluded)
- - -



MARTHA C. BREWER, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C. 4/18/10

C E R T I F I C A T E

1
2 STATE OF OHIO)
3) SS:
4 COUNTY OF MERCER)

5 I, Terence M. Holmes, the
6 undersigned, a duly qualified and commissioned
7 notary public within and for the State of Ohio, do
8 hereby certify that before the giving of his
9 aforesaid deposition, the said TIMOTHY RASAWEHR
10 was by me first duly sworn to depose the truth,
11 the whole truth, and nothing but the truth, that
12 the foregoing is the deposition given at said time
13 and place by said TIMOTHY RASAWEHR; that said
14 deposition was taken in all respects pursuant to
15 agreement and stipulations of counsel hereinbefore
16 set forth; that said deposition was taken by me in
17 stenotype and transcribed into typewriting by me;
18 that I am neither a relative of nor attorney for
19 any of the parties to this cause, nor relative of
20 nor employee or any of their counsel, and have no
21 interest whatever in the result of this action.

22 IN WITNESS WHEREOF, I have hereunto
23 set my hand at Cincinnati, Ohio, this 1st day of
24 April, 2010.

25 
My Commission Expires: Terence M. Holmes
July 28, 2012 Notary Public - State of Ohio

ERRATA SHEET

I, Timothy D PASAWCA, 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 18 day of APRIL, 2010.

PAGE LINE CORRECTION OR CHANGE AND REASON:

PAGE	LINE	CORRECTION OR CHANGE AND REASON:
6	15	CHANGE LO AG TO VO AG
7	8	CHANGE HYDROULICS TO HYDRAULICS
7	25	DELETE APOSTROPHE ON THANKS
11	23	CHANGE LAVAUGHN TO LAVAUN
11	24	CHANGE NICKELS TO NIKEL PASSIM
14	7	DELETE APOSTROPHE ON MARY'S PASSIM
15	10	CHANGE MOTOR MAO TO MOTOMAN
15	8	CHANGE BASIS TO BASES
15	9	CAPITALIZE CROWN
25	2	CAPITALIZE BEAVER PASSIM
25	19	LOAN CHANGE TO LOWAN
51	14	CHANGE RUN TO FRAUM
54	8	CHANGE BENSON TO EASON

AFFIDAVIT OF TIMOTHY RASAWEHR



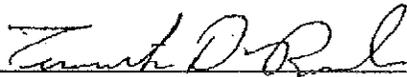
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.



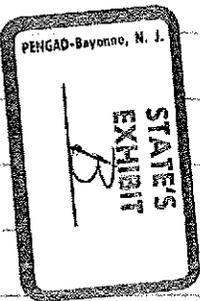
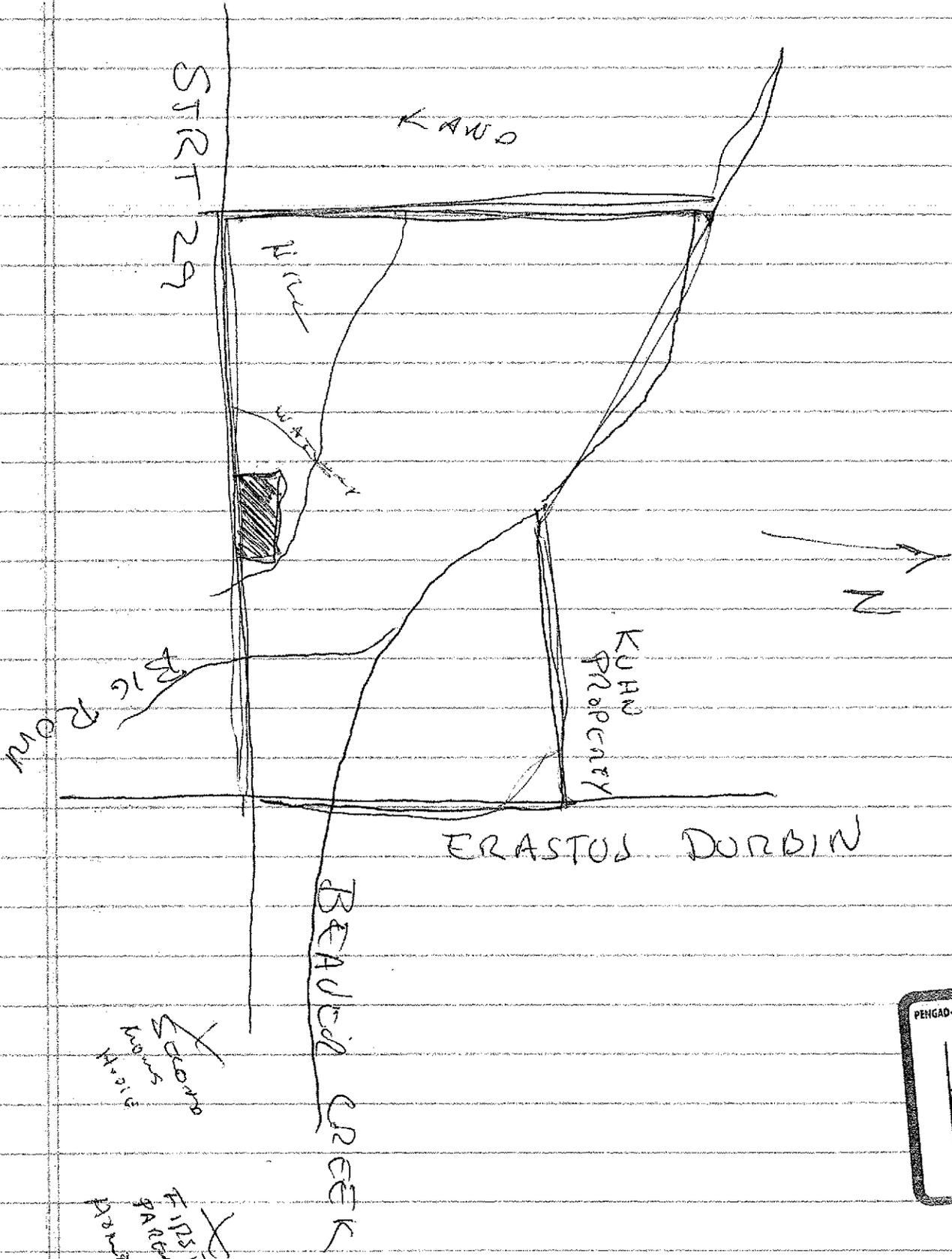
Timothy Rasawehr

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



Notary Public

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



TAB 44

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 CARL W. ROSE, was taken
by the Respondents as on cross-examination, pursuant
to the Ohio Rules of Civil Procedure, at the Central
Service Building, 220 West Livingston Street, Celina,
Ohio 45822, on Thursday, February 4, 2010, at 2:30
p.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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Cincinnati, Ohio 45240
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(513) 342-1820
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1 | APPEARANCES:

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On Behalf of Ohio Department of National
Resources:

Rachel Stelzer, Esq.
Environmental Enforcement
30 East Broad Street, Floor 25
Columbus, Ohio 43215-3400

On Behalf of the Realtors:

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:

Examinations	DIRECT	CROSS
By: Ms. Stelzer		4
By: Mr. Fusonie	53	

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of Carl W. Rose	30
B	Affidavit of Carl W. Rose	49

- - - -

1 CHARLES ROSE
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 EXAMINATION

7 BY MS. STELZER:

8 Mr. Carl Rose is being deposed today
9 by agreement of counsel. Mr. Rose, my name
10 is Rachel Stelzer.

11 THE WITNESS: Can you please speak up?

12 MS. STELZER: Of course.

13 THE WITNESS: I'm pretty hard of
14 hearing.

15 MS. STELZER: Of course. My name is
16 Rachel Stelzer. I represent the State of
17 Ohio, Ohio Department of Natural Resources.
18 Mr. Rose, may I call you Carl?

19 THE WITNESS: Yes, please.

20 MS. STELZER: Okay. Carl, have you
21 ever been deposed before?

22 THE WITNESS: Have I ever been what?

23 MS. STELZER: Deposed before?

24 THE WITNESS: No.

25 MS. STELZER: Okay. Well, I'm going

1 to ask you a series of questions. I would
2 ask that you speak loudly and clearly so
3 the court reporter can hear you and if you
4 don't understand a question, you stop me
5 and let know. Will you agree to do that?

6 THE WITNESS: Okay.

7 Q. Okay. Carl, did you look at any
8 documents in preparation for your deposition today?

9 A. No.

10 Q. Where do you work, Carl?

11 A. I'm retired.

12 Q. Okay. What did you do before
13 retiring?

14 A. Well, I worked at Avco New Idea, at a
15 factory in Cold Water, for over 45 years and then I
16 farmed the biggest part of that time.

17 Q. Okay.

18 A. 'Til I had a heart attack and then I
19 rented the ground out.

20 Q. How long did you farm?

21 A. Well, I started farming in 1958 until
22 19-- Let's see -- 80-- 88 was the last year I farmed,
23 I think, 1988.

24 Q. Did you further your education after
25 high school?

1 A. No.

2 Q. Can you please describe the location
3 of the property that you own?

4 A. Please?

5 Q. Can you please describe the location
6 of the property you own that you allege has been
7 taken by the State.

8 A. 2940 Pine Road, Celina.

9 Q. And is that one single parcel?

10 A. Please?

11 Q. Is that one single parcel?

12 A. Well, it was a single -- What do you
13 mean by, "single parcel?"

14 Q. For county, for county purposes, have
15 they assigned a single parcel number to the property
16 we're talking about.

17 A. I suppose they did. I can't say for
18 sure.

19 Q. Okay. How many acres are we talking
20 about?

21 A. What do you mean, that we own now or
22 what we owned when we moved out there.

23 Q. Well, you just gave an address --

24 A. Oh!

25 Q. -- of a property that you allege, in

1 | this case, has been flooded and taken by the State of
2 | Ohio. So I want to talk about that property. How
3 | big is that property?

4 | A. You mean where we live or what we own
5 | on the north side of the road? What we own now?
6 | What we own now?

7 | Q. Let's talk about what you own now.

8 | A. What we own now.

9 | Q. What do you own now?

10 | A. Yeah. Repeat the question.

11 | Q. How big is the property you own
12 | currently in Mercer County?

13 | A. What we own now is 87 acres and a
14 | fraction or --

15 | Q. And do you live on that 87 acres?

16 | A. No, not on that 87 acres.

17 | Q. Where do you live?

18 | A. We live on the south side of the road,
19 | on the property that we sold.

20 | Q. Where is this 87 acres in relation to
21 | where you live?

22 | A. Where I live right now?

23 | Q. Um-hum.

24 | A. It's -- We live on the south side of
25 | Pine Road and this is on the north side of Pine Road

1 and west of Township Line Road.

2 Q. Okay. And how long have you owned
3 this 87 acres?

4 A. Well, we bought 20 acres of it in 1958
5 and we bought the balance of it in 1960-- '68 or '69;
6 I'm not really sure, '68 or -- '69 I think.

7 Q. Okay.

8 A. Sixty-nine. Sixty-nine, I'm sure now
9 it's '69.

10 Q. Are you aware of who owned the 20-acre
11 chunk before you?

12 A. Yes.

13 Q. How was that?

14 A. Charlie Powell. He had passed away.
15 We bought it from his estate.

16 Q. Okay. And do you know who owned the
17 67-acre chunk before you did?

18 A. Yeah.

19 Q. Who was that?

20 A. Clarence Siebert, Siebert or Seebert;
21 I'm not real sure how it's pronounced.

22 Q. Do you know how to spell it?

23 A. No.

24 Q. Do you currently own any other
25 property in the area outside this 87 acres?

1 A. No.

2 Q. Okay, but it sounds like you've
3 recently sold some property?

4 A. Yes. We sold --

5 Q. What have you recently sold?

6 A. We sold -- Let's see, 53 -- 93 or 94
7 acres on the south side of Pine Road, west of
8 Township Line Road.

9 Q. When did you sell that property?

10 A. Last May. Yeah, last May.

11 Q. So May of 2009?

12 A. Right.

13 Q. And who did you sell that property to?

14 A. Jerry and Amy Meyers.

15 Q. Are they related to you?

16 A. No.

17 Q. How long had you owned the property
18 that you recently sold to Jerry and Amy Meyers?

19 A. Well, we bought the first of it in
20 1958 and we bought the other 40 acres or a little
21 over 40, something like that, in '69.

22 Q. Tell me again how much -- how many
23 acres you bought in 1958.

24 A. Well, what we bought in 19 -- We
25 bought 73.3, but 53 and a third was on the south side

1 of the road and 20 acres was on the north side of the
2 road.

3 Q. Okay.

4 A. They were in two different pieces.

5 Q. Okay. And then you bought the balance
6 in 1969?

7 A. On the north side of the road, right.

8 Q. Okay. Let's talk first about the 87
9 acres that --

10 A. Wait a minute. I take that back. You
11 said when we bought the balance on the north side of
12 the road? That would have been in '81. I was
13 thinking of what we bought on the -- what the Meyers
14 bought from us; it was 81.

15 Q. That's okay. So the 93 or 94 acres
16 you sold to Jerry and Amy Meyers you purchased in
17 1958 and 1981?

18 A. No, not the Meyers. The ground on the
19 north side of the road, we bought -- when we bought
20 the 73 and a third acres in 58, we bought 53 and a
21 third on the south side and then 20 on the north
22 side.

23 Q. Okay.

24 A. And then -- Now, repeat what you said
25 before.

1 Q. Well, I'm talking about the property
2 that the Meyers now own --

3 A. Yeah.

4 Q. -- and I'm wondering how long you
5 owned that property, and in 1958, it sounds like you
6 bought 73 acres --

7 A. Yeah, but they didn't buy the 20 acres
8 we bought then. They just bought the 53, 53 and a
9 third acres we bought then, plus afterwards, in '69,
10 we bought 40; that's what they bought, the 53 and a
11 --

12 Q. I understand.

13 A. Um-hum.

14 Q. So you had to purchase another chunk
15 of property at some point after 1958 to equal the 93
16 or 94 acres you sold to the Meyers. When did you buy
17 the rest of the property?

18 A. Where, on the north side?

19 Q. Um-hum, sure.

20 A. In 1981.

21 Q. Okay. So I'd like to talk about the
22 Meyers' property in a bit, but let's talk first about
23 the property that you still own, the 87 acres that's
24 across from your house.

25 A. All right.

1 Q. How far away is Beaver Creek from that
2 87 acres?

3 A. Well, from the -- Probably about a
4 mile and a half. Approximately a mile and a half.
5 That would be from the south side of the 87 acres.
6 The north side would be a half mile closer.

7 Q. So your property is on the south side
8 of Beaver Creek?

9 A. Right.

10 Q. Approximately how far away is the
11 Wabash from your property?

12 A. Well, if you go by the waterway from
13 out -- from the creek, from Kittle Ditch to the
14 Beaver, it's probably about, 'til the Beaver hits the
15 Wabash, probably about six mile. But if you went
16 straight west of us to the Wabash, it would be
17 closer.

18 Q. Okay. So Kittle Ditch is a natural
19 water course that runs through your property?

20 A. Right.

21 Q. Are there any other waterways running
22 through your property?

23 A. Not that run through the property, no.

24 Q. Okay. Are there any other ditches in
25 your property?

1 A. Please?

2 Q. Any other ditches in your property?

3 A. No.

4 Q. Okay. Are there any trees on your
5 property, on this 87 acres?

6 A. Twenty acres of woods.

7 Q. Um-hum. Twenty acres of woods. What
8 is the -- What does the remainder of the property
9 look like?

10 A. Please?

11 Q. What does the remainder of the
12 property look like?

13 A. Well, it's all tillable farm ground,
14 outside of the creek and, you know, and then, of
15 course, you know, the road ditch and stuff like
16 that's counted in on your acreage, but then you can't
17 farm it.

18 Q. Is there a house on this 87 acres?

19 A. No.

20 Q. Are there any other buildings?

21 A. No.

22 Q. How is the property used?

23 A. How is the property used?

24 Q. Um-hum.

25 A. A farm, farming.

1 Q. How many acres of the property is used
2 for farmland would you say?

3 A. Approximately 67 acres.

4 Q. Do you, yourself, farm the property?

5 A. No.

6 Q. Who does?

7 A. Jerry and Tom Powell or Powell,

8 Limited.

9 Q. Do they rent the property from you?

10 A. Yes, they rent it.

11 Q. And how much do they rent the property
12 for?

13 A. Please?

14 Q. How much do they rent the property
15 for?

16 A. We share, share rent.

17 Q. Okay, 50/50?

18 A. On shares, 50/50, yeah.

19 Q. How long has this 67 acres or so been
20 used for farmland?

21 A. Oh, God! Well, I don't know how long.
22 It was before I, before I were in the neighborhood.

23 Q. Okay. So since you bought the
24 property, it's always been used as farmland,
25 continuously?

1 A. Long as I can remember, yeah.

2 Q. Okay. Can you please describe the
3 drainage system on the property?

4 A. Well, it drains in the Kittle Ditch
5 and we, we tiled it. It's tiled every 35 feet,
6 complete tiling system.

7 Q. So the entire 67 acres of farmland is
8 tiled?

9 A. It is tiled about as good as any in
10 Mercer County.

11 Q. Who tiled it?

12 A. Kahlig Brothers.

13 Q. How do you spell Kahlig?

14 A. How do you spell Kahlig, K --
15 K-A-H-L-I-G, I think.

16 Q. Sounds good. When was the property
17 tiled?

18 A. We done it two different years. We
19 tiled some of it in the year we bought it. That was
20 in 1981. We tiled about half of it in 1981 and I
21 don't remember for sure when we finished it up. It
22 would have been about '90; it was in the -- it
23 probably would have been about 19 -- Oh, I can't tell
24 you for sure. It probably would have been about
25 seven, eight years later when we finished it up.

1 Q. Sometime in the late-'80's? Sometime
2 in the late-'80's you think?

3 A. Yeah, sometime in the late-'80's
4 probably.

5 Q. So from the time you bought the
6 property until you retired from farming in 1988, did
7 you, personally, farm this property?

8 A. Yes, between my wife and my son helped
9 me.

10 Q. Does your son still live in Mercer
11 County?

12 A. Please?

13 Q. Does your son still live in Mercer
14 County?

15 A. No.

16 Q. Do you participate or does this
17 property participate in the Conservation Reserve
18 Program?

19 A. No.

20 Q. Does it participate in the Wetlands
21 Reserve Program?

22 A. Is what?

23 Q. Does your property participate in the
24 Wetlands Reserve Program?

25 A. No.

1 Q. Do you understand what both those
2 programs are?

3 A. Well, a little bit. I don't
4 understand all of it, but I understand part of it. I
5 went to some meetings about it, but I don't
6 understand it all.

7 Q. Okay. Before you acquired the
8 property, did you know anything about it?

9 A. Well, yeah, 'cause we lived right
10 across the road from it for, you know -- well, from
11 '58 to '81, we observed it.

12 Q. And what did you observe? Did you
13 observe any flooding?

14 A. Oh, yes.

15 Q. Okay. What kind of flooding did you
16 observe?

17 A. Well, it had to be water, I guess.

18 Q. Fair enough. How often did the
19 property flood?

20 A. Please?

21 Q. How often did the property flood?

22 A. Well, it would flood, partially,
23 almost every year. It would vary, though, from
24 year-to-year.

25 Q. Um-hum. Varied in how much flooded?

1 A. How much flooded and how deep.

2 Q. Was there a time when flooding
3 occurred most often?

4 A. Mostly, it was in the spring, in
5 March, April, May.

6 Q. Do you have any idea why flooding
7 occurred at that time of the year?

8 A. Well, part of it is because that's
9 when we get the heaviest rains and part of it that's
10 when they'd leave the most water out of the
11 reservoir; it would go over the spillway.

12 Q. So before 1997, before changes were
13 made to the spillway, can you talk to me a little bit
14 about what parts of your property would flood?

15 A. Well, it would be the same parts that
16 flooded afterward, but it was not near as deep and
17 never stayed near as long.

18 Q. Okay. So before the new spillway in
19 1997, how many acres of the property were affected by
20 flooding?

21 A. Well, it could -- I don't know -- It
22 would probably be on 30 acres or 31, something like
23 that.

24 Q. And so before a new spillway in 1997,
25 how deep was flooding on your property?

1 A. Well, that would vary, maybe, from one
2 foot to where the higher ground got and it would
3 shallow off to nothing.

4 Q. Okay. Kind of on average, how long
5 would water stay on your property before 1997?

6 A. Well, before that if -- Well, just to
7 give you an example, if the creek would come out, be
8 out in the morning when we got up, by noon, it would
9 be off; it would, you know, the water would be off
10 the ground.

11 Q. Is the creek you're talking about
12 Kittle Ditch?

13 A. Kittle Ditch, yeah.

14 (Brief pause for the court reporter.)

15 Q. So as a result of the flooding that
16 occurred on your property before 1997, what kind of
17 harm or damage did you experience as a result?

18 A. Well, this is before '87?

19 Q. Before 1997.

20 A. Oh, 1997.

21 Q. So when the spillway was changed,
22 before that.

23 A. It covered our wheat and lowered the
24 quality of the wheat and we had to settle selling it
25 for milling grain. It went for livestock feed and it

1 probably cost us 20 percent of the crop,
2 approximately. I don't know for sure; I didn't keep
3 records of it, but I know the price was cut way down
4 on us because the quality wasn't there no more.

5 Q. Did that happen more than once? Was
6 the quality affected more than once?

7 A. It happened several times, but I can't
8 tell you what years.

9 Q. Did you suffer any other harm or
10 damage?

11 A. Please?

12 Q. Before 1997, did flooding on your
13 property cause any other harm or damage?

14 A. Not really, not, not -- nothing real
15 serious, no.

16 Q. Were there any erosion issues?

17 A. Well, yeah, there was some erosion.
18 That's why we put in two waterways an drop boxes.

19 Q. When did you put those waterways and
20 drop boxes in?

21 A. I can't tell you for sure, but it
22 would probably been -- it was in the early '90's.

23 Q. Did you ever have instances before
24 1997 of debris --

25 A. Of what --

1 Q. Did you ever have instances before
2 1997 of flooding leaving debris, logs, sticks on your
3 property after the water went down?

4 A. Well, when the creek come out, you
5 always get some debris.

6 Q. Um-hum. Did flooding before 1997 ever
7 cause any drainage tile failure?

8 A. Not that I can recall.

9 Q. Before 1997, did you have crop
10 insurance?

11 A. No.

12 Q. Okay. Now, I'd like to talk about
13 flooding on your properties that has occurred after
14 the spillway was modified in 1997. So since 1997,
15 how often has flooding occurred?

16 A. Well, almost every year.

17 Q. When was the last time your property
18 flooded?

19 A. 2009, I guess.

20 Q. When, in 2009, did your property
21 flood?

22 A. It was in the spring, probably March,
23 but I'm not real sure.

24 Q. Okay. Do you remember how long the
25 water stayed on your property?

1 A. Oh, several days.

2 Q. Can you remember how many acres were
3 affected?

4 A. That would be hard to say. It would
5 probably be 25, 30 acres.

6 Q. How deep was the water in spring,
7 2009?

8 A. Well, it probably was from several
9 feet to where the ground went higher down to nothing,
10 I guess.

11 Q. Several feet, so three feet deep.

12 A. It might have been. It was too cold
13 for me to go out and check.

14 Q. Okay. Prior to spring, 2009, what was
15 the last time you remember your property flooding?

16 A. Prior -- Repeat --

17 Q. Before spring, 2009, when was the last
18 time your property flooded?

19 A. I can't tell you. It might have
20 flooded in 2008 or -- but I can't really recall, but
21 I know 2005 and 2003 were the ones that really stand
22 out in my mind.

23 Q. Okay. Then let's talk about 2005.
24 Did your property only flood once in 2005?

25 A. It might have been two or three times;

1 I'm not real sure.

2 Q. When do you remember your property
3 flooding in 2005?

4 A. 2005?

5 Q. What season?

6 A. Well, it would have been -- probably
7 the first time would have been in the spring, I
8 think.

9 Q. So in spring, 2005, do you remember
10 how long the water stayed on your property?

11 A. It was property three days, plus.

12 Q. Do you remember how deep the water
13 got?

14 A. Well, in some places, it probably was
15 three foot.

16 Q. And can you remember how many acres
17 were affected?

18 A. It probably have been 30, 31 acres.

19 Q. You said you might remember that in
20 2005, your property flooded two or three times. What
21 other times did your property flood in 2005?

22 A. I can't, I can't -- I don't recall. I
23 think it was later in the season. I think our beans
24 and stuff were up already. It might have probably
25 June or July; I'm not real sure.

1 Q. Okay. How long did water stay on the
2 property in June or July of 2005?

3 A. Probably three, four or five days in
4 some places. Some places it might have been five
5 days; I don't know.

6 Q. Do you remember how deep the water
7 was?

8 A. Well, the -- probably the highest it
9 might have been three feet some places.

10 Q. And can you remember how many acres
11 were affected?

12 A. It probably would have been 30 acres
13 or 31, something like that.

14 Q. Did you lose crops that year?

15 A. We didn't have a total loss of crops,
16 but we lost, you know, probably we lost yield and
17 maybe we lost some of our stand.

18 Q. During 2005, did you carry crop
19 insurance?

20 A. No.

21 Q. Did you report crop loss in any sort
22 of crop disaster --

23 A. Please? I didn't understand that.

24 Q. Did you seek damages from the Federal
25 Government for -- in a crop disaster program of any

1 | sort?

2 | A. No.

3 | Q. Do you keep any records of your yield
4 | each year?

5 | A. Did you keep records for what?

6 | Q. Do you keep records of your crop yield
7 | each year?

8 | A. Well, for when, then or now?

9 | Q. Well, let's talk about 2005.

10 | A. No.

11 | Q. Do you have records of your crop yield
12 | in 2005?

13 | A. We don't have records, but I could
14 | have. If I'd known this was comin' I could have kept
15 | records of when I sold the grain, but otherwise, no;
16 | I don't remember and I don't think we have the
17 | records anymore of what we sold.

18 | Q. Do you know if Powell, Limited keeps
19 | records of crop yield each year?

20 | A. I don't know whether they do or not.

21 | Q. Okay. So before June or July, 2005,
22 | when was the last time your property flooded?

23 | A. Before that?

24 | Q. Um-hum.

25 | A. Well, I think it probably flooded in

1 2004, I would think. I'm not real -- I didn't keep
2 records.

3 Q. Do you remember a certain time of year
4 in 2004 or are you just guessing?

5 A. It probably was in the spring.

6 Q. Do you remember specifics?

7 A. I don't remember specifics.

8 Q. You had mentioned the 2003 flood. Was
9 that July of 2003?

10 A. That was one of them.

11 Q. Did your property flood again in 2003?

12 A. I think it flooded in August, too.

13 Q. In July, 2003, do you remember how
14 long property stayed or -- Excuse me. Strike that.

15 Do you remember how long water stayed
16 on your property in July, 2003.

17 A. It was probably at lease five days.

18 Q. Do you remember how many acres were
19 affected?

20 A. It would probably be 30, 31 acres.

21 Q. Do you remember how deep the water
22 was?

23 A. Probably the deepest about three foot.

24 Q. And then you said it flooded again in
25 August, 2003?

1 A. Please?

2 Q. You said it flooded again, your
3 property flooded again in August, 2003?

4 A. Yes.

5 Q. How many acres were affected then?

6 A. It probably would have been about 30
7 acres.

8 Q. How long did the water stay on the
9 property?

10 A. That wasn't quite as bad as 4th of
11 July. Probably three days.

12 Q. And how deep did the water get?

13 A. Probably close to the deepest,
14 probably three feet.

15 Q. When your property floods, are you
16 able to get out in the field?

17 A. Please.

18 Q. When your property had flooded, are
19 you able to get out in the field?

20 A. I don't think so unless I take a boat.

21 Q. Okay. So do you try to walk around
22 and --

23 A. No.

24 Q. Just kind of observe from your house?

25 A. You can observe it, practically all of

1 | it from our house.

2 | Q. Before the flooding, so before 2003,
3 | when was the last time your property flooded?

4 | A. Please repeat that.

5 | Q. Before 2003, before July of 2003, when
6 | was the last time your property flooded?

7 | A. Before 2003?

8 | Q. Yeah.

9 | A. I can't say for sure because it'd
10 | flood almost every year some. It probably was,
11 | probably in 2002 we might have had water, but I can't
12 | say for sure.

13 | Q. Is always -- Are around 30 acres
14 | always affected?

15 | A. Most of the time, yeah, 'bout that
16 | much.

17 | Q. Is there any left?

18 | A. Please?

19 | Q. Is it ever any left?

20 | A. Well, it possibly could be. Just
21 | depends on a lot of other things.

22 | Q. What else would it depend on?

23 | A. Well, the amount of rain or how much
24 | water they're lettin' out of the lake.

25 | Q. Okay. Is any more than 30 or 31 acres

1 of your property every impacted by flooding?

2 A. It might be, but not a whole lot more.
3 If it would be more, it wouldn't be a whole lot more.

4 Q. Okay. The flooding that's occurred on
5 your property since 1997, has it been documented at
6 all?

7 A. Not -- No, I don't think so.

8 Q. You haven't taken any pictures?

9 A. Well, we had a picture, but we
10 couldn't find it. We looked for it. We had a
11 picture of where it was flooded and it was over the
12 road and everything else, but we hunted for it and we
13 couldn't find it. We must have lost it or didn't
14 look the right place.

15 Q. Okay. What flood was that a picture
16 of; do you remember?

17 A. Please?

18 Q. What flood event was that a picture
19 of; do you remember? What year did that flood occur
20 that you think you --

21 A. I think it was 2005, I think.

22 Q. Okay. Would you have recorded notes
23 on flooding in a log or a diary of any sort?

24 A. No, we didn't.

25 Q. So to your knowledge, you haven't

1 written down anything or taken any pictures of
2 flooding that occurred on your property?

3 A. Please restate that.

4 Q. You haven't -- So what I'm hearing is
5 that you haven't taken any pictures or written
6 anything down about flooding that has occurred on
7 your property since 1997?

8 A. No.

9 Q. Okay.

10 (Xerographic Document, Affidavit of
11 Carl W. Rose, was marked for
12 identification Exhibit A.)

13 Carl, I'm going to hand you what's
14 been marked Respondent's Exhibit A. If you could
15 review that for me, please.

16 (Witness complying.)

17 Okay. This is your Affidavit, dated August 25th,
18 2009; correct?

19 A. Please?

20 Q. This is your Affidavit, "Affidavit of
21 Carl W. Rose," dated August 25th, 2009; correct?

22 A. Yeah, yeah.

23 Q. And is that your signature on page 3?

24 A. Please?

25 Q. Is that your signature on page 3?

A. Yeah. I'll look again, but I'm sure I

1 signed it. Yeah, that's my signature.

2 Q. Okay. Can you flip to the last page,
3 which is marked Exhibit A to your Affidavit. This is
4 -- Well, strike that. Carl, is this the property
5 we've been talking about, the 87 acres we've been
6 talking about?

7 A. Correct.

8 Q. Okay. And what's shaded on this
9 property?

10 A. The area that flooded.

11 Q. Flooded when?

12 A. Well, 2003, 2005 and almost every year
13 a certain part of it would.

14 Q. Okay. And did you shade this map?

15 A. I drew out the outline. I don't know
16 how -- I don't remember whether I shaded that or
17 whether I just drew out the outline of where it
18 flooded.

19 Q. Okay. So you're confident that you
20 drew the outline, but you're not sure whether or not
21 you did the actual shading --

22 A. I don't know whether I made that black
23 on there or not, but I know I drew the outline of the
24 area, area that flooded. I remember that for sure.

25 Q. Okay. If you could hand me that.

1 (Witness complying.)

2 I'd like to talk now about the property that you sold
3 to Jerome and Amy Meyers in 2009. When, in 2009, did
4 you sell the 94 acres to Jerome and Amy?

5 A. It was in May, 'bout the middle of
6 May.

7 Q. Did you tell the Meyers that the
8 property flooded?

9 A. I don't know, but I know they knew it.

10 Q. So you don't remember having a
11 conversation with them about the flooding?

12 A. I don't remember any.

13 Q. Okay. How do you know that they knew
14 about the flooding then?

15 A. Because they live in the area.

16 Q. Where do they live?

17 A. They live a mile north of us and then
18 west a little bit, on Route 29.

19 Q. How long have they lived a mile north
20 of you?

21 A. I can't tell you when they moved
22 there.

23 Q. Okay.

24 A. I can't tell you.

25 Q. So do they live on the property that

1 | you sold them or do they live in their old house and
2 | they just bought the property you sold them?

3 | A. Please?

4 | Q. Where do the Meyers live now?

5 | A. They live on 29. It was a property
6 | that, I guess they owned or I don't know when they
7 | bought it, but they lived there for several years. It
8 | might have been 10; I don't know, but I don't think
9 | it was that long. It's on 29; it's just west of us a
10 | little bit.

11 | Q. So if you didn't talk to the Meyers
12 | about the flooding on the property, did you disclose
13 | flooding on the property to the Meyers in writing?

14 | A. No.

15 | Q. But do you believe that they
16 | understood the extent of flooding on the property?

17 | MR. FUSONIE: Objection.

18 | A. I'm sure they observed, 'cause they
19 | lived in the area. They knew quite a bit about that,
20 | so -- So it went on.

21 | Q. How much did you sell the property to
22 | the Meyers for?

23 | MR. FUSONIE: Objection.

24 | THE WITNESS: Please?

25 | MR. FUSONIE: You can answer.

1 THE WITNESS: Can I?

2 MR. FUSONIE: If you understand what
3 property she's talking about.

4 A. Seven thousand.

5 Q. Do you understand what property I'm
6 talking about, Carl?

7 A. Oh, you're talking about the Meyers'
8 property, on the south, the big one, yeah, it was
9 7,000.

10 Q. And you told me earlier that you sold
11 them 94 acres in May of 2009; correct?

12 A. Yeah.

13 Q. Okay. So how much did you sell that
14 94 acres for in May of 2009?

15 A. Seven thousand an acre.

16 Q. Okay. I just wanted to make sure
17 we're on the same page. Do you believe that the
18 flooding that occurs on that 94 acres affected the
19 price?

20 A. Oh, I'm sure it did.

21 Q. Okay. In what way?

22 A. Well, the way I can explain it the
23 best is when we rented it out, not too many people
24 wanted to cash rent it; they wanted to share rent it,
25 so we run part of the risk. So now I know that

1 probably if it wouldn't a flooded, we could have got
2 more rent for it and we could have got more for it
3 when we sold it.

4 Q. Before 1997, how often did the Meyer
5 property flood?

6 A. Well, it would have -- It would have
7 been -- be the same as what the one on the north side
8 of the road, 'cause when one flooded, the other did,
9 'cause most of it's the same elevation --

10 Q. Okay.

11 A. -- so it'd probably be about, at
12 least, once every year and some years two or three
13 times.

14 MR. FUSONIE: You're talking about
15 before the spillway was put in, in 1997?
16 This is before the spillway was put in, in
17 1997.

18 MS. STELZER: Do you want to go off
19 the record. Let's take a break.

20 MR. FUSONIE: Yeah.

21 (Brief recess taken.)

22 Q. Okay. So, Carl, I'm gonna just strike
23 the question I asked you before and I'll ask you
24 again. Before 1997 and before the spillway was
25 modified --

1 A. Yeah.

2 Q. -- how often did the Meyers' property,
3 the 94 acres that you just sold to the Meyers in 2009
4 flood?

5 A. Probably about once a year.

6 Q. And, you know, on average, how much of
7 their property flooded once a year?

8 A. That was the spillway?

9 Q. Yeah, before 1997, how much of that
10 property flooded?

11 A. It probably was over 40 acres.

12 Q. And how deep would the water get on
13 the Meyer property before 1997?

14 A. Well, on occasions, it would several
15 feet.

16 Q. And how long would the water stay on
17 the Meyer property before 1997?

18 A. This is previous to the --

19 Q. Before the new spillway, yeah.

20 A. Probably 12 hours, half a day.

21 Q. Since the time you bought that 94
22 acres, did you farm it?

23 A. I farmed it -- Well, from '58 to, to
24 when I had the hear attack. That would have been
25 '80-- '88, '89 when I rented it out first and then

1 | the -- Of course, the 40 acres to the south, we
2 | didn't buy that until '60-- '69. That was the 40
3 | acres. Then the 53 and a third was one I bought in
4 | '81, but we farmed it until, until '89.

5 | Q. So the property that you sold to the
6 | Meyers in 2009, you farmed yourself until you stopped
7 | farming in 1988; is that accurate?

8 | A. Yeah. I farmed it in '80 -- Let's see
9 | -- I farmed it in '88, yeah.

10 | Q. Okay. So you farmed the property that
11 | the Meyers now own from the time you bought it,
12 | whenever you bought it until around '88 or '89?

13 | A. Yeah --

14 | Q. And then after that, after '88 or '89,
15 | you -- it sounds like you rented the property to
16 | farmers?

17 | A. I rented it to Powell --

18 | Q. To Powell, Limited again?

19 | A. Yeah.

20 | Q. And so did Powell, Limited rent and
21 | farm the Meyer property until you sold it to the
22 | Meyers, just in 2009?

23 | A. Right. They actually farmed it last
24 | year, too, 'cause that was in the deal that they were
25 | going to farm it just like we hadn't like we hadn't

1 | sold it and Meyers got the rent off of it or they got
2 | half the crops.

3 | Q. Did you carry crop insurance on what
4 | is now the Meyer property when you farmed it?

5 | A. No.

6 | Q. Did you suffer crop loss on the Meyer
7 | property prior to 1997, when you farmed it?

8 | A. Not that I -- If it was, it would have
9 | minimal.

10 | Q. Did the flooding that occurred on the
11 | Meyer property, prior to 1997 cause any harm or
12 | damage?

13 | A. It did some harm, some crop damage and
14 | some stands and delayed planting and something like
15 | that.

16 | Q. How often did crop damage or stand
17 | damage occur prior to 1997?

18 | A. Say that again.

19 | Q. So on the Meyer property, what's now
20 | the Meyer property, before 1997, you mentioned that
21 | crop damage or stand damage occurred due to flooding
22 | on that property. How many times did crop damage or
23 | stand damage occur?

24 | A. Probably, maybe, a limited amount half
25 | the time -- half of the years, sometimes not and

1 sometimes not at all and sometimes more.

2 Q. Okay. So did you get -- You didn't
3 get crop damage every year?

4 A. No. There's a few years we didn't get
5 crop damage.

6 Q. Okay. Every other year was there crop
7 damage and stand damage?

8 A. It probably would have been every
9 other year, but it would have been -- some years it
10 might have been minimal, some years it would have
11 been a lot more.

12 Q. But it would be fair to say that every
13 other year, there was crop damage or stand damage of
14 some sort.

15 A. There would be some, yeah.

16 Q. And the time we're talking about is
17 prior to the construction of the new spillway in 1997
18 and the property we're talking about is the property
19 that the Meyers --

20 A. Right.

21 Q. -- now own; correct?

22 A. Correct.

23 Q. So prior to 1997, the construction of
24 the new spillway, was there any other harm or damage
25 that the Meyer property suffered from flooding? Were

1 | there erosion issues?

2 | A. There would have been, but it would
3 | have -- that ground, it would have been minimal
4 | because it's so flat; it wouldn't have much erosion.

5 | Q. Okay. Was there ever debris, stones
6 | twigs that were left after the flooding receded?

7 | A. There were a few times it was so bad
8 | that corn stalks and stuff washed on our -- on the
9 | property and it didn't come off our field; it come
10 | off other fields and we had to clean it up.

11 | MR. FUSONIE: Before the spillway was
12 | changed in 1997 is what she's asking?

13 | A. No, no, this wouldn't have been.
14 | Well, there would have been some, but it wouldn't
15 | have been near right afterwards. Would have been
16 | some, but no, you know, whenever water comes out of a
17 | creek, the stuff floats to the edge, where the water
18 | goes, you know --

19 | Q. Um-hum.

20 | A. -- and then when it goes off, whatever
21 | debris is there stays there and then the water goes
22 | off. There would have some, but not, not a whole
23 | lot.

24 | Q. Would there have been some every year?

25 | A. No, not every year.

1 Q. Every other year?

2 A. Probably.

3 Q. So prior to construction of the new
4 spillway in 1997, there would be some debris that was
5 left after flood waters receded on the Meyer
6 property?

7 A. There would be some.

8 Q. Was there any other harm or damage
9 from flooding on the Meyer property, and I'm still
10 talking about before 1997?

11 A. Prior, prior.

12 Q. Yeah.

13 A. There might -- It wouldn't have been
14 very serious, 'cause I don't remember it.

15 Q. Was there any drainage tile failures
16 on the Meyer property before 1997 due to flooding?

17 A. I don't know what you call tile
18 failure. When the ground's flooded, your tiles don't
19 work, you know, it don't work 'til the creek goes
20 down.

21 Q. I guess, did any tile blow out because
22 of flooding?

23 A. Yeah, we had some that blew out.

24 Q. Because of flooding that occurred
25 before 1997?

1 A. Well, I wouldn't say before, no.

2 Q. Okay. Are there any buildings on the
3 Meyer property, the property you sold to the Meyers
4 in 2009?

5 A. Yeah. There's a four-bedroom house
6 and two bathrooms, barn, grain bin, two machine sheds
7 and a cattle building.

8 Q. Were any of those buildings ever
9 impacted by flooding that occurred before the new
10 spillway in 1997?

11 A. No.

12 Q. Did you build all of those buildings?

13 A. No. We remodeled the house and built
14 the machine shed and cattle shed and put up the grain
15 bin.

16 Q. So what was there before you bought
17 the property?

18 A. Well, there was a house and a small
19 chicken house and a small hog house and a bard and a
20 wood shed.

21 Q. Did you keep records of flooding that
22 occurred on the Meyer property, flooding that
23 occurred before 1997?

24 A. No.

25 Q. Did you take any pictures?

1 A. I said we had a picture, but that
2 might have been afterwards; I don't know. We had a
3 picture and we couldn't find it. We wanted to find
4 it and we couldn't find it. Maybe I'll probably find
5 it when I get home.

6 Q. Okay. Now, I'd like to talk about
7 flooding that occurred on the Meyer property after
8 the construction of the new spillway in 1997; okay?

9 A. Okay.

10 Q. So how often has flooding occurred on
11 the property that now belongs to the Meyers?

12 A. Almost every year.

13 Q. And when was the last time the Meyer
14 property flooded?

15 A. 2009.

16 Q. When, in 2009?

17 A. It was in the spring.

18 Q. And do you remember how long water
19 stayed on the property in the spring of 2009?

20 A. It'd probably been about three days.

21 Q. Do you remember how many acres were
22 affected in spring, 2009?

23 A. You're talking about the Meyers?

24 Q. I'm talking about the 94 acres that
25 you sold to the Meyers, in 2009.

1 A. Probably about 48 acres or so.

2 Q. And so in spring, 2009, you no longer
3 owned this property.

4 A. We did 'til May.

5 Q. You're right; I'm sorry.

6 A. Um-hum.

7 Q. Okay. So in spring, 2009, how deep
8 did the water get?

9 A. In 2009?

10 Q. Spring, 2009, on the Meyer property?

11 A. Well, I'd have to guess. I didn't --
12 Probably two or three feet.

13 Q. Prior to -- or so before spring, 2009,
14 when was the last time that the Meyer property
15 flooded?

16 A. Prior to. Before 2009?

17 Q. Um-hum. When was the last time you
18 remember the 94-acre Meyer property --

19 A. It probably, it probably flooded in,
20 maybe, once in 2008, but I'm not sure. I don't
21 remember; I don't remember.

22 Q. What is the last flood event you do
23 remember?

24 A. Well, I never will forget 2005.

25 Q. Okay. When, in 2005, did the Meyer

1 property flood?

2 A. Well, it flooded in the spring, then
3 it flooded in the summer, summer one time, but I'm
4 not real sure. I think it flooded three times that
5 year, but I'm not real sure.

6 Q. But you're certain that it flooded in
7 spring, 2005?

8 A. Yes.

9 Q. Okay. Do you remember how long water
10 stayed on the Meyer property in spring of 2005?

11 A. It was probably from three-to-five
12 days.

13 Q. Do you remember how many acres of the
14 Meyer property was flooded in the spring, 2005?

15 A. Probably about 48.

16 Q. And do you remember how deep the water
17 was on the Meyer property in spring, 2005?

18 A. It probably was, the deepest, probably
19 three feet.

20 Q. Do you remember any other flood events
21 on the Meyer property since the spillway was
22 constructed in 1997?

23 A. Well, in 2003.

24 Q. Okay.

25 A. That was the worst.

1 Q. When, in 2003 did the Meyer property
2 flood?

3 A. Well, I think the worst was the 4th of
4 July.

5 Q. Do you remember how deep the water
6 got?

7 A. That was probably the deepest,
8 probably three feet, plus.

9 Q. Did you ever measure how deep the
10 water got?

11 A. Please?

12 Q. Did you ever measure how deep the
13 water got?

14 A. No, but I --

15 Q. Is this your best estimate?

16 A. Well, I would say at least three feet
17 because we had wheat in one field and it completely
18 covered the wheat and the wheat would usually be
19 about three feet tall and in part of the field it was
20 completely covered. You couldn't see the wheat; the
21 water was over it.

22 Q. How many acres were affected in July,
23 2003, on the Meyer property?

24 A. Probably about 48, I would imagine,
25 somewhere in that, pretty close.

1 Q. And can you remember how long the
2 water stayed on the Meyer property in July, 2003?

3 A. Well, probably from three-to-five days
4 because, you know, where it's the shallow hit a wall
5 first and it probably didn't stay there as long as
6 what it did on the deepest.

7 Q. Before July, 2003, do you remember any
8 other flood events occurring on the Meyer property?

9 A. Before 2003?

10 Q. Um-hum.

11 A. You mean all the way back from the
12 time we purchased it?

13 Q. Before 2003, but after the spillway
14 was modified in 1997.

15 A. After the spillway. I can't say
16 specifically, but probably once a year, maybe.

17 Q. But you don't remember anymore
18 specific events?

19 A. No, none.

20 Q. In the flooding that occurred after
21 1997, after the new spillway was constructed, did
22 those floods result in any harm or damage to the
23 Meyer property?

24 A. Oh, yeah. We lost a part of our crop
25 of beans that we planted and damaged some of the

1 grain, our wheat and stuff like that. It flooded, it
2 ruined the quality of the grain?

3 Q. Can you remember what years crops were
4 lost due to flooding?

5 A. What year the crops were lost due to
6 the --

7 Q. Um-hum.

8 A. Oh, it's been 2003 and 2005.

9 Q. Any other years?

10 A. I wouldn't say that would have been
11 serious, but some of the years, we might have been
12 delayed planting on account of it, 'cause it usually
13 took close to a week after the water got off before
14 you could get out there and plant.

15 Q. Did the flooding that occurred after
16 1997, on the Meyer property cause you any other harm
17 or damage?

18 A. Well, we had to repair some tile, I
19 think, afterwards.

20 Q. In what years did you have tile
21 failure that you needed to repair.

22 A. Oh, it'd probably been about five, six
23 years ago, about 2004, 2005.

24 Q. Did you have tile damage at any other
25 time?

1 A. Not that I recall that would have been
2 serious enough that I'd remember it.

3 Q. Any other harm or damage because of
4 flooding since 1997 on the Meyer property?

5 A. No, nothing -- Anything other than
6 what we talked about?

7 Q. Um-hum, yes.

8 A. I don't -- I don't recall anything too
9 serious after that outside of it might have been a
10 little erosion, not too much because it's so flat
11 that it don't erode very much.

12 Q. Anything else?

13 A. No.

14 Q. Okay. Carl, I'm going to hand you
15 what's been marked Respondent's Exhibit B.

16 (Xerographic Document, Affidavit of
17 Carl W. Rose, was marked for
identification Exhibit B.)

18 A. Please? I didn't understand you.

19 Q. I'm handing you what's been marked
20 Exhibit B. Can you look at that and review that
21 please.

22 A. Yeah, okay.

23 (Witness reviewing document.)

24 Q. Actually, if you could keep that.
25 Carl, Exhibit B is your Affidavit; right?

1 A. Yes.

2 Q. Okay. And it's dated on page 3,
3 August 25th, 2009.

4 A. Yeah.

5 Q. And that's your signature; correct?

6 A. Right.

7 Q. Okay. This affidavit talks about the
8 property that you sold to the Meyers in 2009; right?

9 A. Right.

10 Q. And in paragraph 3, on the first page
11 of your Affidavit, you refer to two parcel numbers
12 and those are the two parcels, the property we've
13 been talking about today; right --

14 A. Right.

15 Q. -- that you sold to the Meyers in
16 2009. Okay. Could you flip to Exhibit A to your
17 Affidavit.

18 (Witness complying.)

19 And Exhibit A shows parcel number --

20 A. A. Okay.

21 Q. -- parcel number 42-019700.0000.

22 A. Where'd you get them numbers? Oh!

23 Q. In the bottom, left-hand corner.

24 A. Oh, okay, yeah!

25 Q. Shows a 53.33-acre parcel; right?

1 A. Right.

2 Q. That you sold to the Meyers in 2009?

3 A. Right.

4 Q. And on this Exhibit, part of it has
5 been shaded. What does that shading represent?

6 A. Please.

7 Q. Part of this Exhibit, part of the
8 53-acre property has been shaded. What does that
9 shading represent?

10 A. The flooding area that flooded the
11 most.

12 Q. A specific flood event?

13 A. Please?

14 Q. Does the shading represent a specific
15 flooding event?

16 A. Well, it would probably be 2/03 and
17 2/05, but that ground is so flat, if it floods back
18 here, it's gonna flood up here, too; the ground is so
19 level.

20 Q. Okay.

21 A. There's very little difference in the
22 elevations from here to here.

23 Q. So correct me if I'm wrong. There's
24 very different elevation in the northern part of the
25 property to the southern part of the property.

1 A. Very little, very little difference.

2 Q. So everything you shaded is pretty
3 much the same elevation?

4 A. It's pretty much the same elevation.

5 Q. And did you shade Exhibit A?

6 A. I don't know that I shaded it, but I
7 know I outlined it, but I'm not real sure that I
8 shaded it. I might have, but I don't know.

9 Q. Okay.

10 A. I don't remember.

11 Q. Do you remember when you outlined
12 and/or shaded Exhibit A.

13 A. It was probably last August sometime,
14 but I'm not real sure of that date, either.

15 Q. Did anyone help you shade Exhibit A to
16 your Affidavit?

17 A. My wife and I done it together.

18 Q. Anyone else?

19 A. No.

20 Q. Can you turn to the last page of your
21 Affidavit, which is marked Exhibit B to your
22 Affidavit, and this is a 40.86-acre parcel; correct?

23 A. Right.

24 Q. And this is property that you also
25 sold to the Meyers in 2009; right?

1 A. Right.

2 Q. And what does the shading on Exhibit B
3 to your Affidavit represent?

4 A. The ground that would flood normally.

5 Q. Um-hum.

6 A. This, too, it is real, real flat
7 there; it's real level. If it floods one place, the
8 whole course about is gonna to flood it.

9 Q. Did you shade this Exhibit?

10 A. I don't recall that I shaded this, but
11 I knew (sic) I outlined it. I might have shaded it,
12 but I don't recall.

13 Q. Did anyone help you shade --

14 A. My wife and I done it together.

15 Q. All right. Anyone else?

16 A. No.

17 Q. Okay.

18 MS. STELZER: I don't have any further
19 questions.

20 MR. FUSONIE: I got some questions.

21 EXAMINATION

22 BY MR. FUSONIE:

23 I'm going to be asking you some
24 questions now, Mr. Rose.

25 THE WITNESS: Yes.

1 MR. FUSONIE: Do you need a bathroom
2 break?

3 THE WITNESS: No.

4 MR. FUSONIE: Okay. Bear with me as I
5 gather up my notes, then, to ask you
6 questions.

7 THE WITNESS: Well, let me blow my
8 nose then.

9 MR. FUSONIE: I will allow you to do
10 that, sir.

11 Q. You talked about a July, 2003, flood
12 of your 87-acre parcel.

13 A. Yeah.

14 Q. Were there more acres, to your
15 knowledge, flooded during that flood event that you
16 had ever seen in your entire time living in that
17 area?

18 A. That was by far the worst. The 2003
19 you're talking about?

20 Q. Yes.

21 A. Yeah. That was by far the worst.

22 Q. And would your testimony be the same
23 as to the Meyer property, that that was the worst
24 flooding you ever saw in your 50-plus years living in
25 the area.

1 A. Yeah, that was the worst.

2 Q. And now, as to 2005, the flooding of
3 your 87-acre parcel in 2005, was the second worst
4 flooding you had ever seen in your 50-plus years of
5 living in the area?

6 A. Yes.

7 Q. And your testimony would be the same
8 for the Meyer property?

9 A. Right.

10 Q. Am I correct that the longer crops are
11 under water, the more damage is going to occur to the
12 crops?

13 A. Absolutely.

14 Q. So if crops are under water for
15 three-to-five days verse (sic) a half a day, there's
16 going to be more damage to the crops?

17 A. Going to be a lot more damage --

18 Q. Okay.

19 A. -- and especially if the sun shines on
20 it. When water is standing over a crop, when the sun
21 shines on it, it does a lot more damage than when
22 it's cloudy; don't ask me why.

23 Q. If the water is there for
24 three-to-five days verse a half a day, is there more
25 soil compaction?

1 A. Well, yeah. It would be even more
2 soil compaction and it would take days longer for it
3 to dry out.

4 Q. Okay. And how old are you, sir?

5 A. Seventy-nine years and 51 weeks.

6 Q. And how many years have you lived in
7 Mercer County?

8 A. All this time.

9 Q. If I put you on the spot, sir, and
10 says (sic) who has the better long-term memory, you
11 or your wife, who would you say?

12 (Witness chuckling.)

13 A. It depends on -- Sometimes, I think
14 long term, I have a better remember -- I don't know
15 about that, but I have better long-term memory than I
16 have what I done had for breakfast this morning.

17 Q. Okay, all right.

18 A. I won't lie.

19 Q. I'll take as you're not sure as to who
20 has better long-term memory.

21 A. It depends on certain -- Certain
22 things she'll remember that I never would remember,
23 vice-versa.

24 Q. Okay, all right.

25 A. Just depends on who is in the right or

1 wrong.

2 Q. With the 2003 and the -- I'm sorry --
3 2003 flood, did you have more debris on your property
4 in 2003 than you had ever seen prior to 1997?

5 A. Yeah, I think so, yeah.

6 Q. How about for the Meyer property? Was
7 there more debris in 2003 than you had ever seen on
8 your property before 1997?

9 A. Yeah.

10 Q. And for 2005, for your property that
11 you still own, was there more debris than you ever
12 saw before 1997?

13 A. Yeah, there was some, but on what we
14 own now, it don't get -- we don't get the debris on
15 there as what they do on the -- what Meyers does --

16 Q. Okay.

17 A. Don't ask me why, but it just seems
18 like that the --

19 Q. Okay.

20 A. -- what the Meyers bought that they
21 get the most debris because it's more level and flat,
22 you know.

23 Q. So for 2005, your property, you had
24 debris from the flooding in 2005 --

25 A. We had some, yeah.

1 Q. And was your debris in 2005 more than
2 you had ever seen on your property --

3 A. Oh, yeah --

4 Q. -- before 1997?

5 A. Yeah.

6 Q. Okay. And for Meyer property, is your
7 testimony the same as to the debris?

8 A. It would be the same.

9 Q. Okay.

10 MR. FUSONIE: Those are all the
11 questions I have for you, Mr. Rose. I'm
12 not sure if Ms. Stelzer has any follow up.

13 MS. STELZER: No, I don't have any
14 further questions, either. Thank you.

15 MR. FUSONIE: Mr. Rose, if the State
16 attorneys order a transcript of everything
17 that's been taken down, as far as questions
18 and answers, you have the right to review
19 that to correct any errors in the
20 transcript. I can't tell you to do so, but
21 I recommend to everyone, who I'm the
22 attorney for, sitting next to them in a
23 deposition, that they read. You need to
24 tell the court reporter if you want to
25 read. You can tell her right now.

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THE WITNESS: Yeah, I would like to
read it, 'cause I might have said something
I don't remember short-term.

Carl W. Rose

- - -
(At 3:17 o'clock, PM, the deposition concluded.)
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THE WITNESS: Yeah, I would like to
read it, 'cause I might have said something
I don't remember short-term.

Carl W. Rose
Carl W. Rose

- - -

(At 3:17 o'clock, PM, the deposition concluded.)

- - -

Martha Brewer 3/15/10
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, 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 CARL W. ROSE 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 CARL W. ROSE; 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 19th day of February, 2009.

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

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ERRATA SHEET

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I, CARL W. ROSE, 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:
5	15	Cold Water should be one word Coldwater
9	6	delete 53
11	18	south instead of north
11	20	should be 1969 instead of 1981
14	22	were should be was
19	25	Change milking to feed
20	18	an should be and
23	11	property should be probably
33	7	lied should be lived
35	1	change a flooded to flood
36	14	add flood after would
36	24	hear should be heart
37	4	81 should be 58
40	15	delete right ^{near} insert nearly as bad as afterwards
18	22 & 23	Change 30 Acres or 31 to 10 to 15--
18	22 & 23	I got Confused
42	19	lard should be barn

(2) C.R

ERRATA SHEET

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I, CARL W. ROSE, 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:

36	11	Change over 40 Acres to between 25+300 acres at most. Reason--I was confused by the question
47	4	Change shallow hit a wall to shallowest.

AFFIDAVIT OF CARL W. ROSE



STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

1. I am a Relator in this mandamus action 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 42-018500.0000.

3. I have been an owner of Mercer County Parcel Number 42-018500.0000 since 1958.

4. Mercer County Parcel Number 42-018500.0000 lies south of Beaver Creek. Kittle Ditch which flows into Beaver Creek cuts through Mercer County Parcel Number 42-018500.0000.

5. Since ODNR replaced the western spillway of Grand Lake St. Mary's in 1997 and undertook its current lake level management practices, which include maintaining increased lake levels and use of the western spillway for virtually all water flow out of Grand Lake St. Mary's, Mercer County Parcel Number 42-018500.0000 has been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

6. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 42-018500.0000 has flooded approximately fifteen times, or at least once per year. On each occasion, Mercer County Parcel Number 42-018500.0000 was inundated with water at depths varying from six inches to three feet.

7. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 42-018500.0000 floods more rapidly and remains flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Number 42-018500.0000 remained inundated with water for a period of two to five days.

8. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 42-018500.0000 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 31 acres of Mercer County Parcel Number 42-018500.0000 being flooded with approximately three feet of water for approximately five days. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Number 42-018500.0000 is attached hereto as Exhibit A. I have shaded in the area of the parcel that was flooded in 2003.

10. Mercer County Parcel Number 42-018500.0000 also experienced severe flooding in 2005.

11. Mercer County Parcel Number 42-018500.0000 was again flooded as recently as Spring 2009.

DON000582

12. As a direct result of the flooding, Mercer County Parcel Number 42-018500.0000 has suffered damage in the form of loss of crops, bank erosion, the deposit of debris, and drainage tile failure.

13. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Number 42-018500.0000.

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.

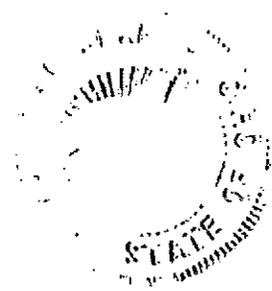
FURTHER AFFIANT SAYETH NAUGHT.

Carl W. Rose
Carl W. Rose

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

Kristi Kress Wilhelmy
Notary Public

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



DO#000583

EXHIBIT A
TO
AFFIDAVIT OF CARL W. ROSE

(DON000584)

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

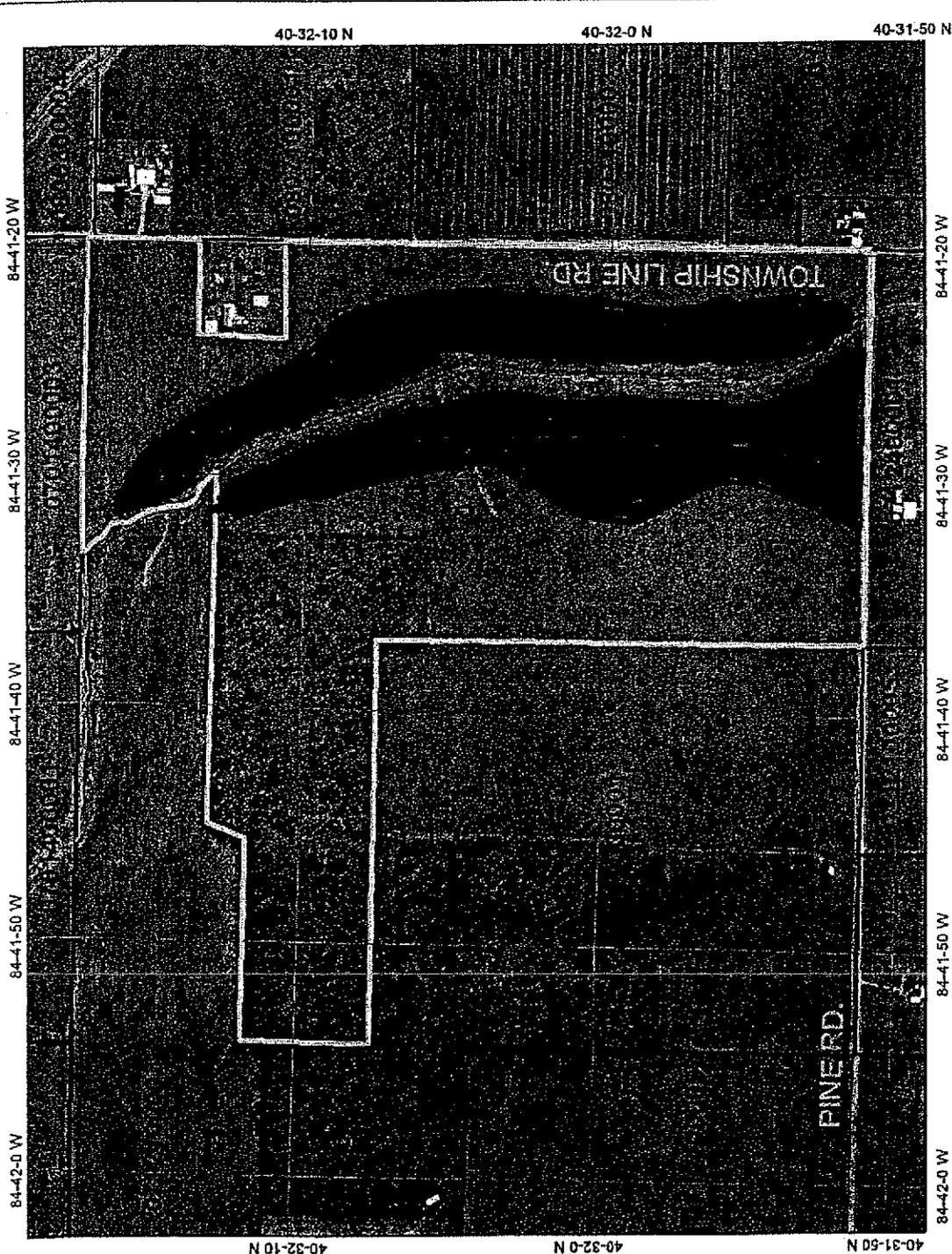
Transportation

- State Highways
- US Highways

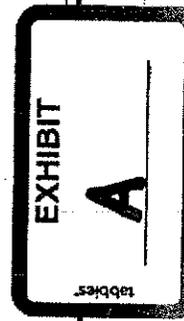
Water

- Lake
- Streams

Scale: 1:6,500

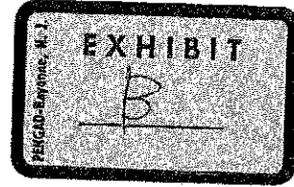


This map is a user generated static output from an internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.



Carl W. Rose and Lucile M. Rose
 -0- Pine Rd.
 Parcel No.: 42-018500.0000 - 87.788 acres

AFFIDAVIT OF CARL W. ROSE



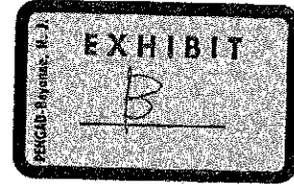
STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

1. Jerome and Amy Meyer are Relators 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. I was a prior owner of real estate described as Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000.
3. I owned Mercer County Parcel Number 42-019700.0000 from 1958 to 2009 and Mercer County Parcel Number 42-019800.0000 from 1969 to 2009.
4. Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000 lie south of Beaver Creek. Kittle Ditch which flows into Beaver Creek cuts through Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000.
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 42-019700.0000 and 42-019800.0000 have been subject to continuing, persistent, frequent, and inevitable increased severe flooding from the western spillway of Grand Lake St. Mary's.

DON000586

AFFIDAVIT OF CARL W. ROSE



STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

1. Jerome and Amy Meyer are Relators in this mandamus action seeking compensation for the property taken by Respondents Ohio Department of Natural Resources and Sean D. Logan, Director. (collectively "ODNR").

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DON000586

6. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000 have flooded approximately fifteen times, or at least once per year. On each occasion, Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000 were inundated with water at depths varying from six inches to three feet.

7. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000 flood more rapidly and remain flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000 remained inundated with water for a period of two to five days.

8. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000 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 20 acres of Mercer County Parcel Number 42-019700.0000 and 28 acres of Mercer County Parcel Number 42-019800.0000 being flooded with approximately three feet of water for approximately five days. True and accurate copies of black and white aerials from the Mercer County Auditor's website of Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000 are attached hereto as Exhibits A and B. The shaded in area of each parcel depicts the area that was flooded in 2003.

10. Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000 also experienced severe flooding in 2005.

DON000587

11. Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000 was again flooded as recently as Spring 2009.

12. As a direct result of the flooding, Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000 have suffered damage in the form of loss of crops, bank erosion, the deposit of debris, and drainage tile failure.

13. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Numbers 42-019700.0000 and 42-019800.0000.

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.

Carl W. Rose
Carl W. Rose

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

Kristi Kress Wilhelmy
Notary Public

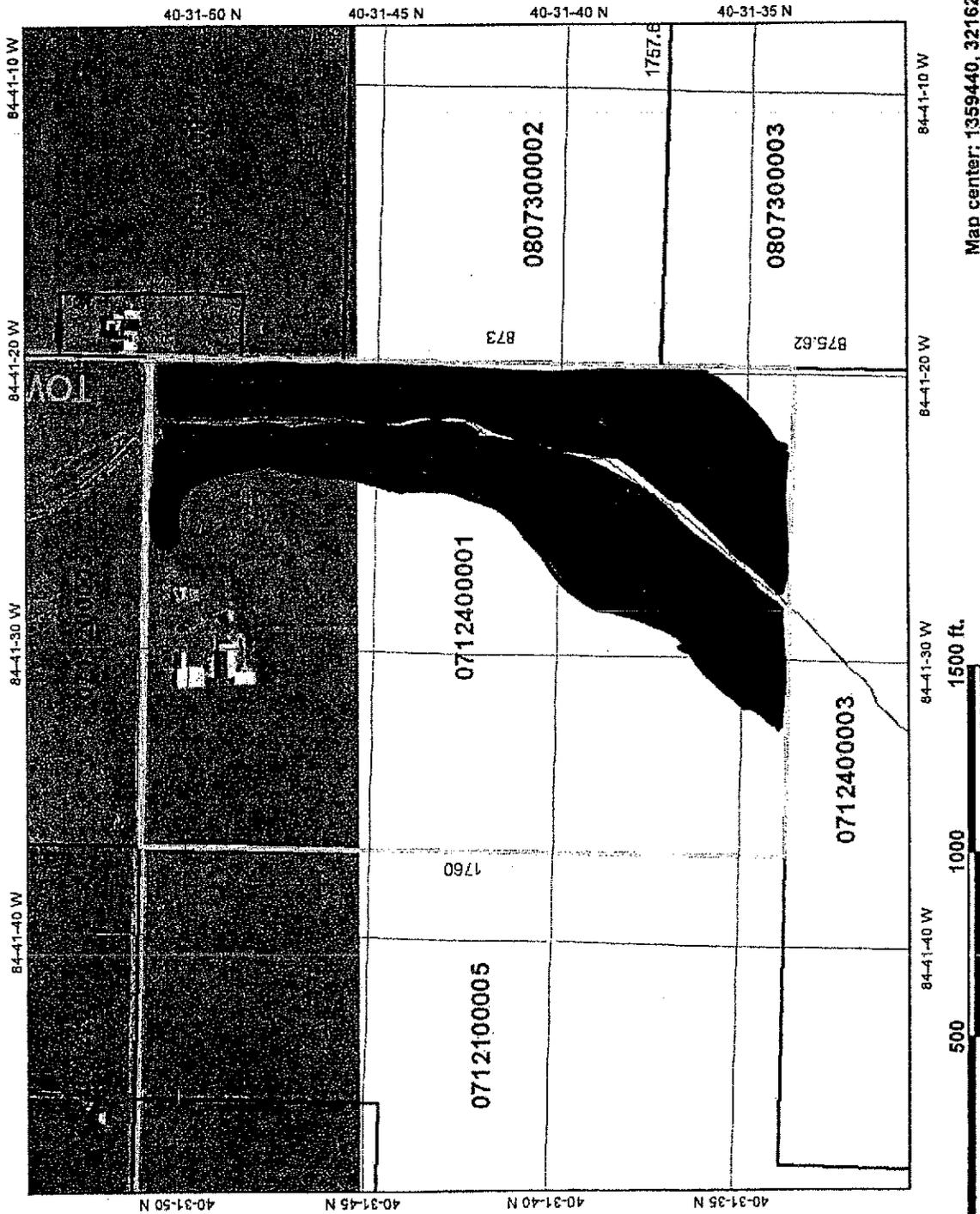
KRISTIKRESS WILHELMY
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 O.R.C.

DON000588

EXHIBIT A
TO
AFFIDAVIT OF CARL W. ROSE

[DON000589]

Mercer County Ohio



Legend

- Administrative**
 - Townships
 - Neighborhoods
- Parcels**
 - Parcels
- Transportation**
 - State Highways
 - US Highways
- Water**
 - Lake
 - Streams



Scale: 1:5,200

Map center: 1359440, 321627

EXHIBIT

A

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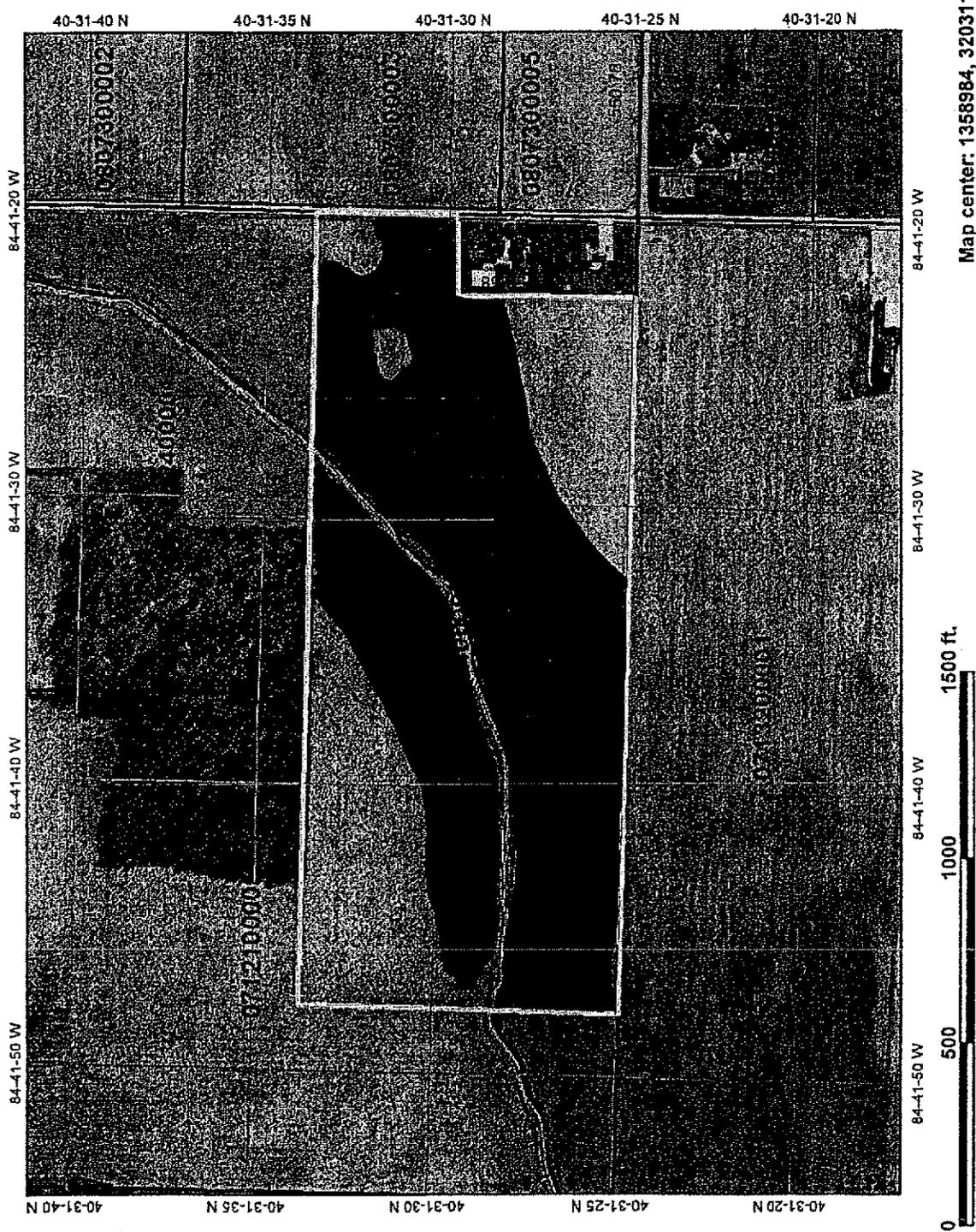
Jerome L. Meyer and Amy L. Meyer
 2940 Pine Rd.
 Parcel No.: 42-019700.0000 - 53.33 acres

Mercer County Ohio



Legend

- Administrative**
 - Townships
 - Neighborhoods
- Parcels**
 - Parcels
- Transportation**
 - State Highways
 - US Highways
- Water**
 - Lake
 - Streams



Scale: 1:5,200

EXHIBIT
B

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.

Jerome L. Meyer and Amy L. Meyer
 -0- Township Line Rd.
 Parcel No.: 42-019800.0000 - 40.86 acres

2650000592

TAB 45

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 LUCILE M. ROSE, was
taken by the Respondents as on cross-examination,
pursuant to the Ohio Rules of Civil Procedure, at
the Central Service Building, 220 West Livingston
Street, Celina, Ohio 45822, on Thursday, February
4, 2010, at, 10:52 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

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APPEARANCES :

On Behalf of Ohio Department of National Resources:

Rachel H. Stelzer, Esq.
Environmental Enforcement
30 East Broad Street, Floor 25
Columbus, Ohio 43215-3400

On Behalf of the Respondent:

Martha C. Brewer, Esq.
And
Thomas H. Fusonie, esq.
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:

Examinations	DIRECT	CROSS
By Ms. Stelzer		4
By Mr. Fusonie		

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of Lucile Rose	37

- - - -

1 LUCILE M. ROSE
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 MS. STELZER:

8 I am deposing Mrs. Lucille Rose today
9 by agreement of counsel. Ms. Rose, my name
10 is Rachel Stelzer. I am an Assistant
11 Attorney General, here on behalf of the
12 Ohio Department of Natural Resources.

13 Q. Could you please state your name and
14 address for the record?

15 A. My name is Lucile M. Rose. My address
16 is 2940 Pine Road, Celina, Ohio, 45822.

17 Q. Is it okay if I call you Lucile?

18 A. Lucy.

19 Q. Lucy?

20 A. Yes. That's what I always go by.

21 Q. Okay. Lucy, have you ever been
22 deposed before?

23 A. Pardon?

24 Q. Have you ever been deposed before?

25 A. No.

1 Q. Okay. I'm going to ask you a series
2 of questions. My main purpose is to try and get a
3 better understanding of the flooding that's occurring
4 on your property. It's important that you speak
5 clearly and loudly so that the court reporter
6 understand and can get down everything that you're
7 saying. It's also important that if you understand a
8 question or you need me to clarify, you ask me to do
9 so. Can I get you to agree to do that?

10 A. I will.

11 Q. Okay. Have you reviewed any documents
12 in preparation for your deposition today?

13 A. Yes.

14 Q. What did you look at? What documents
15 did you review?

16 A. Well, the affidavits we drew up and
17 stuff.

18 Q. Okay. So the two affidavits you
19 filed in this case. Anything else?

20 A. Well, my husband and I talked about
21 it.

22 Q. Okay.

23 A. We remembered a lot of flooding.

24 Q. Okay. Did you talk about your
25 deposition with anyone else?

1 A. I don't understand.

2 Q. Well, did you talk about your
3 deposition in preparation for your deposition today
4 with anyone else outside your husband?

5 A. I'm confused.

6 Q. Did you maybe talk to your attorney
7 about --

8 A. Well, we discussed it. I mean --

9 MR. FUSONIE: And that's all you need
10 to say.

11 MS. STELZER: Okay. That's all I was
12 asking. Thank you.

13 Q. What is your husband's name, Lucy?

14 A. Carl.

15 Q. Do you work, Lucy? Do you have on a
16 job?

17 A. At home.

18 Q. At home, regular job. Did you have
19 any further education after high school?

20 A. No.

21 Q. Okay. Can you please describe the
22 location of the property that you own, that you
23 alledge has been taken by the State in this case?

24 A. It is on the north side of Pine Road.
25 It's runs along Township Line Road.

1 Q. So is your home, is your residence on
2 this property?

3 A. We live across that property. We no
4 longer own it, but we live there.

5 Q. You no longer own your residence that
6 you live --

7 A. Right.

8 Q. But your home is not on the property
9 that we're going to be discuss being today?

10 A. No, right across the road.

11 Q. Okay. Is the property -- How large is
12 the property that we're going to be talking about?

13 A. Eighty-seven point -- I think 87 or
14 something like that. It's a little over 87 acres.

15 Q. And is that 87 acres dividend into
16 different parcels, parceld for tax purposes by the
17 county?

18 A. No. It's just on one parcel.

19 Q. Okay. And how long have you owned
20 that 87 acres?

21 A. Since '58 and some of it was since
22 '81.

23 Q. How many acres of the 87 have you
24 owned since 1958?

25 A. Twenty.

1 Q. And you because bought the remainder
2 in 1981?

3 A. Right.

4 Q. Do you own any other property in the
5 area?

6 A. No.

7 Q. Do you lease or rent any other
8 property in the area?

9 A. No.

10 Q. This 87 acres that we're going to be
11 talking about, do you lease or rent that property
12 out?

13 A. We have a renter at that farms it.

14 Q. Okay. The entire 87 acres?

15 A. Well, there's woods on its.

16 Q. Okay.

17 A. But he rents the farm ground.

18 Q. Okay. Who is that?

19 A. Jerry Powell.

20 Q. Jerry Powell.

21 A. Well, Powell, Limited, really.

22 Q. Does Powell, Limited cash rent the
23 property?

24 A. No, share.

25 Q. What are the terms of that agreement?

1 How much share?

2 A. Half and half.

3 Q. Half and half? Can you describe
4 where your property is in relation to the Beaver
5 Creek?

6 A. Yes. Is it south of the Beaver Creek,
7 about -- I'd say three or four miles, I think.

8 Q. Okay. So another property is in
9 between yours and the before?

10 A. Oh, yes, but we have a ditch.

11 Q. Do you have a waterway that slices
12 through the center of your property?

13 A. We have a ditch.

14 Q. A ditch. So a ditch that doesn't
15 always flow? The ditch isn't always flowing with
16 water; correct?

17 A. I don't know -- Well, no. I mean,
18 sometimes it doesn't have any water in it.

19 Q. Okay. Just wanted to make sure that I
20 understood what a ditch was. You mentioned trees on
21 your property. Where are the trees?

22 A. They are located on the northwest
23 corner of the property.

24 Q. And around how many acres do those
25 trees cover?

1 A. Twenty.

2 Q. Is that portion of the property used
3 for anything?

4 MR. FUSONIE: Objection, vague.

5 Q. The portion of that 20 acres have been
6 farmed by Powell, Limited; correction?

7 A. Correct.

8 Q. Is there anything else on that 20
9 acres besides trees? Are there any buildings?

10 A. No.

11 Q. Anything else?

12 A. No.

13 Q. So how many acres of farmland are
14 there on your property?

15 A. Sixty-seven point seven or something.

16 Q. Is that 67 acres or so pretty flat?

17 MR. FUSONIE: Objection.

18 Q. Though, Lucy, you may still answer.
19 Is that 67 acres pretty flat?

20 MR. FUSONIE: Objection. You can
21 answer though.

22 THE WITNESS: How many?

23 MR. FUSONIE: If you understand the
24 question, you can answer the question.

25 Q. It not real flat.

1 Q. Can you describe it for me?

2 A. I don't know. It's not real flat.
3 It's got some rolling in it.

4 Q. Okay. Can you see the farmland from
5 your home across the street?

6 A. Yes.

7 Q. And so its kind of rolling?

8 A. Yes.

9 Q. So there is definitely a difference in
10 elevation?

11 A. Yes.

12 Q. So am I correct that there's no
13 man-man made structures on the entire 87 acres?

14 MR. FUSONIE: Objection.

15 Q. Are there any barns or grain elevators
16 on the property?

17 A. No.

18 Q. Just farmland and a patch of trees?

19 A. Right.

20 Q. Okay, thanks. How long has the
21 property been used or been farmed?

22 A. We've been out there since '58, but
23 how many years before that, I do not know.

24 Q. Who is we?

25 A. My husband and I.

1 Q. Have been on -- both your husband and
2 you have been on the property since 1958?

3 A. Right.

4 Q. And so since 1958, the property has
5 been continuously used as farmland?

6 A. Correct.

7 Q. And have you also -- have you and your
8 husband ever farmed the property yourself?

9 A. Yes.

10 Q. And when was that?

11 A. Eighty-eight was the last year, I
12 think.

13 Q. So from 1958 to around 1988, you guys
14 farmed the property?

15 A. Right.

16 Q. Okay. Have the 20 acres always been
17 in trees since you acquired the property or did you
18 plant those trees?

19 A. No, it's always been there.

20 Q. I'm sorry. It's always been trees?

21 A. Right.

22 Q. Okay. Can you please describe the
23 drainage system on the property? Is the property
24 tiled?

25 A. Yes, the property is tiled.

1 Q. Is the full 67 acres of farmland
2 tiled?

3 A. Yes.

4 Q. Did you and your husband install those
5 tiles?

6 A. Yes.

7 Q. When was that to the best of your
8 knowledge.

9 Q. We did some in different years because
10 would he couldn't afford to do it all --

11 Q. Um-hum?

12 A. And we have two waterways, too.

13 Q. Where are the waterways?

14 A. They're on the west side of the creek
15 that runs through it.

16 Q. So there is a man-made waterway on the
17 west side of the natural creek that runs through your
18 property?

19 A. We got two different waterways.

20 Q. Okay. Where is the second?

21 A. It's further north than the first
22 one. They're both on the west side of the creek.

23 Q. There are two man-made waterways and a
24 natural creek running through your property. Where
25 does the natural creek running to, to what waterway?

1 Does it run to the Beaver?

2 A. And the Wabash, I think.

3 Q. The Beaver?

4 A. Yes.

5 Q. How far away is the Wabash from your
6 property?

7 A. Probably six miles.

8 Q. When you and your husband farmed the
9 property, what crops did you guys plant?

10 A. Beans, corn, wheat and some oats.

11 Q. Do you know what Powell, Limited
12 planted last year?

13 A. Corn and soy beans.

14 Q. And in addition to the tiling that has
15 already been done and the two man-made waterways have
16 you and your husband ever contemplated or thought
17 about making any other improvements to the land to
18 alleviate any of the drainage problems?

19 MR. FUSONIE: Objection.

20 A. I don't understand.

21 Q. Can you think of anything else that
22 could be done to the property to alleviate drainage
23 problems that exist?

24 MR. FUSONIE: Objection. Calls for
25 speculation.

1 A. If they would lower the water in the
2 lake.

3 Q. Anything else?

4 A. I don't know.

5 Q. Do you participate in the Conversation
6 Reserve Program? So it's a program that requires
7 property owners to maintain filter strips on their
8 property. Do you maintain any filter strips on your
9 property?

10 A. We have two waterways.

11 Q. Um-hum. Do you know anything about
12 filter strips that maybe in place?

13 A. No.

14 Q. Okay. Do you know if the property
15 participates in the Wetlands Reserve Program?

16 A. Yes, because they're only allowed to
17 do a certain kind of tillage on it, I know, or part
18 of it.

19 Q. Okay. Do you know what part?

20 A. No.

21 Q. Do you know how many acres?

22 A. No.

23 Q. But not the whole thing?

24 A. I can't --

25 Q. That's okay. Just to the best of your

1 knowledge.

2 MR. FUSONIE: If you don't understand

3 --

4 MS. STELZER: Yeah, if you don't know,
5 you don't know.

6 THE WITNESS: Yeah.

7 A. I don't.

8 Q. Okay, thanks. Before you acquired the
9 property in 1958, and then another chunk in 1981,
10 what did you know -- what did you know about it?

11 MR. FUSONIE: Can we -- can we break
12 that out.

13 MS. STELZER: Yeah. Break it out.

14 Q. In 1958, when you acquired the first
15 20 acres, what did you know about the property?
16 Just a few years ago, I know.

17 A. I did not know nothing about it.

18 Q. Okay. What about the 67 acres you
19 acquired in 1981? What did you know about the
20 property before you acquired that 67 acres? Did you
21 speak with the previous property owners before you
22 purchased it?

23 A. I did not. My husband probably did.

24 Q. Okay. Did you know of any flooding on
25 the property before you purchased it?

1 A. Nothing like it does now, ever.

2 Q. But you did know that some flooding
3 occurred?

4 A. No.

5 Q. You didn't know?

6 A. I didn't know.

7 Q. Were you told that no flooding
8 occurred on the property?

9 A. I don't remember.

10 Q. Let's first talk about the -- Well,
11 actually, the 20-acre chunk that you acquired in
12 1958, is that the 20 acres with trees on it or is
13 that 20 acres partially farmland?

14 A. It all farmland.

15 Q. It's all farmland, okay. That 20
16 acres that you acquired in 1958, -- Actually, strike
17 that.

18 The entire 87 acres, since you
19 purchased them, did you experience flooding on that
20 property before 1997?

21 A. Nothing -- It didn't last long. It
22 would just only stay on a real short time. Now, it
23 stays on for three-to-five days.

24 Q. How long did it stay -- did water stay
25 on the property when it flooded before 1997?

1 A. It would always be off probably within
2 a half a day anyhow, maybe sooner.

3 Q. Before the spillway was changed in
4 1997, how many acres were affected by flooding?

5 A. I don't recall. Not near as many as
6 now I don't think.

7 Q. Around how many acres flood now?

8 A. Probably 31, at least.

9 Q. Before 1997?

10 A. Just a few.

11 Q. How many is a few?

12 A. Three.

13 Q. Were there ever times that it flooded
14 more than three acres?

15 A. I don't recall.

16 Q. How deep was flooding that occurred
17 before 1997?

18 A. I know it wasn't near as deep as what
19 it is now.

20 Q. Okay. Did it used to always flood in
21 the same place?

22 A. I don't recall.

23 Q. Did it used to flood along the
24 waterway or the natural water course that flows
25 through your property?

1 A. Pardon?

2 Q. Where, in the properties, did I used
3 to flood before 1997?

4 A. I don't recall.

5 Q. Do you remember it flooding near the
6 waterway in the center of your property?

7 A. I don't know.

8 Q. What does flooding mean to you?

9 A. What does flooding mean?

10 Q. Yes.

11 A. When water stands on your crops and
12 ruins the quality of 'em; it damages them and hurts
13 the soil. It puts all kind of debris over your
14 land. You have to go out and clean it off.

15 Q. Anything else?

16 A. No.

17 Q. Okay. Before 1997, what do you
18 believe was the cause of flooding on your property?

19 A. If we would get real, real heavy rain
20 for a few days at a time, but it didn't occur nothing
21 like the does now.

22 Q. Okay. When you got really heavy rain
23 for a few days at a time, how did the flooding occur?
24 Where was it occurring?

25 MR. FUSONIE: ed objection.

1 Q. I don't know.

2 Q. Okay.

3 MR. FUSONIE: Do you want to take a
4 break for a few minutes?

5 THE WITNESS: I don't care

6 MS. STELZER: Would you like to take a
7 break. We can certainly take a break.

8 THE WITNESS: I just want to get it
9 over with.

10 MS. STELZER: Okay.

11 THE WITNESS: Before --

12 MS. STELZER: Okay.

13 Q. Can you give my any sense of how often
14 flooding occurred on your property before 1997? Did
15 it occur once a year?

16 A. I don't think so, no.

17 Q. So more or less?

18 A. Less.

19 Q. Once ever two years?

20 A. I don't recall.

21 Q. But more than -- or less than once
22 ever year?

23 A. Right.

24 Q. Before 1997, did you loose any crops
25 due to flooding on your property?

1 A. No.

2 Q. Did you suffer any tile failures due
3 to flooding?

4 A. No.

5 Q. Any erosion?

6 A. I don't recall.

7 Q. Any deposit of silt or any other
8 debris?

9 A. No.

10 Q. When your property flooded before
11 1997, could you still farm the product?

12 A. Yes.

13 Q. Could you farm the product while there
14 was water standing?

15 A. No, not on the property.

16 Q. So while there was water standing, you
17 were unable to farm?

18 A. Right.

19 Q. Is that usually the case when water is
20 standing --

21 A. Right.

22 Q. Okay. It's hard to farm when there is
23 water on the property?

24 A. You don't farm when there is water on
25 the property.

1 Q. Okay, okay. Did you make any records
2 of flooding that occurred before 1997?

3 A. No.

4 Q. You didn't keep a log of whether
5 conditions?

6 A. No.

7 Q. Okay. Did you take any pictures?

8 A. No.

9 Q. Now, before 1997, did you have crop
10 insurance?

11 A. No.

12 Q. Never before -- Do you have crop
13 insurance now?

14 A. No.

15 Q. Do you know if Powell, Limited carries
16 crop insurance?

17 A. No, they don't.

18 Q. Okay. Lets talk about flooding that
19 occurred after the construction of the few spillway
20 in 1997. How often has flooding occurred since the
21 few spillwas was put in?

22 A. I think at least once ever year and
23 sometimes twice.

24 Q. When was the last time that the
25 property flooded?

1 A. Well, this spring, we had water on it.

2 Q. So this past spring, in 2009 or last

3 year?

4 A. 2009, yes. We're not in spring now.

5 Q. I wish we are in spring?

6 A. I do, too.

7 Q. How deep was the water in spring,

8 2009?

9 A. I don't recall, but the worst was 2003
10 and 2005.

11 Q. Okay.

12 A. 2003, I know it's very, very bad.

13 Q. Okay. Let's talk about spring, 2009,
14 first. Do you know how many acres were affected?

15 A. No, I don't.

16 Q. Do you remember how many acres were
17 affected in 2003?

18 A. I think about all of it. I mean it
19 was really bad.

20 Q. All 87 acres?

21 A. Well, in 2003, we owned the others,
22 too, then, yes.

23 Q. 2003, you owned the others. What
24 other properties are you talking about?

25 A. What we sold this year.

1 Q. Okay. And you sold property to Jerome
2 and Amy Meyer (sic) this year?

3 A. Right, right.

4 Q. Okay. So just talking about the 87
5 acres?

6 A. Okay.

7 Q. How much of that property flooded in
8 2003?

9 A. At least 31 acres.

10 Q. Okay. So then back to spring, 2009.
11 Did the flood in spring, 2009, reach that entire 31
12 acres that flooded in 2003?

13 A. I'm not sure.

14 Q. Do you think more or less was flooded?

15 A. Probably less.

16 Q. A lot less?

17 A. No.

18 Q. Twenty-nine acres?

19 A. I would say it was about probably that
20 much.

21 Q. So almost all the property that --

22 A. Right.

23 Q. -- flooded in 2003 flooded in spring
24 of 2009?

25 A. Right.

1 Q. Okay. And how long did the water stay
2 on the property in spring, 2009?

3 A. A couple days anyhow, two, three, I
4 think.

5 Q. Okay. Before spring, 2009, what was
6 the last flood event on your property that you
7 remember?

8 A. Well, every year we've had flooding,
9 every year.

10 Q. Did any other floods occur in 2009?

11 A. No.

12 Q. Okay. So what happened in 2008?

13 A. We had flooding. I remember that, but
14 I don't remember when it was.

15 Q. You don't remember what season?

16 A. No.

17 Q. Did your property flood in 2007 that
18 you remember?

19 A. Yes. I know we had flood then, too.

20 Q. Do you remember when?

21 A. No, I don't.

22 Q. Do you remember a flood occurring in
23 2006?

24 A. Well, I know we talked about it --
25 we've had flooding every year. One time it was on

1 the 4th of July; it was really bad and I don't
2 remember which year it was, but we've had flooding
3 every year, I know that.

4 Q. Okay. You said you remembered some
5 details about the 2005 and the 2003 floods?

6 A. Well, that was really bad on 2003
7 because the water was really, really way deep and it
8 stayed on for between five days.

9 Q. About how deep was the water in 2003?

10 A. Some places it got up to three feet.

11 Q. Three feet of water on your property?

12 A. Yes.

13 Q. And how did the 2005 flood compare to
14 the 2003 flood?

15 A. I don't think it was quite as bad, but
16 it was bad also.

17 Q. Did it cover 31 acres?

18 A. Yes.

19 Q. Did it cover more?

20 A. I don't think so.

21 Q. How long did the water stay on the
22 property in 2005?

23 A. I think three-to-four days.

24 Q. And how deep was the water in 2005?

25 A. It was probably at least two feet

1 deep.

2 Q. Do you remember any other specific
3 flood events that have occurred on your property
4 since the spillway was modified in 1997?

5 A. I don't recall when they occurred, but
6 I know we talked about many times we've had one every
7 year.

8 Q. Okay. Has your property been damaged
9 because of the flood events?

10 A. Well, I'm sure it devalued the value
11 of it.

12 Q. Okay. How do you think the value has
13 been affected?

14 A. Because nobody wants to buy -- give
15 you a good price for land that floods.

16 Q. Have you tried selling your property?

17 A. We had it appraised.

18 Q. When did you have it appraised?

19 A. In '08.

20 Q. And what was it appraised for?

21 A. Forty-four hundred an acre.

22 Q. How do you think that the new spillway
23 has affected value of your property?

24 A. Very much so. It probably devalued
25 the property by at least 60 percent or better. I

1 mean, we would get more than double for it if it
2 wouldn't be for that.

3 Q. Why do you think double?

4 A. Because there is land in our area
5 selling for, anywhere from \$75, 8,000 an acre that
6 isn't half as good as our ground.

7 Q. Where are those other properties?

8 A. We had one sell within five miles of
9 us two weeks; brought 7500 for some of it and it's
10 not tiled or anything and does not produce half as
11 good as ours. And another one sold about a year ago
12 the same way.

13 Q. Where was that property?

14 A. On 219.

15 Q. How far away from your place?

16 A. I'd say about six miles.

17 Q. Okay.

18 A. I'm not sure exactly.

19 Q. Six miles in which direction?

20 A. Would be south.

21 Q. And the property that's five miles
22 away?

23 A. Was west, southwest also.

24 Q. Since the spillway was changed in
25 1997, have you or your husband made any records of

1 flooding on the property?

2 A. We have not made any records.

3 Q. You don't keep any logs or diaries of
4 flood events?

5 A. No.

6 Q. Have you taken any pictures?

7 A. No.

8 Q. Have you reported flooding on your
9 property to any State agencies?

10 A. No.

11 Q. Any Federal agency?

12 A. No.

13 Q. To your knowledge, has the crop yield
14 been impacted by flooding on the property?

15 A. I'm sure it has been and also the
16 quality grain sometimes with the wet.

17 Q. The quality of the grain?

18 A. Right. They dock you big time for it.

19 Q. In what years has the quality of the
20 grain been impacted?

21 A. I don't remember the certain years.

22 Q. What has led you to believe that the
23 quality of the grain has been impacted?

24 A. Well, because when you sell it, they
25 tell you. You get about half for it. They can only

1 use it for feed, for nothing else.

2 Q. Have you guys shared profits with
3 Powell, Limited? Are you involved in the actually
4 sale of crops that are grown on the 87 acres?

5 A. Wwell, we sell our share.

6 Q. You sell your share, okay. And
7 Powell, Limited sells their share?

8 A. Right.

9 Q. You mentioned that you sold a property
10 to Jerome and Amy Meyer last year. Are Jerome and
11 Amy Meyer related to you?

12 A. No.

13 Q. How do you know Jerome and Amy?

14 A. They only live a little offer a while
15 from us.

16 Q. And that's the property you use to own
17 until just recently?

18 A. Right.

19 Q. Did you used to farm that property?

20 A. Yes.

21 Q. How many acres did they buy from you
22 in 2009?

23 A. Ninety-four.

24 Q. And did you and your husband, at one
25 point, farm all 94 acres?

1 A. Yes.

2 Q. Okay. And for how long did you farm
3 that acreage?

4 A. The same as we did the others, from
5 '88 or '89; '88 was the last time we farmed it, I
6 think.

7 Q. Did flooding ever occur on that 94
8 acres?

9 A. Yes.

10 Q. How often would flooding occur?

11 A. Well, since the spillway was in, every
12 year.

13 Q. While you were farming the property,
14 did flooding ever occur?

15 A. A few times I'm sure it did, but it
16 didn't stay on long.

17 Q. How often would flooding occur while
18 you were farming the property?

19 A. I don't recall.

20 Q. Every year?

21 A. No, no.

22 Q. Every five years?

23 A. I don't recall.

24 Q. But it did floods while you were
25 farming it every now and then?

1 A. It did, but it went off right away.

2 Q. Okay. What's right away?

3 A. I mean within a day.

4 Q. Okay. When did you begin farming that
5 94 acres.

6 A. We bought part of it in '58 and part
7 of it in '69.

8 Q. Do you remember how much you bought in
9 '58?

10 A. Yes, we bought 73 point something
11 acres.

12 Q. And then the remainder in 1969?

13 A. We bought 40 acres in 1969 and the
14 others we bought in '81.

15 Q. And over the 20 or 30 years that you
16 farmed that property, you do remember the property
17 flooding?

18 MR. FUSONIE: Objection, asked and
19 answered.

20 A. I don't recall anymore.

21 MS. STELZER: Actually, Lucy, can we
22 take a quick break and go off the record.

23 (Brief recess taken.)

24 Q. Okay, Lucy, I want to talk a little
25 bit more about the 94 acres that you told to the

1 Meyers in 2009. You said that you stopped, you and
2 your husband stopped farming that 94 acres in 1988?

3 A. Was the last that we farmed, '88, I
4 think.

5 MR. ROSE: Last year.

6 MR. FUSONIE: You can't help answer
7 this --

8 THE WITNESS: Yeah, you be quiet. See
9 that's why -- Get over there.

10 MR. FUSONIE: You got to be quiet.
11 Maybe you should sit over there.

12 MR. ROSE: I'll go back in the other
13 room.

14 MS. STELZER: Lucy was talking to her
15 husband, Carl, who is in the room.

16 Q. Okay, Lucy, it's your understanding
17 that you stopped farming the 94 acres in 1988.

18 A. We farmed it in '88, yes.

19 Q. After that, did you rent the property?

20 A. Yes.

21 Q. To who?

22 A. Powell, Limited.

23 Q. Powell, Limited.

24 Q. Did you rent the property to anyone
25 else?

1 A. No.

2 Q. So Powell, Limited rented the 94 acres
3 from 1988 or '89 --

4 A. Right.

5 Q. -- until you sold the property in 2009?

6 A. Yes.

7 Q. And this 94 acres, where, exactly, is
8 it in relation to your house?

9 A. It around the outside. I mean on the
10 east side, on the west side and south of it.

11 Q. Okay. So you can see the 94 acres
12 from your home?

13 A. Well --

14 Q. Not all 94 acres, but --

15 A. Yeah not all, but yeah.

16 Q. It borders your property?

17 A. Right.

18 Q. The property you still own?

19 A. That we live (sic), yeah.

20 Q. After the spillway was modified in
21 1997, how often did flooding occur on the 94 acres
22 that the Meyers now own?

23 A. Well, looking out the kitchen window,
24 it flooded those two fields almost fully from what we
25 could see and it stayed on there for several days,

1 | sometimes longer.

2 | Q. Since 1997, how many times did the 94
3 | acres flood?

4 | A. At least once a year.

5 | Q. What was the last time you remember
6 | the 94 acres flooding?

7 | A. Well, '99, we had some water on it, I
8 | remember -- '99 -- I meant 2009. Sorry.

9 | Q. Oh, that's okay. 2009. Do you
10 | remember what time of year?

11 | A. The spring.

12 | Q. And do you have any idea of how many
13 | acres of the 94 flooded in spring, 2009?

14 | A. Probably about 48.

15 | Q. And in spring, 2009, how long did the
16 | water remain on the property?

17 | A. I don't recall.

18 | Q. Do you have any idea how deep the
19 | water got on the 94 acres in spring, 2009?

20 | A. No.

21 | Q. Before spring, 2009, when was the last
22 | time you remember the 94-acre property flooding?

23 | A. I know in 2003 and 2005 were very,
24 | very bad years and the water got very deep.

25 | Q. The winter of 2005?

1 A. It wasn't in the winter.

2 Q. Okay. When was it?

3 A. I don't remember, but it was not in
4 the winter; I know that. It was in the spring, I
5 think. I'm not sure.

6 Q. Okay. When the Meyers' property, in
7 2005, flooded in 2005, do you remember how many acres
8 were affected?

9 A. Probably at least 45 or 48.

10 Q. And do you remember how long water
11 stayed on the Meyers' property in 2005?

12 A. I think about five days.

13 Q. Do you have any idea how deep the
14 water was?

15 A. Between two and three feet.

16 Q. And then you said you remember
17 flooding on the Meyer property in 2003, too?

18 A. Right.

19 Q. Do you know how many acres were
20 affected in 2003?

21 A. At least that many, probably more.

22 Q. At least how many?

23 A. At least 48, but probably more.

24 Q. Okay. Do you know how long water
25 stayed on the Meyers' property in 2003?

1 A. I think five days.

2 Q. Do you have any idea how deep the
3 water was in 2003?

4 A. Three feet, probably.

5 Q. Do you remember any other specific
6 instances of flooding on the Meyers' properties since
7 the spillway was changed in '97?

8 A. Every year there has been flooding on
9 it at least once a year, sometimes twice.

10 Q. Flooding as serious as occurred in
11 2003?

12 A. Probably not quite as serious, but
13 some years were bad.

14 Q. Do you remember any specific years
15 that were bad?

16 A. They were all bad; none of 'em were
17 good. I don't recall just what years were the worst.

18 Q. Okay. Lucy, I'm going to hand you
19 what's been marked Exhibit A. If you can review
20 that, please.

21 (Xerographic Document, Affidavit of
22 Lucile M. Rose, was marked for
identification Exhibit A.)

23 (Witness reviewing document.)

24 Okay. Lucy, this is your Affidavit;
25 correct?

1 A. Yes.

2 Q. And it's assigned on page 3; right?

3 A. Yes.

4 Q. On August 25th, 2009?

5 A. Right.

6 Q. In paragraph four, on the first page,
7 you reference Kittle Ditch; right?

8 A. Um-hum.

9 Q. Is Kittle Ditch the natural waterway
10 running across your property?

11 A. Pardon?

12 Q. We've been talking about two man-made
13 ditches --

14 A. Um-hum.

15 Q. -- and a natural water course on your
16 property. Is Kittle Ditch the natural water course
17 we've been talking about?

18 A. Kittle Ditch is the creek that flows
19 through our property.

20 Q. Okay, thanks. If you could turn to
21 Exhibit A, the last page, Exhibit A. This is Exhibit
22 A, so the last page of your Affidavit. And this is
23 the 87-acre or so property we've been discussing
24 today; correct?

25 A. Right, right.

1 Q. And your Affidavit states that you
2 have shaded a portion of this property to reflect the
3 flooding that occurred in 2003; right?

4 A. Right.

5 Q. Did I shade this Exhibit yourself?

6 A. Yes.

7 Q. Okay. And how did you shade this
8 Exhibit somewhat did you use?

9 A. A pen.

10 Q. Okay. And how did you determine how
11 much of this Exhibit you would shade?

12 A. We did it together, my husband and I.

13 Q. Okay. And the shading is to represent
14 the 2003 flood level on your property; right?

15 A. Right.

16 Q. If you signed this exhibit -- or
17 excuse me -- If you assigned your Affidavit on August
18 25, 2009, did you shade Exhibit A to the Affidavit on
19 the 25th of August, 2009, too?

20 A. Yes.

21 Q. Okay. Lucy, what do you hope to
22 accomplish from this lawsuit?

23 A. I hope they fix the waterway so it
24 doesn't ruin everybody's property values.

25 Q. Okay.

1 MS. STELZER: I don't have any
2 further questions.

3 MR. FUSONIE: Give me one minute.

4 MS. SELZER: Okay.

5 MR. FUSONIE: I may have a question.

6 MS. STELZER: Okay.

7 DIRECT EXAMINATION

8 BY MR. FUSONIE:

9 Q. Mrs. Rose?

10 A. Yes.

11 Q. How long have you lived in Mercer
12 County?

13 A. All my life.

14 Q. And how old are you?

15 A. You have to ask that.

16 MR. ROSE: You're not allowed to ask
17 that.

18 A. I am 75 years old.

19 Q. When you just answered Ms. Stelzer's
20 question about what you hope to accomplish from this
21 lawsuit, you mentioned that you hope they fix the
22 waterway?

23 A. Yes.

24 Q. Did you mean the Grand Lake St. Marys?

25 A. Yes.

1 Q. And the spillway to the Grand Lake St.
2 Marys?

3 A. Right, definitely.

4 Q. And the lake level management of the
5 Grand Lake St. Marys?

6 A. Right, correct.

7 MR. FUSONIE: I don't have any other
8 questions.

9 MS. STELZER: Okay. Neither do I.
10 Thanks, Mrs. Rose.

11 MR. FUSONIE: Mrs. Rose, if the State
12 orders, State attorneys order a transcript
13 of all the questions and answers today, you
14 have the right to read that to review it
15 for any errors and you can correct any
16 errors in the transcript. I can't tell you
17 to do that. I can only recommend and I
18 recommend that anyone who I'm the attorney
19 for that they should read the transcript.

20 THE WITNESS: Who do I get it from?

21 MR. FUSONIE: We'll deal with that.

22 THE WITNESS: Okay.

23 MS. FUSONIE: You have to tell the
24 court reporter right now if you'd like to
25 read it.

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THE WITNESS: Yes, I would.

MS. STELZER: Okay.

- - -

(At 11:55 o'clock, AM, the description concluded.)

- - -

Lucile M. Rose

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 LUCILE M. ROSE 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 LUCILE M. ROSE; that said deposition was taken in all respects pursuant to agreement and stipulations of counsel hereinbefore set forth; that said deposition was taken by me; that the transcribed deposition was submitted to the witness for her examination and signature; that I am neither a relative of nor attorney for any of the parties to this cause, nor relative of nor employee of any of their counsel and have no interest whatever in the result of the action.

IN WITNESS WHEREOF, I have hereunto set my hand at Cincinnati, Ohio, this 21st day of February, 2010.

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

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THE WITNESS: Yes, I would.

MS. STELZER: Okay.

- - -

(At 11:55 o'clock, AM, the description concluded.)

- - -

Lucile M. Rose
Lucile M. Rose

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

Martha Brewer
Notary
Date: 3/15/10

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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 her aforesaid deposition the said LUCILE M. ROSE 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 LUCILE M. ROSE; that said deposition was taken in all respects pursuant to agreement and stipulations of counsel hereinbefore set forth; that said deposition was taken by me; that the transcribed deposition was submitted to the witness for her examination and signature; that I am neither a relative of nor attorney for any of the parties to this cause, nor relative of nor employee of any of their counsel and have no interest whatever in the result of the action.

IN WITNESS WHEREOF, I have hereunto set my hand at Cincinnati, Ohio, this 21st day of February, 2010.

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

ERRATA SHEET

I, Lucile M. ROSE, have read the transcript of my deposition taken in this pending matter or the same has been read to me. I have noted all changes in form or substance on this sheet this 15th day of March, 2010.

PAGE LINE CORRECTION OR CHANGE AND REASON:

6	25	Change it's to it
8	13	delete at
13	9	Q should be answer
13	10	Change would be to we
17	21	Change the to it
20	1	Q should be answer
22	22	ever should be every
26	8	should read (stayed on between four and five days
28	5	Change 75. to 7500.
30	5	type well
30	14	over a mile instead of offer a while
31	5	should be 58 + part of it 69, not 88 or 89
34	9	Change it to it's

6. Specifically, as a result of ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 42-018500.0000 has flooded approximately fifteen times, or at least once per year. On each occasion, Mercer County Parcel Number 42-018500.0000 was inundated with water at depths varying from six inches to three feet.

7. Since ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 42-018500.0000 floods more rapidly and remains flooded for longer periods of time. On each occasion of flooding, Mercer County Parcel Number 42-018500.0000 remained inundated with water for a period of two to five days.

8. Prior to ODNR's replacement of the western spillway and its current management practices, Mercer County Parcel Number 42-018500.0000 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 31 acres of Mercer County Parcel Number 42-018500.0000 being flooded with approximately three feet of water for approximately five days. A true and accurate copy of a black and white aerial from the Mercer County Auditor's website of Mercer County Parcel Number 42-018500.0000 is attached hereto as Exhibit A. I have shaded in the area of the parcel that was flooded in 2003.

10. Mercer County Parcel Number 42-018500.0000 also experienced severe flooding in 2005.

11. Mercer County Parcel Number 42-018500.0000 was again flooded as recently as Spring 2009.

DON000594

12. As a direct result of the flooding, Mercer County Parcel Number 42-018500.0000 has suffered damage in the form of loss of crops, bank erosion, the deposit of debris, and drainage tile failure.

13. The flooding caused by ODNR has substantially destroyed the value of Mercer County Parcel Number 42-018500.0000.

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.

Lucile M. Rose
Lucile M. Rose

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

Kristi Kress Wilhelmy
Notary Public

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

DON000595

EXHIBIT A
TO
AFFIDAVIT OF LUCILE M. ROSE

DON000596

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

Transportation

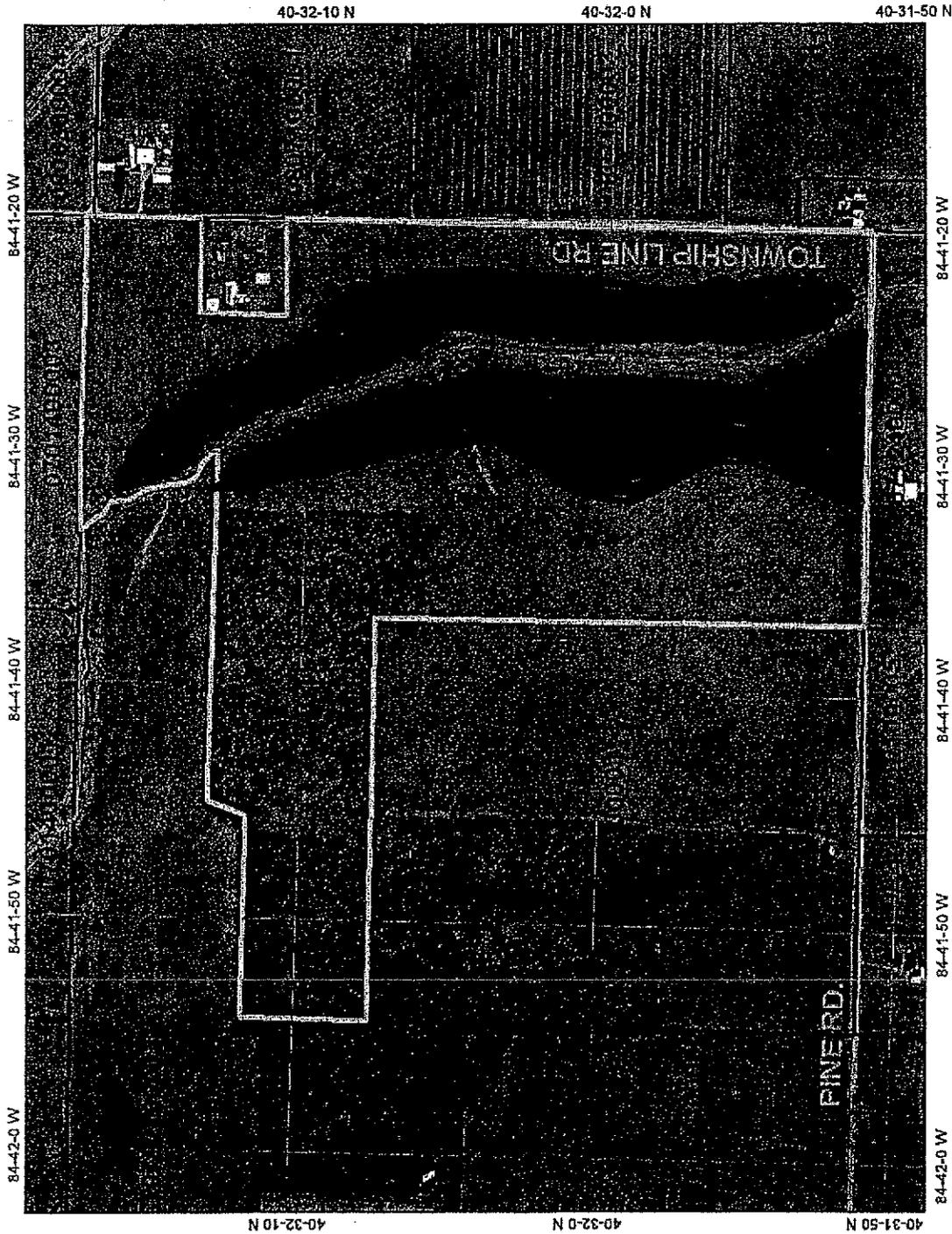
- State Highways
- US Highways

Water

- Lake
- Streams



Scale: 1:8,500



Map center: 1358841, 323842

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.

EXHIBIT
A

Carl W. Rose and Lucile M. Rose

-0- Pine Rd.

Parcel No.: 42-018500.0000 - 87.788 acres

TAB 46

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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 BONITA S. SEARIGHT, was
taken by the Respondents as on cross-examination,
pursuant to the Ohio Rules of Civil Procedure, at the
Central Service Building, 220 West Livingston Street,
Celina, Ohio 45822, on Wednesday, February 3, 2010,
at, 1:07 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

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APPEARANCES:

On Behalf of Ohio Department of Natural Resources:

William J. Cole, Esq.
Environmental Enforcement
30 East Broad Street, Floor 25
Columbus, Ohio 43215-3400

On Behalf of the Respondent:

Thomas H. Fusonie, Esq.
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:	BONITA S. SEARIGHT		
	Examinations	DIRECT	CROSS
	By Mr. Cole	4	-

E X H I B I T S

RESPONDENT'S	DESCRIPTION	MARKED
A	Affidavit of Bonita S. Searight	6

- - -

1 representing the Department of Natural
2 Resources in this litigation. I'm going to
3 ask you some questions. I'm going to ask
4 you some questions in this deposition. I
5 need you to just listen to the questions
6 and if you have any questions if you don't
7 understand a question or want me to clarify
8 it, please let me know; that should be no
9 problem.

10 A couple rules: Please don't start to
11 answer until I've stopped asking the
12 question and I'll do my best not to
13 interrupt you. Sometimes you hear things
14 and you think, Oh gee! I know the answer
15 and at the last second, there'll be
16 something there --

17 THE WITNESS: Um-hum.

18 MR. COLE: -- and, you know, oops!
19 Wait. So please go ahead -- Please do wait
20 for me to finish.

21 I would ask you to give verbal yes and
22 no answers or verbal answers. The nods of
23 the heads are a little tougher to pickup,
24 but since we are being recorded and being
25 -- the words are being taken down.

1 If you need to take a break, I don't
2 think we're going to be here that long. If
3 you do, just let me know. The only
4 condition I'd put on that is if you have
5 question pending, I'd like you to go ahead
6 and answer the question before -- if you
7 need to take a break.

8 Do you have any questions for me?

9 THE WITNESS: No.

10 Q. All right. Can you give me your
11 educational background?

12 A. High school.

13 Q. Okay. Are you a graduate?

14 A. Yes.

15 Q. Okay. Any schooling beyond that?

16 A. No.

17 Q. Have you ever had any schooling or
18 training in agriculture?

19 A. No.

20 Q. Engineering?

21 A. No.

22 Q. Anything to do with water, drainage,
23 movement on land, hydrology, hydraulics, anything
24 like that?

25 A. No.

1 Q. I'm going to hand you --

2 (Off the record.)

3 (Xerographic Document, Affidavit of
4 Bonita S. Searight, was marked for
identification Exhibit A.)

5 Q. All right. I'm going to hand you,
6 what's been marked -- I'm gonna mark this as -- Off
7 the record.

8 (Brief pause in the deposition.)

9 Mrs. Searight, I'm going to hand you what has been
10 marked as Exhibit A. Just take a -- time to kind of
11 look that over. I'm not going to quiz you on it, but
12 if you could just take a quick look.

13 (Witness reviewing document.)

14 I'm looking at your Affidavit here and
15 it indicates that you and your husband are the owners
16 of four parcels that, I believe, there are pictures
17 of in these Affidavits -- or in these Exhibits;
18 correct?

19 A. Yes.

20 Q. All right. Now, when the complaint
21 was filed, there was another parcel identified; it's
22 06-15500. I see that's not in this. Do you know
23 what parcel that is?

24 A. Yes. That's his -- what his mother
25 had over -- That's in Center Township.

1 Q. Okay.

2 A. That has nothing to do with the flood.

3 Q. You have no claim of flooding by the
4 spillway, just the four that are listed?

5 A. Yes, um-hum.

6 Q. Okay. You have owned these properties
7 jointly with your husband, the 119 and the 307.02,
8 since '83. The other two since '97 and '98; correct?

9 A. Correct.

10 Q. And from whom did you acquire these
11 properties?

12 A. Orland Menchoffer.

13 Q. Okay. And who is that?

14 A. That's who we bought the land from.

15 Q. Okay. Did you have any -- Tell me
16 about the sale. Was it a arms-length sale?

17 MS. BREWER: Objection.

18 Q. You can answer questions if she
19 objects. Go ahead.

20 A. Pardon, arms-length sale?

21 Q. Was it a sale on the market or did you
22 know them?

23 MS. BREWER: Objection. Go ahead.

24 THE WITNESS: Okay.

25 A. My husband had rented farms from him

1 for cattle. We lived up the road and matter of fact,
2 we actually lived on this farm since '74 I think we
3 moved there, but it didn't become in our name because
4 it was on land contract until, like, the first parcel
5 that we bought, you know, until whatever it says
6 there and then we acquired land as it went on.

7 Q. So you lived on -- Do you know which
8 parcel you physically lived on?

9 A. Yeah. Am I allowed to --

10 Q. Yes.

11 (Witness reviewing documents.)

12 A. The first one that was bought. I
13 mean, whatever our house shows on here. Trying to
14 see. I'm not real sure which parcel it is, 'cause
15 it's a small one.

16 Q. Is Exhibit A, though, the kind of a
17 triangular one?

18 A. That could be. That might be our
19 house there. I'm not even -- I think. It's
20 Hellwarth Road; we live on Mudd Pike.

21 MS. BREWER: Go ahead and look
22 through.

23 A. Howard Road, I think that is our
24 house, though. That would be the same; correct,
25 yeah.

1 Q. So Exhibit A, which is the 119 parcel,
2 that's the one where you've lived --

3 A. Yes.

4 Q. -- since '74?

5 A. Seventy-four, '75.

6 Q. And you had a land contract for that?

7 A. Correct.

8 Q. Okay. When you purchased the
9 property, do you remember what you paid for it, for
10 these properties?

11 A. I cannot recall.

12 Q. How about the most recent one, the one
13 you bought in 1998? Do you recall what the per-acre
14 value was when you paid or what you paid for it?

15 A. My husband probably does. I'm just
16 not real sure.

17 Q. Um-hum. Have you owned those parcels
18 continuously?

19 A. Pardon, like -- I mean, we bought
20 land, you know, as we got money and he wanted to
21 sell, we'd say -- he'd say he had so many acres he
22 wanted to sell and we'd say, "Okay," so it was all
23 just one far, but it was just like, you know, as we
24 had the money and he had the land he wanted to get
25 rid of because he was retired.

1 Q. Do you know how long the person who
2 sold you the property had owned the land?

3 A. A long time because his mother had
4 lived there.

5 Q. More than 20 years?

6 A. Yes.

7 Q. Do you know the total acreage? Well,
8 never mind; it looks like they're indicated here.

9 A. Um-hum.

10 Q. Rather than go through each of `em --
11 Now wait a minute. My Exhibit B, I -- We have the
12 original. I see 8.23 acres of the 199 parcel, then I
13 can't tell how many acres for Exhibit B. Do you know
14 how many that is? Does that look like a 60. I don't
15 want you to guess, but --

16 A. I don't know.

17 Q. Okay. Looks like Exhibit C there is
18 five acres. The last one is about 4.76 acres. What
19 do you do for a living?

20 A. I'm retired as of now.

21 Q. Okay, but how have you been retired?

22 A. I retired in -- I've been retired four
23 years, in 2005.

24 Q. Okay.

25 A. But --

1 Q. Please finish your answer; I'm sorry.

2 A. I would have probably worked all year
3 but for my back. I have scoliosis and --

4 Q. Okay.

5 A. -- two back surgeries and I'm done.

6 Q. What did you do when you retired?

7 What were you doing?

8 A. I was working in the office, at
9 Reynolds and Reynolds.

10 Q. What's that?

11 A. It's a paper factory.

12 Q. Is that in Celina?

13 A. Well, it started out in Celina and
14 then it split because another person bought half of
15 it so also then I went to Coldwater. It was known as
16 a relies on and then workflow. I worked there 17
17 years. Prior to that, we were in dairy for, like,
18 10, 12 -- 19 -- probably 10 years.

19 Q. And when you say you were in dairy,
20 what did you do?

21 A. Milk cows.

22 Q. Okay. Do you farm the properties you
23 own?

24 A. My husband does.

25 Q. The parcels that -- And let me say

1 from now on when I talk about properties, I'm only
2 talking about the ones in this case unless I say
3 something specific, I indicate otherwise. Are the
4 properties at issue here, the ones that we've
5 identified, have they always been used for farming?

6 A. Yes.

7 Q. And you've always farmed them or your
8 husband has always farmed them since you've owned
9 them?

10 A. Yes.

11 Q. What do you plant on them?

12 A. Corn and beans.

13 Q. By the way, do you own any other
14 properties?

15 A. Just the parcel that's listed that was
16 his mother's.

17 Q. Okay. Just a brief description, what
18 kind of property is that?

19 MS. BREWER: Objection.

20 A. As far as?

21 Q. Is it farmland, as well?

22 A. Yes, farmland.

23 Q. Do you lease or rent any of these
24 properties?

25 A. No.

1 Q. Do you lease or rent any property
2 anywhere?

3 A. Yes.

4 Q. Tell me about that.

5 A. It's probably about, I'm going to say
6 20 acres, just east of us on Mudd Pike.

7 Q. Just east how far?

8 A. Half a mile.

9 Q. Okay. And when you say, "east of us,"
10 from your house?

11 A. From my farm, correct, house, yes.

12 Q. Okay. How close are these parcels in
13 relationship to each other?

14 A. Close I'd say.

15 Q. Okay.

16 A. I mean fairly close because we only
17 have 90-some acres, so --

18 Q. Can you give me a -- Close is kind of
19 a relative term -- quantify it. Are they within half
20 a mile of each other?

21 A. The ones that are flooded?

22 Q. Yes.

23 A. Oh, yes!

24 Q. Okay. Closer than that?

25 A. Yes.

1 Q. Quarter mile of each other, closer?

2 A. They're right on our farm, so I just
3 see water. I don't really know. It just -- Yes,
4 it'd have to be, I'd say.

5 Q. So just so I'm clear, the parcels here
6 at play, you don't lease those, though?

7 A. No.

8 Q. Okay. Do you have any other ownership
9 or property rights in any other property --

10 A. No.

11 Q. -- other than the five parcels we
12 talked about?

13 A. No, right.

14 Q. You say these four parcels are all
15 pretty close proximity to each other.

16 A. To me, they are. I mean they're on
17 our farm.

18 Q. Where are they in relationship to the
19 west bank of Grand Lake St. Marys?

20 A. Well, they're west of Celina, about
21 two-and-a-half miles and the Beaver, the Beaver is
22 about probably half -- somewhere. I don't even know
23 if it's a half mile south of us. I don't even think
24 it's a half mile.

25 Q. How about Wabash River?

1 A. Well, Wabash River is out in Indiana;
2 is that correct? I don't know.

3 Q. Don't know.

4 A. Well, it goes into the Wabash, but
5 we're not close to the Wabash.

6 Q. All right. Now, these parcels -- and
7 you can look on your copy -- have areas that are
8 shaded. Is that the areas that you and your husband,
9 assuming that -- and I'm assuming that you and he,
10 essentially, agree on your claims --

11 A. Right.

12 Q. -- on your claims --

13 A. Yes.

14 Q. -- those are the areas that you have
15 identified have been flooded?

16 A. Yes.

17 Q. Who, actually, did the shading; was it
18 you or him or someone else?

19 A. I did mine; he did his and we -- I
20 mean we looked at each other's and thought if we were
21 too big, too small.

22 Q. Okay. Do you know who, specifically,
23 shaded for these exhibits, who did the shadings?

24 A. On mine, I did; on his, he did.

25 Q. Which ones were yours?

1 A. Well, we both did `em together. I
2 shaded my affidavit; he shaded his, together.

3 Q. Oh, I see, okay.

4 A. Yeah, they're the same.

5 Q. So the ones in this affidavit is where
6 you shaded?

7 A. Yes.

8 Q. All right. Do you know if any of
9 these properties are in the flood plain area?

10 MS. BREWER: Objection.

11 Q. Ms. Searight, unless your lawyer tells
12 you not to --

13 A. I don't know.

14 Q. Hang on. Unless she tells you not to
15 answer, she can object, but you can go ahead and
16 answer.

17 A. Okay.

18 Q. Did you answer the question?

19 A. I do not know.

20 Q. You do not know, okay. Has anyone
21 ever told you that they're in the flood plain?

22 A. I do not know.

23 Q. Parcel A -- Excuse me. I'm going to
24 call it the 26-119 parcel which is in Exhibit A --
25 you've indicated your residence is on there. Are

1 | there any other man-made structures on that property?

2 | MS. BREWER: Objection.

3 | A. We have a barn and a tool shed.

4 | Q. Is that adjacent to your house?

5 | A. Yeah.

6 | MS. BREWER: Objection.

7 | Q. Okay. Any others?

8 | A. No.

9 | Q. Okay. What's the topography of this
10 | parcel?

11 | MS. BREWER: Objection.

12 | Q. What's the land like?

13 | A. It's good land, except --

14 | Q. Okay. Is it level?

15 | MS. BREWER: Objection and I'll
16 | instruct you to wait --

17 | THE WITNESS: Okay, okay. I didn't --

18 | MS. BREWER: -- just a second so I can
19 | jump in --

20 | THE WITNESS: Okay, okay. I didn't
21 | even know whether to -- Okay. Go ahead.

22 | MS. BREWER: That's okay. No, it's
23 | okay. And I'd also like to remind you to
24 | give verbal responses --

25 | THE WITNESS: Okay.

1 MS. BREWER: -- So the court reporter
2 can take things down.

3 Q. Are there any hills on the property,
4 on this one?

5 A. No.

6 Q. Are there any dips or valleys, any
7 ditches?

8 A. Yes.

9 Q. Okay. Where are those?

10 A. We did a ditch. We did a ditch
11 project, like it would come through the -- from the
12 Menchoffer Woods part which is south of us and it
13 heads over to the north.

14 Q. Can you show me where on that?

15 A. I know where it is from our house -- I
16 mean -- My husband will tell you that. I'm not real
17 sure. I know with the ditch project that was 2004
18 and it came through, like, Menchoffer Woods from the
19 south and crossed our land and goes over to Fair
20 Ground Road.

21 Q. Okay. That ditch that you did --

22 A. Um-hum.

23 Q. -- you say in 2004, is that on -- Do
24 you know if it's on this parcel here which is the one
25 you have up right there which is on Exhibit A, the

1 one, the 26-119 parcel?

2 A. I think it goes through there.

3 Q. All right. Why did you do the ditch?

4 A. Do you have the pictures?

5 Q. I do.

6 A. That's why.

7 Q. Well --

8 A. Okay. There were suck holes --

9 Q. You need to just --

10 A. Okay, okay, okay --

11 Q. It may seem academic, but you need to
12 make your answer.

13 A. Yes. Well, there were so many suck
14 holes in our fields that my husband would take, like
15 a load of dirt and fill it in one year and by the
16 time the, you know, he'd have to -- couldn't farm it
17 again because you couldn't go through it. There were
18 just huge suck holes everywhere in our land and it
19 just needed to be replaced.

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

22 A. No.

23 Q. If you go to the next parcel in
24 Exhibit B, that's the 037 -- 0307.02 parcel. That's
25 the, I believe, approximately 60 acres there. It's

1 on Exhibit B --

2 A. Um-hum.

3 Q. -- that you have right there.

4 A. Um-hum.

5 Q. Again, it looks, from the aerial --

6 Are you familiar with this piece of land here that
7 you own?

8 A. Yes.

9 MS. BREWER: Objection. Go ahead.

10 Q. Are there any structures, man-made
11 structures on this parcel?

12 MS. BREWER: Objection.

13 A. On just this?

14 Q. Just that.

15 A. Not on the waterway -- or not where
16 the flood is.

17 Q. Anywhere within the boundaries of
18 this?

19 A. No.

20 Q. Okay. Is this parcel level?

21 MS. BREWER: Objection.

22 A. Yes.

23 Q. Are all the parcels more or less
24 level?

25 MS. BREWER: Objection.

1 A. Yes.

2 Q. Any other parcels have hills or sink
3 holes or ditches or valleys in them?

4 A. I'm not sure exactly where the ditch
5 went through. He'll be able to tell you that.

6 Q. Have you ever been active with farming
7 your property?

8 A. Before my back, yes, in the early
9 years when we owned it.

10 Q. When did you stop doing that?

11 A. When my -- probably if the children
12 were -- my son was older and then my back problems, I
13 stopped, oh, probably early 2000, late-'90's.

14 Q. Do any of your properties abut or go
15 --

16 (Brief pause for the court reporter.)
17 Is there a dropoff? Is your property at the same
18 level of the road or is it lower or higher?

19 A. Same level.

20 Q. On these four properties, to your
21 knowledge, are all four tillable? Are they all good
22 for crop use --

23 MS. BREWER: Objection.

24 Q. -- for farming?

25 A. Yes.

1 Q. Do you know what kind of soil is on
2 the land?

3 MS. BREWER: Objection.

4 A. No.

5 Q. Do you know if there is any sort of
6 drainage on your properties?

7 MS. BREWER: Objection.

8 A. Well, we just put the new tile in and
9 then we've had a -- just put a waterway in.

10 Q. Okay. Let's talk about that. Let's
11 first talk about you say you just put tile in. When
12 did you put that in?

13 A. I'm thinking it was, like, four or
14 five years ago.

15 Q. And what can you tell me about that?
16 Well, what kind of tile did you use?

17 A. As far as how big of a tile?

18 Q. Yeah.

19 A. I don't really know. I thought 24
20 inch, but I'm not sure.

21 MS. BREWER: And you don't need to
22 guess.

23 A. I'm not sure.

24 Q. Okay. Do you know what the tile is
25 made out of?

1 A. No.

2 Q. Did you tile all of your properties?

3 A. I don't know.

4 Q. Which ones do you know for sure that
5 you did tile?

6 A. I think it went through every one of
7 the properties, you know, except maybe if there's one
8 west further, it didn't because it came through the
9 -- from Hellwarth Road over to --

10 Q. So you're not sure if you did them
11 all? You may have?

12 A. I don't know. I know where the tile
13 is, but I don't know what you mean as far as it
14 didn't touch every parcel maybe.

15 Q. Okay. But was it -- did you tile to
16 improve the drainage on all your properties?

17 A. Yes.

18 Q. Okay. And again, I'm sorry, you said
19 that was in '05 that you did that?

20 A. We were talking -- '05 or '04,
21 probably '05; I'm not sure.

22 Q. And you also mentioned a waterway.
23 Tell me about that.

24 A. We just had a filter strip put in this
25 past spring. I guess that's what you call it.

1 Q. So that would have been in spring of
2 '09?

3 A. I believe.

4 Q. And do you know how long that strip
5 is?

6 A. I can see it, but it starts at
7 Hellwarth Road and I think it continues all the way
8 through to the west, you know, end of our land.

9 Q. Would you be able to estimate how long
10 that is?

11 MS. BREWER: Objection.

12 A. However way -- I don't know.

13 Q. Okay. And did you get any sort of a
14 payment, reimbursement from the federal government
15 for that?

16 A. I think so.

17 Q. Okay. You're not sure?

18 A. I'm sure we did, but the amount, I'm
19 not -- he can -- he'll fill you in when he comes.

20 Q. Okay, fair enough. Do you happen to
21 know whether your drainage system is consistent with
22 the industry standard?

23 MS. BREWER: Objection.

24 A. I don't know.

25 Q. Have you ever taken any other steps to

1 change or modify or effect the drainage on your
2 properties other than the ones you've identified?

3 MS. BREWER: Objection.

4 A. No.

5 Q. Do you know if you or your husband
6 have ever participated in what's called the
7 Conservation Reserve Program?

8 A. Well, he put, like, a quail cover on a
9 small parcel of land I think just this spring, too,
10 or --

11 Q. What was that again?

12 A. I think it was called quail cover. I
13 don't know if that's what you speaking about. That's
14 what he calls it.

15 Q. What is that?

16 A. It's like part of the land that he
17 knew he couldn't farm because I think it's because it
18 butts up to a woods and -- I don't know exactly what
19 quail cover is, but that's what it is, some kind of
20 grassy substance.

21 Q. All right. So you put that on part of
22 the land you said he knew he could not farm?

23 A. Well, I think it was -- I don't know
24 what the real reason was for that. Maybe I shouldn't
25 have said that because I don't know what the real

1 reason for the quail cover --

2 Q. Okay. Well, be careful. I do want
3 you to give --

4 A. It's a small area.

5 Q. I do want you to give, you know --

6 A. Okay. It's just a small, little
7 section that he put some --

8 Q. Do you know, on the properties that
9 you own, are they entirely farmable or are there
10 parts that aren't farmable?

11 MS. BREWER: Objection. Go ahead.

12 A. To the best of my knowledge, they're
13 entirely farmable.

14 Q. Okay. Except, maybe a small part; is
15 that right, that you just talked about?

16 A. Well, I thought maybe --

17 MS. BREWER: Objection.

18 A. Okay. -- maybe where he put that
19 little -- I mean it's only a -- I don't even think
20 it's a -- It's just a small strip of quail cover. I
21 don't know if that's the reason he did it or not. I
22 hear him talk, but I'm not into it, so --

23 Q. Are you, typically, involved with the
24 decisions on what you do to the land?

25 A. No.

1 Q. Do you know if you or your -- and when
2 I say, "you," or your husband participate in the
3 Wetlands Reserve Program? Do you know anything about
4 that?

5 A. I don't know. I don't think --

6 Q. You don't believe so.

7 A. I don't think so, but I don't know.

8 Q. Okay. When did you first occupy the
9 property. You said you bought it, you bought the
10 first two parcels in the '80's and you were on it --
11 you started living there in the '70's; is that right?

12 MS. BREWER: Objection. Are you
13 talking about a particular parcel?

14 MR. COLE: Where she lives.

15 A. Where I live at my house?

16 Q. Yes.

17 A. Seventy-four or '75.

18 Q. Now, when you started living there,
19 did you also own the surrounding -- were you also
20 renting the surrounding property? Was the
21 surrounding property also under the land contract?

22 MS. BREWER: Objection.

23 A. The parcel that we bought? Is that
24 what you're asking me?

25 Q. Yes.

1 A. If they were --

2 Q. Were they also part of the land
3 contract deal?

4 A. Yes, I guess. I mean we bought it in
5 so many different sections that I'm not sure, you
6 know, which year we required (sic) what, but I know
7 --

8 MS. BREWER: And again, I'm going to
9 instruct you that to the extent you know,
10 you can answer and if you don't know, I
11 don't want you to guess.

12 THE WITNESS: I'll just say I don't
13 know, okay.

14 MR. COLE: Yeah. Ms. Searight, if you
15 don't know, that's -- if you don't know,
16 it's perfectly acceptable. I will not beat
17 you over the head `til you answer. If
18 you're not, I may ask a couple follow-ups,
19 but if you don't know, that's a perfectly
20 acceptable answer.

21 MS. BREWER: And if you don't
22 understand his question, you can just tell
23 him you don't understand a question.

24 THE WITNESS: Okay.

25 Q. Before the spillway was modified --

1 | You know what I'm talking about; don't you -- before
2 | the Great Lakes Spillway -- Grand Lake St. Mary West
3 | Spillway was modified -- I'm going to call that the
4 | spillway from now on -- did any of your properties
5 | ever flood when you owned or were on them?

6 | A. Before the spillway?

7 | Q. Yes.

8 | A. Yes, but not near as bad and it didn't
9 | stay near as long.

10 | Q. Okay. Let's talk about that a little
11 | bit. What kind of flooding -- If you took possession
12 | of your house in '74 -- and I realize it's been some
13 | time, I do, but from '74 until '97, do you recall how
14 | often your property would flood at all?

15 | A. I don't know.

16 | Q. Once a year?

17 | A. I don't know.

18 | Q. But it did flood some?

19 | A. That's what I said, some, but not to
20 | the extend and didn't stay as long and wasn't as
21 | massive.

22 | Q. All right. When it did flood
23 | previously, how deep would it get?

24 | A. I don't know.

25 | Q. Okay. Did you ever take records or

1 make charts or keep notes on your flooding
2 beforehand? Did your husband that you know?

3 A. I don't know.

4 Q. Okay. Do you know how long -- Again,
5 this is -- All these questions are before the
6 spillway was changed.

7 A. Um-hum.

8 Q. Do you know how long, when your
9 property did flood, how long the water would be
10 there?

11 A. Not long.

12 Q. Less than a week?

13 A. Oh, yes!

14 Q. Less than three days?

15 A. Yes.

16 Q. Okay. More than two days sometimes?

17 A. It seemed like it left quickly before
18 that. Now, it's just, you know --

19 Q. And that's a -- You're answering very
20 honestly. Quickly is -- what is quickly to me might
21 be very different than you, so more than -- Were
22 there ever instances where the water lasted more than
23 a day before the spillway due to flooding?

24 A. I can't remember. I don't think so.

25 Q. Do you know why your, before the

1 spillway was built, your property would have flooded?

2 A. Because of the overage of the lake.

3 Q. Okay. Could it have been due to rain?

4 A. Yes.

5 MS. BREWER: Objection. Go ahead.

6 A. Rain.

7 Q. Okay, but you say it also could have
8 been that the lake, you could have had overflow from
9 the lake, as well?

10 MS. BREWER: To the extent you know,
11 you can answer. I don't want you to guess.

12 A. I don't know.

13 Q. Do you know at all, without guessing,
14 do you know why your property would have blooded
15 before that, before the spillway?

16 A. I can just say due to the rain.

17 Q. Okay, okay. When I say, "flooding,"
18 what does that mean to you?

19 MS. BREWER: Objection.

20 Q. And let me ask you this: Do you
21 consider flooding when the lake spills over or when
22 you have standing water on your land or something
23 else?

24 MS. BREWER: Objection.

25 A. When I have a lot of standing water on

1 | my land, I consider that flooding.

2 | Q. Do you recall before the spillway was
3 | modified, when you had flooding, that the lake had
4 | not crested or the Beaver Creek had not crested?

5 | MS. BREWER: Objection.

6 | A. Had not crested. You mean --

7 | Q. In other words, at the times that you
8 | can remember, even if it's generally, when you did
9 | have flooding, before the spillway was modified --

10 | A. Um-hum.

11 | Q. -- were there ever times that you had
12 | flooding on your property, but the lake had not
13 | overtopped?

14 | MS. BREWER: Objection.

15 | A. I don't know.

16 | Q. Was there, before the spillway was
17 | modified, was there a particular time of year that
18 | your property would flood?

19 | A. I don't know.

20 | Q. Was there a time when that flooding
21 | caused damage to your property or to the crops before
22 | the spillway?

23 | A. I don't think. No, I'd say.

24 | Q. No or you don't know.

25 | A. I don't think -- Well, okay. I don't

1 know.

2 MS. BREWER: You're fine. Just answer
3 the questions if you can that are posed to
4 you.

5 Q. If you can go back to the charts or to
6 the pictures I should say and we'll take these --
7 Well, wait, before I -- I'm sorry. Let's take a
8 minute here.

9 MS. BREWER: You want to take a quick
10 break?

11 MR. COLE: No. Let's just take a
12 minute unless she does.

13 MS. BREWER: Do you need a break?

14 Q. Do you recall -- Again, this is all
15 before the spillway. When you did have flooding on
16 your property, do you recall whether you and your
17 husband ever got any sort of governmental assistance
18 or any help?

19 MS. BREWER: Objection.

20 A. I don't know.

21 Q. Do you know if your property is
22 suitable for other uses besides farming?

23 MS. BREWER: Objection.

24 A. As far as?

25 Q. Anything besides farming.

1 MS. BREWER: Objection.

2 A. I don't know. I guess. You mean like
3 for land for houses being put on it or what would you
4 -- I don't know what you're asking.

5 Q. Fair enough. The parcels that have
6 been identified here, other than your house which you
7 use for your residence, are they all and always have
8 been used for farming; correct?

9 A. Right, correct.

10 Q. And is it your intention to use those
11 properties for farming purposes?

12 A. Yes.

13 Q. Okay. That cut down a lot of
14 questions, so -- Do you or if you know, did your
15 husband keep any records of the conditions of the
16 property prior to the spillway being constructed?

17 MS. BREWER: Objection.

18 A. He just knows. He can remember for
19 than I, you know.

20 Q. Do you know, did you or your husband,
21 if you know, keep records of the income you made off
22 your farming?

23 MS. BREWER: Objection.

24 A. Yes.

25 Q. Do you, let's say, in the year --

1 Let's say in '96; that was the year before the
2 spillway was modified, do you know what you made off
3 your crops?

4 A. I don't know.

5 Q. Did your husband, did he have other
6 work?

7 A. Yes.

8 Q. What did he do or what does he do?

9 A. He's retired now.

10 Q. What did he do? Okay, what --

11 A. He was a factory worker.

12 Q. How long did he do that?

13 A. All his life, from the time he was 18
14 until he was 62.

15 Q. Do either of you have anyone help you
16 farm your property?

17 A. My son.

18 Q. Other than family?

19 A. No -- Well, yes, as far as taking our
20 crops up, we hire that done.

21 Q. Okay. But as far as planting the
22 crops and maintaining them, you just use someone else
23 for removing them; is that right?

24 A. Correct.

25 Q. Do you have crop insurance or do you

1 know if your husband does?

2 A. We have the very lowest crop insurance
3 there is because he doesn't believe in it and we had
4 to take it to get in the, like, the Commodity
5 Programs or whatever.

6 Q. Do you know what kind of policy you
7 have?

8 MS. BREWER: Objection.

9 A. I just know where we get it at.

10 Q. Where is that.

11 A. We get it at Landmark --

12 MS. BREWER: Landmark?

13 A. At Mercer Landmark, we get it through
14 them.

15 Q. Landmart, M-A-R-T?

16 A. Mark, M-A-R-K.

17 Q. Do you know what that, your premium is
18 a year on that?

19 A. I think 200-and-some dollars, but --

20 Q. And what do you mean by, "the lowest?"
21 What do you mean by that? You mean least expensive?

22 A. Right.

23 Q. Do you recall have you ever made any
24 claims?

25 A. No.

1 Q. How about after the spillway?

2 A. No, because I don't think it would
3 have been covered because of the kind of insurance we
4 have.

5 Q. So as far as you know, you've never
6 made a claim on your crop insurance?

7 A. No. We've only had it for the last,
8 maybe, two or three years, but we had to have it when
9 they enforced it.

10 Q. And they is government?

11 A. I believe so.

12 Q. Do you know anything about your yield,
13 your crop yields?

14 MS. BREWER: Objection.

15 A. It varies so much. This past year, it
16 was not good because we didn't get the rain we needed
17 after the crops were planted, so, you know, it's a
18 big difference, depending on the weather.

19 Q. Has your crop yield changed since
20 1997?

21 MS. BREWER: Objection.

22 A. Yes.

23 Q. And how?

24 A. Well, because some years, it, you
25 know, flooded under and I'm sure it's changed then.

1 Q. You don't know any specifics?

2 A. I have no idea.

3 Q. Okay. Have you ever had your
4 properties appraised?

5 A. No.

6 Q. Do you have any personal opinion of
7 what the value of the property is, the market value
8 of the property is?

9 A. Myself, I know what properties are
10 bringing around us, north, south, west and it's a big
11 difference, I can tell you that.

12 Q. Why don't you tell me about that.

13 A. Okay. I --

14 Q. What you know.

15 A. Okay. Of a property that sold west of
16 us; it's in the water, you know, with all the flood
17 damage, too, maybe about 3500 an acre. And then I
18 know if you go south to Maria Stein, you know, where
19 they have no floodage (sic), and around the Fort
20 Recovery area, I've heard of properties bringing 9,
21 10,000 an acre. Clear north of us, some guys from
22 the south are coming over and buying land there.
23 It's went from, I heard 7500 to 9,000 an acre, but
24 I'm afraid to say what ours would be worth because of
25 the damage to the -- from the floods; I don't know.

1 It would be a bad time to sell it.

2 Q. I'm going to apologize for asking this
3 if I asked you before: Do you know how much you paid
4 for the property initially?

5 A. No.

6 Q. Okay. On these other sales that
7 you've heard about, are these sales or are these what
8 people are asking?

9 A. Sales.

10 Q. Sales? Do you know how far away are
11 they from your properties?

12 A. Well, the one that went for 4700 is
13 just probably west of us to Erastus Durbin Road or I
14 don't know how, three or four mile.

15 Q. Okay.

16 A. I'm not sure. I shouldn't really say.

17 Q. Well, I don't want you to guess, but
18 you can estimate distances; that's all right, and you
19 can indicate that; that's all right. How about the
20 9-to-10,000 per acre? That's the one you said was
21 south; right? Do you know how far that was?

22 A. Maria Stein area, however far that is
23 from us.

24 Q. More than five miles?

25 A. Um-hum.

1 Q. Yes?

2 A. Yes.

3 Q. How about the one north, going -- I
4 think you said north, going for 7500 an acre?

5 A. Um-hum.

6 Q. About how far, estimate?

7 A. I don't know.

8 Q. Are the properties surrounding your,
9 and let's say within a mile radius, are there any
10 properties surrounding yours that are not used for
11 farming? And I don't mean -- You know, maybe there's
12 some -- but is the land surrounding your properties,
13 the nearby land, within a mile surrounding yours, are
14 they all -- is it also farmland?

15 MS. BREWER: Objection.

16 A. Yes, except, let's see, just right
17 south of us. It's like Menchoffer Woods; it's a
18 development that's been there for -- That's who we
19 bought the farmland off of.

20 Q. That's a residential development or --

21 A. Yes.

22 Q. How long has -- Menchoffer Woods
23 existed when you purchased your property?

24 A. Yes.

25 Q. Okay. Do you know how many houses are

1 | there?

2 | A. No.

3 | Q. More than 50?

4 | A. No.

5 | Q. Twenty?

6 | MS. BREWER: Objection.

7 | A. Maybe 20, 20; I don't know.

8 | Q. Do you know if Menchoffer Woods has
9 | grown since you purchased the property in the '70's?

10 | A. It has not.

11 | Q. Any other development in the area --

12 | MS. BREWER: Objection.

13 | Q. -- that you're aware of?

14 | A. No.

15 | Q. Okay. Let's go to after the spillway.

16 | So we're looking at 1997. By the way, are you
17 | familiar with the Affidavit?

18 | MS. BREWER: Objection.

19 | Q. Have you seen it before today?

20 | A. Yes.

21 | Q. On page 3, is that your signature?

22 | Did you sign it?

23 | A. Yes.

24 | Q. And I presume this was prepared and
25 | then you signed it; correct? You didn't type this

1 up; did you?

2 A. I did not type it up, but it's our
3 information.

4 Q. Okay. Did you review it before you
5 signed it?

6 A. Yes.

7 Q. How often, after the spillway was
8 modified in 1997, did you experience flooding?

9 MS. BREWER: Objection.

10 A. Well, 2003 was a huge flood.

11 Q. Okay. Did you have flooding before
12 2003?

13 A. Yes. I would say -- And I remember
14 2003 just being so massive that it stuck in my mind.

15 Q. What about between 1997 and 2003, do
16 you recall if your property flooded?

17 A. No, don't know.

18 Q. Okay. But you're sure that it did
19 flood in 2003?

20 A. Oh, yes!

21 Q. All right. Why don't you tell me
22 about that.

23 A. Tell you about the flood?

24 Q. Yes.

25 A. It looked like a lake. Our son-in-law

1 | came over one day and he said, "What would you think
2 | if I came, I just came by your place and there's
3 | ducks out on your field." And Bob said, "Oh, that's
4 | not a good sign." There's so much water and it
5 | stayed forever. It was, like, four feet deep maybe
6 | in places. I remember that.

7 | Q. Do you remember what time of the year
8 | that was?

9 | A. Whenever the water came on. Do don't
10 | know if it was -- I can't remember if it was -- No, I
11 | don't.

12 | Q. You don't remember --

13 | A. I guess it was spring. Well, I don't
14 | know -- summer. I don't know.

15 | Q. I don't want you guessing. If you
16 | don't know, you don't know.

17 | A. I can't remember.

18 | Q. And how deep do you think it was?

19 | A. I thought it -- from places, like, a
20 | couple inches, I thought Bob had went out there and
21 | stood in it said to four feet. I mean that was --

22 | Q. Did you ever, personally, go out and
23 | see?

24 | A. Oh! I drove by. No, I did not walk
25 | out in it because I don't walk very well. Why would

1 I go out in it.

2 Q. Did you or do you know if your husband
3 actually measured to see how deep it was?

4 A. I think so.

5 Q. Okay. Was that your husband you think
6 did that?

7 A. Yes.

8 Q. And I know you've answered you're not
9 sure about when it flooded before 2003, but did it
10 ever flood that severely?

11 A. No.

12 Q. Has it ever flooded that severely
13 since 2003?

14 A. Well, in 2005 and 2008, I know were
15 bad, too, because I can remember 2008 replanting. I
16 mean I don't take care of what he does with the
17 crops, but I see the bills and 2008, like, three
18 times replanting beans and -- It was terrible.

19 Q. All right. Let me take you back to
20 2003 since we're starting with that one.

21 A. Um-hum. I should remember what month
22 and I can't remember.

23 Q. Well, that's okay.

24 A. Okay.

25 Q. It's all right. How long was your --

1 Do you remember how much of your land was under water
2 in 2003? We can go parcel-by-parcel if it would help
3 or do you know just generally?

4 A. Totally, what I think, I know one
5 parcel was, like, 36. Probably 38 acres, maybe, I --

6 Q. You've indicated this is the area that
7 you've shaded where you believe --

8 A. Yeah. This was how many acres.

9 Q. Okay.

10 A. And if you add them up, I think it
11 came to that.

12 Q. In 2003, do you know how long the
13 water was there?

14 A. It was a long time.

15 Q. Okay.

16 A. To say exact, I don't know.

17 Q. More than a week?

18 A. Yes.

19 Q. More than two weeks?

20 A. Probable -- I don't -- I'm not sure.

21 Q. More than a week for sure?

22 A. Yes.

23 Q. All right. Any other flooding -- I
24 think you indicated the next time that you felt it
25 was flooded was 2005 --

1 A. I just remember --

2 MS. BREWER: Objection.

3 Mischaracterizing. Go ahead.

4 Q. Is that correct; do you recall it
5 flooding in 2005?

6 MS. BREWER: The question was, I
7 believe you indicated the next time it
8 flooded was 2005.

9 A. What I said was 2005 and 2008 stick
10 out in my memory that it flooded. Mainly, 2008,
11 'cause I know that was at planting time, you know --

12 Q. Okay. Then let me go back then.
13 Since 1997, do you know how frequently your property
14 floods because of the spillway or otherwise?

15 A. Since 1997 how frequently? I don't
16 know.

17 Q. Do you know how frequently it flooded
18 since 2003?

19 A. I don't know.

20 Q. You do recall it flooded in 2005;
21 correct?

22 A. Yes.

23 Q. Can you tell me about that? How deep
24 did it get in 2005?

25 A. I don't know. I don't think it was as

1 massive as 2003, but it wasn't good.

2 Q. Do you know how long your property was
3 flooded in 2005?

4 A. I don't know.

5 Q. How about 2008? Well, let me -- I'm
6 sorry. Do you recall if your property flooded
7 anytime between 2005 and 2008?

8 A. Not sure.

9 Q. All right. You do recall 2008?

10 A. Yes.

11 Q. How many times in 2008?

12 A. Several times during planting season.

13 He'd put beans out and then it gets, you know,
14 smothered down and -- from the rain and then he'd put
15 'em out. I know at least three times he replanted
16 the beans, so --

17 Q. Do you know if it flooded at least
18 three times; do you recall that actually?

19 A. He replanted three times; that's what
20 I'm saying.

21 Q. Do you know how deep it got in 2008?

22 A. I don't know.

23 Q. Do you know how long it was there in
24 2008?

25 A. I don't know.

1 Q. Has your property flooded since 2008?

2 A. Probably if the lake has a lot of
3 water. I can't remember of it ever being as big as
4 the, you know, '08; I don't know.

5 Q. You don't know if your property has
6 flooded since 2008?

7 A. I don't know.

8 MS. BREWER: You don't know or you
9 can't remember?

10 THE WITNESS: Can't remember.

11 Q. Now, in your Affidavit, Ms. Searight,
12 on -- it's paragraph 9 -- you indicate that -- Yeah.
13 If you want to look, it's on page 2 there and the --
14 well, right-hand corner, you have a 599 number there.
15 It's actually -- I'm sorry. It's the bottom of page
16 2 and it's the top of page 3. I'm not going to read
17 these into the record 'cause this exhibit will be
18 there, but we have approximately 1.25 acres for
19 parcel 119, 36.5 in another parcel, 1 acre and .75
20 acres. When you signed this Affidavit, did you,
21 specifically, remember that or did somebody else --

22 A. I went over it with my husband.

23 Q. Okay, all right. That's where you got
24 that information?

25 MS. BREWER: Objection.

1 A. Well, that's what we said.

2 Q. All right. You don't, specifically,
3 remember though that it was this many acres were
4 flooded on each of these parcels --

5 MS. BREWER: Objection.

6 Q. -- on this Affidavit; do you? You
7 don't specifically remember those; do you --

8 MS. BREWER: Objection.

9 Q. -- in 2003?

10 A. As far as how many acres were flooded?

11 Q. Yes.

12 A. Well, yes. It was a lot of acreage
13 and we went over it and that's what we thought when
14 we shaded it in it was that many acres.

15 Q. All right.

16 A. I, specifically, remember.

17 Q. All right. Since -- I'll ask 1997 --
18 I realize it's going back some time. Since 1997, do
19 you recall ever having a particularly hard rainfall,
20 one that lasted more than two days?

21 MS. BREWER: Objection.

22 A. I don't know. Can't remember.

23 Q. Do you recall since the spillway was
24 modified there was ever a time that your property
25 flooded, but the river did not overcrest?

1 MS. BREWER: Objection.

2 A. I don't remember, but I don't think --
3 I think it came from, like, the Beaver when it went
4 out.

5 Q. You don't remember or are you just --

6 A. I don't remember.

7 Q. Okay. As a result of the flooding,
8 what's happened to you? What's happened to your
9 property?

10 A. Well, I know my husband had a lot of
11 debris to clean up and I mean, it's erosion and the
12 land sometimes, it's compacted; it's really hard and
13 I remember he had so much of the stuff from the
14 water, from the, you know, rowed up against, like, a
15 fenceway and he was burning, had a great big fire out
16 there and three fire departments came out, three big
17 trucks, you know. Now, he calls `em and tells `em
18 when he's going to burn, but it's a lot of work, I'll
19 tell you.

20 Q. Well, what about your crop yields,
21 what effect did the flooding have on that?

22 A. He can tell you.

23 Q. You don't know?

24 A. I don't know. It hasn't been good.

25 Q. Did you, as a result of the flooding

1 | since 1997, do you know if -- did you or do you know
2 | if your husband ever contacted any Federal or State
3 | agencies for any help?

4 | A. Well, this ditch project, I know he
5 | had to go before the Commissioners.

6 | Q. The Mercer County Commissioners?

7 | A. Yeah.

8 | Q. Anything else with government?

9 | A. I don't know. Our waterway, he had to
10 | have that approved.

11 | Q. Is your house which, is on the one
12 | parcel, is it elevated or is it flat with the land?

13 | MS. BREWER: Objection.

14 | A. Our house is elevated, like up a
15 | little.

16 | Q. Was your house ever damaged because of
17 | flooding?

18 | A. No.

19 | Q. How high is your house elevated?

20 | A. I don't know.

21 | Q. Higher than the water, obviously;
22 | right?

23 | A. Yes.

24 | Q. Was your basement ever damaged because
25 | of flooding?

1 A. We do get water come in our basement;
2 yes, we do.

3 Q. Did you get water in your basement in
4 2003 that you recall?

5 A. I'm sure we did because -- Yes, a lot
6 in the one room; yes.

7 Q. Okay. Nothing else though?

8 MS. BREWER: Objection.

9 Q. Other than the basement --

10 A. Basement.

11 MS. BREWER: You're referring to 2003?

12 Q. Right. How about 2005?

13 A. Yes.

14 Q. 2008?

15 A. Yes.

16 Q. You got flooding in your basement in
17 2008?

18 A. Yes, water.

19 Q. How long, if you know, if crops are
20 damaged or destroyed by the flooding that you've
21 experienced, how long does it take to replant 'em?

22 A. I don't know.

23 Q. Okay. How long does it take?

24 A. You mean how many hours or --

25 Q. Yeah, days, hours?

1 A. Well, you have to wait `til the land
2 dries out and, you know, yeah, days, hours, weeks --

3 Q. Well, you don't know for sure, though?

4 A. No.

5 Q. Don't guess. Mrs. Searight, I think
6 you -- I want to follow back on a question just
7 because I don't know if you answered, asking you --
8 You said you've looked at other sales. Do you have
9 an opinion of what your property is worth today?

10 A. I do not.

11 MS. BREWER: Objection.

12 Q. Okay. Do you think your property
13 would be worth more if the spillway hadn't been
14 modified?

15 A. Would be worth more?

16 Q. Do you think it would be?

17 A. If the -- If we didn't get flooding?

18 Q. Yes.

19 A. Yes.

20 Q. Well, if the spillway hadn't been
21 changed because you indicated you still had flooding,
22 some flooding even without the spillway. So not just
23 flooding, but do you think your property would be
24 worth more if the spillway had never been changed?

25 A. Oh, yes!

1 MS. BREWER: Objection.

2 Q. You indicated you've never had the
3 property appraised. Have you ever gotten any sort of
4 informal opinion from a realator or anyone about the
5 value of the property?

6 A. No.

7 Q. After 1997, until this lawsuit was
8 filed, did you ever complain or go to the State or
9 the Department of Natural Resources to complain or
10 make a claim due to flooding?

11 MS. BREWER: Objection.

12 A. I don't know.

13 Q. You didn't, personally?

14 A. I did not.

15 Q. I think I asked you this: Do you know
16 whether any of your properties are within flood
17 plain?

18 MS. BREWER: Objection. Asked and
19 answered.

20 A. I've answered.

21 Q. And the answer?

22 A. I don't know.

23 Q. When you first took possession of your
24 property, did the owners indicated there was any
25 problems with flooding --

1 MS. BREWER: Objection.

2 Q. -- back in the '70's?

3 A. Yes. He said there was always a
4 problem, you know, and got worse, but he thought the
5 State was going to fix it, so --

6 Q. This was in the '70's, there was
7 flooding?

8 A. Well, no, not as much then as when we
9 bought the latter property.

10 Q. But he did tell you that there was --

11 MS. BREWER: I'm sorry. To be clear,
12 she's had several different property
13 transactions, which -- Are you talking

14 about who, are you asking to speak with --

15 MR. COLE: All right. Well, I'll let
16 her tell me that. That's a good point.

17 Q. When were you told that there were,
18 from an owner, that there was flooding on the
19 property?

20 A. I don't know.

21 Q. Before the spillway, before 1997?

22 A. I think it was more like when we
23 bought the later, I mean, you know, when we got those
24 last transactions or whatever in 1997 or whenever. I
25 don't know.

1 Q. You don't, okay. You know you were
2 told by somebody --

3 A. We knew because we lived in the area.

4 Q. Okay, all right. What about when you
5 acquired the property from the owner, you indicated
6 that they mentioned that there was -- flooding was a
7 problem and the State needed to take care of it; is
8 that correct?

9 A. Correct.

10 Q. Do you know approximately when that
11 was?

12 A. No.

13 Q. Do you know if it was before 1997?

14 A. No.

15 Q. You don't know or you know for sure it
16 wasn't?

17 A. I don't know.

18 Q. All right.

19 MR. COLE: That's all I have. Thank
20 you.

21 MS. BREWER: Okay. The court reporter
22 will type up a record of everything that
23 happened and you are given the opportunity
24 to look it over, to read it and then sign
25 it and verify that it's correct or you can

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waive that right. I would recommend that you would take the opportunity to read it over and sign it. Is that what you'd like to do?

THE WITNESS: I think that's what --
Yeah.

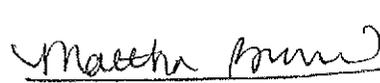
MR. COLE: Thank you very much.


Bonita S. Searight

- - -

(At 2:10 o'clock, PM, the deposition concluded.)

- - -

 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 her aforesaid deposition the said BONITA S. 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 BONITA S. 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 her examination and signature; that I am neither a relative of nor attorney for any of the parties to this cause, nor relative of nor employee of any of their counsel and have no interest whatever in the result of the action.

IN WITNESS WHEREOF, I have hereunto set my hand at Cincinnati, Ohio, this 21st day of February, 2010.

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

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E R R A T A S H E E T

I, Bonita Jearight, 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 17 Change Mudd to Mud, passim

9 23 Change Howard to Hellworth

10 23 change for to farm

12 10 Change relies to Relizon

35 18 change for to more

46 20 change probable to Propably

47 10 add ^{that} "know", but at least once a year



AFFIDAVIT OF BONITA S. SEARIGHT

STATE OF OHIO)
) ss:
COUNTY OF MERCER)

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

1. I am a Relator in this mandamus action 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.

DON000598

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-

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.


Bonita S. Searight

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


Notary Public

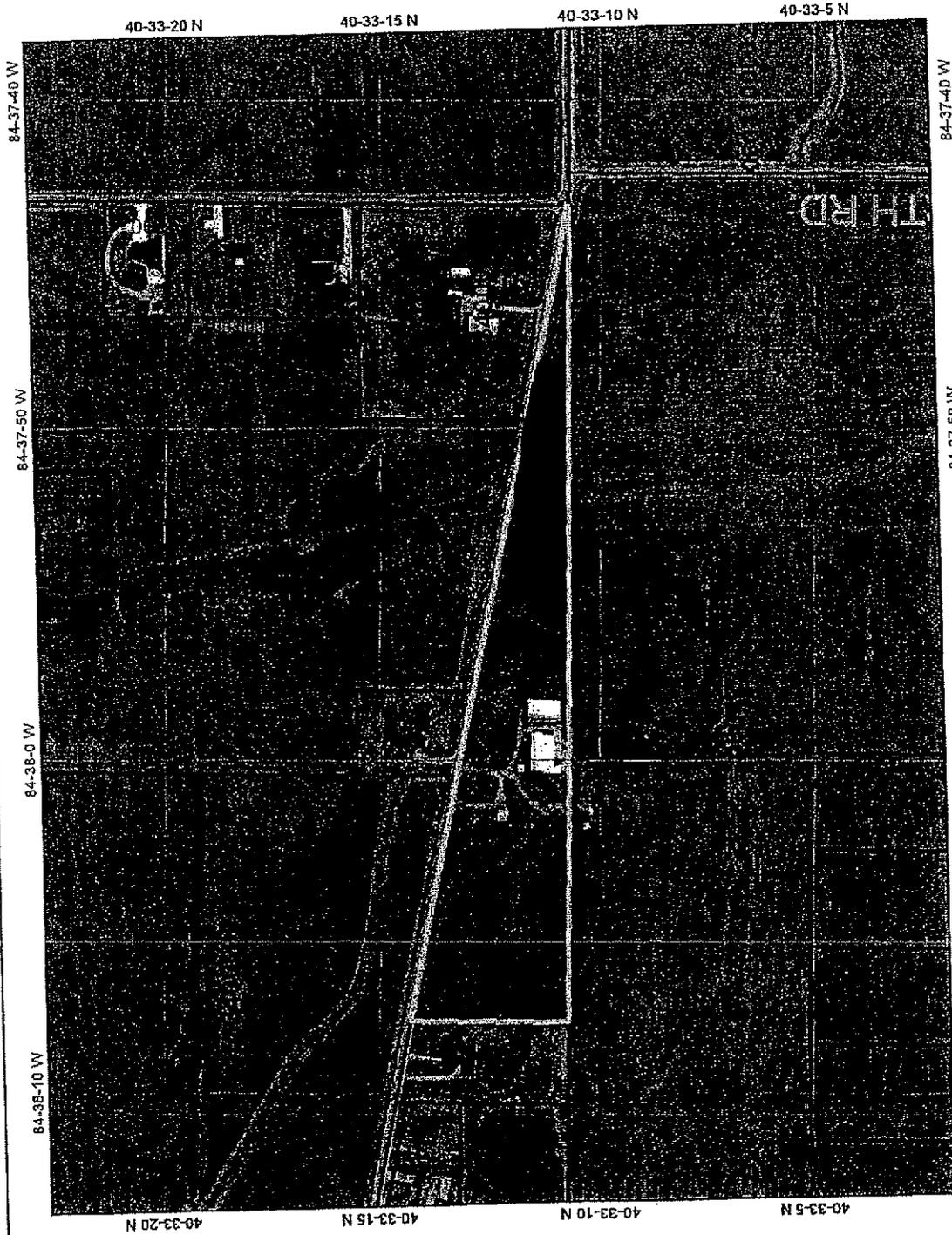
KRISTIKRESS WILHELMY
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 O.R.C.

DON000600

EXHIBIT A
TO
AFFIDAVIT OF BONITA S. SEARIGHT

DON000601

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

Transportation

- State Highways
- US Highways

Water

- Lake
- Streams



Scale: 1:4,500

Map center: 1376083, 330327

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



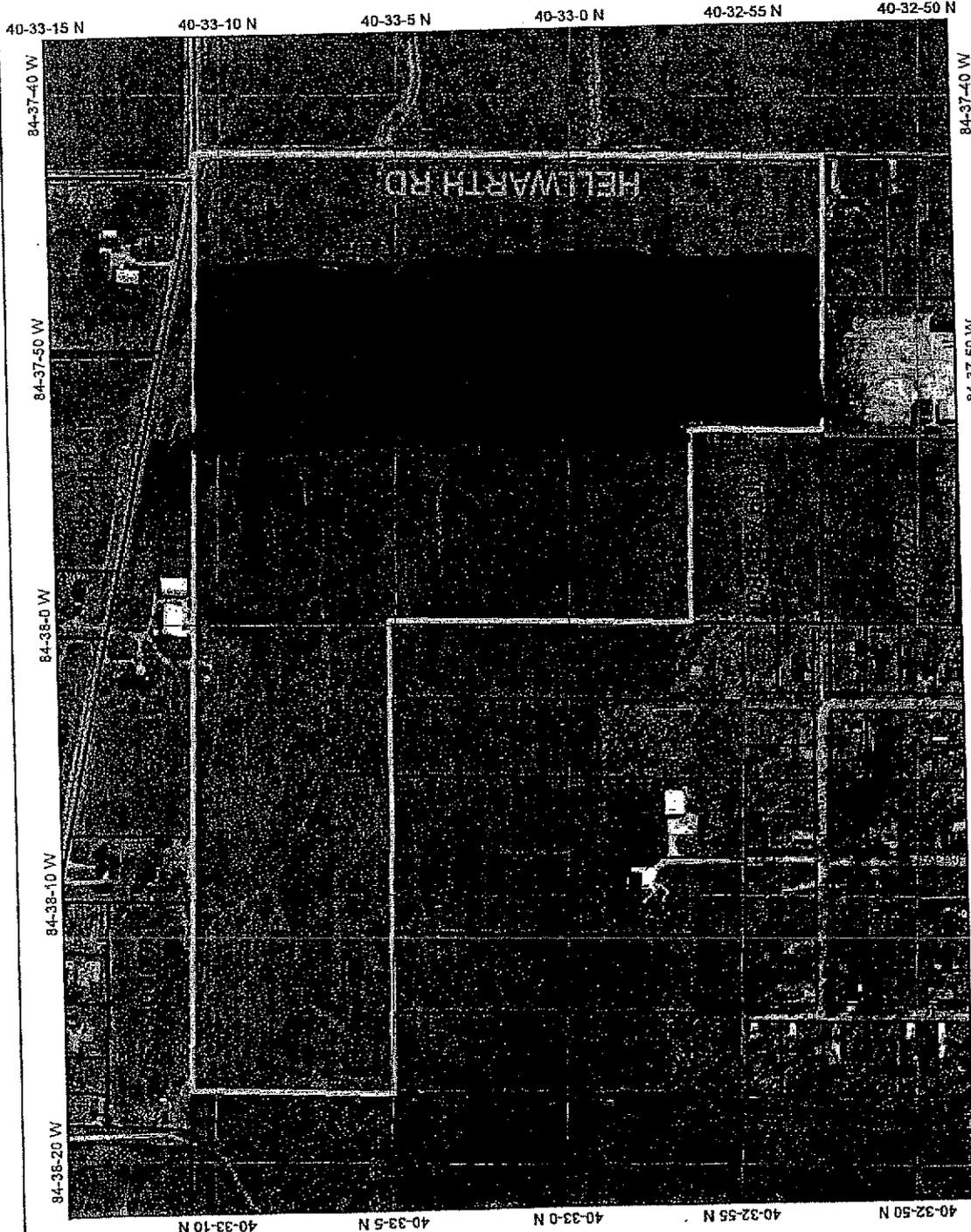
DON000602

EXHIBIT B
TO
AFFIDAVIT OF BONITA S. SEARIGHT

DON000603



Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

Transportation

- State Highways
- US Highways

Water

- Lake
- Streams



Scale: 1:5,600

Map center: 1375748, 329243

1650 ft.

550

1100

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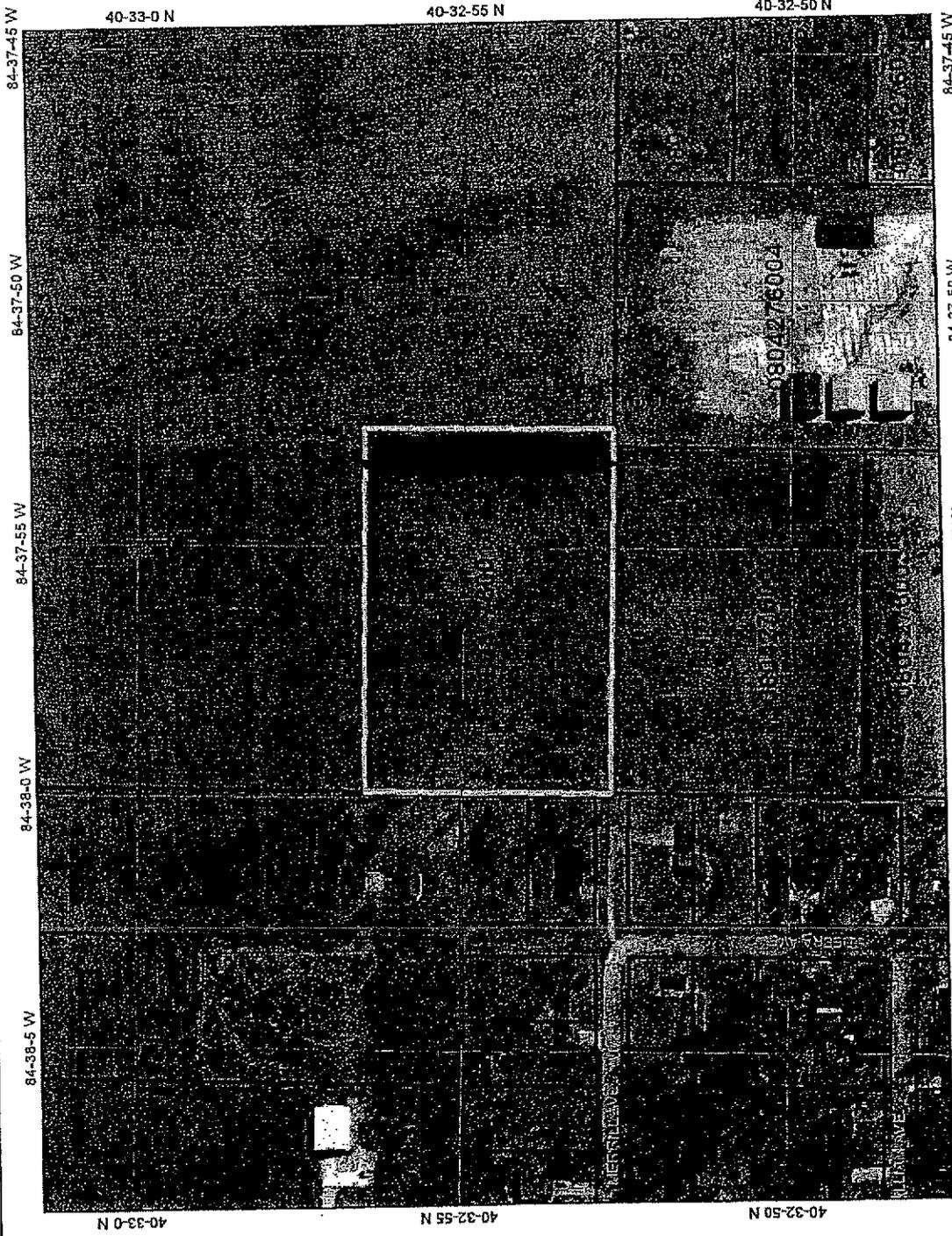


Robert E. Searight, aka Robert Searight and Bonnie Searight
-0, Hellwarth Rd

EXHIBIT C
TO
AFFIDAVIT OF BONITA S. SEARIGHT

DON000605

Mercer County Ohio



Legend

Administrative

- Townships
- Neighborhoods

Parcels

- Parcels

Transportation

- State Highways
- US Highways

Water

- Lake
- Streams



Scale: 1:3,000

Map center: 1375989, 328520

900 ft.

600

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EXHIBIT

C
Searight

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- Debra Ave.

990000606

EXHIBIT D
TO
AFFIDAVIT OF BONITA S. SEARIGHT

〔 DON000607 〕

Mercer County Ohio

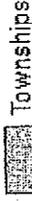


Map center: 1375965, 328134

Scale: 1:3,000

Legend

Administrative



Townships



Neighborhoods

Parcels



Parcels

Transportation



State Highways

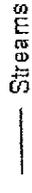


US Highways

Water



Lake



Streams

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.

EXHIBIT

P
Merrill

809000N00