

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel. WAYNE T. DONER, et al.,	:	Case No. 2009-1292
	:	
Relators,	:	Original Action in Mandamus
	:	
v.	:	Master Commissioner Campbell
	:	
SEAN D. LOGAN, Director,	:	
Ohio Department of Natural Resources, et al.,	:	
	:	
Respondents.	:	

---

**MEMORANDUM OF RESPONDENTS IN OPPOSITION TO RELATORS' MOTION TO SHOW CAUSE WHY STANTEC CONSULTING SERVICES, INC. SHOULD NOT BE HELD IN CONTEMPT**

---

BRUCE L. INGRAM\* (0018008)  
*\*Counsel of Record*  
 JOSEPH R. MILLER (0068463)  
 THOMAS H. FUSONIE (0074201)  
 KRISTI KRESS WILHELMY (0078090)  
 Vorys, Sater, Seymour and Pease LLP  
 52 East Gay Street  
 P.O. Box 1008  
 Columbus, Ohio 43216-1008  
 614-462-6480  
 614-719-4775 fax  
 blingram@vorys.com  
 jrmler@vorys.com  
 thfusonie@vorys.com  
 kkwilhelmy@vorys.com  
 mcbrewer@vorys.com

Counsel for Relators

RICHARD CORDRAY  
 Ohio Attorney General

WILLIAM J. COLE\* (0067778)  
*\*Counsel of Record*  
 MINDY WORLY (0037395)  
 JENNIFER S.M. CROSKY (0072379)  
 Assistant Attorneys General  
 30 East Broad Street, 26th Floor  
 Columbus, Ohio 43215  
 614-466-2980  
 866-354-4086 fax  
 william.cole@ohioattorneygeneral.gov  
 mindy.worly@ohioattorneygeneral.gov  
 jennifer.croskey@ohioattorneygeneral.gov

DALE T. VITALE (0021754)  
 DANIEL J. MARTIN (0065249)  
 RACHEL H. STELZER (0083124)  
 Assistant Attorneys General  
 2045 Morse Road #D-2  
 Columbus, Ohio 43229  
 614-265-6870  
 614-268-8871 fax  
 dale.vitale@ohioattorneygeneral.gov  
 daniel.martin@ohioattorneygeneral.gov  
 rachel.stelzer@ohioattorneygeneral.gov  
 Counsel for Respondents

**FILED**  
 JUN 03 2010  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

**MEMORANDUM OF RESPONDENTS IN OPPOSITION TO RELATORS’  
MOTION TO SHOW CAUSE WHY STANTEC CONSULTING SERVICES, INC.  
SHOULD NOT BE HELD IN COMTEMPT**

**I. INTRODUCTION**

Relying on a litany of inapposite federal cases interpreting the Federal Rules of Civil Procedure, Relators ask this Court to order Stantec Consulting Services, Inc. (“Stantec”)<sup>1</sup> to show cause why it should not be held in contempt for failing to produce documents withheld under the longstanding protection of Ohio’s work product doctrine. As further explained below, because Ohio has not adopted the 1993 amendments to the Federal Rules of Civil Procedure that form the basis for Relators’ claims, the motion should be overruled.

**II. RELEVANT BACKGROUND**

Simply stated, Relators’ version of the background facts in this case is not accurate. First, on May 10, 2010, counsel for Respondents forwarded a response to the Stantec subpoena after completing a privilege review. On that day, counsel for Respondents provided (1) the Supplemental Agreement between ODNR and Stantec, which added the work at Grand Lake St. Marys, (2) all Stantec’s invoices, and (3) an email between Stantec and Hydrosphere Engineering. In that correspondence, counsel for Respondents also explained that modeling of the July 2003 flood event with the old spillway in place had been previously provided (at the April 29, 2010 deposition of Tadd Henson) and that no maps were created for that event. (Correspondence dated May 10, 2010, attached as Ex. A.) Further, Tadd Henson testified about what reports of Dr. Campbell he reviewed, but did not rely on in formulating his own expert opinion and that

---

<sup>1</sup> Relators’ motion incorrectly refers to Stantec as “Stantec Consulting Corporation.”

his attendance at Dr. Campbell's deposition was not for the purpose of developing his opinion. (Deposition of Tadd Henson at 13:6-14:10; 23:12-24:17; 112:1-12, attached as Ex. B.)

Second, Civil Rule 26(B)(5) does not provide for the disclosure of all materials given to and reviewed by an expert, including trial preparation materials, opinion work product, and privileged materials as Relators claim. To the contrary, rather than the *carte blanche* Relators' claim, discovery under Civ.R. 26(B)(5)(a) requires a showing of undue hardship or other exceptional circumstances. While Civil Rule 26(B)(5)(b) provides an alternative means of obtaining discovery from a testifying expert, it carefully restricts any discovery of an expert's opinions and the grounds therefor to those previously given to the other party or those to be given on direct examination at trial.

Third, as repeatedly explained to Relators, Stantec attended the expert deposition of Mr. Campbell for purposes of consultation only, thereby assisting counsel's understanding of Mr. Campbell's technically complex testimony. Indeed, as Tadd Henson confirmed at his April 29, 2010 deposition, Stantec's presence at the Campbell deposition was neither for the purpose of developing Stantec's testimony nor was it in aid of the Stantec report. (See, generally, Ex. B.) Moreover, contrary to the extensive list of documents Relators claim have been withheld on the ground of privilege, Respondents have previously produced 1) the agreement between ODNR and Stantec<sup>2</sup> (with the

---

<sup>2</sup> Mr. Henson's general testimony at his deposition regarding his understanding of the scope of work undertaken by Stantec could not waive the work product privilege. Waiver principles are inapplicable to Civ.R 26(B)(3). *In re Election of Nov. 6, 1990 for the Office of Atty. Gen. of Ohio* (1991), 57 Ohio St.3d 614, 615. Moreover, not only did counsel for respondents object to any testimony regarding discussions with counsel regarding the scope of work, but also she instructed Mr. Henson not to answer any questions seeking core work product. (Ex. B, Henson Deposition Transcript p. 19.)

exception of one paragraph in the agreement which was redacted because it outlined counsel's litigation strategy); 2) all Stantec invoices; 3) all of Stantec emails with Dr. Philip DeGroot and/or Hydrosphere Engineering; and 4) any modeling/mapping prepared by Stantec of the July 2003 flooding with the old spillway in place. Likewise, copies of any reports of Dr. Pressley Campbell contained in Mr. Henson's files are already in Relators' possession and Mr. Henson provided testimony regarding his review of those reports. (Ex. B.) Counsel has repeatedly represented to Relators that any copies of the Campbell report are merely duplicative of the copies they presently have and contain no notes, flags or any other markings. As such, production of these copies would be cumulative, unreasonably burdensome, and a waste of the parties' and the Court's limited resources.

### **III. ARGUMENT**

In 1993, the Federal Rules of Civil Procedure regarding expert witnesses was amended. The amended rule required "far greater disclosure," including the disclosure of "all opinions to be expressed and the basis and reasons therefor" along with "the data or other information *considered* by the witness in forming the opinions." (Emphasis sic.) *Mfg. Admin. & Mgt. Sys., Inc. v. ICT Group, Inc.* (E.D.N.Y 2002), 212 F.R.D. 110, 113. Indeed, as the Advisory Committee Notes to the 1993 amendments explain, the expert report is to disclose the data and other information considered by the expert. Given this obligation of disclosure, litigants in federal court should no longer be able to argue that materials furnished to their experts to be used in forming their opinions, whether or not

---

Notably, counsel for Relators never asked Mr. Henson whether he read or was even aware of the contents of the supplemental agreement. Accordingly, not only was there no testimony regarding the contents of the agreement, but also counsel for Relators failed to lay any foundation for any such testimony by Mr. Henson.

ultimately relied upon by the expert, are privileged or otherwise protected from disclosure. *Id.* at 115, quoting Fed.R.Civ.P. 26 advisory committee's note (1993 amendments). The drafters of the amendment specifically rejected the requirement that data or information be "relied on" in favor of broader language that requires only that the expert "considered" the information for it to be discoverable. *Id.*

Notably, however, such is not the rule in Ohio. In Ohio, work product continues to receive substantial protection. While fact work product receives lesser protection, opinion work product reflecting the attorney's mental impressions, opinions, conclusions, judgments or legal theories receives near absolute protection. *State v. Hoop* (12th Dist. 1999), 134 Ohio App.3d 627, 642. Moreover, in those specific instances where work product is discoverable, Ohio courts have still granted absolute protection to an attorney's theory of the case. *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, syllabus ¶ 3; *Miller v. First Int'l Fid. & Trust Bldg.*, 113 Ohio St.3d 474, 2007 Ohio 2457, ¶9.

**A. Ohio Civ. R. 26(B)(5)(b) authorizes limited discovery of an expert's opinions, not the broad scope Relators urge based on a federal bright line test.**

Civ. R. 26(B)(5)(b) requires only disclosure of testifying experts and the subject matter about which they will testify at trial. After disclosure, a party may discover from an expert "facts known or opinions held by the expert which are relevant to the stated subject matter." That discovery is limited to the "expert's opinions and the grounds therefor \*\*\* previously given to the other party or those to be given on direct examination at trial."

Despite Relators' herculean efforts at persuasion otherwise, Ohio, along with other state courts, continues to protect the core work product Relators now seek. *Helton*

*v. Kincaid* (12th Dist.), 2005-Ohio-2794, ¶19 (finding that letters from an attorney to an expert are protected under the work-product doctrine). In doing so, Ohio continues to place a high value on the longstanding history of the work product doctrine and the ability of an attorney to pursue various theories of the case without requiring him to reveal his thoughts, theories and mental processes to the other side. *Id.* ¶12.

It is therefore not surprising that Ohio's discovery rules directly addressing expert witnesses who are expected to testify at trial track the pre-1993 federal rule. *Id.* at ¶13. Simply stated, work product does not lose its protected status simply because it is disseminated to an expert. *Id.* at ¶16. Rather, in accordance with Ohio's longstanding policy favoring work product privacy, by use of interrogatories, a party may require the other party to identify each person the party expects to call as a witness at trial and to state the subject matter on which the party is expected to testify. *Id.* ¶13, citing Civ.R. 26(B)(4)(b). The party may then "discover from the expert or the other party facts known or opinions held by the expert which are relevant to the stated subject matter." *Id.* All of this the Relators have already done without objection. Specifically, Relators sent interrogatories to Respondents in November 2009 and Respondents answered in December 2009. Further, Relators deposed Respondents' experts in April 2010.

It is essential that a lawyer assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. *Mfg. Admin. & Mgt. Sys., Inc. v. ICT Group, Inc.* (E.D.N.Y. 2002), 212 F.R.D. 110, 112, quoting *Hickman v. Taylor* (1947), 329 U.S. 495, 511. It is for this reason that Ohio has flatly rejected the federal bright line rule Relators single-mindedly now urge upon the Court. In this case, Stantec's contract is not limited

to explaining the fee, the type of work billed for, or the purpose of litigation. Instead, the scope of work is detailed, reflecting the legal strategies of the attorneys and providing insight into the attorneys' thoughts concerning the direction of the litigation. *Id.* at 113.

Nonetheless, the Court may decide to conduct an evidentiary hearing or an in camera inspection to determine the issue of privilege. However, absent such a hearing or inspection, any blanket grant of discovery is an abuse of discretion. *Miller v. Bassett* (8th Dist.), 2006-Ohio-3590, ¶16; *Cargotec, Inc. v. Westchester Fire Ins. Co.*, 155 Ohio App.3d 653, 2003-Ohio-7257.

**B. Discovery under Ohio Civ. R. 26(B)(5)(a) requires a showing of undue hardship or exceptional circumstances. Relators have not attempted to make such a showing.**

Civ. R. 26(B)(5)(a) provides “[s]ubject to the provisions in (B)(5)(b) of this rule and Rule 35(B), a party may discover facts known or opinions held by an expert retained or specially employed by another party in anticipation of litigation or preparation for trial only upon a showing that the party seeking discover is unable without undue hardship to obtain facts and opinions on the same subject matter by other means or upon a showing of other exceptional circumstances indicating that denial of discovery would cause manifest injustice.”

Relators have not shown that they are “unable to obtain facts and opinions on the same subject by other means” or shown “other exceptional circumstances indicating that denial of discover would cause manifest injustice.” Relators have simply argued, based on the federal bright-line test and Missouri law, that they are entitled to disclosure of communications that are protected by the work product privilege. As stated above,

Respondents provided a copy of the Supplemental Agreement to Relators with only the scope of work redacted.

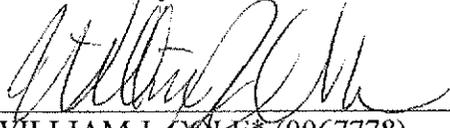
Relators have made no showing of undue hardship or other exceptional circumstances which would warrant discovery under Rule 26(B)(5)(a). Likewise, Relators' motion is not limited to only the expert's opinions or the grounds therefor previously provided to the Respondents or those to be given on direct examination at trial. Rule 26(B)(5)(b). As such, Relators' motion to show cause should be denied.

#### **IV. CONCLUSION**

Because Ohio continues to favor the protection of core work product and limits the discovery of testifying experts, Relators' motion should be denied. Stantec complied with the subpoena in good faith, and consistent with the Ohio Rules of Civil Procedure.

Respectfully submitted:

RICHARD CORDRAY  
Ohio Attorney General

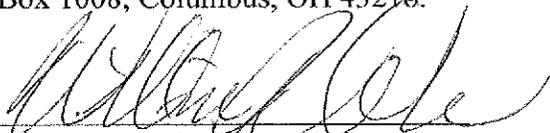
  
WILLIAM J. COLE\* (0067778)  
*\*Counsel of Record*  
MINDY WORLY (0037395)  
JENNIFER S.M. CROSKEY (0072379)  
Assistant Attorneys General  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215  
614-466-2980  
866-354-4086 fax  
william.cole@ohioattorneygeneral.gov  
mindy.worly@ohioattorneygeneral.gov  
jennifer.croskey@ohioattorneygeneral.gov

DALE T. VITALE (0021754)  
DANIEL J. MARTIN (0065249)  
RACHEL H. STELZER (0083124)  
Assistant Attorneys General  
2045 Morse Road #D-2  
Columbus, Ohio 43229  
614-265-6870  
614-268-8871 fax  
dale.vitale@ohioattorneygeneral.gov  
daniel.martin@ohioattorneygeneral.gov  
rachel.stelzer@ohioattorneygeneral.gov

Counsel for Respondents

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was sent by regular mail on June 3, 2010, to  
Bruce L. Ingram, Joseph R. Miller, Thomas H. Fusonie and Kristi Kress Wilhelmy,  
Vorys, Sater, Seymour & Pease, P.O. Box 1008, Columbus, OH 43216.

  
WILLIAM J. COLE

**William J. Cole**

---

**From:** Jennifer Croskey  
**Sent:** Monday, May 10, 2010 4:08 PM  
**To:** Brewer, Martha C.; Fusonie, Thomas H.  
**Cc:** William J. Cole; Mindy Worly; Rachel H. Stelzer; Daniel J. Martin; Dale T. Vitale  
**Subject:** FW: Doner, et al v. Logan, et al.  
**Attachments:** Stantec Subpoena Response.pdf

- 1) Supplemental Agreement adding work at Grand Lake St. Marys attached
- 2) Invoices attached
- 3) E-mail attached
- 4) There are no maps. Models were previously provided.

Phil DeGroot forwarded original documents. We are preparing copies and hope to provide them to you tomorrow.

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

---

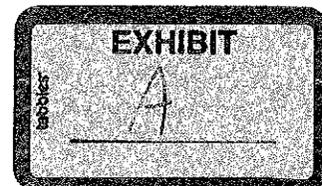
**From:** William J. Cole  
**Sent:** Friday, May 07, 2010 12:18 PM  
**To:** Jennifer Croskey  
**Subject:** FW: Doner, et al v. Logan, et al.

---

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

Mindy and Bill,

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



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

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

Thanks,  
Martha

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

IRS CIRCULAR 230 DISCLOSURE: In order to ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing, or recommending to another person, any transaction or other matter addressed herein.

---

CONFIDENTIALITY NOTICE: This e-mail message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

**Jennifer Croskey**

---

**From:** Henson, Tadd [Tadd.Henson@stantec.com]  
**Sent:** Monday, April 26, 2010 12:55 PM  
**To:** Dorsey, Jay; Phillip De Groot  
**Subject:** FW: Stantec FTP Confirmation - NEW AFFIDAVITS

You can access new affidavits regarding flooding last month on the ftp site below.

Tadd Henson, PE, CFM  
Stantec  
Ph: (614) 844-4005  
Cell: (614) 284-1607  
tadd.henson@stantec.com  
**stantec.com**

The content of this email is the confidential property of Stantec and should not be copied, modified, retransmitted, or used for any purpose except with Stantec's written authorization. If you are not the intended recipient, please delete all copies and notify us immediately.

 Please consider the environment before printing this email.

---

**From:** CORPFTP@temp.stantec.com [mailto:CORPFTP@temp.stantec.com]  
**Sent:** Monday, April 26, 2010 12:26 PM  
**To:** Henson, Tadd  
**Subject:** Stantec FTP Confirmation - NEW AFFIDAVITS

## Your request has been successfully created

The FTP link below contains the required credentials to access your FTP site.

### Automatic Login

**FTP site link:** <ftp://s0510102546:1803342@ftptmp.stantec.com>

**By clicking on the link above (or pasting the link into your browser) you will be automatically logged into your FTP site.**

### Manual Login

**If your email system has disabled the link above, use the information provided below to log in:**

**FTP link:** <ftp://ftptmp.stantec.com>

**Login name:** s0510102546

**Password:** 1803342

**Expired Date:** 5/10/2010

**Disk Quota:** 2GB

Please contact IT Service Center if you need to extend expiry date or disk quota.

**DISCLAIMER:**

The content of this email is the confidential property of Stantec and should not be copied, modified, retransmitted, or used for any purpose except with Stantec's written authorization. If you are not the intended recipient, please delete all copies and notify us immediately.

Please be reminded that your new temporary FTP site is not included on our daily backup. Backups are only available for permanent FTP site. All files uploaded/downloaded on Stantec FTP sites are intended for business purposes only. Stantec maintains the right to monitor all activities on its FTP sites.

## **SUPPLEMENTAL AGREEMENT NO. 12**

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

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

hereinafter referred to as the "Project," and

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

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

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

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

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

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

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

[REDACTED]

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

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

The Consultant shall provide the following services:

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

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

Replace Part III - SPECIAL PROVISIONS, with the following:

**PART III  
SPECIAL PROVISIONS**

**A. TIME OF PERFORMANCE**

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

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

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

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

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

## **B. TERMINATION**

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

## **C. REVIEWS AND ACCEPTANCES**

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

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

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

**D. INTERPRETATION**

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

**E. SPECIALISTS**

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

**F. TRANSFERS**

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

**G. PUBLIC UTILITIES**

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

**H. DOCUMENT OWNERSHIP, EXAMINATION, INSURANCE, PROPERTY RIGHTS**

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

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

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

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

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

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

#### **I. GOVERNING LAW**

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

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

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

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

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

**J. CONSULTANT PERFORMANCE EVALUATION**

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

**K. STANDARD OF CARE**

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

**L. INGRESS and EGRESS**

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

**M. CONSTRUCTION MEANS and METHODS**

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

**N. EDGE BUSINESS DEVELOPMENT PROGRAM PARTICIPATION**

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

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

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

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

#### **PART IV PAYMENTS**

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

1. Design Services:

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

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

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

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

2. Construction Administration:

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

3. Grand Lake St. Marys Western Spillway Analysis:

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

4. Contract Allowance:

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

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

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

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

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

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

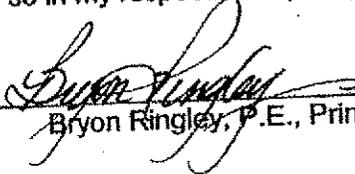
It is further mutually agreed that this Agreement is supplemental to the Contract of January 8, 1998 and amended by Supplemental Agreement No. 1, dated June 8, 1998, Supplemental Agreement No. 2 dated November 9, 1998, Supplemental Agreement No. 3 dated March 23, 2000, Supplemental Agreement No. 4 dated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

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

As Principal

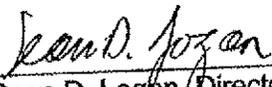
Of Stantec Consulting Services, Inc.

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

  
Bryon Ringley, P.E., Principal

F.T.I. No. 61-0659421

STATE OF OHIO  
Acting By  
Department of Natural Resources

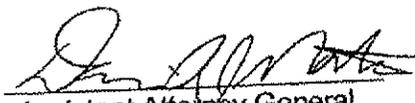
By   
Sean D. Logan, Director

Date March 1, 2010

#### APPROVAL BY ATTORNEY GENERAL

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

Richard Cordray  
Attorney General

By   
Assistant Attorney General

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

**APPENDIX A – SUPPLEMENTAL AGREEMENT NO. 12**

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

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

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

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

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



**Stantec**

December 4, 2009

Invoice No. 173522007.367674

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

Re: Invoice for Professional Services  
August 29, 2009 through November 6, 2009  
Improvements to SFLR Channel  
DNR-050058

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

- INVOICE -

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

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

Supplemental Agreement #11 Tasks

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

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

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

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

ODNR - Division of Engineering  
December 4, 2009  
Page 2

Total Invoiced to Date	\$ 800,185.23
Less Previously Invoiced	757,899.34
<b>Total Balance Due</b>	<b><u>\$ 42,285.89</u></b>

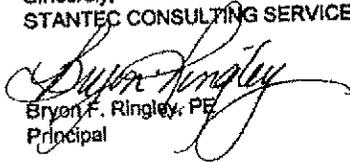
Total Project Progress: \$ 800,185.23 / \$893,549= 89.55%

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

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

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

Sincerely,  
STANTEC CONSULTING SERVICES INC.

  
Bryan F. Ringley, PE  
Principal

/jfk

Invoice for Professional Services Rendered  
 Grand Lake St. Marys Spillway H&H Study  
 through November 6, 2009  
 DNR-050066

**Itemized Charges**

**Grand Lake St. Marys Primary Spillway H&H Study**

<b>Employee</b>	<b>Task Description</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
		1.50	\$ 124.00	\$ 186.00
Roger Denick, PE, CFM	Hydrologic Analysis	100.00	\$ 132.00	13,200.00
Tadd Henson, PE, CFM	H&H; report; mtgs	20.00	\$ 100.00	2,000.00
Julle Pickering, PE	Hydraulic Model	19.00	\$ 154.00	2,926.00
Bryon Ringley, PE	PM; H&H; report; mtgs	28.50	\$ 93.00	2,650.50
Mark Seldelmann, EI	Hydrologic Analysis; Watershed	55.50	\$ 73.00	4,051.50
Nick Soltes	Delineation	111.50	\$ 93.00	10,369.50
Anil Tangirala, PE	Mapping	18.50	\$ 73.00	1,350.50
Travis White, EI	Hydraulic Model	64.00	\$ 86.00	5,504.00
Melissa Williams, EI	Hydrologic Model	418.50		\$ 42,238.00
<b>Expenses</b>				\$ 37.89
Mercer County Engineer	Bridge Plans			10.00
Rainfall Data for Project				\$ 42,285.89
<b>Subtotal</b>				



**Stantec**

December 21, 2009

Invoice No. 173522007.373312

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

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

Re: Invoice for Professional Services  
 November 7, 2009 through December 18, 2009  
 Improvements to SFLR Channel  
 DNR-050056

- INVOICE -

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

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

Supplemental Agreement #11 Tasks

Task	Description	Task Budget	Percent Complete	Accrued Fee	Billed to Date	Amount Due This Invoice
7.4.12	Additional Meetings	\$ 6,184.00	100.0	\$ 6,184.00	\$ 6,184.00	\$ -
7.4.13	Additional Analyses	36,538.50	100.0	36,538.50	36,538.50	-
7.4.14	Endangered Species	35,097.50	100.0	35,097.50	35,097.50	-
7.4.15	Addl. Easement Acquis.	24,075.00	100.0	24,075.00	24,075.00	-
7.4.16.1	Utility Coordination	7,240.00	100.0	7,240.00	7,240.00	-
7.4.16.2	Columbia Gas Relocate	36,820.00	86.0	31,665.20	31,665.20	-
7.4.16.3	Sprint Relocate	3,820.00	100.0	3,820.00	3,820.00	-
7.4.17	ODOT I-70 Permitting	13,797.00	100.0	13,797.00	13,797.00	-
7.4.18	Public Presentation	17,770.00	100.0	17,770.00	17,770.00	-
7.4.19	SWP3 NOI	655.00	23.0	150.65	150.65	-
7.4.20.1	Construction Admin.*	58,705.00	17.0	9,999.14	9,999.14	-
7.4.20.2	Constr. Obs. Labor **	65,000.00	86.7	56,348.24	42,285.89	14,062.35
7.4.20.3	Constr. Obs. Testing	9,570.00	0.0	-	-	-
7.4.21	Progress Rpts /Coord.	24,500.00	100.0	24,500.00	24,500.00	-
SA #10	Allowance	23,228.00	95.7	22,218.53	22,218.53	-
	Subtotal	\$ 363,000.00		\$ 289,403.76	\$ 275,341.41	\$ 14,062.35

Project Totals \$ 893,549.00 \$ 814,247.58 \$ 800,185.23 \$ 14,062.35

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

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

ODNR - Division of Engineering  
December 21, 2009  
Page 2

Total Invoiced to Date	\$ 814,247.58
Less Previously Invoiced	800,185.23
<b>Total Balance Due</b>	<b><u>\$ 14,062.35</u></b>

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

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

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

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

Sincerely,  
STANTEC CONSULTING SERVICES INC.

  
Byron F. Ringley, PE  
Principal

/jfk

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

**Itemized Charges**

**Grand Lake St. Marys Primary Spillway H&H Study**

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



**Stantec**

Invoice No. 173520005.388279

March 4, 2010

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

Re: Invoice for Professional Services  
 December 19, 2009 through February 26, 2010  
 Improvements to SFLR Channel  
 DNR-050058

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

**- INVOICE -**

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

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

**Supplemental Agreement #11 Tasks**

Task	Description	Task Budget	Percent Complete	Accrued Fee	Billed to Date	Amount Due This Invoice
7.4.12	Additional Meetings	\$ 6,184.00	100.0	\$ 6,184.00	\$ 6,184.00	\$ -
7.4.13	Additional Analyses	36,538.50	100.0	36,538.50	36,538.50	-
7.4.14	Endangered Species	35,097.50	100.0	35,097.50	35,097.50	-
7.4.15	Addl. Easement Acquis.	24,075.00	100.0	24,075.00	24,075.00	-
7.4.16.1	Utility Coordination	7,240.00	100.0	7,240.00	7,240.00	-
7.4.16.2	Columbia Gas Relocate	36,820.00	86.0	31,865.20	31,665.20	-
7.4.16.3	Sprint Relocate	3,820.00	100.0	3,820.00	3,820.00	-
7.4.17	ODOT I-70 Permitting	13,797.00	100.0	13,797.00	13,797.00	-
7.4.18	Public Presentation	17,770.00	100.0	17,770.00	17,770.00	-
7.4.19	SWP3 NOI	655.00	23.0	150.65	150.65	-
7.4.20.1	Construction Admin. *	9,999.14	100.0	9,999.14	9,999.14	-
7.4.20.2	Constr. Obs. Labor **	-	0.0	-	-	-
7.4.20.3	Constr. Obs. Testing **	-	0.0	-	-	-
DNR-050058	Grand Lake St. Marys	124,285.33	75.7	93,672.52	56,348.24	37,324.28
7.4.21	Progress Rpts /Coord.	24,500.00	100.0	24,500.00	24,500.00	-
SA #10	Allowance **	22,218.53	100.0	22,218.53	22,218.53	-
Subtotal		\$ 363,000.00		\$ 326,728.04	\$ 289,403.76	\$ 37,324.28
Project Totals		\$ 893,549.00		\$ 851,571.86	\$ 814,247.58	\$ 37,324.28

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

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

ODNR - Division of Engineering  
March 4, 2010  
Page 2

Total Invoiced to Date	\$ 851,571.86
Less Previously Invoiced	<u>814,247.58</u>
<b>Total Balance Due</b>	<b><u>\$ 37,324.28</u></b>

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

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

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

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

Sincerely,  
STANTEC CONSULTING SERVICES INC.

  
Byron F. Ringley, PE  
Principal

/jfk

Invoice for Professional Services Rendered  
 Grand Lake St. Marys Spillway H&H Study  
 December 19, 2009 through February 26, 2010  
 DNR-060056

Itemized Charges

Grand Lake St. Marys Primary Spillway H&H Study

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

# OneRain Incorporated

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

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

JAN 08 2010

## Invoice

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

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

173522007  
 TASK 700  
 TW 12/18/09

AMOUNT DUE	ENCLOSED
\$3,000.00	

Please detach top portion and return with your payment.

PO/Contract#	State
Agreement	OH

Date	Service	Activity	Quantity	Rate	Amount
12/18/2009	Historical Radar	QA/QC'd rainfall data for the specific time period of: July 4th 2003 - July 9th 2003	1	3,000.00	3,000.00

RECEIVED  
 BY A/P  
 DEC 22 2009  
 Edmonton - AB

TOTAL	\$3,000.00
-------	------------

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

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

17354924

DEC 3 2009

**Confirmation**

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

**Expense Report US688471**

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

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

**BY A/P**  
DEC 1 2009

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

**Expense Report Summary**

Edmonton -- AB

**General Information**

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

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

Expense Details Expense Summary Approval Notes [0]

**Cash and Other Expenses**

**Receipt-Based Expenses**

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

Expense Report US688471

Mileage Expenses

Start Date	End Date	Expense Type	Justification	Project Number	Task number	Trip Distance	Mileage Rate	Reimbursable Amount (USD) Details
12/07/2009	12/07/2009	Direct Personal Vehicle Use	mtg w/ D. Mohr at ODNR	173522807	700	14.6(Miles)	0.55	8.03 

Expense Details Expense Summary Approval Notes [0]

Copyright 2000-2005 Oracle Corporation. All rights reserved.



**Stantec**

April 20, 2010

Invoice No. 173520005.398680

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

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

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

- INVOICE -

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

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

Supplemental Agreement #11 and #12 Tasks

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

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

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

ODNR - Division of Engineering  
April 20, 2010  
Page 2

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

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

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

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

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

Sincerely,  
STANTEC CONSULTING SERVICES INC.

  
Bryon F. Ringley, PE  
Principal

/jfk

Invoice for Professional Services Rendered  
Grand Lake St. Marys Spillway H&H Study  
February 27, 2010 through April 16, 2010  
DNR-050056

Itemized Charges

Grand Lake St. Marys Primary Spillway H&H Study

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

173520005.398680 ISO Billing Backup

Date	Project	Task	Employee/Supplier	Quantity	Bill Rate	Bill Amount	Comments	AP Ref #
03/16/2010	173520005	201	BAKER, TIMOTHY A (TIM)	2.00	\$118.00	\$236.00	GET ODKR EASEMENTS RECORDED IN LUCKING COUNTY	
03/16/2010	173520005	201	RINGLEY, BRYON F	0.50	\$155.00	\$77.50	DEPALMO EASEMENT RECORDING ISSUE	US731342
03/16/2010	173520005	201	BAKER, TIMOTHY A (TIM)			\$48.50	MILEAGE	PETTYCASH MAR1710
03/17/2010	173520005	201	SEAN CASSADY			\$52.00	EASEMENT RECORDING FEES	
<b>Total Sub Task 201</b>							<b>\$414.00</b>	
<b>Total Top Task 201</b>							<b>\$414.00</b>	
03/11/2010	173520005	203	HENSON, TADD H	2.00	\$148.00	\$296.00		
03/12/2010	173520005	203	HENSON, TADD H	4.00	\$148.00	\$592.00		
03/15/2010	173520005	203	HENSON, TADD H	2.00	\$148.00	\$296.00		
03/17/2010	173520005	203	HENSON, TADD H	2.00	\$148.00	\$296.00		
03/24/2010	173520005	203	HENSON, TADD H	2.00	\$148.00	\$296.00		
03/31/2010	173520005	203	HENSON, TADD H	1.00	\$148.00	\$148.00		
03/31/2010	173520005	203	PICKERING, JULIE L	2.50	\$109.00	\$272.50		
03/16/2010	173520005	203	PICKERING, JULIE L	0.25	\$109.00	\$27.25	INVOICING AND PROGRESS REPORT	
04/16/2010	173520005	203	RINGLEY, BRYON F	0.50	\$155.00	\$77.50		
03/15/2010	173520005	203	WHITE, TRAVIS E	2.50	\$100.00	\$250.00		
03/18/2010	173520005	203	WHITE, TRAVIS E	1.50	\$100.00	\$150.00	BURN CDS, DELIVER TO ATTORNEY GENERALS OFFICE	
03/16/2010	173520005	203	WHITTEN, ZACHARY N (ZACH)	1.00	\$77.00	\$77.00		
<b>Total Sub Task 203</b>							<b>\$2778.25</b>	
<b>Total Top Task 203</b>							<b>\$2,778.25</b>	



1 **some since then.**

2 Q. Were you employed while you were getting  
3 your master's degree?

4 **A. Yes.**

5 Q. And were you working at Fuller at the  
6 time?

7 **A. No.**

8 Q. Where were you working?

9 **A. BBC&M Engineering.**

10 Q. When you were obtaining your bachelor's  
11 degree in civil engineering, did you work for  
12 BBC&M at all during --

13 **A. No.**

14 Q. -- that time frame?

15 What projects for ODNR did you work on  
16 while at BBC&M?

17 **A. Jackson Lake State Park is one that I  
18 remember.**

19 Q. And what role did you have for that  
20 project?

21 **A. I performed hydrology and hydraulic  
22 calculations for a dam improvement.**

23 Q. What hydrology and hydraulic modeling  
24 did you use?

1 **working on some Muskingum River lock and dam  
2 projects, but I didn't have a large role in  
3 that. No hydraulics or hydrology.**

4 Q. Okay. What's the next project you  
5 recall working on for ODNR?

6 **A. I don't recall any other ones.**

7 Q. How about since -- is it okay if I refer  
8 to Fuller and Stantec just as Stantec?

9 **A. Yes.**

10 Q. How about since you joined Stantec, what  
11 ODNR projects have you worked on?

12 **A. Projects for ODNR? I was -- I do not  
13 believe I've been -- we had a project for ODNR  
14 called the South Fork Licking River project, but  
15 I did not -- I might have done a couple little  
16 things on that. It was not a major -- I did not  
17 have a large role in that project.**

18 Q. When did you start working on a project  
19 at Stantec that involved the Grand Lake  
20 St. Mary's?

21 **A. Again, I'm horrible with dates, but if I  
22 remember correctly, it would have been October  
23 of 2009.**

24 Q. Okay.

1 **A. It was a long time ago. I believe the  
2 best I can recall would have been HEC-1 for  
3 hydrology, and I believe dam break for  
4 hydraulics.**

5 Q. What's the next -- were there any other  
6 projects for ODNR that you performed while at  
7 BBC&M?

8 **A. There may have been others. It's been a  
9 while. I recall working on something in  
10 Zanesville, another dam project, Zanesville  
11 State Nursery Park Dam.**

12 Q. Did you perform any hydrology or  
13 hydraulic work for that?

14 **A. Yes.**

15 Q. Did you do any hydrology modeling?

16 **A. The best I can recall, yes.**

17 Q. Any hydraulic modeling?

18 **A. I do not believe that included hydraulic  
19 modeling.**

20 Q. What hydrology model did you use?

21 **A. That would have probably been HEC-1.**

22 Q. What's the next project for ODNR you  
23 recall working on?

24 **A. I may have partially been involved in**

1 **A. Fall of 2009.**

2 Q. Were you aware of any ongoing Stantec  
3 projects related to the Grand Lake St. Mary's at  
4 that time?

5 **A. No.**

6 MR. FUSONIE: Before we get any further,  
7 while I remember, during Dr. Campbell's -- or  
8 right after Dr. Campbell's deposition yesterday,  
9 I asked for Mr. Henson's notes from that  
10 deposition Mr. Henson attended, which I allowed  
11 him to attend. He took notes during that  
12 deposition, and he exchanged notes, as well,  
13 with a representative of ODNR, as well as  
14 counsel for the respondents in this case. I  
15 have asked for those notes and they have not  
16 been provided to me today.

17 It's my understanding that the position  
18 currently ODNR is taking is that those notes are  
19 in Mr. Henson's capacity as a consulting expert.  
20 It's my position that those notes relate to one  
21 of his areas in which he is a testifying expert.

22 Have I accurately stated the  
23 disagreement between the parties?

24 MS. WORLY: Our position is that those

1 notes reflect only Mr. Henson's role as a  
2 consultant during the course of the deposition.  
3 They have nothing to do with anything that  
4 Mr. Henson used, not data, not facts, in  
5 creating either his affidavit or his report, and  
6 have no bearing whatsoever on the testimony or  
7 the supplemental report that he's giving today.  
8 However, let's see how the testimony develops  
9 and perhaps we'll reconsider.

10 MR. FUSONIE: Okay.

11 BY MR. FUSONIE:

12 Q. So the first time you've worked on a  
13 project for ODNR related to the Grand Lake  
14 St. Mary's was October, 2009, is that the best  
15 of your recollection?

16 A. That's to the best of my recollection.

17 Q. Is that the project in which you are  
18 here today talking -- testifying?

19 A. Yes.

20 Q. And it's the project in which you've  
21 prepared -- you prepared a March 1 report?

22 A. Yes.

23 Q. And you prepared a supplemental report  
24 dated today?

1 A. I would estimate 95 percent.

2 Q. How about 2008, would it be about the  
3 same?

4 A. It would be about the same.

5 Q. 2007, would it be about the same?

6 A. It would be, yes, about the same.

7 Q. When did you -- I'm not sure I asked  
8 this. I apologize if I did. When did you join  
9 Fuller Stantec?

10 A. I believe it was 2003.

11 Q. Has it been since 2003 consistently 95  
12 percent of your time working for governmental  
13 entities, approximately?

14 A. It can vary at any given time, but I'd  
15 say rarely under 75 percent.

16 Q. Okay. Prior to October of 2009, had  
17 you -- let me ask you this: When was the first  
18 time you visited the Grand Lake St. Mary's?

19 A. For this project.

20 Q. No, I mean ever.

21 A. The first time I ever visited Grand Lake  
22 St. Mary's was for this project.

23 Q. Okay. When was your first visit, then,  
24 to the lake?

1 A. Yes.

2 Q. Let me go while you were at BBCM. Did  
3 you ever do any projects for ODOT? Do you know  
4 what I mean by ODOT?

5 A. The Ohio Department of Transportation?

6 Q. Right.

7 Did you do any projects for them?

8 A. I do not recall working on ODOT  
9 projects.

10 Q. How about since joining Stantec, have  
11 you worked on any ODOT projects?

12 A. I recall something, I don't remember the  
13 exact date, in I believe it was Lawrence County.  
14 Slope stability projects where I assisted and we  
15 were working for an ODOT district.

16 Q. Did you perform any hydrology or  
17 hydraulic modeling for that project?

18 A. No.

19 Q. Have you ever before your affidavit in  
20 this lawsuit prepared an affidavit for purposes  
21 of testifying in litigation?

22 A. No.

23 Q. In 2009, what percentage of your work  
24 was for governmental entities?

1 A. Again, if I recall correctly, it would  
2 have been the end of 2009. November.

3 Q. Okay. Would your answer be the same as  
4 far as the Beaver Creek, that you had never  
5 visually observed the Beaver Creek in Mercer  
6 County prior to the end of 2009?

7 A. Yes.

8 Q. Would your answer be the same for the  
9 Wabash River in Mercer County, that you had  
10 never visited the Wabash River in Mercer County  
11 prior to the end of 2009?

12 A. Yes.

13 Q. October, 2009, tell me about your first  
14 contact with ODNR about this project.

15 A. I believe that Dave Moore with ODNR  
16 contacted Brian Ringley about assisting on the  
17 project.

18 Q. And who is Brian Ringley?

19 A. He is -- he works for Stantec, and I  
20 report to him.

21 Q. Were you involved in that first contact?

22 A. No.

23 Q. What was your first -- did Brian Ringley  
24 then talk to you about his conversation with

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

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

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

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

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

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

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

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

Page 110

1 appraiser goes?  
2 **A. No.**  
3 Q. You can't -- you're not determining the  
4 value of properties as far as one that has .8  
5 acres impacted versus another one that has .8  
6 acres impacted by flooding, correct?  
7 **A. No.**  
8 Q. The Linn Grove gage station -- have you  
9 ever looked at the monthly flow records for the  
10 Linn Grove station from 1964 to today?  
11 **A. Yes.**  
12 Q. Have you ever tried to split them up  
13 between 1964 and 1997 and 1997 to today?  
14 **A. No.**  
15 Q. So you have no knowledge as to whether  
16 the monthly average has increased for 10 of the  
17 12 months since 1997?  
18 MS. WORLY: Objection.  
19 What area are we talking about?  
20 MR. FUSONIE: The Linn Grove gage  
21 station.  
22 Q. You don't have any knowledge as to  
23 that --  
24 **A. No.**

Page 111

1 Q. -- one way or another?  
2 Have you looked at the daily flow  
3 records for the Linn Grove gage station since  
4 1964 to the present?  
5 **A. I have looked at that gage data, yes.**  
6 Q. Have you identified any high daily flows  
7 since 1964 to today?  
8 **A. I did not do it. Since it was not**  
9 **included to calibrate the model, I did not do a**  
10 **thorough investigation of the gage.**  
11 Q. So you're not aware --  
12 **A. I looked at the data but I did not do**  
13 **any kind of analysis.**  
14 Q. You're not aware that the three highest  
15 daily flows at the Linn Grove station since 1964  
16 all occurred after 1997?  
17 **A. No.**  
18 Q. You testified on questions from  
19 Ms. Worly about this one-quarter-inch increase  
20 in elevation was insignificant, was how you  
21 described it.  
22 **A. Correct.**  
23 Q. But you have supplemented your report by  
24 changing the data in Figure 2.5; is that

Page 112

1 correct?  
2 **A. Correct. Table 2.5.**  
3 Q. Table 2.5, sorry.  
4 After Dr. Campbell's deposition  
5 yesterday, did you perform any investigation or  
6 research as a result of his deposition?  
7 **A. No.**  
8 Q. Were you asked to perform any research  
9 or investigation as a result of any testimony  
10 that Dr. Campbell provided yesterday during his  
11 deposition?  
12 **A. No.**  
13 Q. Have you reviewed any of the landowner  
14 affidavits in this lawsuit?  
15 MS. WORLY: Objection; asked and  
16 answered.  
17 Also, it's beyond the scope.  
18 MR. FUSONIE: It's not beyond the scope.  
19 I'm trying to establish something about -- it's  
20 not beyond -- well, you have your objection.  
21 MS. WORLY: All right.  
22 **A. Not all of them, but some of them I have**  
23 **read.**  
24 Q. Did you review any that had aerial maps

Page 113

1 attached to them?  
2 MS. WORLY: Objection; asked and  
3 answered.  
4 MR. FUSONIE: That was not asked and  
5 answered. That was not asked.  
6 **A. I don't recall any aerial maps. I**  
7 **recall photographs.**  
8 Q. Do you recall affidavits of landowners  
9 in which they testified that they noticed an  
10 increased frequency in severity to flooding post  
11 '97 versus pre '97?  
12 **A. Yes.**  
13 Q. Do you recall affidavits of landowners  
14 who testified that their property had not been  
15 flooded prior to 1997, but has been flooded  
16 several times since 1997?  
17 **A. I don't specifically recall anyone who**  
18 **said that. I read through them very quickly. I**  
19 **don't recall.**  
20 Q. Okay. So the testimony --  
21 MS. WORLY: Standing objection with  
22 regards to this line of questioning on  
23 affidavits. This was not part of your cross.  
24 MR. FUSONIE: It is. And I don't need

TADD HENSON, P.E.  
APRIL 29, 2010

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

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

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

11 Tadd Henson

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

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



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



