

**ORIGINAL**

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO EX REL.  
WAYNE T. DONER, ET AL.,**

Relators,

v.

**SEAN D. LOGAN, DIRECTOR  
OHIO DEPARTMENT OF  
NATURAL RESOURCES, ET AL.,**

Respondents.

Case No.: 2009-1292

Master Commissioner Campbell

**RELATORS' SUPPLEMENTAL MOTION FOR LEAVE  
TO FILE SUPPLEMENT TO PRESENTATION OF EVIDENCE**

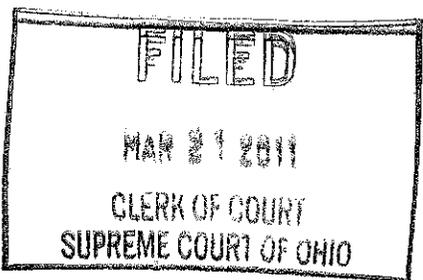
Bruce L. Ingram (0018008)  
*(Counsel of Record)*  
Joseph R. Miller (0068463)  
Thomas H. Fusonie (0074201)  
Kristi Kress Wilhelmy (0078090)  
Martha C. Brewer (0083788)  
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William J. Cole (0067778)  
*(Counsel of Record)*  
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*Attorneys for Respondents*



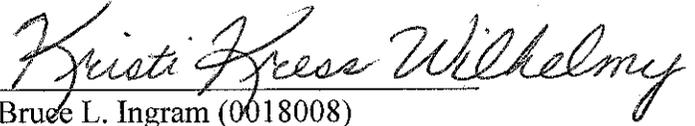
## MEMORANDUM IN SUPPORT

Pursuant to S. Ct. Prac. R. XIV, Sec. 4, Relators, by and through their counsel, respectfully submit this supplemental motion for leave to file a supplement to their Presentation of Evidence. The present supplement consists of new evidence concerning two severe flood events that have, and continue to, interfere with Relators' use and enjoyment of their land. It consists of the additional affidavits of twelve Relators and one witness to the severe flooding on several Relators' properties. Since Respondents manage the Grand Lake St. Marys, they should be well aware of the recent severe flooding of Relators' land downstream from the Grand Lake. Thus, no prejudice to Respondents will result from this Court permitting Relators to file the requested supplement, attached hereto as Exhibits 1 – 13.

As Relators explained in their Motion for Leave, filed March 10, 2011, after filing their Presentation of Evidence on June 1, 2010, Relators experienced severe flooding of their lands, beginning on or about February 17, 2011. (Mot. for Leave at 2.) Ten days later, beginning on or about February 28, 2011, Relators again experienced severe flooding of their lands. (Id.) Indeed, the flooding beginning on or about February 28, 2011, was the worst flooding some Relators had ever experienced, even worse than the severe flooding they experienced in 2003. Since filing the Motion for Leave, twelve other Relators and one witness have compiled their similarly compelling photographs, demonstrating the continued large-scale flooding and resulting damage to their properties. Because evidence of this recent severe flooding is relevant to this Court's determination of the pending claims, Relators seek leave to supplement their Presentation of Evidence with the additional thirteen affidavits attached hereto.

Therefore, Relators respectfully request that this Court grant this Supplemental Motion for Leave to Supplement their Presentation of Evidence.

Respectfully submitted,



Bruce L. Ingram (0018008)

*(Counsel of Record)*

Joseph R. Miller (0068463)

Thomas H. Fusonie (0074201)

Kristi Kress Wilhelmy (0078090)

Martha C. Brewer (0083788)

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*Attorneys for Relators*

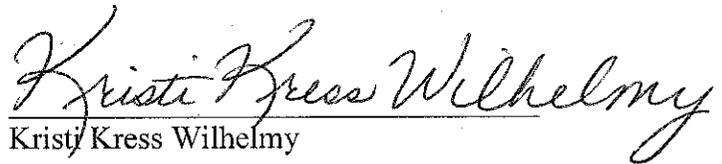
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing was served upon the following, via U.S. Mail postage prepaid, this 21<sup>st</sup> day of March, 2011:

William J. Cole  
Mindy Worly  
Jennifer S.M. Croskey  
Assistant Attorneys General  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215

Dale T. Vitale  
Daniel J. Martin  
Tara L. Paciorek  
Assistant Attorneys General  
Environmental Enforcement Section  
2045 Morse Road # D-2  
Columbus, Ohio 43229

*Attorneys for Respondents*

  
Kristi Kress Wilhelmy  
Kristi Kress Wilhelmy

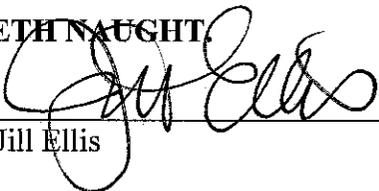
# EXHIBIT 1



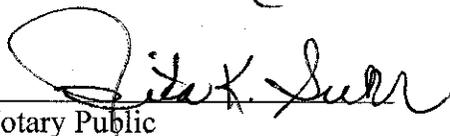
7. I attach as Exhibit B true and accurate copies of photographs I took on February 28, 2011 showing the conditions of the spillway, the Beaver Creek and the flooding at the intersection of Meyer Road and Schunk Road in Celina, Ohio from the spillway overtopping.

8. The handwriting on the back of the photographs is my handwriting.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
Jill Ellis

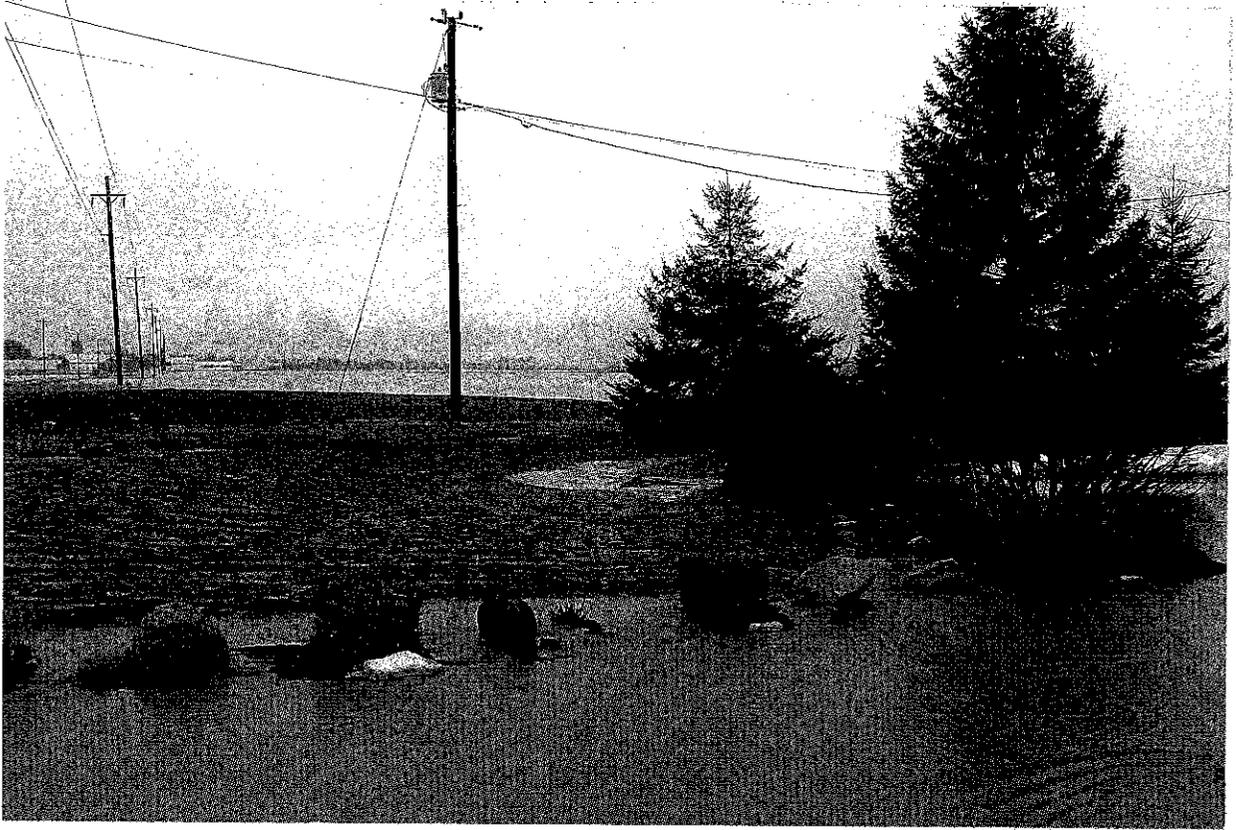
Sworn in my presence and subscribed before me this 17<sup>th</sup> day of March, 2011.

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

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

**AFFIDAVIT OF JILL ELLIS**

**EXHIBIT A**



fr. Yard  
Sof Driveway C+J  
E1115

2/28/11

12:25pm

Exhibit  
A

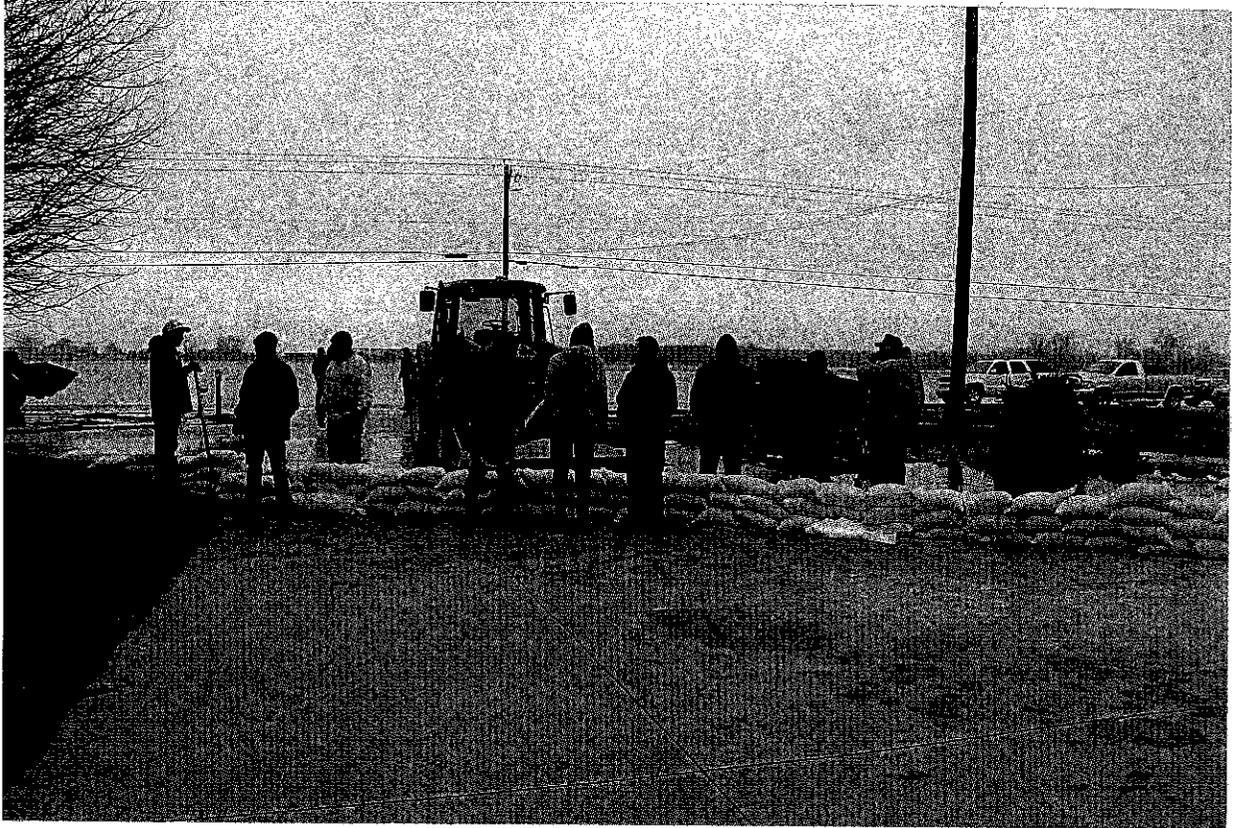


Outside Sandbags  
on drive

C+J  
ELKS

2/28/11

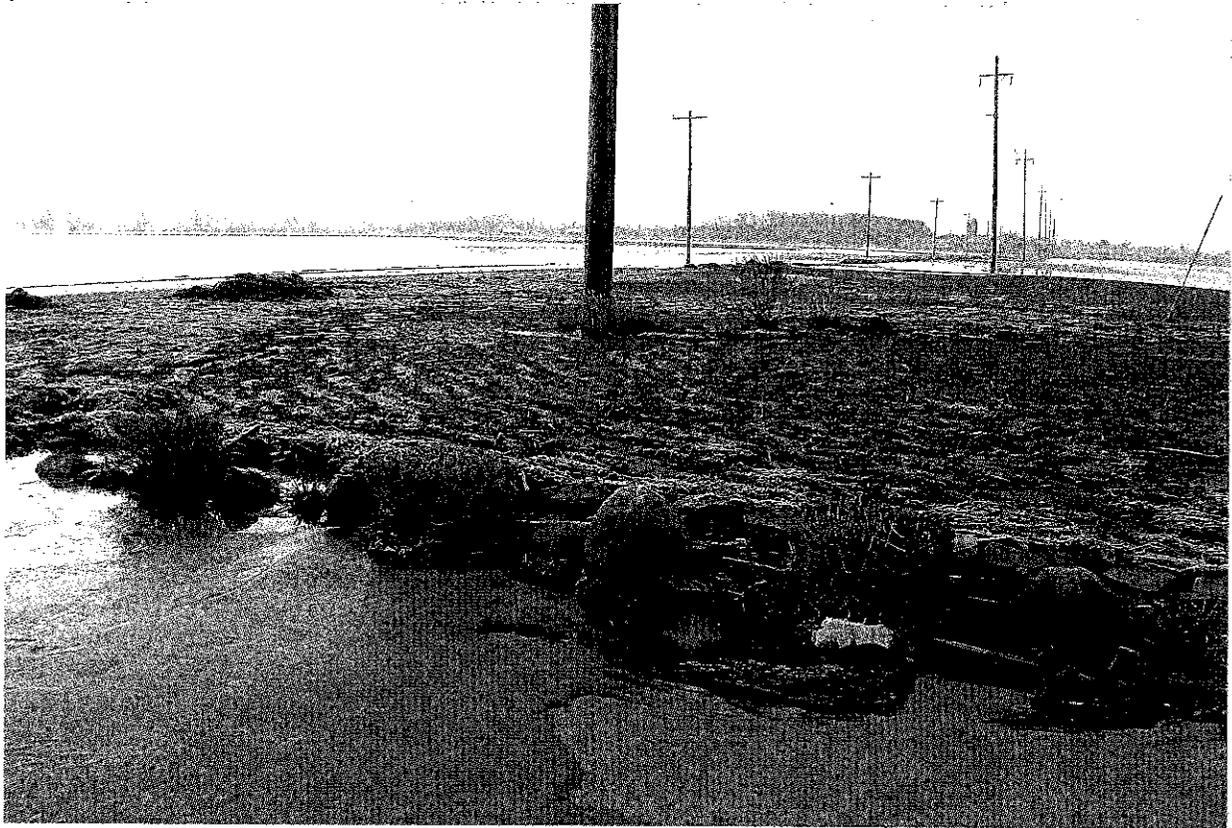
12:18 pm



Driveway Sandbags  
inside -

C+J  
EHS

2/28/11  
12:17pm



Front Yard  
(S)  
of Drive

3/1/11  
836 AM



C13  
Ellen

front yard (N)  
of Drive

8:36 AM

3/1/11



Sludge  
Between  
Trees  
South yard

3/1/11

838 Am



C+J  
Ellis

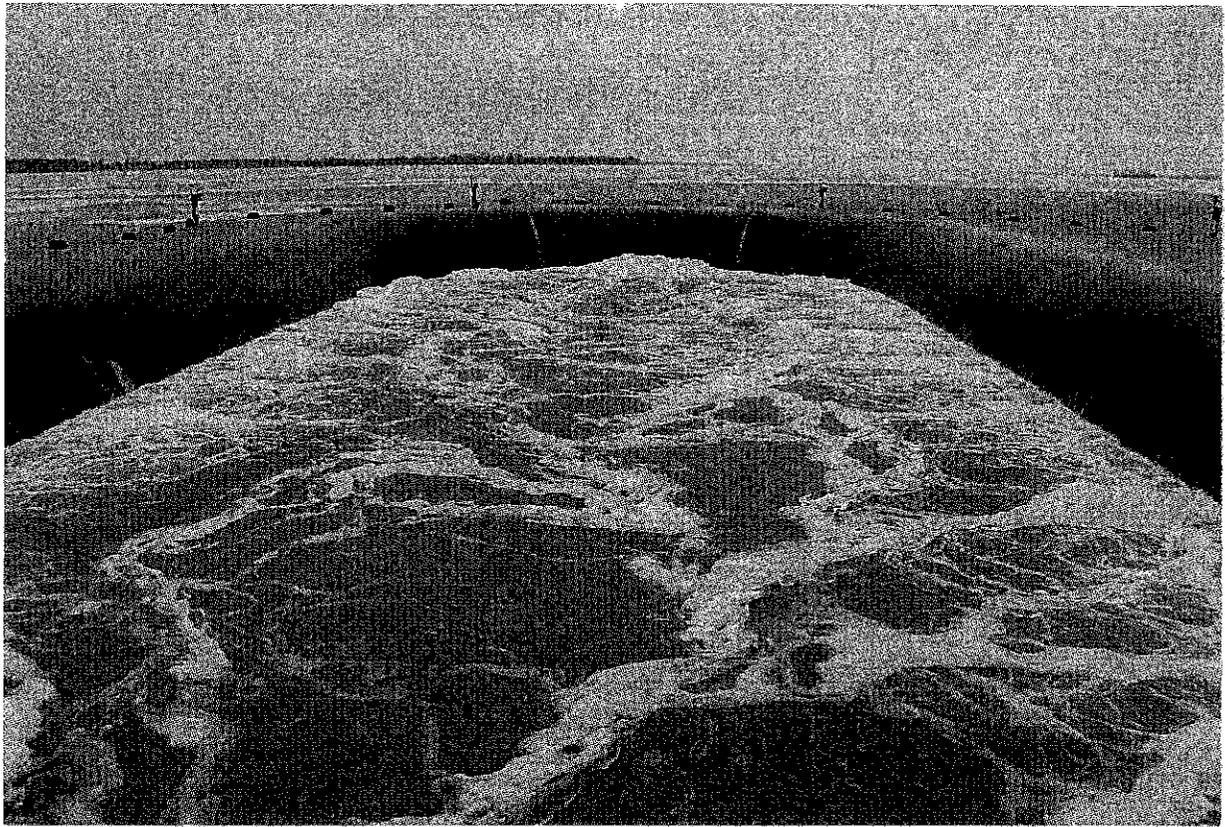
Front yard  
S. of Drive

3/1/11

836 AM

**AFFIDAVIT OF JILL ELLIS**

**EXHIBIT B**

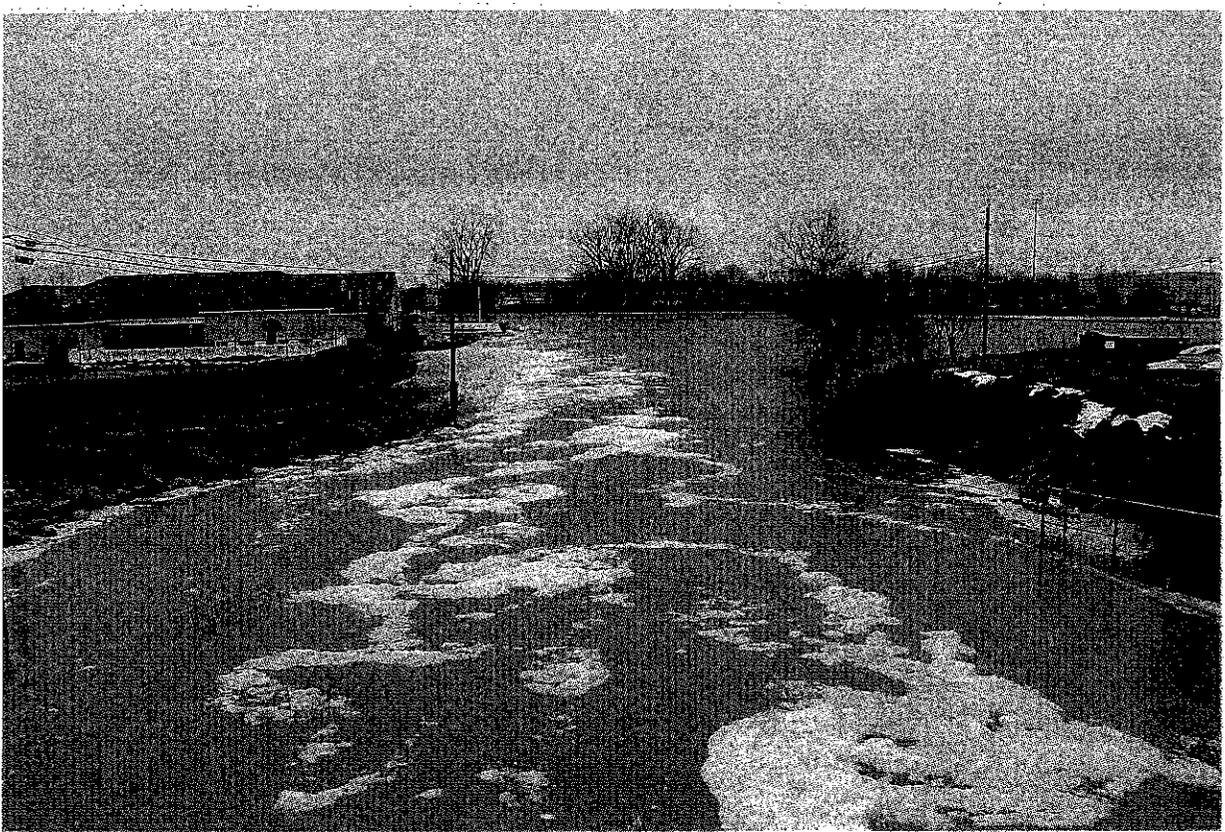


Standing on Bridge over  
the Spillway - Looking East.

2/28/11

2:13pm

Exhibit  
B



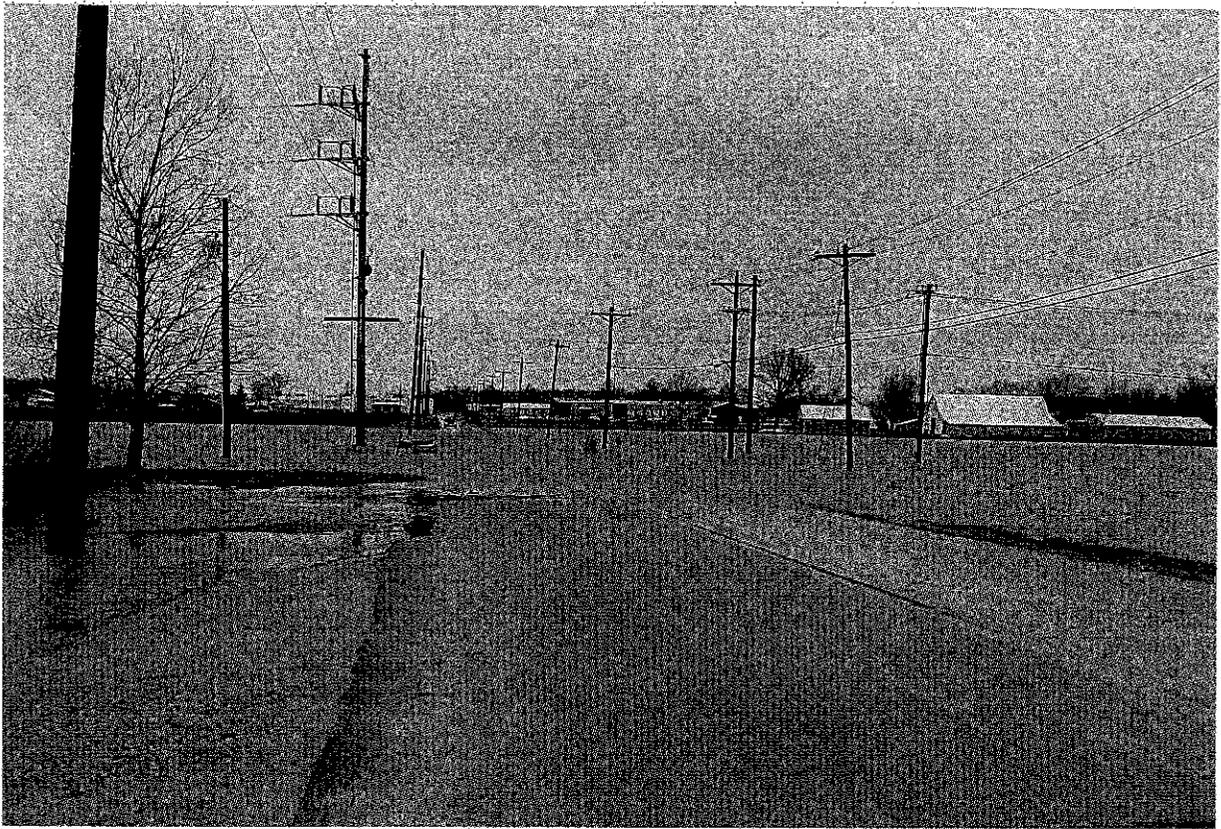
Standing on Bridge over  
Spillway - looking West

2/28/11 2:13pm



Ellis

Beaver By WCSM  
02/28/11 2:05 pm



Meyer Rd.

Ellis  
photo

Standing in front of WCSM -  
One the ~~side of the bridge~~ NORTH  
Side of the Bridge

The intersection of Schunk &  
Meyer Rds

2/28/11 2:05pm

## EXHIBIT 2



**FURTHER AFFIANT SAYETH NAUGHT.**

Patricia L. Highley  
Patricia L. Highley

Sworn to before me and subscribed in my presence this 17<sup>th</sup> day of March, 2011.

Rita K. Suhr  
Notary Public

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

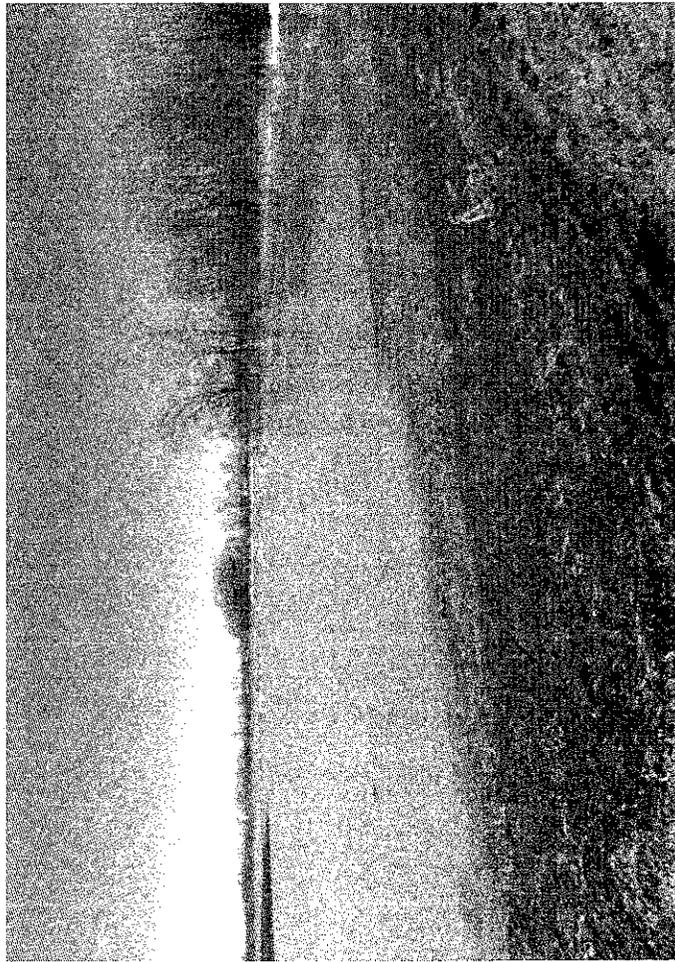
**AFFIDAVIT OF PATRICIA L. HIGHLEY**

**EXHIBIT A**



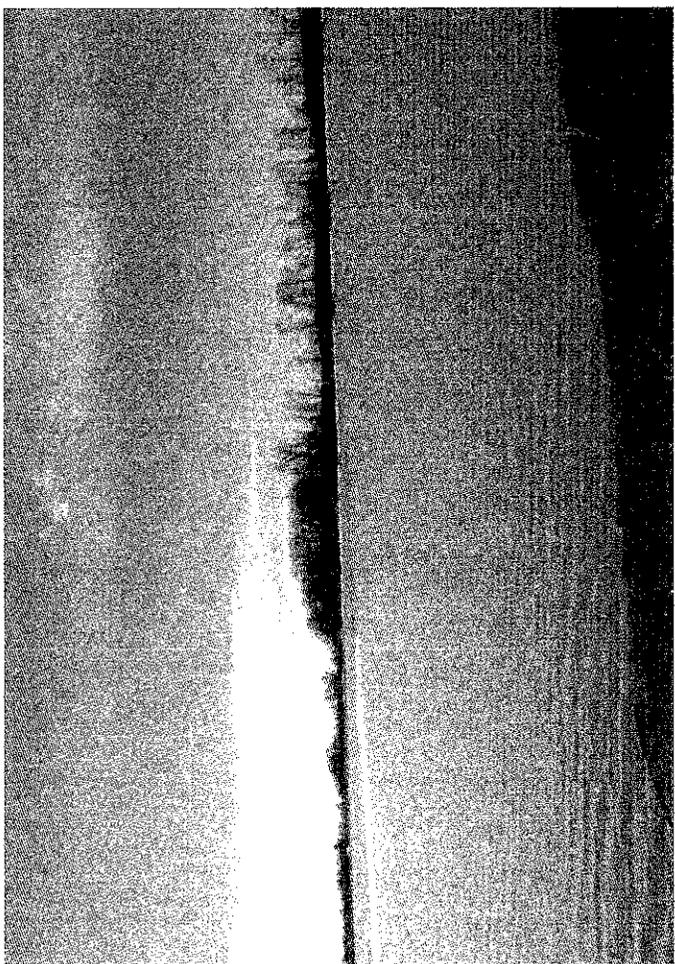
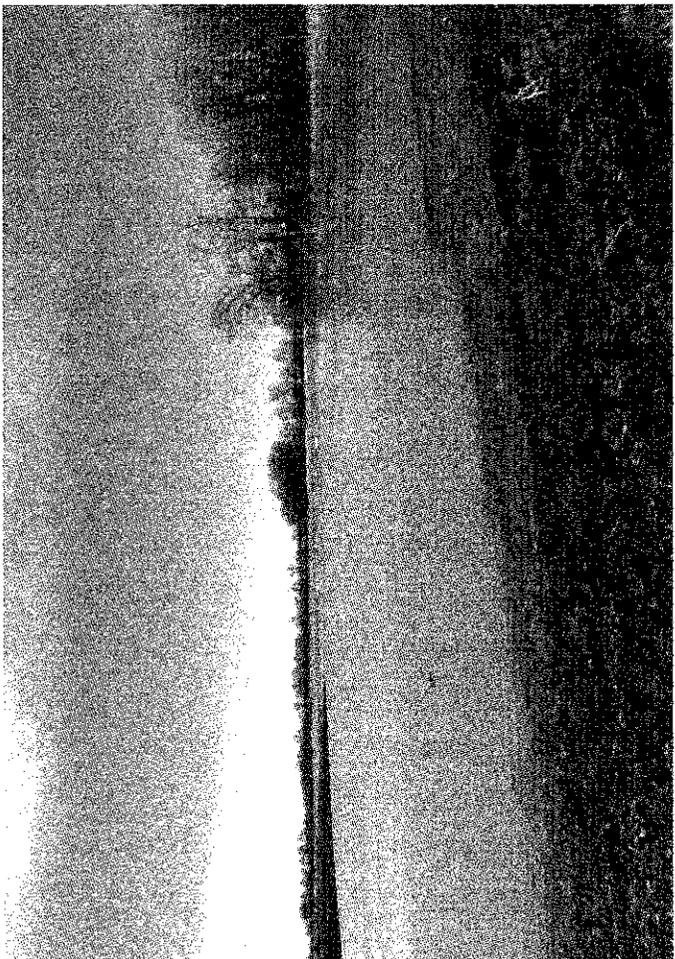
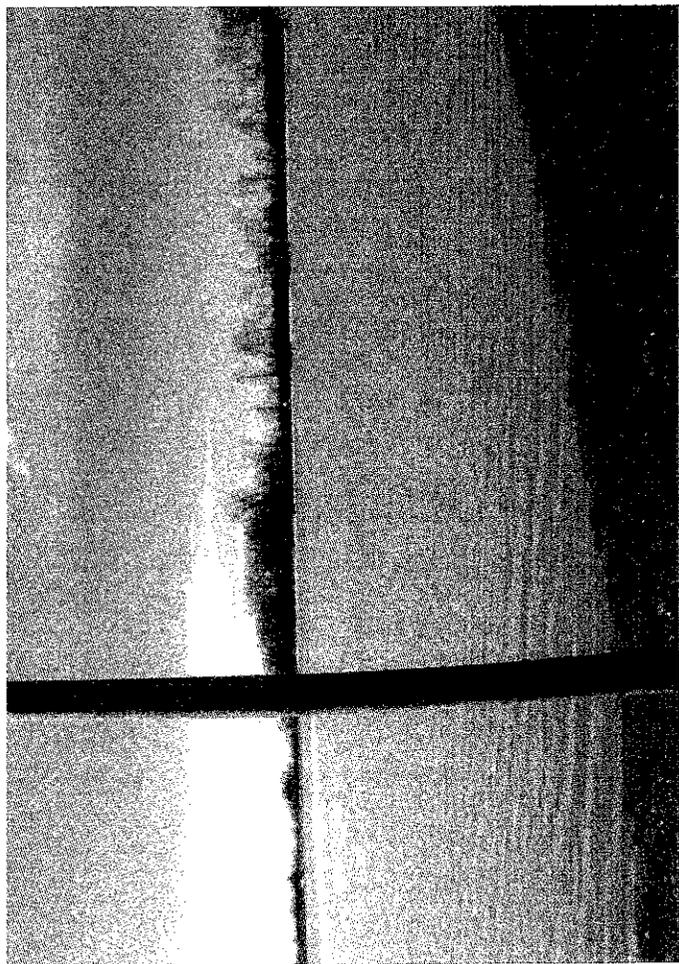
7 RANSBOTTOM - SQ. FIELD  
(WABASH RD.)

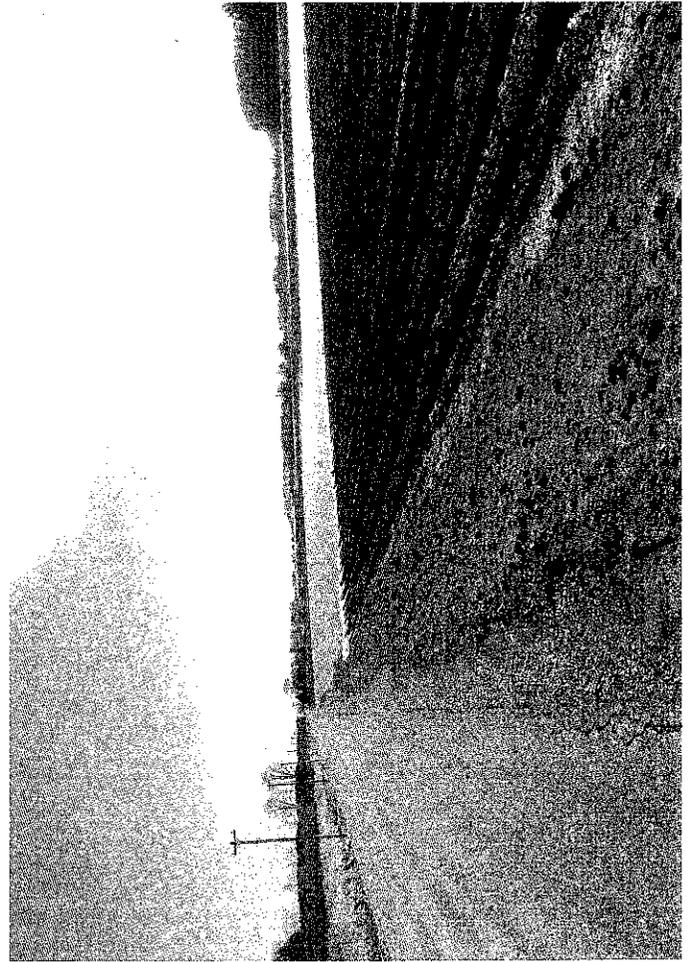
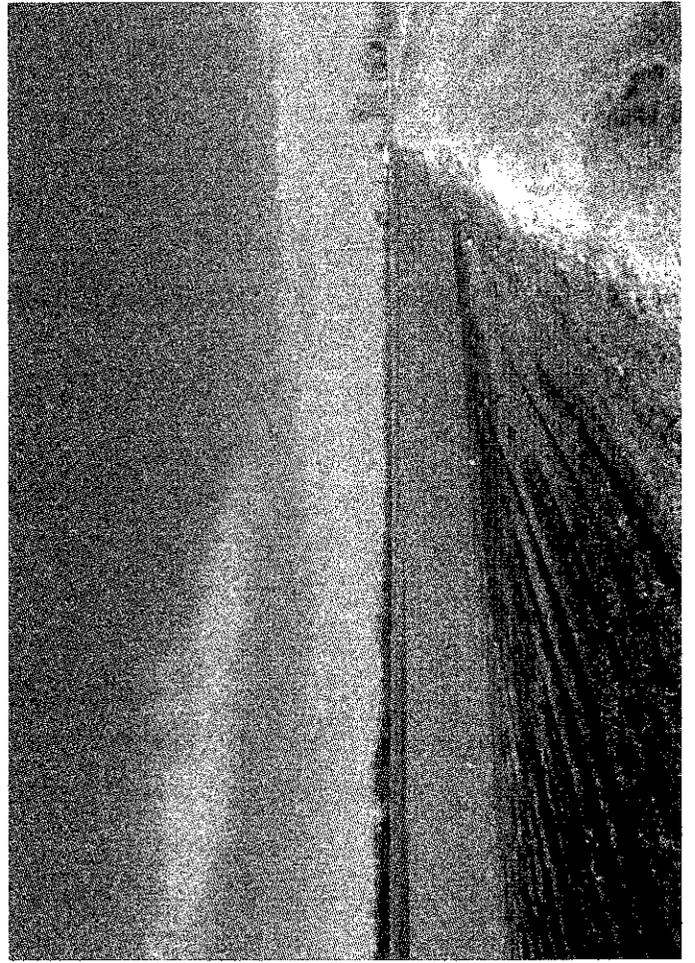
7 BOB & PAT HIGLEY HOME FARM  
(WABASH RD.) BOTTOM

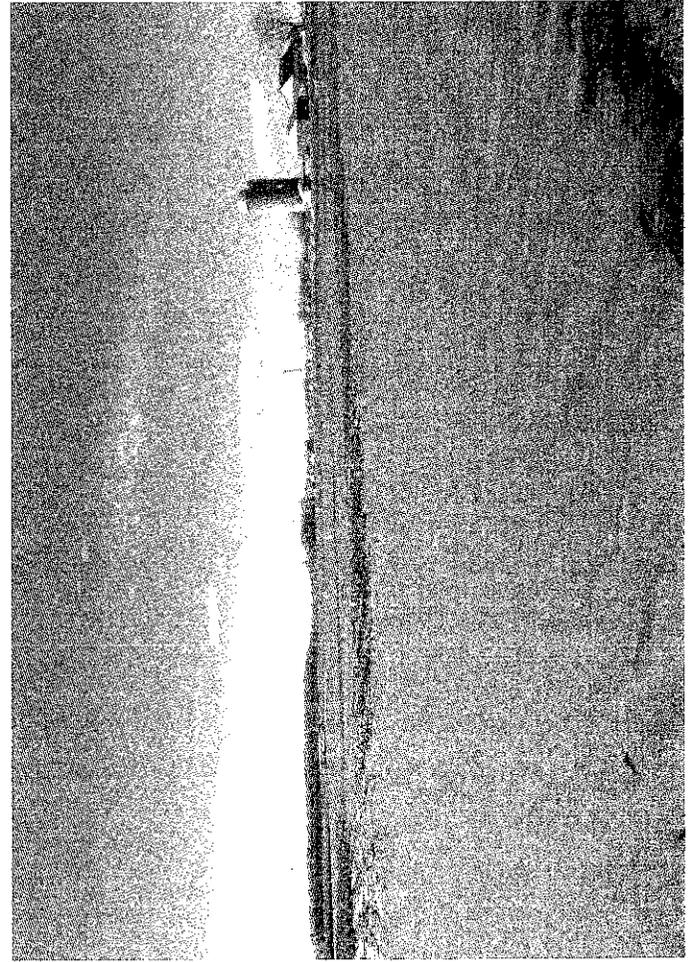
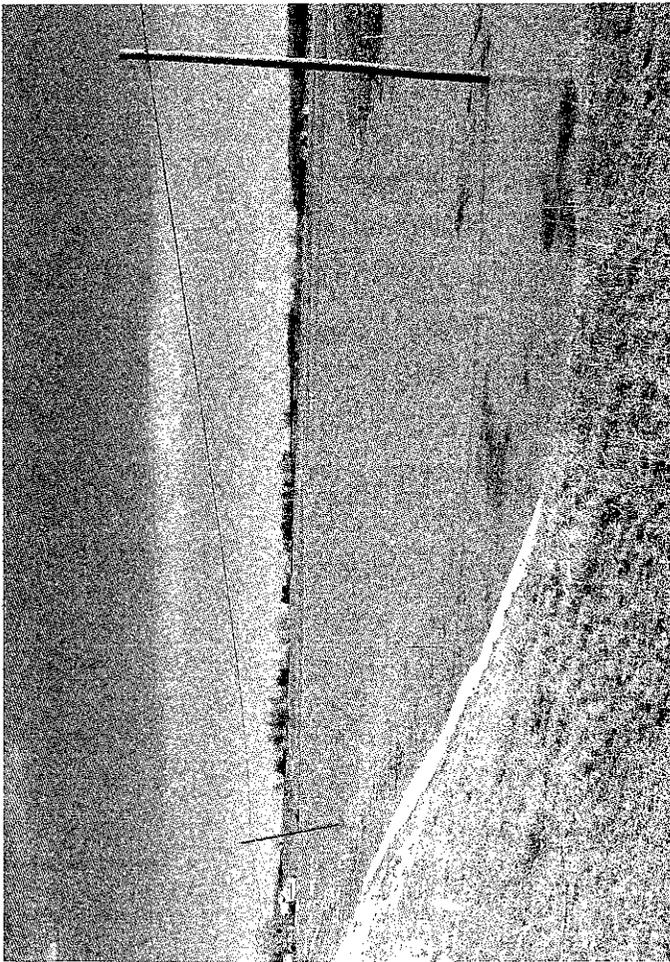
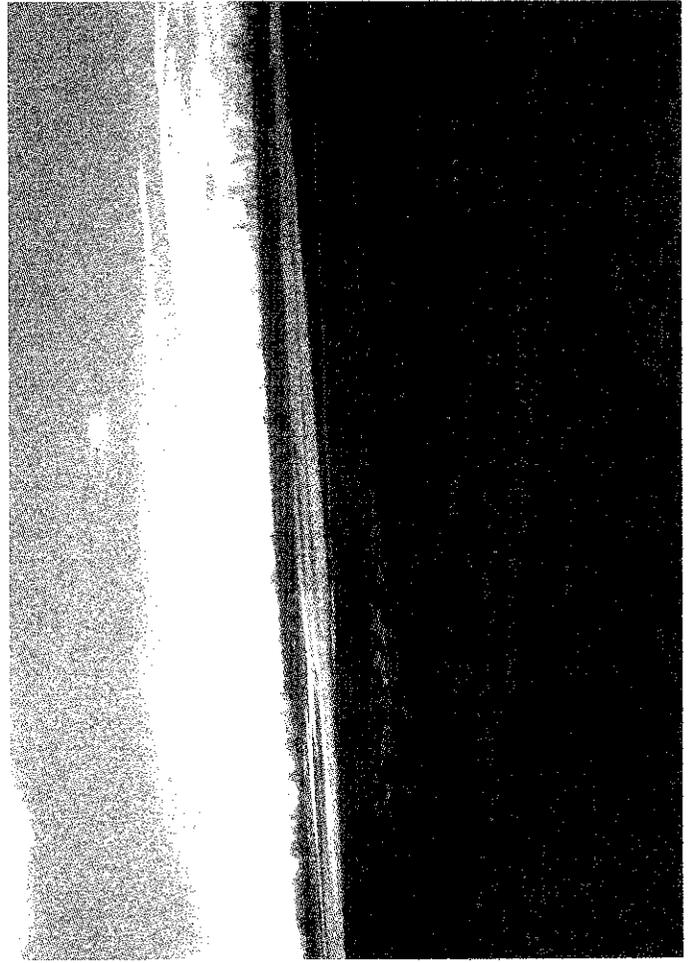
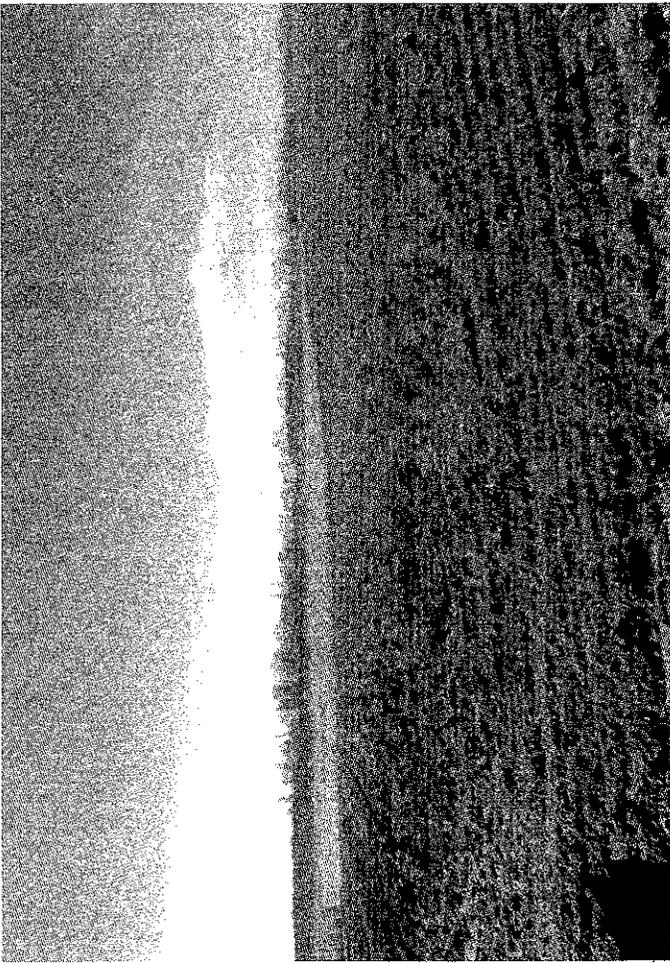


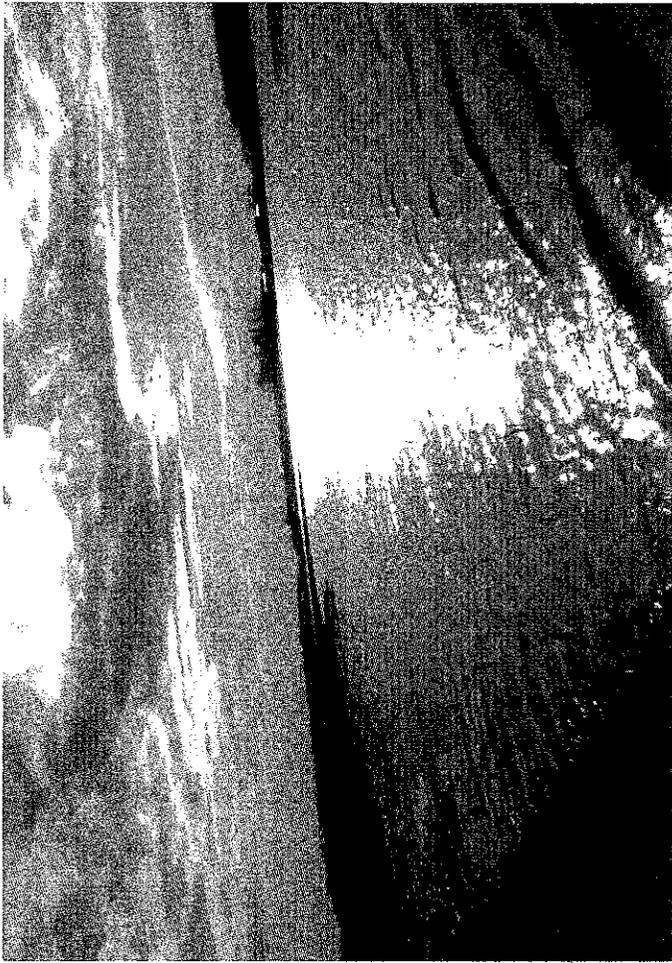
Please excuse the poor focus  
of some of the 26 pictures - have serious  
eye problem and the sun blinds me, so just  
hope I got a decent picture of Pat  
the roads.

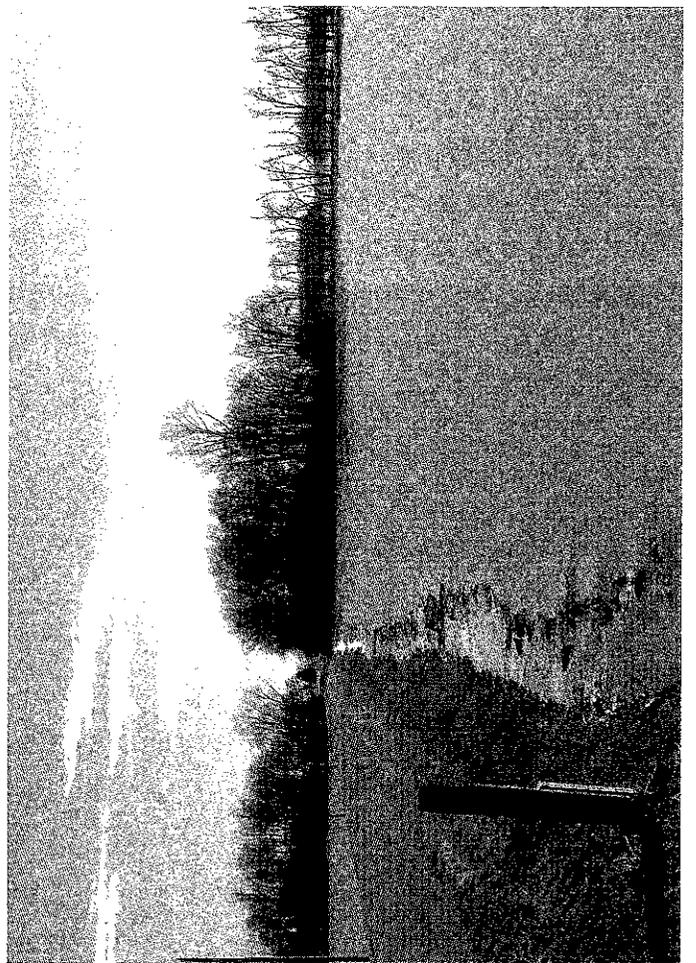
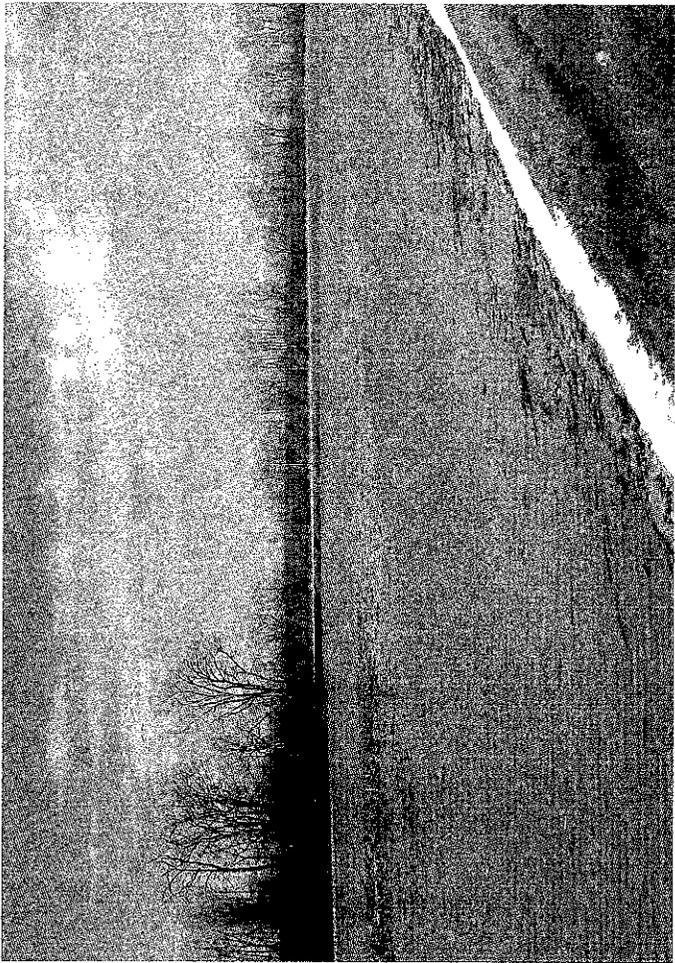
details of each  
on back of picture.

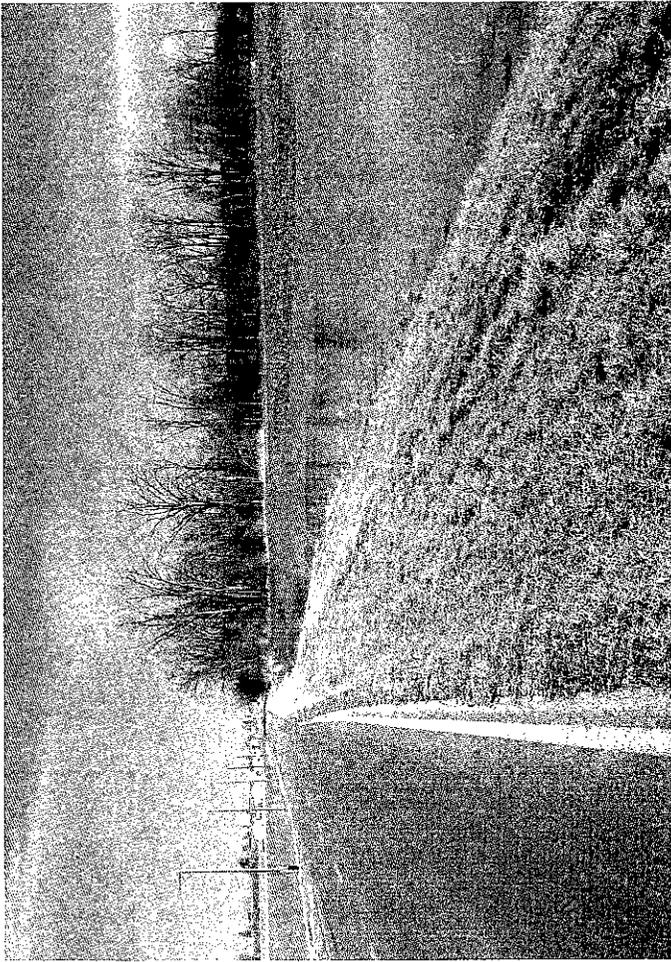
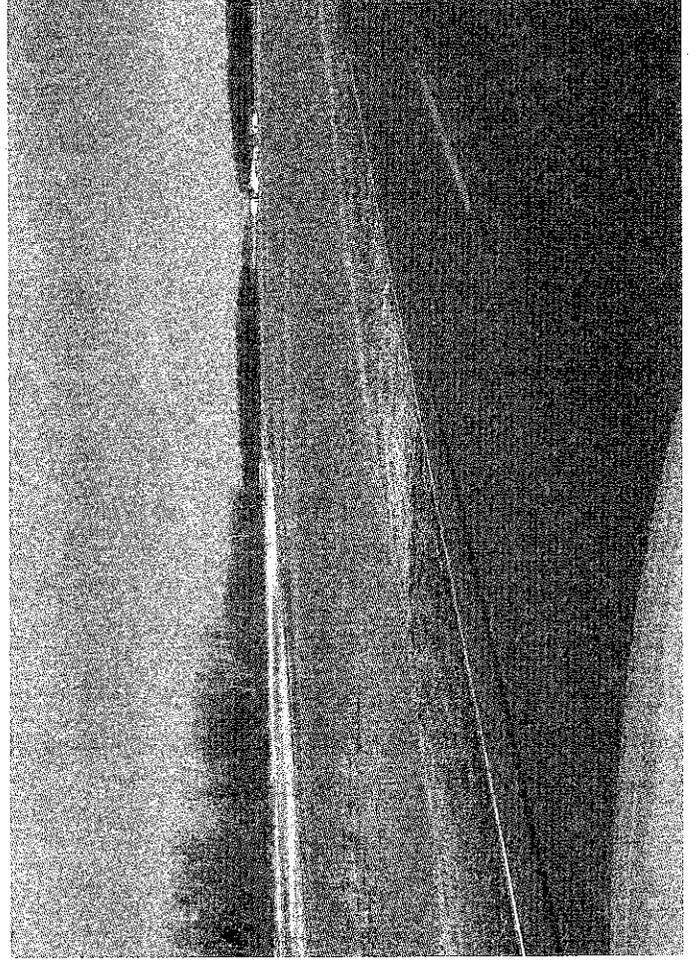
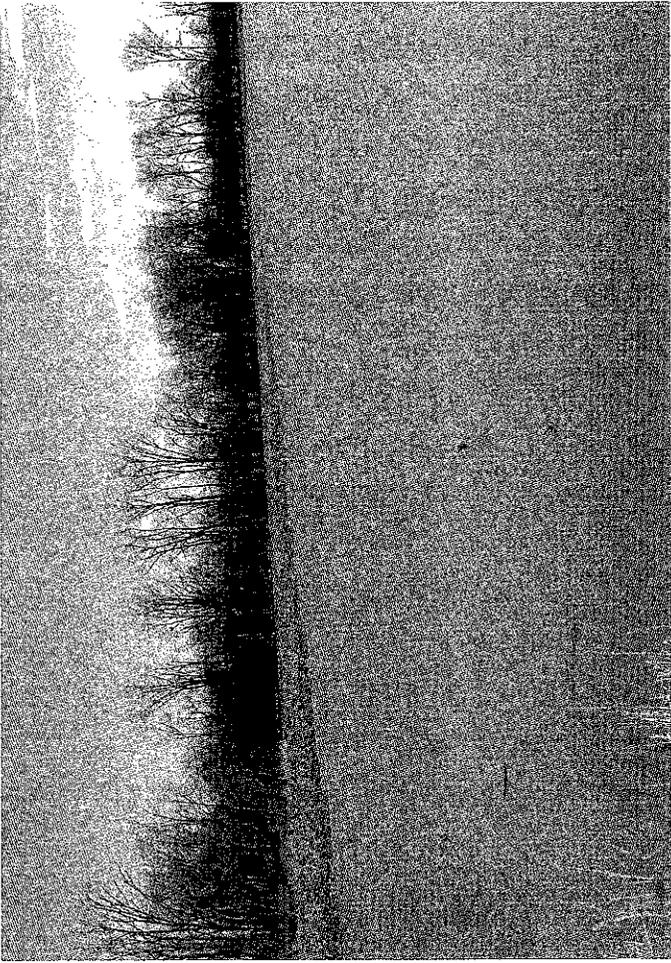








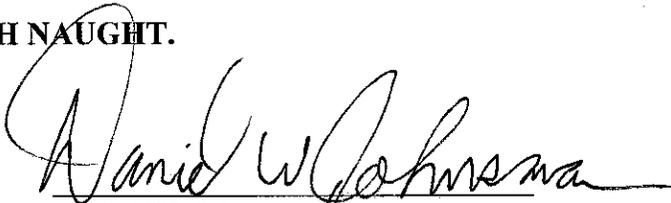




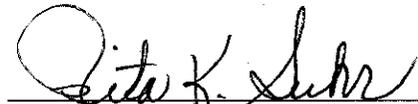
## EXHIBIT 3



**FURTHER AFFIANT SAYETH NAUGHT.**

  
Daniel W. Johnsman

Sworn to before me and subscribed in my presence this 17<sup>th</sup> day of March, 2011.

  
Notary Public

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

AFFIDAVIT OF DANIEL JOHNSMAN

EXHIBIT A

Pro #1 = Dan Johnson

3/1/11

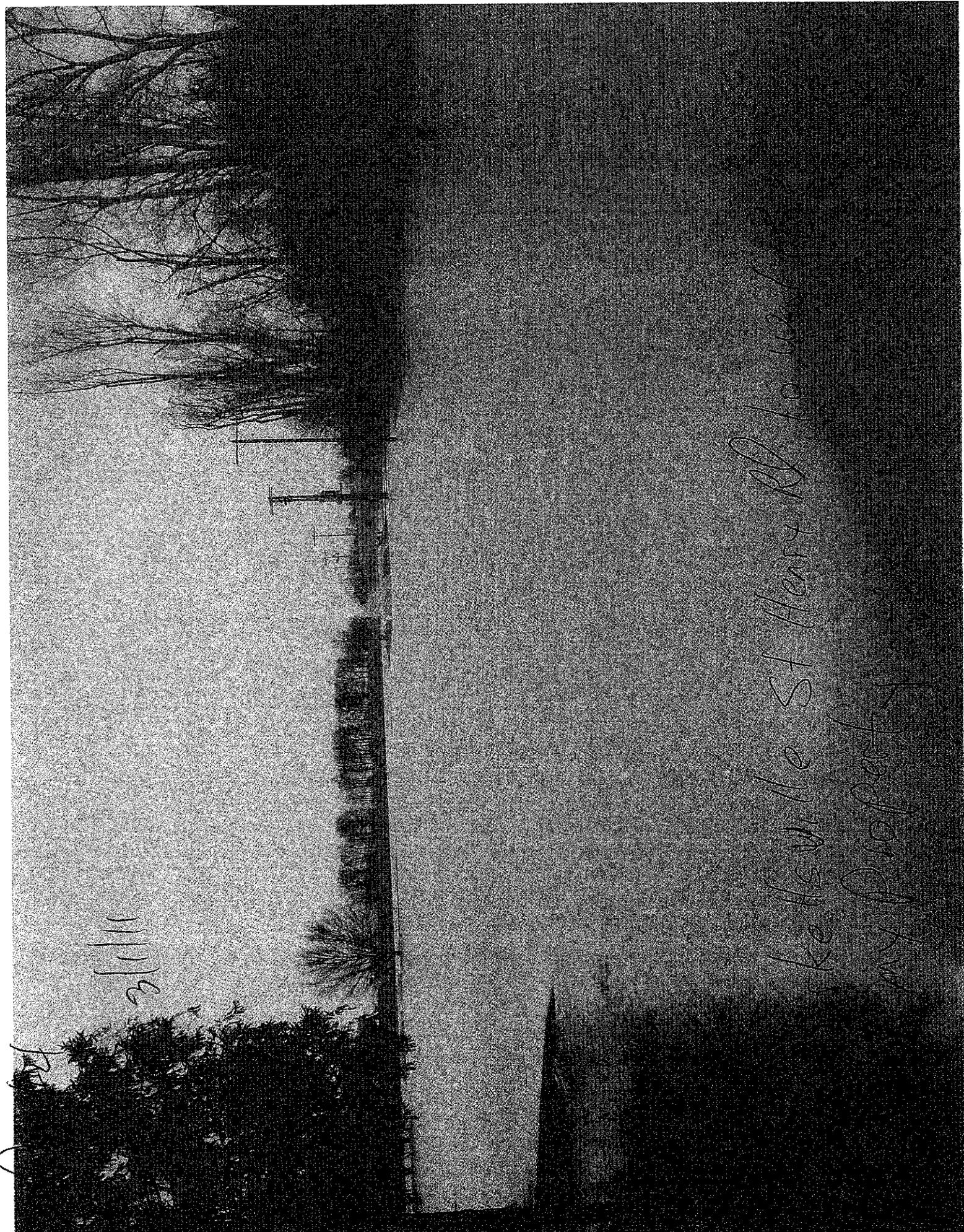
N West

Exhibit  
A

Pic #2 Dan Johnson

11/13

FIG 43 - Our Johnson  
3/11/11



3/1/11

Keelsville St Henry Rd to wall  
my property

Pic 45

taken 3/11/11

1000 ft  
1000 ft  
1000 ft  
1000 ft

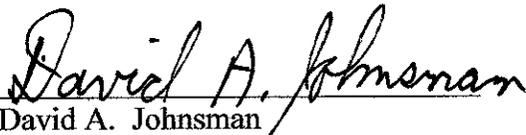
# EXHIBIT 4



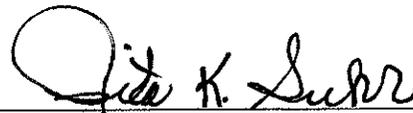
current lake level management practices again caused severe flooding downstream of the western spillway along the Beaver Creek and flooded Mercer County Parcel Numbers 26-029500.0100, 26-048600.0000, and 26-038300.00001.

6. I attach hereto as Exhibit A true and accurate copies of photographs I took on March 1, 2011 showing the flooding of Mercer County Parcel Numbers 26-029500.0100, 26-048600.0000, and 26-038300.00001.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
David A. Johnsman

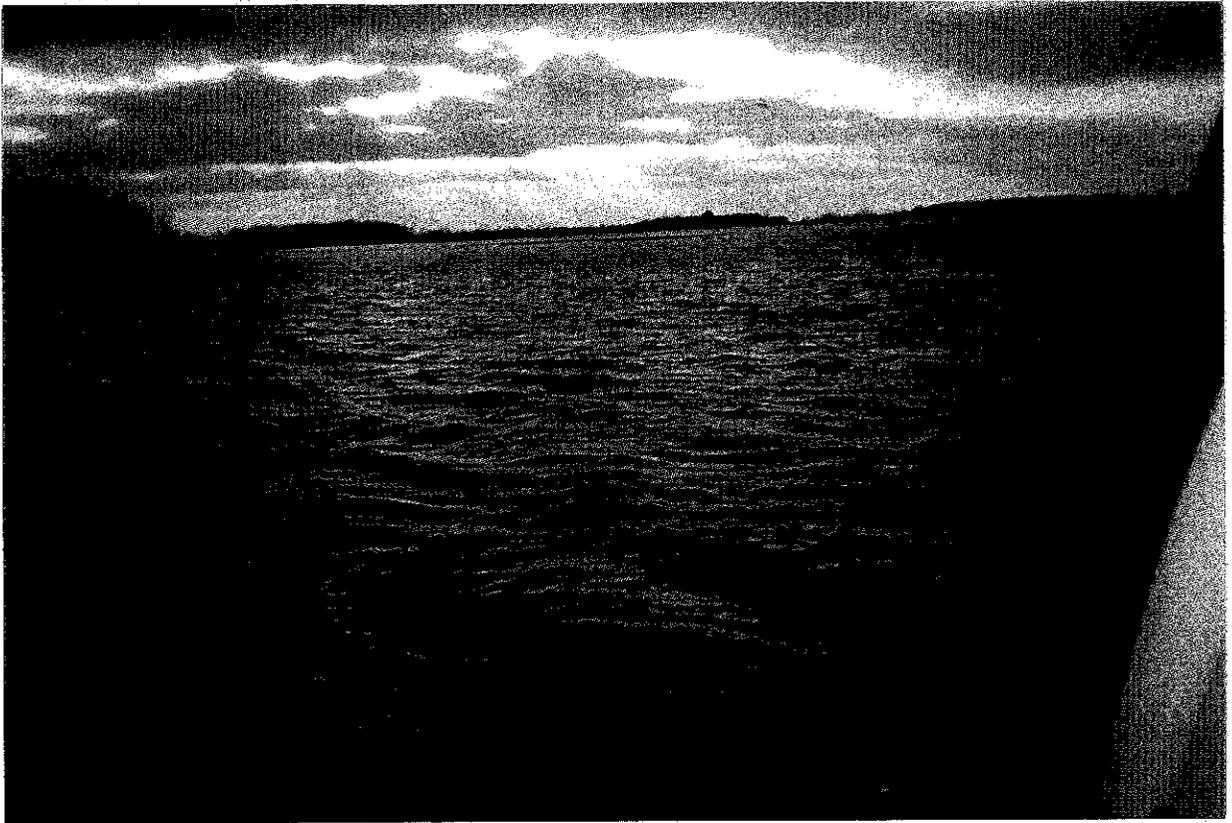
Sworn in my presence and subscribed before me this 17<sup>th</sup> day of March, 2011.

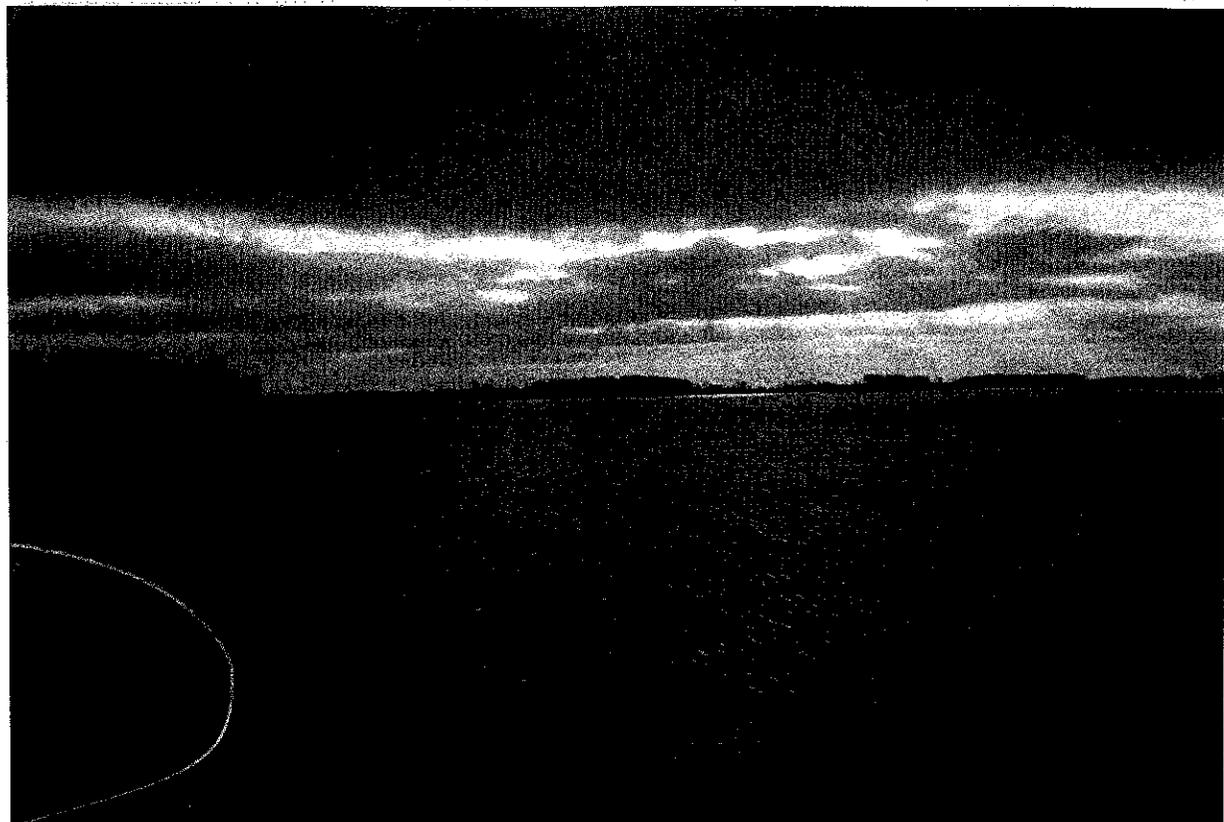
  
Notary Public

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

**AFFIDAVIT OF DAVID A. JOHNSMAN**  
**EXHIBIT A**



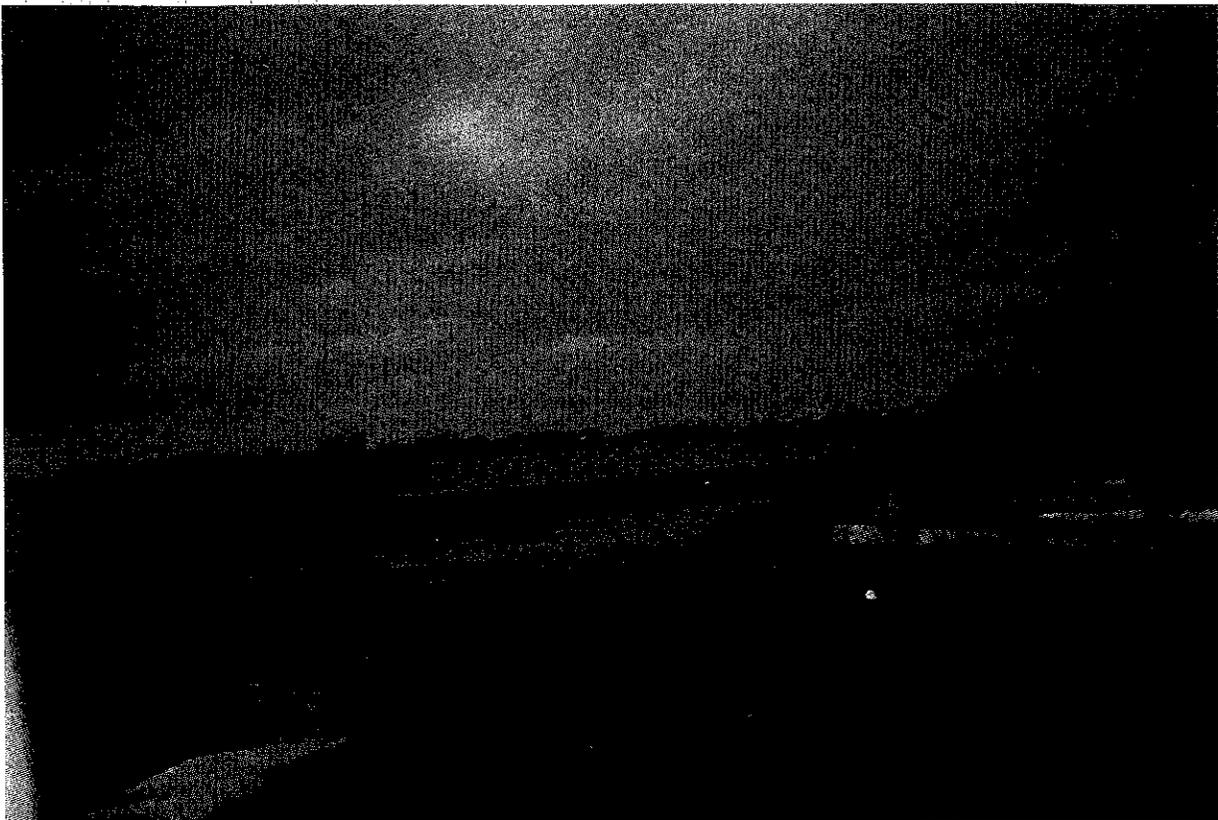






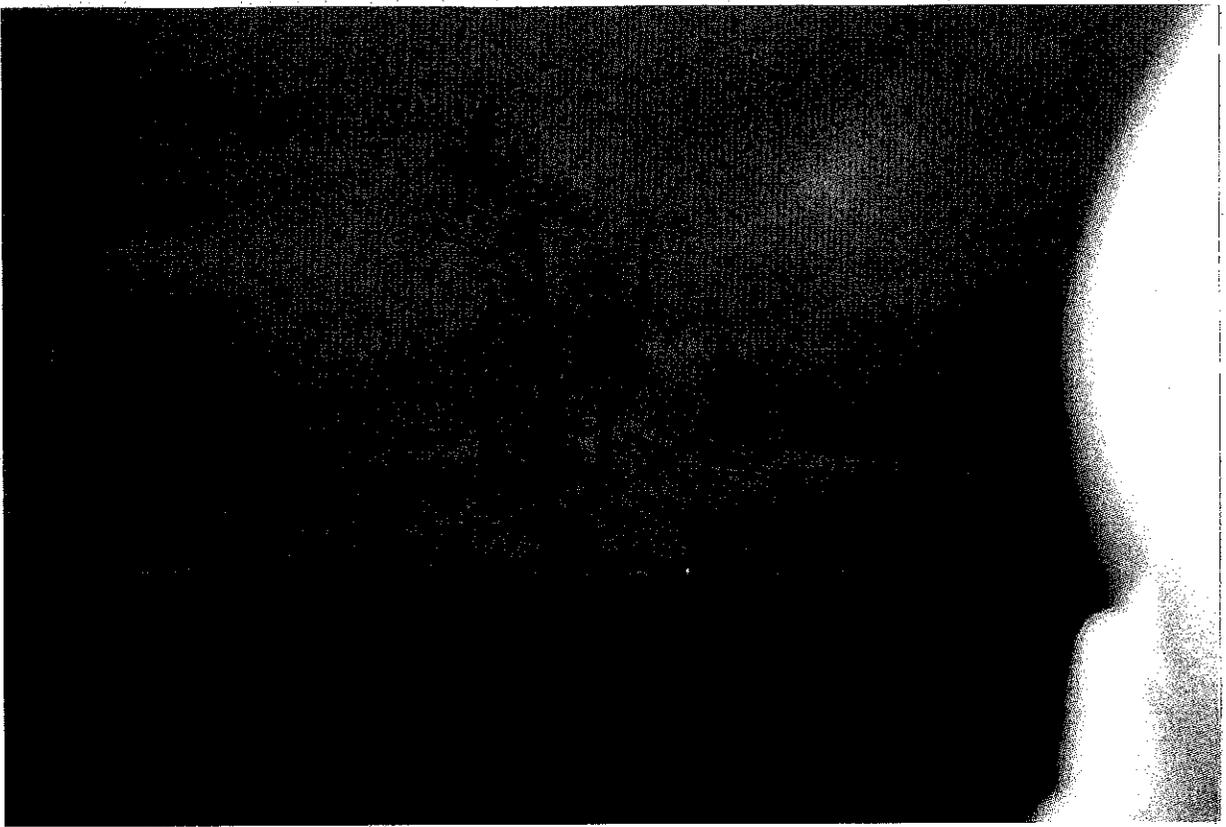












1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document focuses on the role of internal controls in preventing fraud and ensuring the integrity of the financial statements. It highlights the importance of a strong internal control system.

3. The third part of the document addresses the challenges of managing risk in a complex and rapidly changing business environment. It discusses various risk management strategies and the importance of regular risk assessments.

4. The fourth part of the document explores the impact of technology on business operations and the need for continuous learning and innovation. It discusses the benefits of digital transformation and the importance of investing in human capital.

5. The fifth part of the document discusses the importance of corporate governance and the role of the board of directors in overseeing the company's operations and ensuring the interests of all stakeholders are protected.

6. The sixth part of the document focuses on the importance of sustainability and the role of businesses in addressing environmental and social challenges. It discusses the benefits of sustainable practices and the importance of reporting on sustainability performance.

7. The seventh part of the document discusses the importance of effective communication and the role of leadership in driving organizational success. It highlights the importance of clear communication and the ability to inspire and motivate employees.

8. The eighth part of the document discusses the importance of financial planning and the role of budgeting in managing the company's resources. It emphasizes the need for regular financial reviews and the importance of having a clear financial strategy.

9. The ninth part of the document discusses the importance of legal and regulatory compliance and the role of legal counsel in ensuring the company's operations are in line with applicable laws and regulations.

10. The tenth part of the document discusses the importance of employee development and the role of training and development in building a high-performing workforce. It highlights the importance of providing opportunities for growth and learning.

# EXHIBIT 5



**FURTHER AFFIANT SAYETH NAUGHT.**

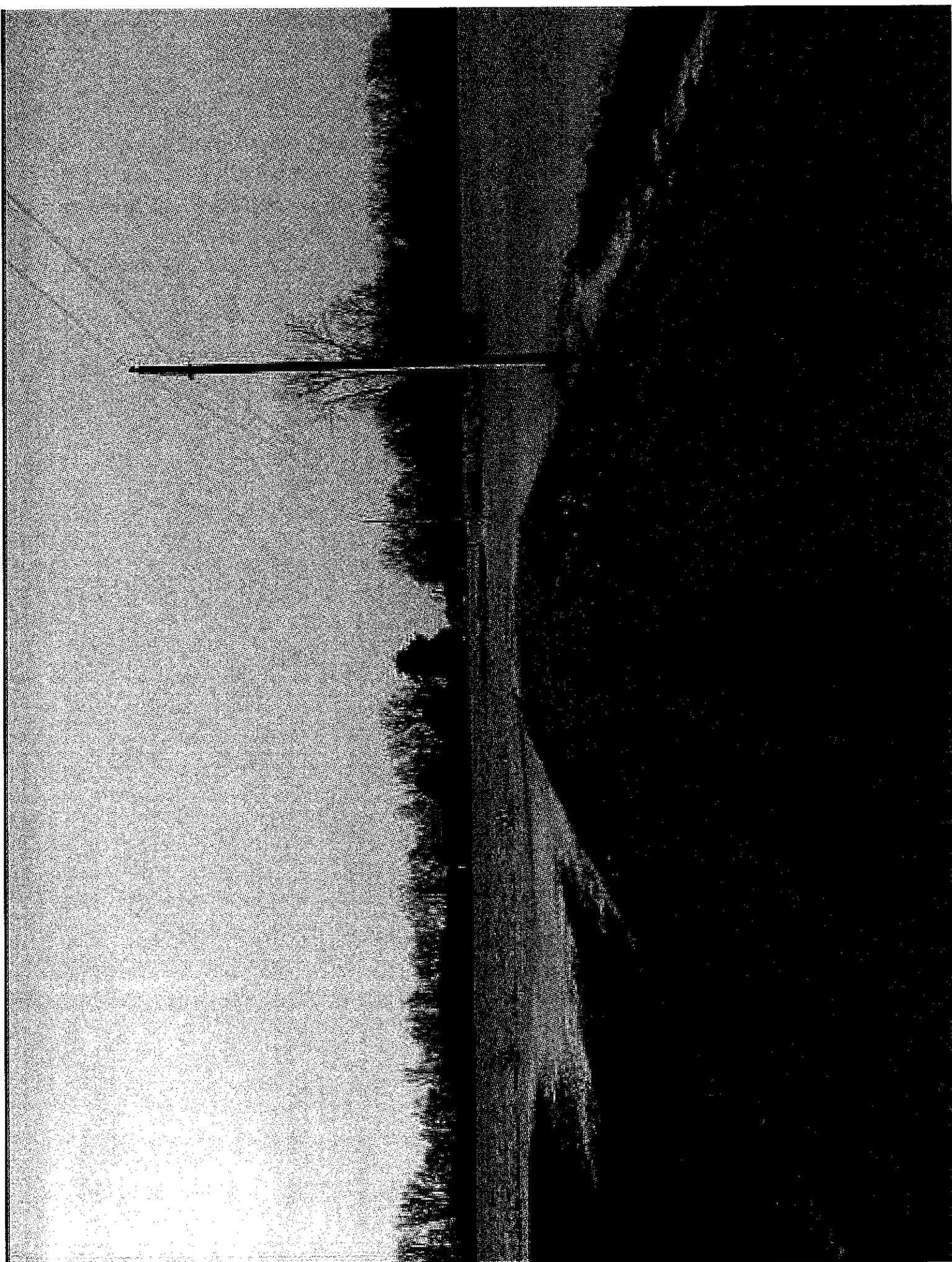
Andrea Knapke  
Andrea Knapke

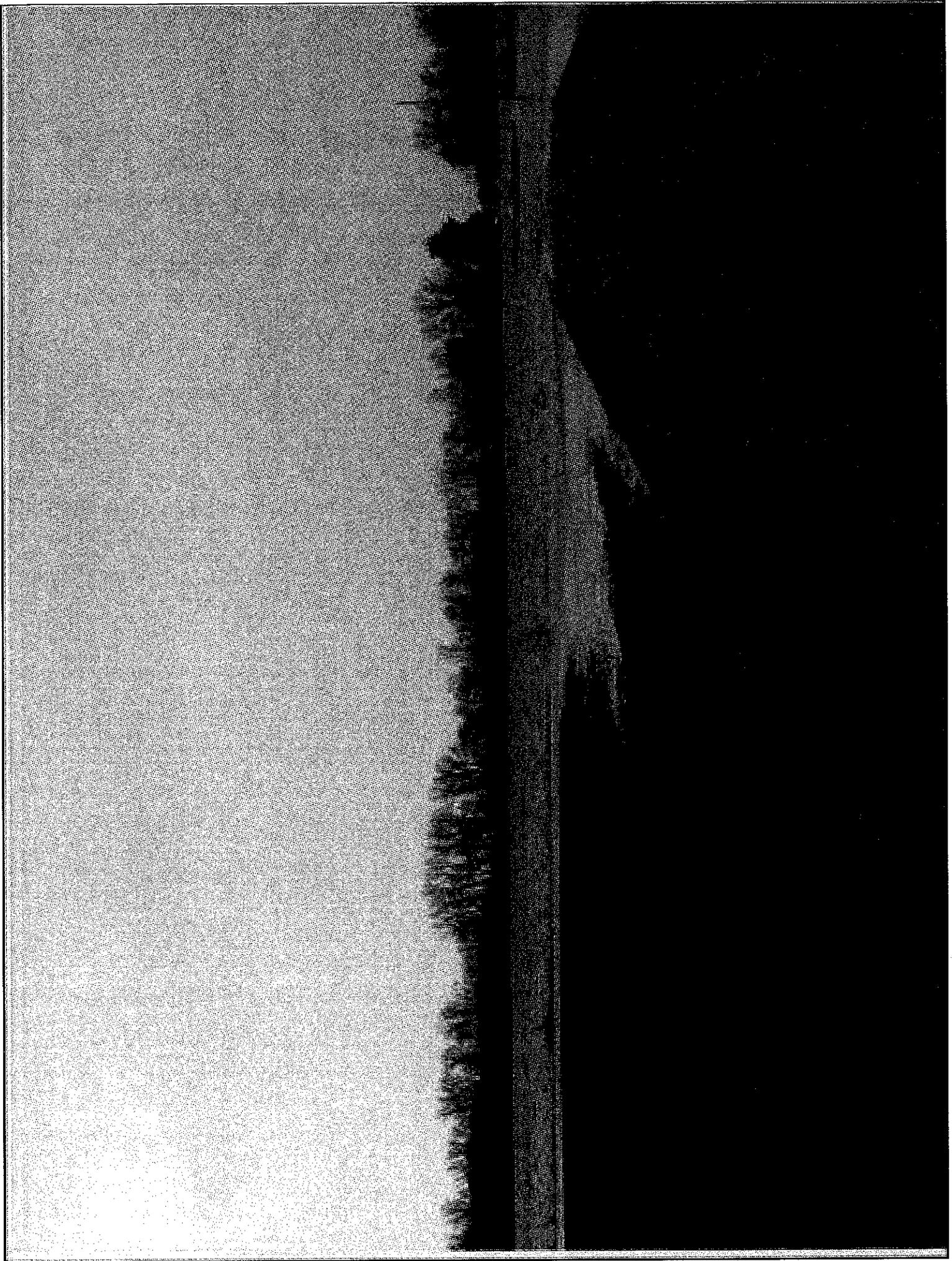
Sworn in my presence and subscribed before me this 18 day of March, 2011.

Rebecca Lewis  
Notary Public

my comm. expires 2-17-2014

**AFFIDAVIT OF ANDREA KNAPKE**  
**EXHIBIT A**

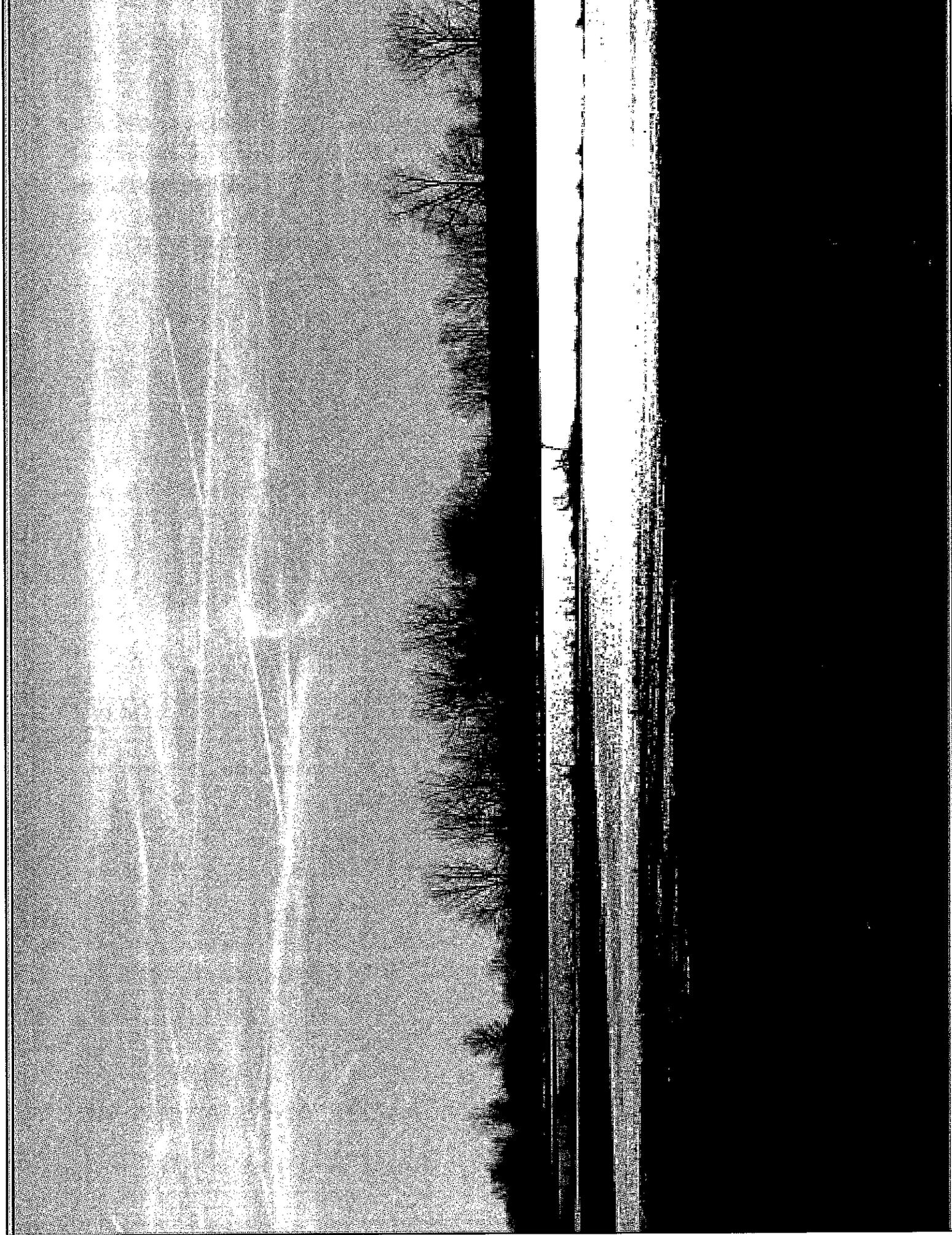


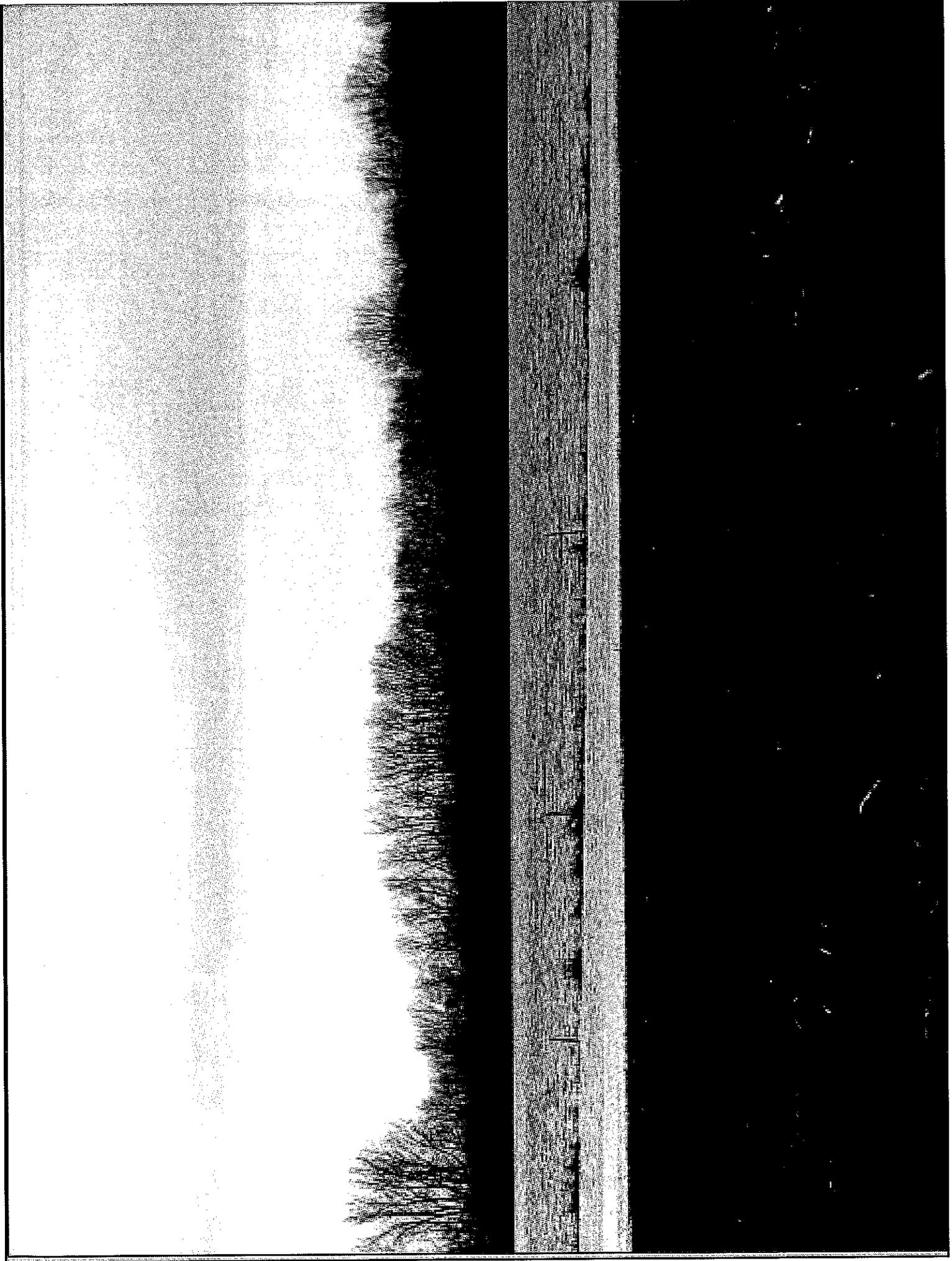




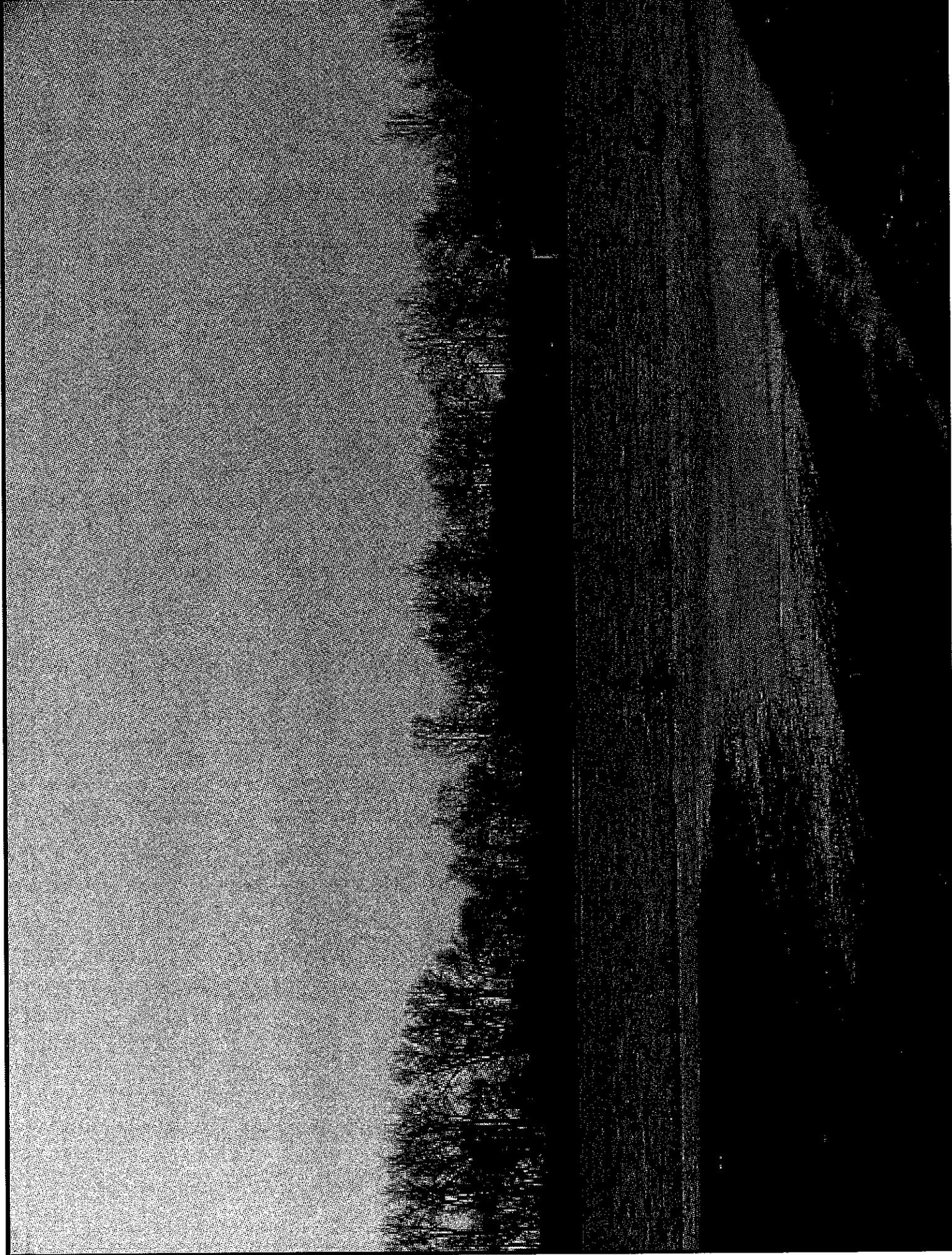




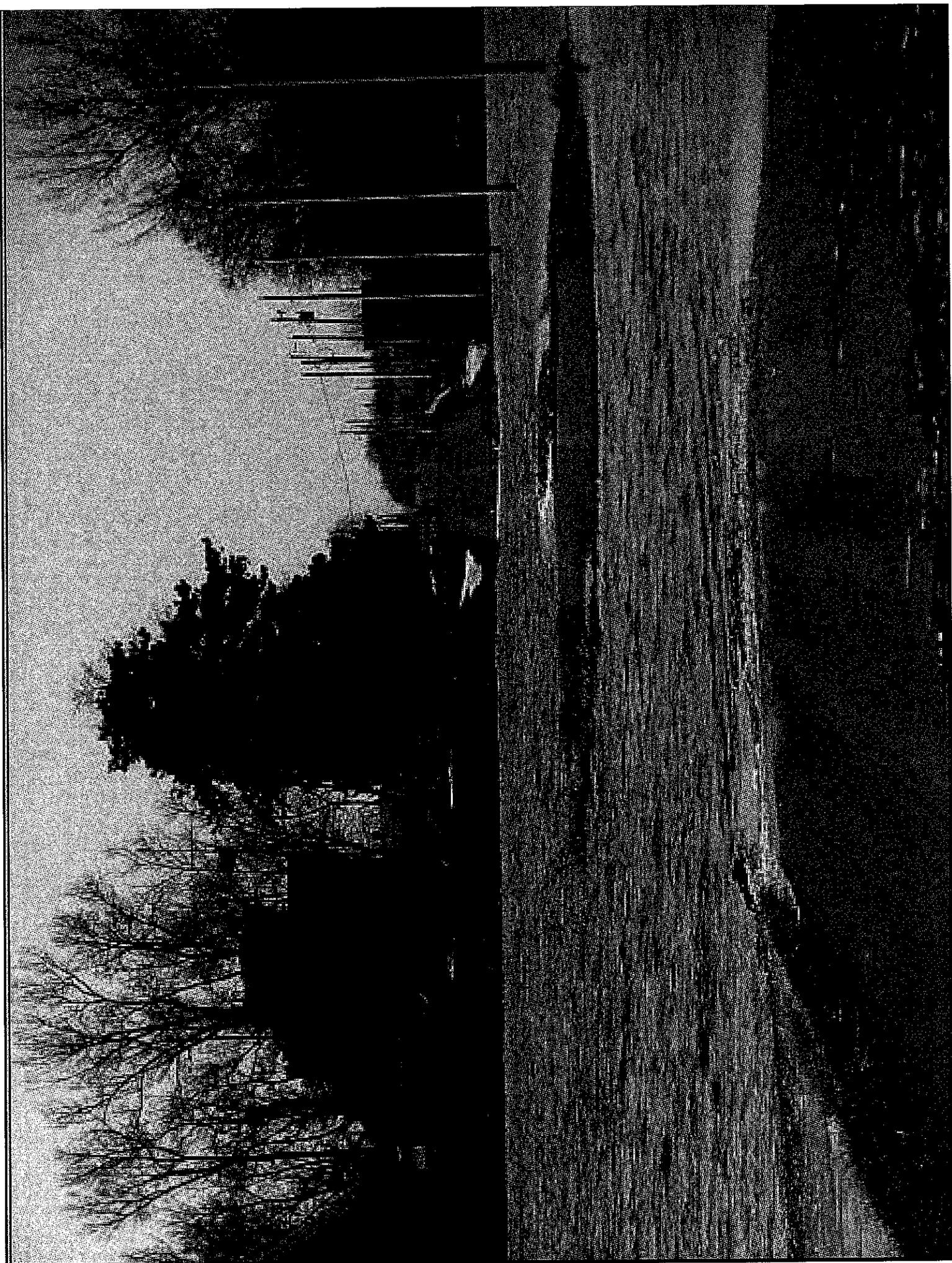


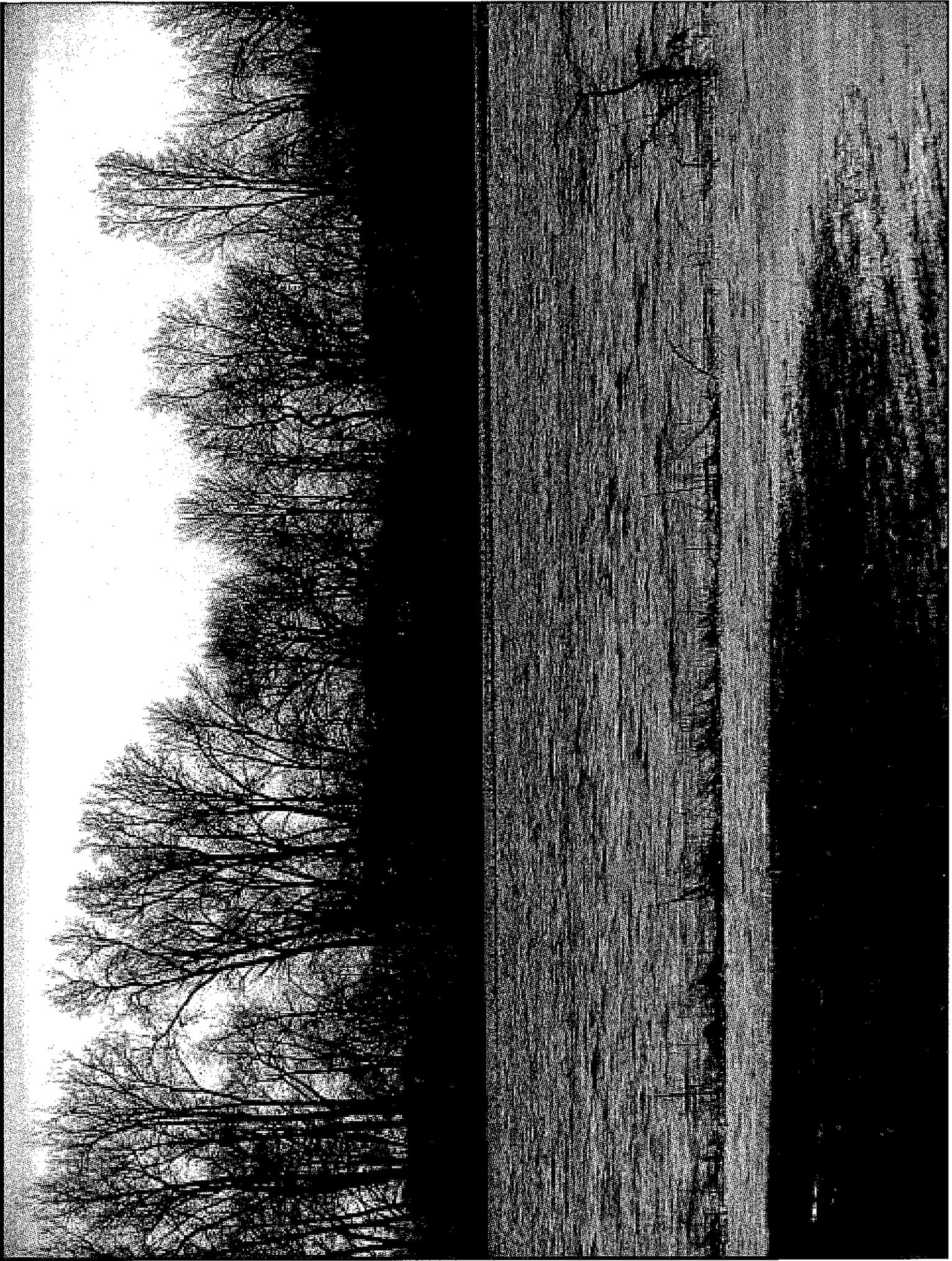


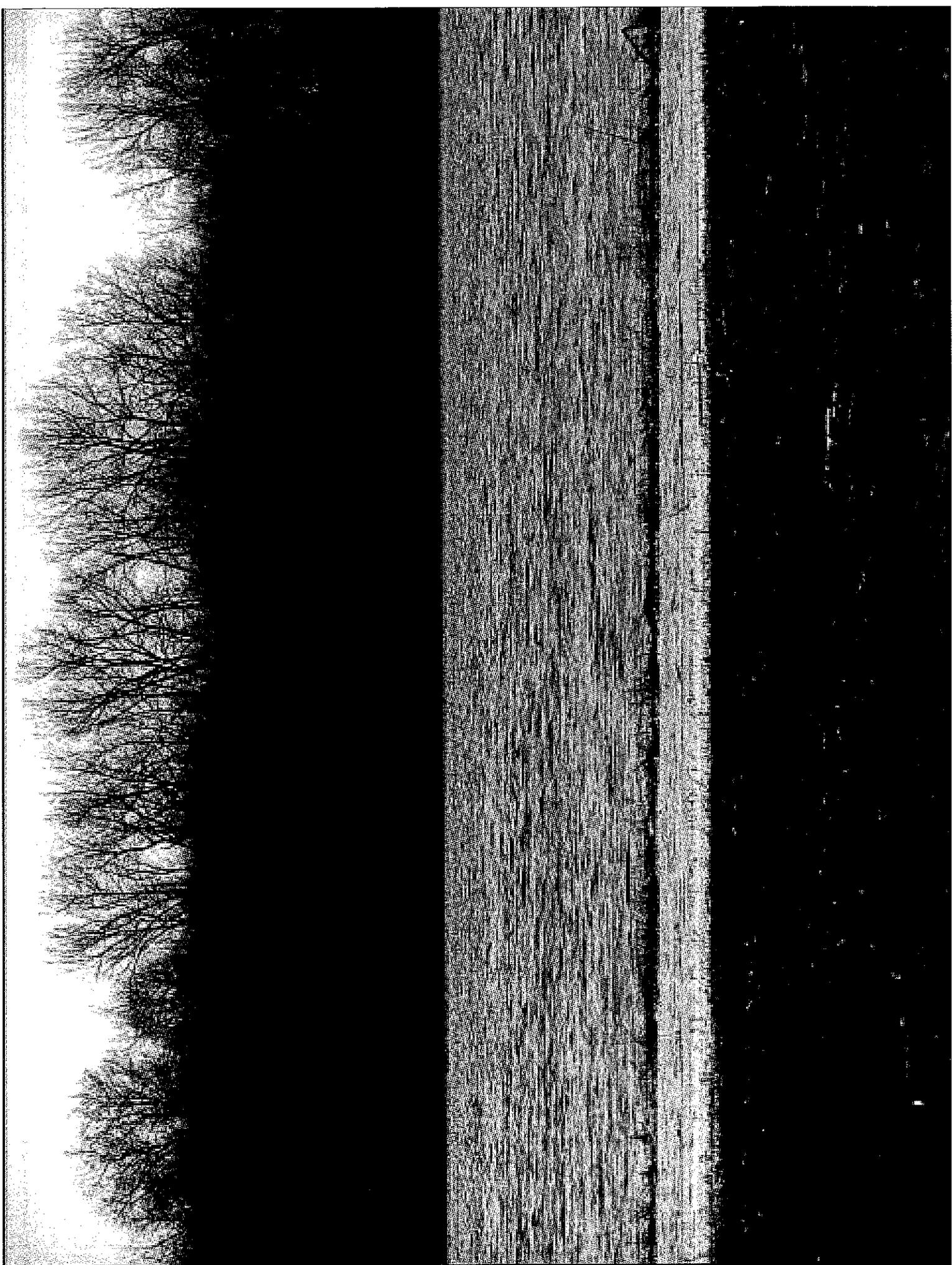


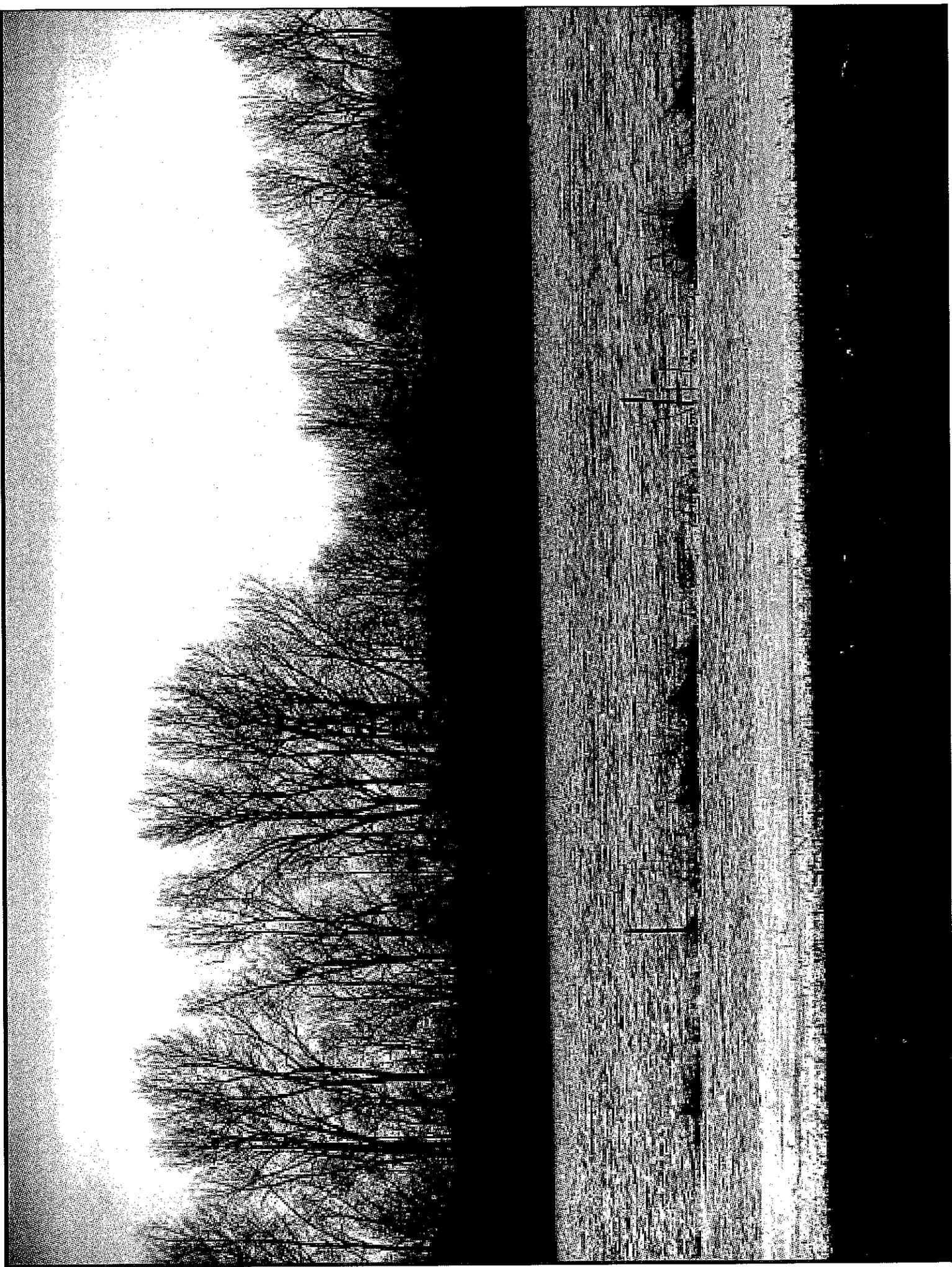














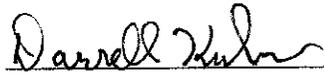
# EXHIBIT 6



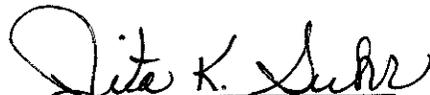
spillway along the Beaver Creek and Wabash River and flooded Mercer County Parcel Numbers 42-001200.0000, 42-000200.0000 and 28-017400.0100.

9. I attach as Exhibit A is a CD-R containing true and accurate copies of photographs I observed my wife, Kendra Kuhn take on February 28, 2011 of the flooding of Mercer County Parcel Numbers 42-001200.0000, 42-000200.0000 and 28-017400.0100. The CD-R contains three zip files. The first zip file contains photographs truly and accurately depicting the flooding of Mercer County Parcel Numbers 42-001200.0000, 42-000200.0000. The second zip file contains photographs truly and accurately depicting the flooding of Mercer County Parcel Numbers 42-001200.0000, 42-000200.0000 and 28-017400.0100. The third zip file contains photographs truly and accurately depicting the flooding of Mercer County Parcel Numbers 42-001200.0000, 42-000200.0000.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
Darrell Kuhn

Sworn to before me and subscribed in my presence this 17th day of March, 2011.

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

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

AFFIDAVIT OF DARRELL KUHN

EXHIBIT A

**ATTACHMENT NOT SCANNED**

# EXHIBIT 7



6. Attached hereto as Exhibit C are photographs that I took on February 28, 2011 that truly and accurately depicts the spillway and the Beaver Creek just below the spillway. The handwriting on the photographs is my handwriting.

7. Attached hereto as Exhibit D are photographs that I took on March 1, 2011 that truly and accurately depicts flooding on Mercer County Parcel Numbers 26-027300.0500, 26-027400.0000, and 26-027500.0000, on the property of Lois J. McNeilan, Mercer County Parcel Number 26-027200.0000, and on the access roads leading to those properties. The handwriting on the photographs is my handwriting.

8. Attached hereto as Exhibit E are photographs that I took on March 1, 2011 that truly and accurately depicts flooding on the Charles Meier's properties and the Zumberge properties. The handwriting on the photographs is my handwriting.

9. Attached hereto as Exhibit F are photographs that I took on March 1, 2011 that truly and accurately depicts flooding on Charles Meier's properties, the Zumberge properties, and Jason and Emily Hines' property. The handwriting on the photographs is my handwriting.

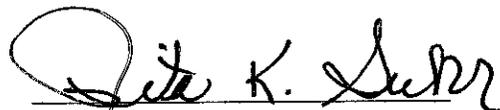
10. Attached hereto as Exhibit G are photographs that I took on March 1, 2011 that truly and accurately depicts the spillway and the Beaver Creek just below the spillway. The handwriting on the photographs is my handwriting.

11. Attached hereto as Exhibit H are photographs that I took on March 3, 2011 that truly and accurately depicts the debris and trash left behind by the receding waters, as well as the damage that water caused to some of the roads. The handwriting on the photographs is my handwriting.

**FURTHER AFFLIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
David J. McNeilan

Sworn to before me and subscribed in my presence this 17 day of March 2011.

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

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

**AFFIDAVIT OF DAVID J. McNEILAN  
EXHIBIT A**



2-28-2011 9am  
looking south down  
Preston road

0143302000290 31+ 0 SAMPLES

03/02/11

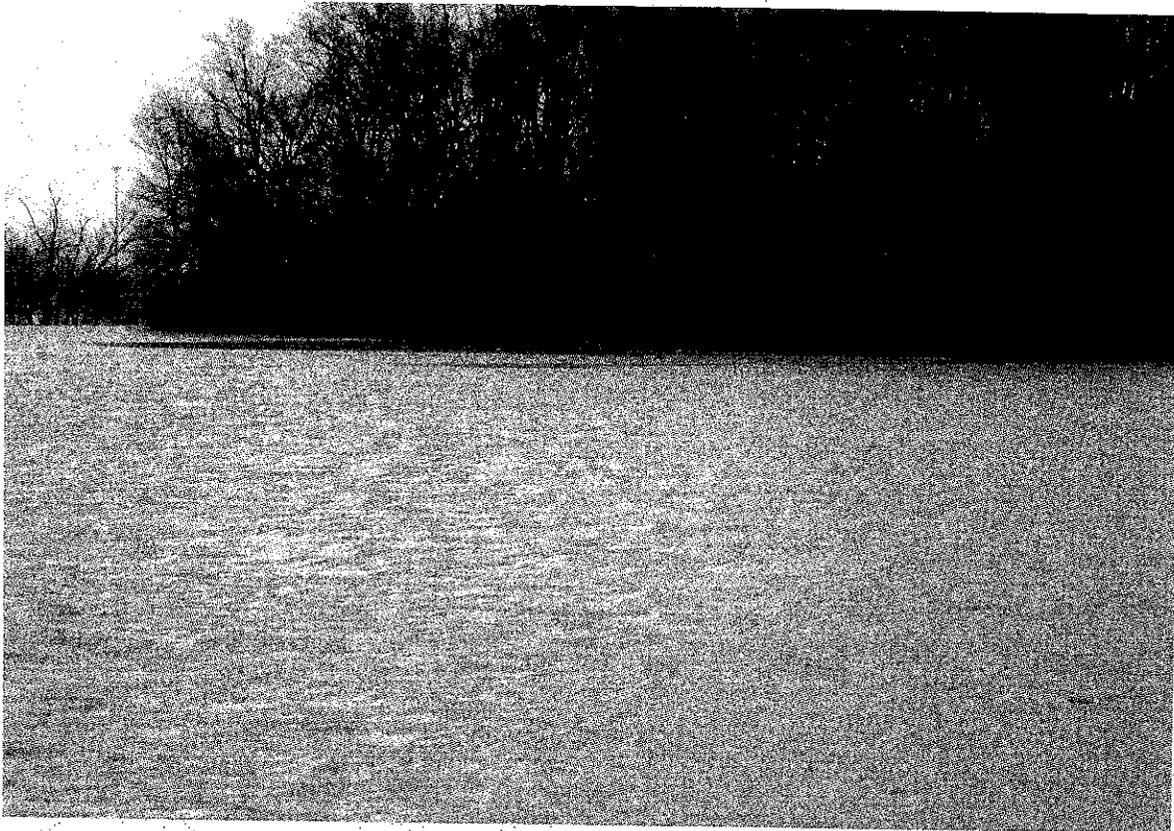
Exhibit  
A



2-28-2011 9am  
looking to the southeast  
across parents and our  
property from firstfoot road

01453002000290 33+ 0 SAM0196

0 03/02/11



2-23-2011 9am  
looking to the woods on  
parents property from  
Fleetfoot road

0143302000290 374 <> SA10198

<> 03/02/11



2-28-2011 4pm

Looking south west

from grain bin

01433022000290 133/195+ <> SA10249

<> 03/02/11



2-28-2011 Spm  
Looking west from  
grain bin

0143302000290 135/1954 < SP10250

< 03/02/11



2-28-2011 5pm

Looking to the southeast  
from train bin

0143302000290 145/195+ 0 S410255

0 03/02/11



2-28-2011 4pm

looking across our parents  
property from their home

0143302000590 153/195+ <> SP10259

<> 03/02/11



2-28-2011 4pm

First foot road bridge  
from parents home

0143002000290 155/195+ 0 5410260

0 03/02/11

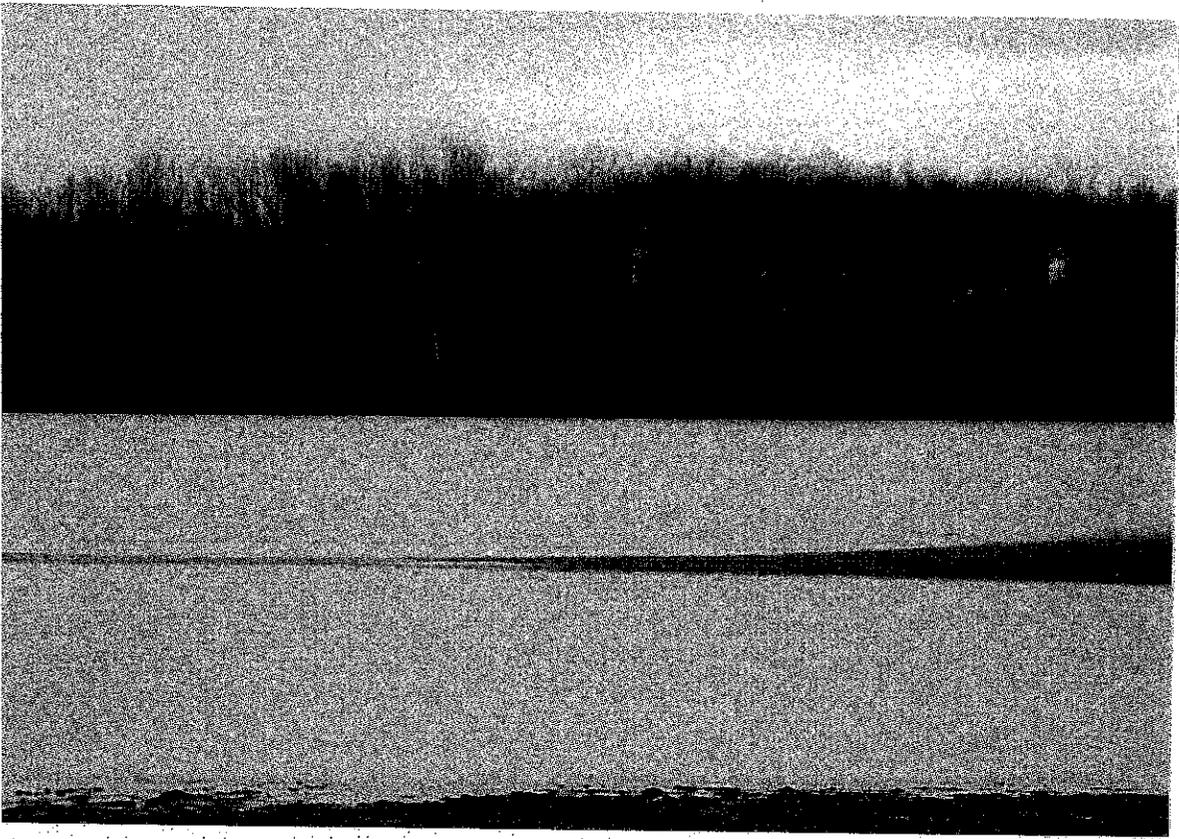


2-28-2011 4pm

Looking to the southeast  
from our parents home

01453020000290 165/155+ ( ) SQM0265

( ) 03/02/11



2-28-2011 3pm  
Looking to the south from  
Parent's house

0143302000290 165/195+ <> 5070267

<> 03/02/11

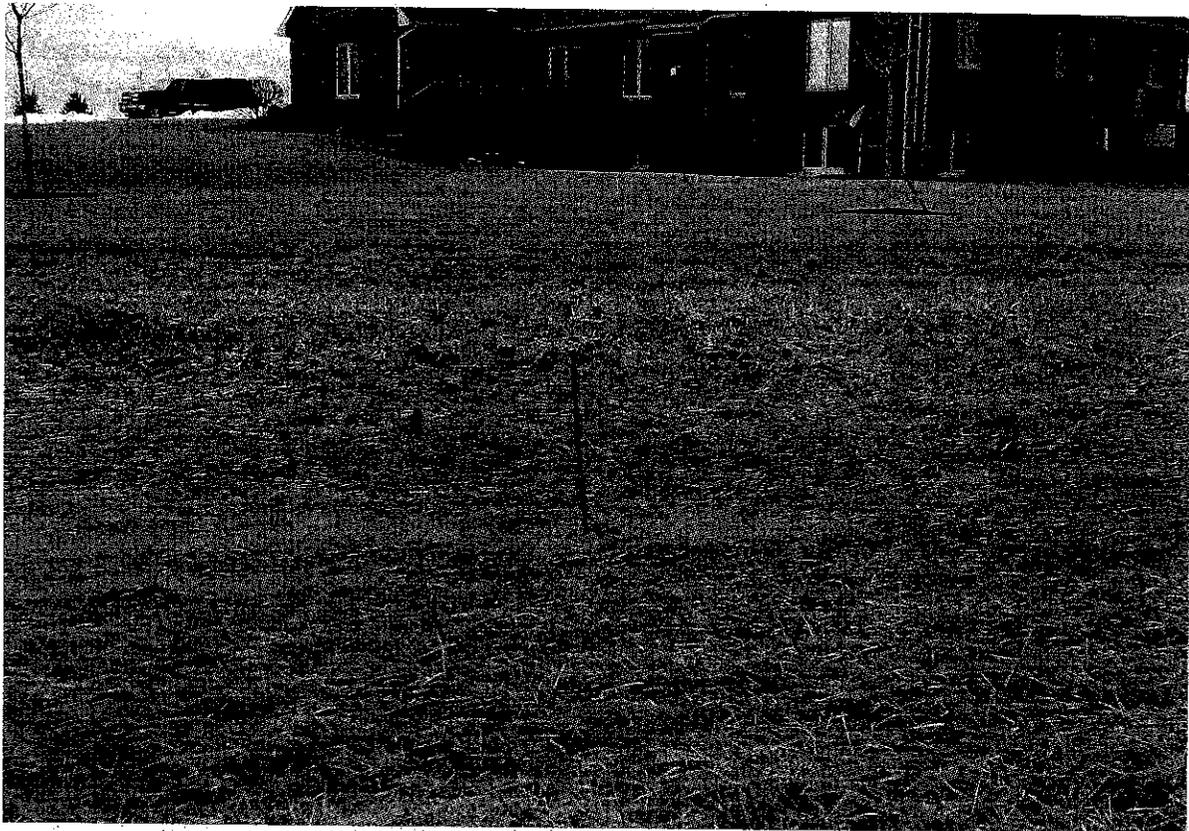


2-28-2011 4pm

Looking towards Plot 401  
Road from parents home

0143302200290 171/195+ <> S/M/02/68

<> 03/02/11



2-28-2011 4pm

high water mark @ 4pm at  
parents home water way

014309200R290 178/155+ 0 SA10272

0 03/02/11



2-28-2011 Rice man  
south of our home

0145302000290 66+ © SAH0217

◇ 03/02/11



2-28-2011 9am  
looking east across waterway  
behind parents home from  
left foot road

01433002000290 23+ <> SAPI0191

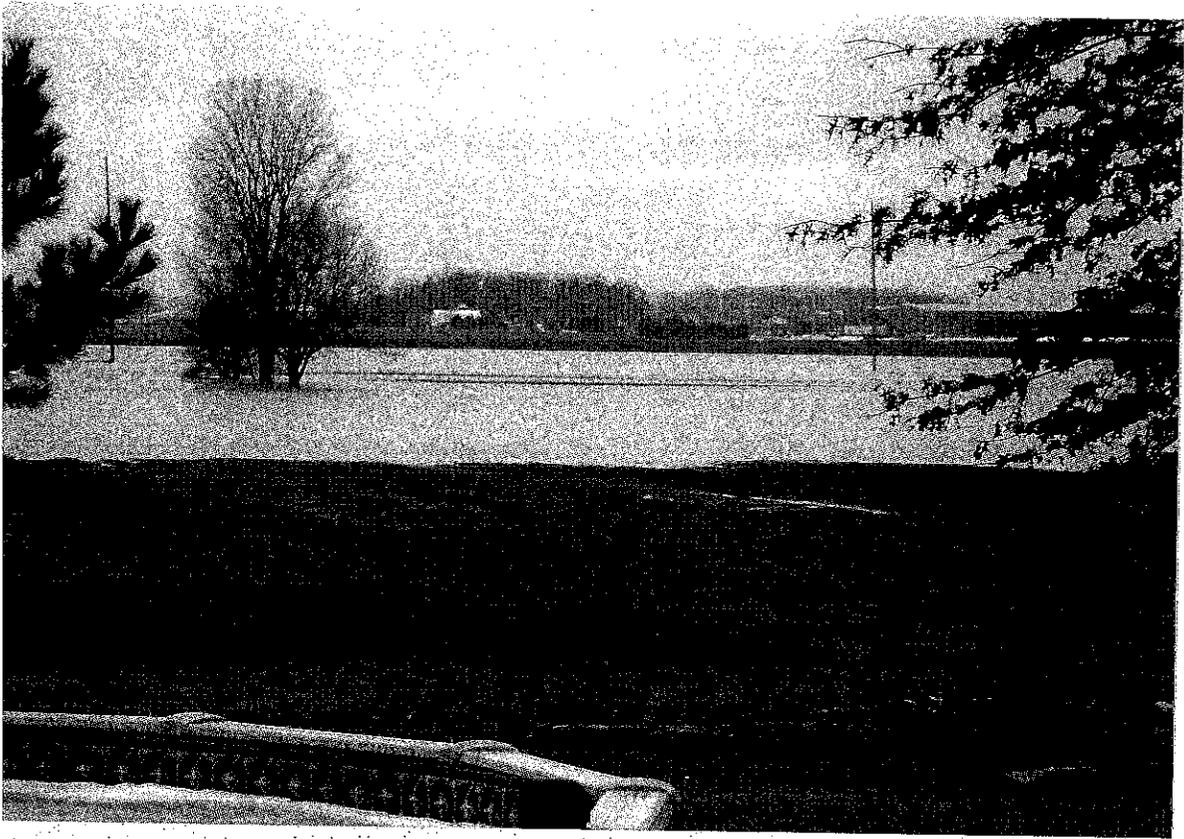
<> 03/02/11



2-28-2011 9am  
looking east across ponds  
property on first flat road  
at bridge

01433020000290 21+ <> S01R0190

<> 03/02/11



9am 2-28-2011  
Jenkins south of our  
home

0143302000290 19+ 0 SP10178

0 03/02/11



2-28-82 9am  
way into 4thos

<> 03/02/11

0143302000290 18+ <> SA10177



2143322000290 B+ <> S419176

<> 03/02/11

away and  
to buy tires 5/11/2011  
MSL 1100.000



2-28-2011 9am

Looking to the southeast  
across parents and our  
property from first foot road

U145002000250 25+ <> SA/0192

<> 03/02/11



2-28-2011 9am

looking to the northeast

across our ~~parents~~ parents property

from first foot road at

south property line

0145302000290 45+ 0 SAN0202

0 03/02/11



2-28-2011 4pm

From Fleetfoot road bridge  
looking north

0145302000290 185/195+ <> S0M027E

<> 03/02/11



2-28-2011 4pm

looking south west  
from gain bin

2145302000290 131/155+ ( ) 34710248

( ) 03/02/11



2-28-2011 4:00pm

Looking towards our  
woods from grain bin

0143802000250 137/195+ ( ) S#P0251

( ) 03/02/11



2-28-2011 4pm

Looking south from  
garage bin

014330Z000290 139/195+ 0 54M0252

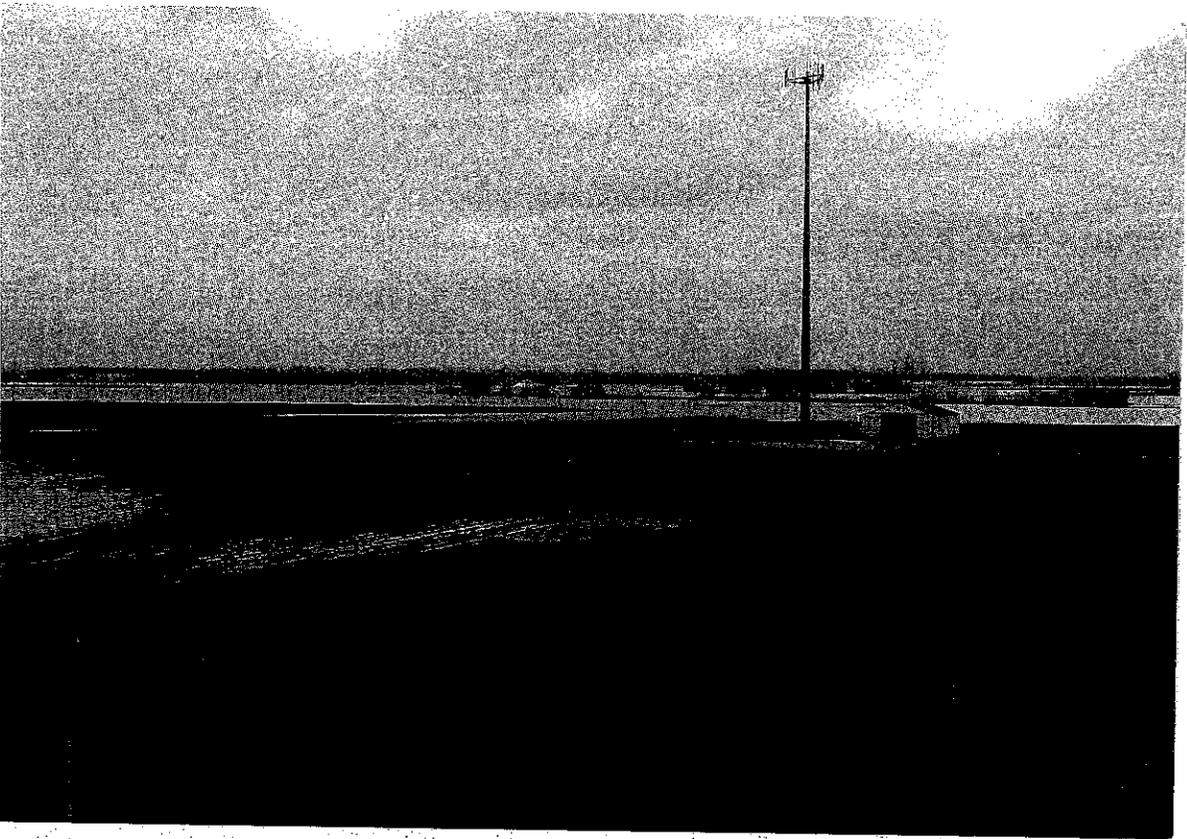
0 03/02/11



2-28-2011 5pm  
looking south from  
gavin bin

0143302000250 141/195+ <> SA-M253

<> 03/02/11



2-28-2011 4pm  
Looking to the  
south east from  
garage bin

0143502000290 143/195+ 0 5010254

0 03/02/11



2-28-2011 4pm  
looking to the southwest  
from grain bin

0143002000290 147/195+ 0) 84M2266

0) 03/02/11



2-28-2011 4pm

looking towards our  
woods from grain bin

0143302000250 149/1554 ◊ S4M0257

◊ 03/02/11



2-28-2011 4pm  
area behind garden houses  
from parents home

0143302000290 157/155+ <> S4M0261

<> 03/02/11



2-28-2011 4pm

Looking to the south east  
from our parents home

0143302000290 159/1954 ( ) SH10262

( ) 03/02/11



2-28-2011 4pm

Looking to the southeast  
from our parents home

0145302000290 161/1954 <> SA10263

<> 03/02/11



2-28-2011 4pm  
Looking to the south  
from parents home

0143302000290 163/195+ <> SAH0254

<> 03/02/11



2-28-2011 4pm  
looking to the southeast  
from parents home

2143302000290 167/195+ <> S4M266

<> 03/02/11



2-28-2011 4pm  
Looking towards old bridge  
over Beaver Creek from  
parents home

0143302000290 173/195+ <> S4H0269

<> 03/02/11



2-28-2011 5pm

high water mark @ 5pm at  
water way at parent's home

0143302000290 174/195+ <> SANEZ70

<> 03/02/11

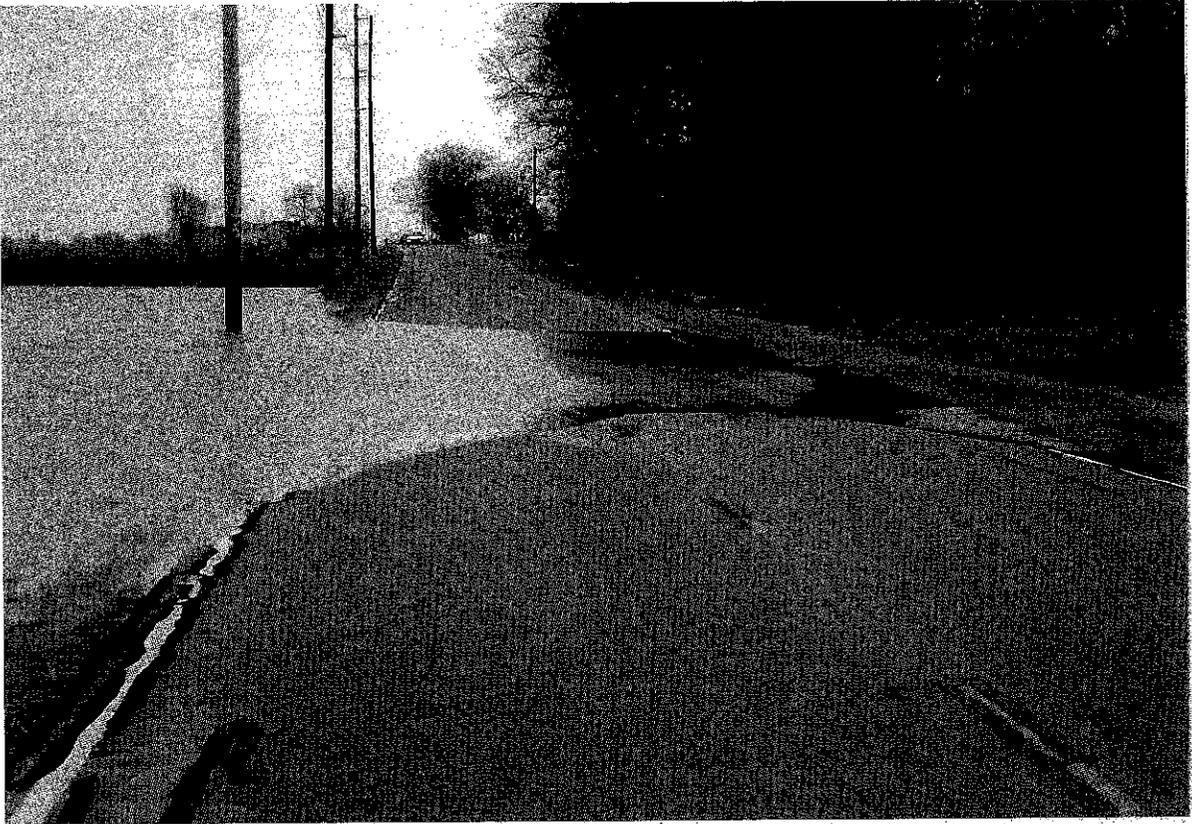


2-28-2011 3pm

High water mark @ 3pm at  
parents home water way

0143302000290 176/195+ O SHH0271

O 03/02/11



2-28-2011 12 noon

First foot road parents  
property to the left

01453002000290 704 <> S410218

<> 03/02/11



2-28-2011 12 noon  
looking to the southwest  
of our home

014830200290 62+ <> SM10214

<> 03/02/11



2-28-2011 12 noon  
Looking south of our home

0143302000290 644 <> SA10215

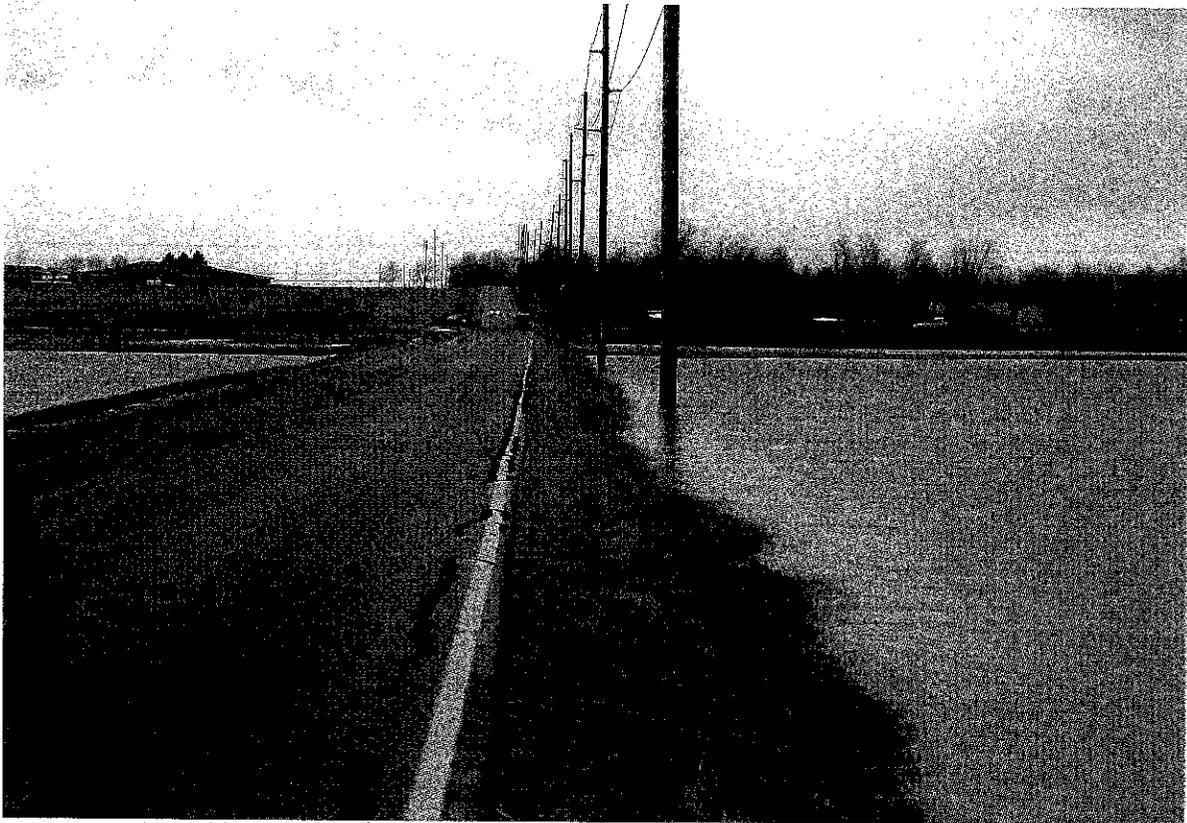
<> 03/02/11



2-28-2011 12 noon  
looking to the southeast  
of our home

0145302000290 661 <> SPM0216

<> 03/02/11



2-28-2011 12 noon

Looking north on first street  
road property to the right  
is our parents

0143302000290 72+ <> SPT0219

<> 03/02/11



2-28-2011 12 noon  
our parents and our south  
property line from  
first foot road

0143302200290 76+ 0 SAT0221

0 03/02/11



2-28-2011 12 noon  
looking at our parents and  
our south property line from  
first foot pad

0143302000290 744 © SM10220

© 03/02/11



2-28-2011 12 noon

Looking at the rear of our  
property from Hardin creek  
bridge on Fleet-foot road

0143302000290 784 <> SM10222

<> 03/02/11



2-28-2011 12 noon  
Looking north towards our  
property from ~~the~~ Monroe road

01433002000290 BE+ <> SP102223

<> 03/02/11



2-28-80 12 men  
looking northeast at our  
property from main road

0143302000290 02+ <> SHN0224

<> 03/02/11



2-28-2011 12 noon  
looking to the northwest  
towards our property from  
Mansie road

0145302000290 044 <> 5410225

<> 03/02/11



2-28-2011 9am  
Looking due east down  
our parents and our property  
line from First foot road

0143302000290 43+ ( ) SA10201

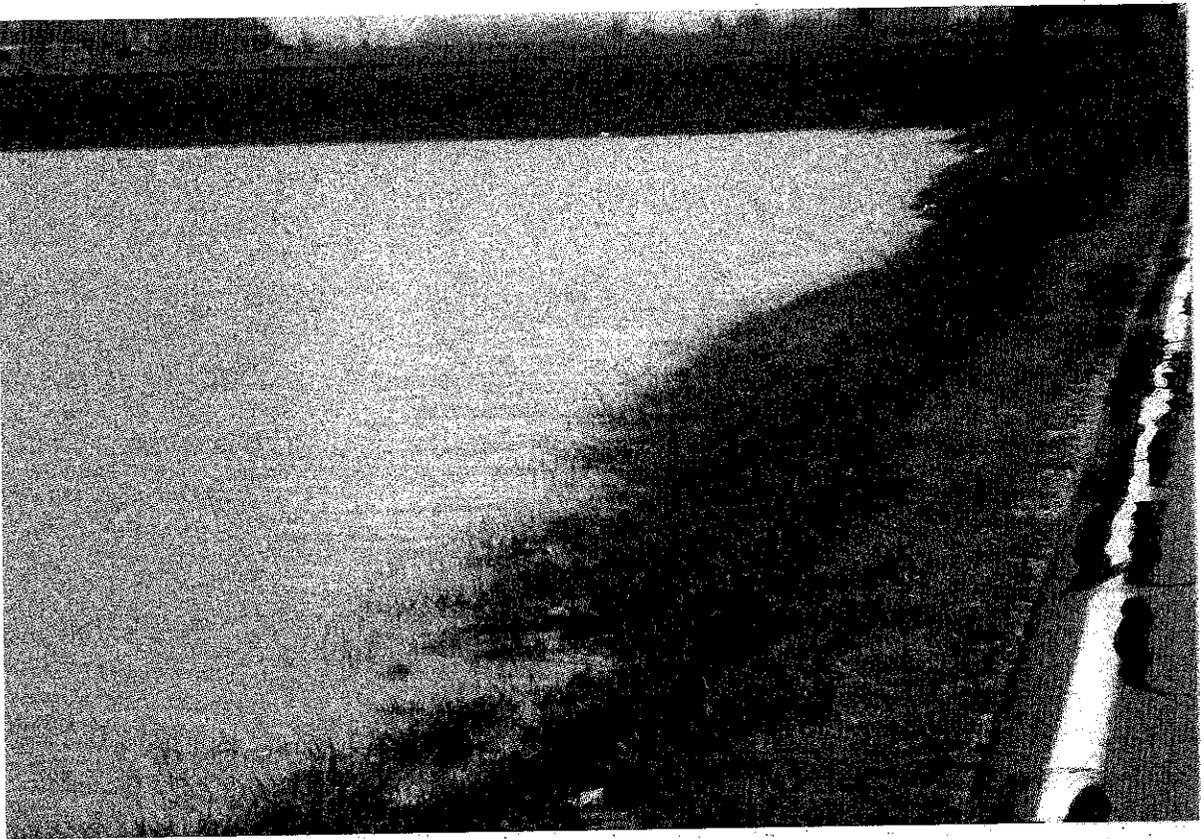
◇ 03/02/11

PRIVATE  
PROPERTY  
NO TRESPASSING

2-28-2011 9am  
Property of our parents  
from Fleetfoot road across  
field and woods

3143302000290 41+ <> SPM0200

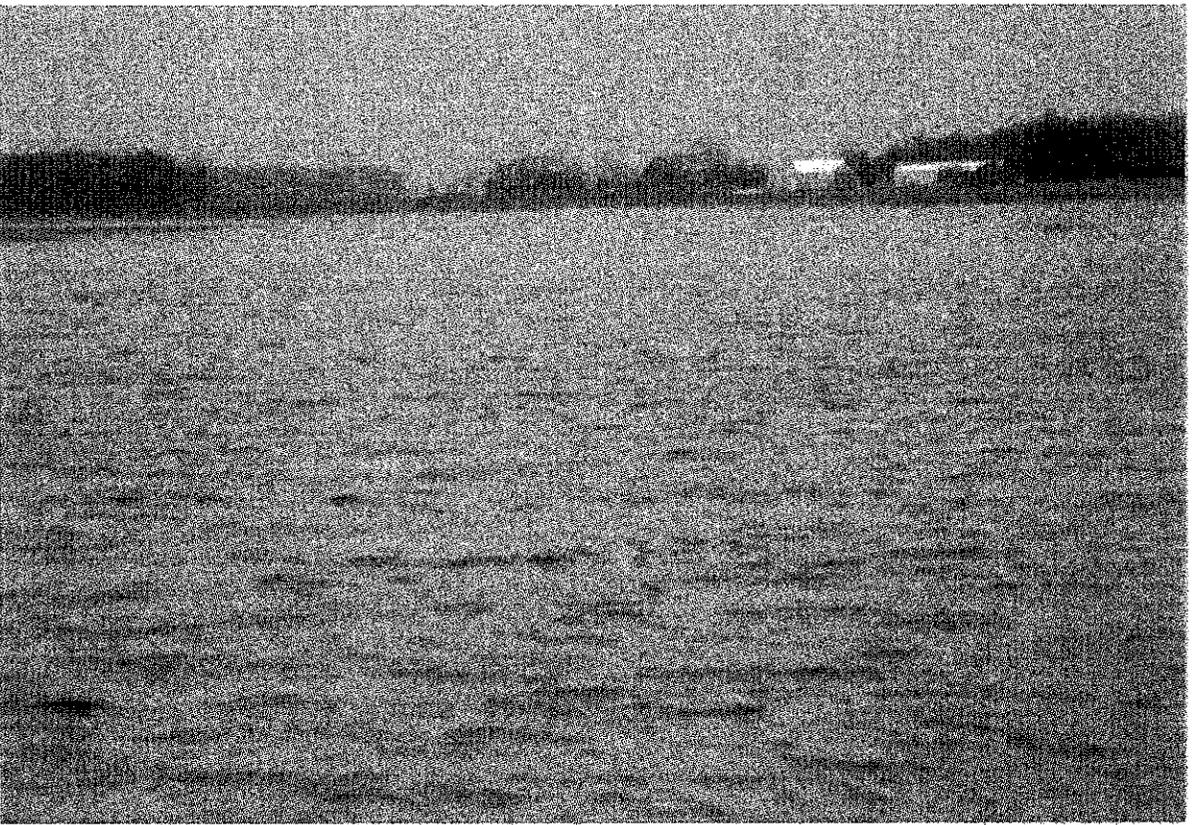
<> 03/02/11



2-228-201 99M  
looking at corner of  
property of Parents that is  
not flooded from Westbrook  
road

01433002000290 39+ <> SAK0199

<> 03/02/11

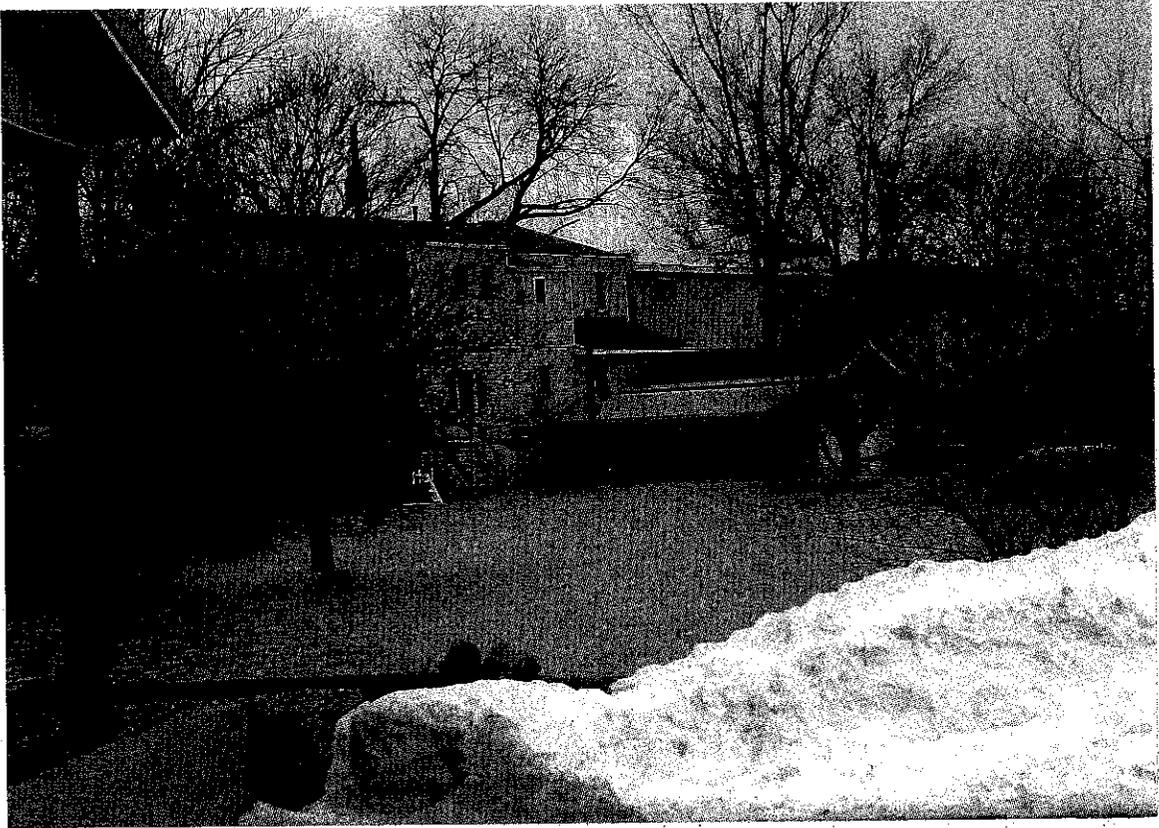


2-28-2011 gam  
looking towards the west  
across county home property  
from R-1 street road

0143302000290 25+ <> S010197

<> 03/02/11

**AFFIDAVIT OF DAVID J. McNEILAN  
EXHIBIT B**



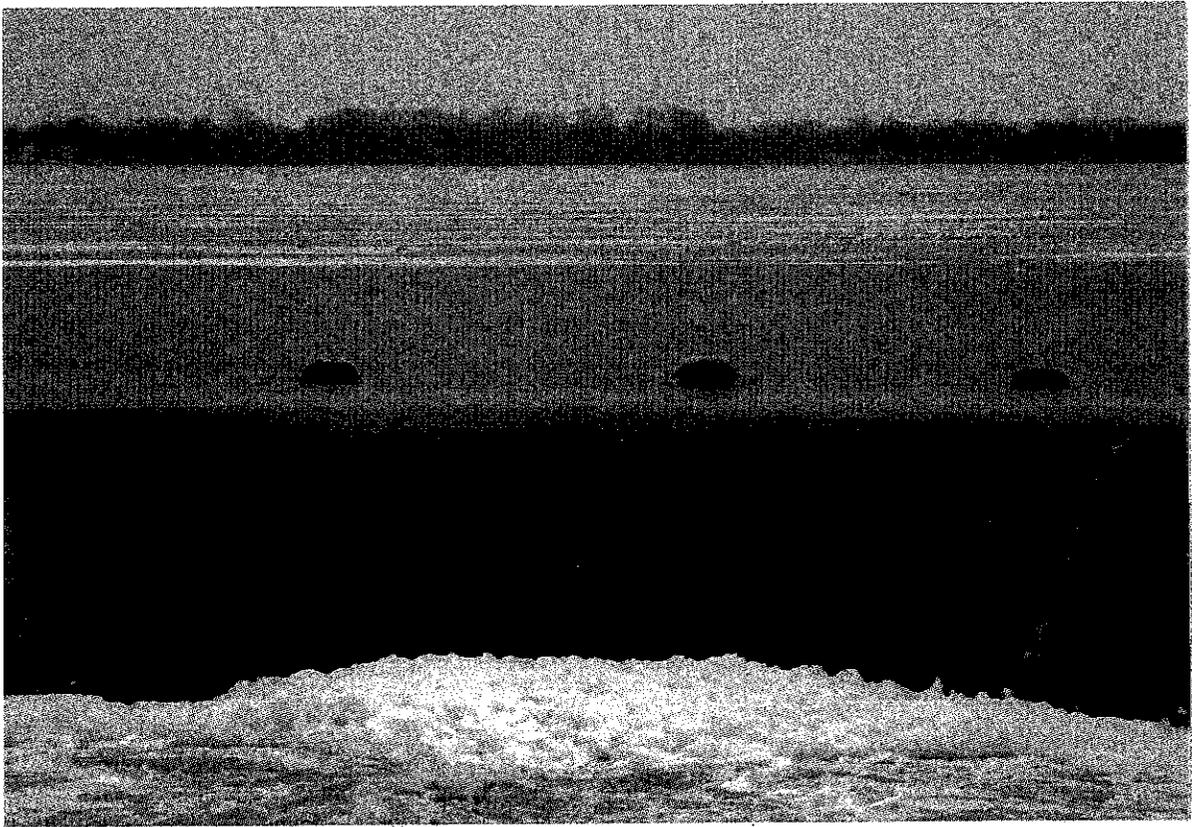
228-2011 4pm

Bob's Audio & Video

0145302000290 125/195+ <> SA10245

<> 03/02/11

**AFFIDAVIT OF DAVID J. McNEILAN  
EXHIBIT C**



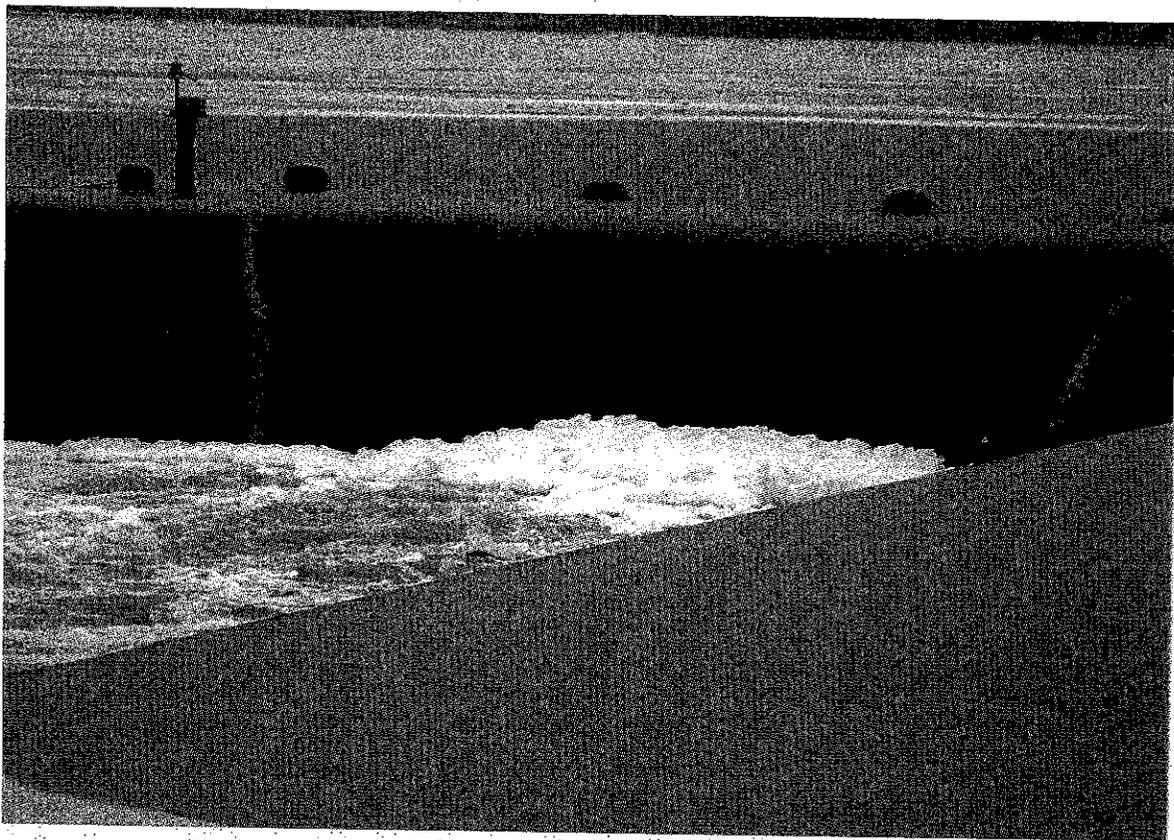
<> 03/02/11

0143302000290 1124 <> 3470239

SP111 way

2-28-2011 12 noon

Exhibit  
C



2-28-2011 12 noon

Spillway dch. 1

0143002000290 110+ <> SPT0238

<> 03/02/11



2-28-2011 12 noon

M5127 bridge from

50' way looking west

0143302000290 1064 <> S4M1236

<> 03/02/11



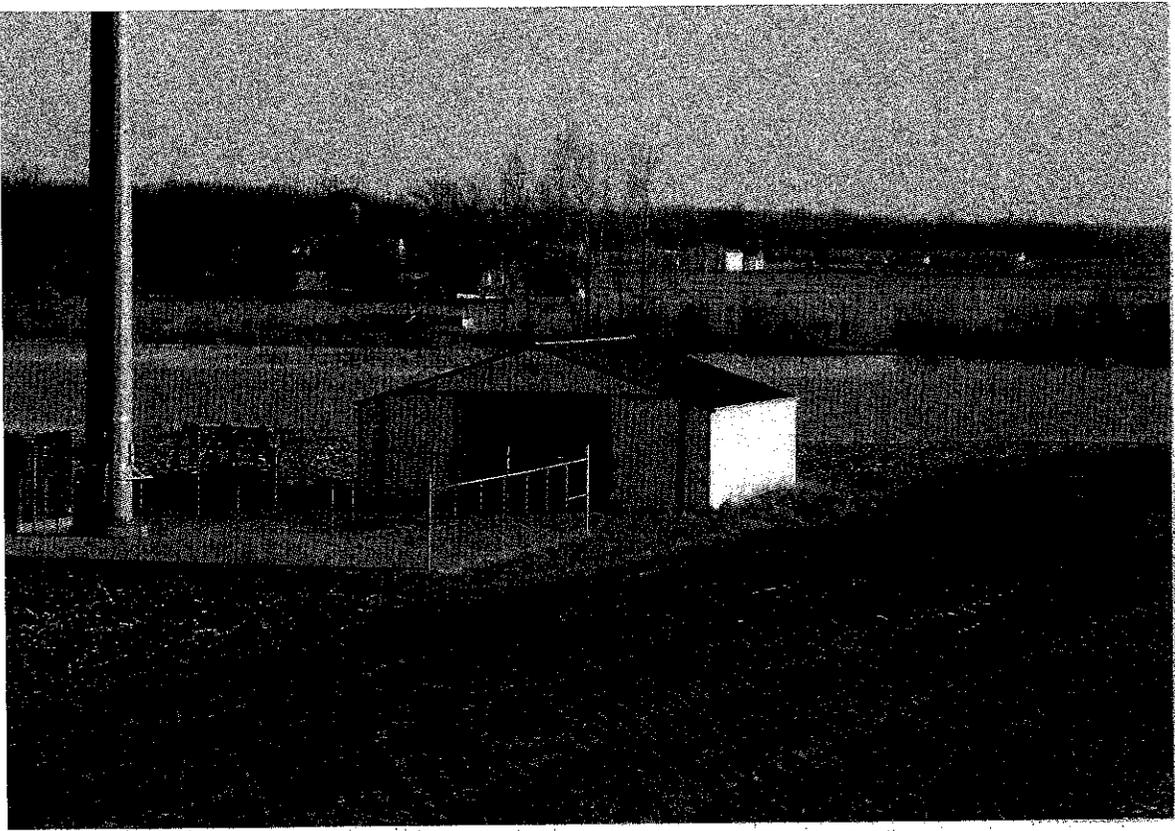
2-28-2011 12 noon

US127 bridge from  
Spillway looking northwest

0145380000290 1084 0 SPW0237

0 03/02/11

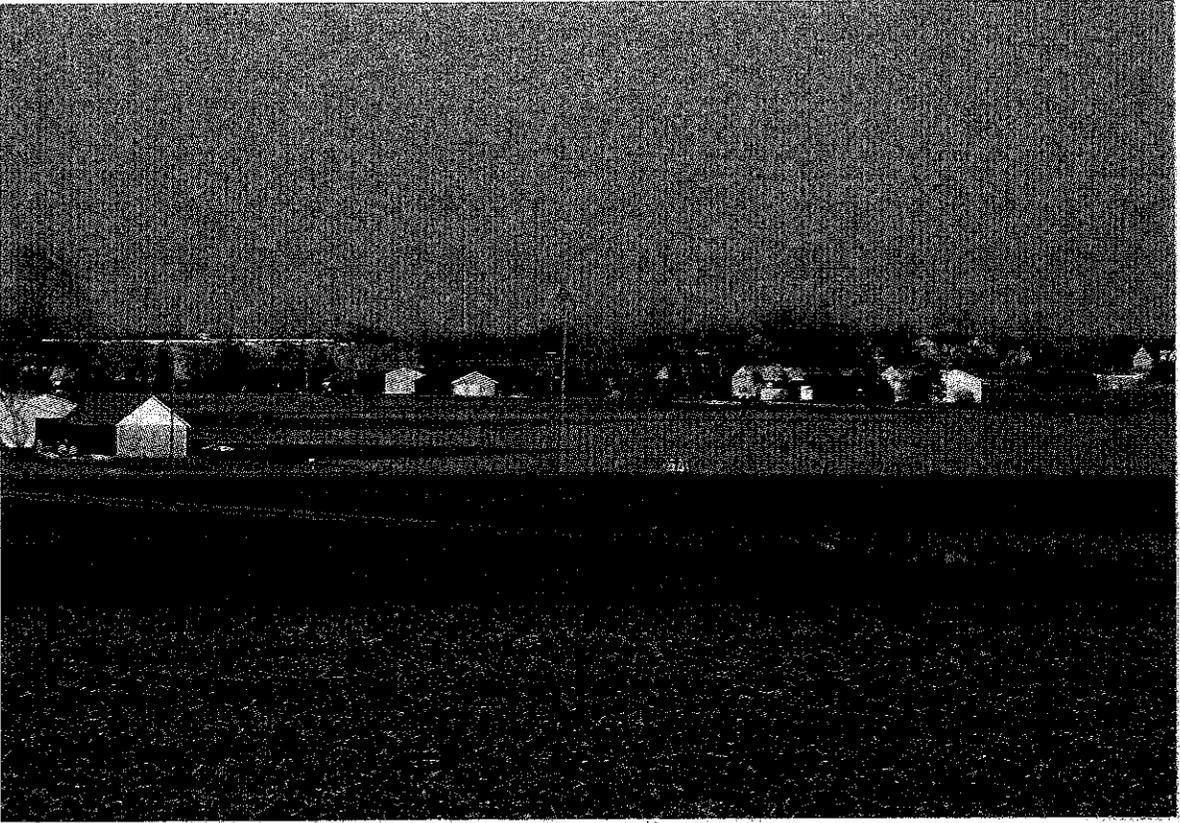
**AFFIDAVIT OF DAVID J. McNEILAN  
EXHIBIT D**



3-1-2011 5pm  
looking at the rear of  
Arby property from our  
grain bin

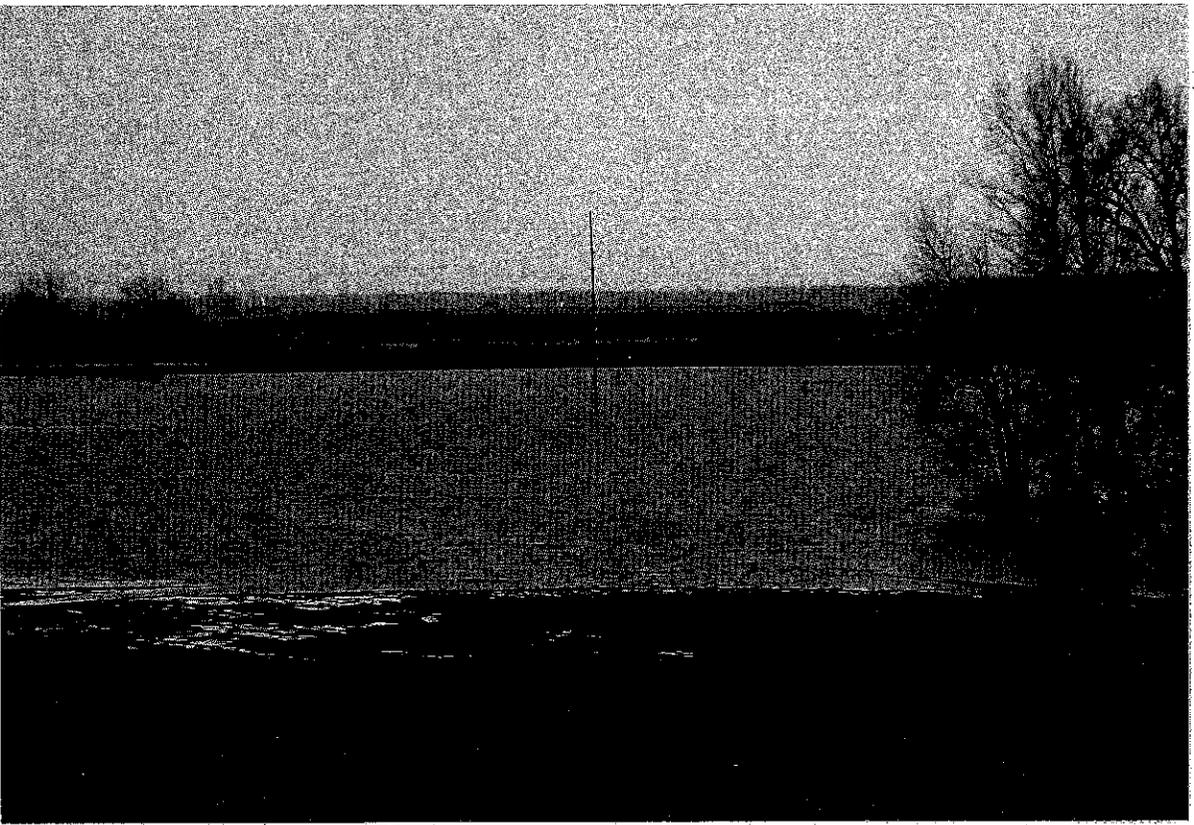


3-1-2011 5PM  
Looking to the south  
east of our property  
across third property  
from our grain bin

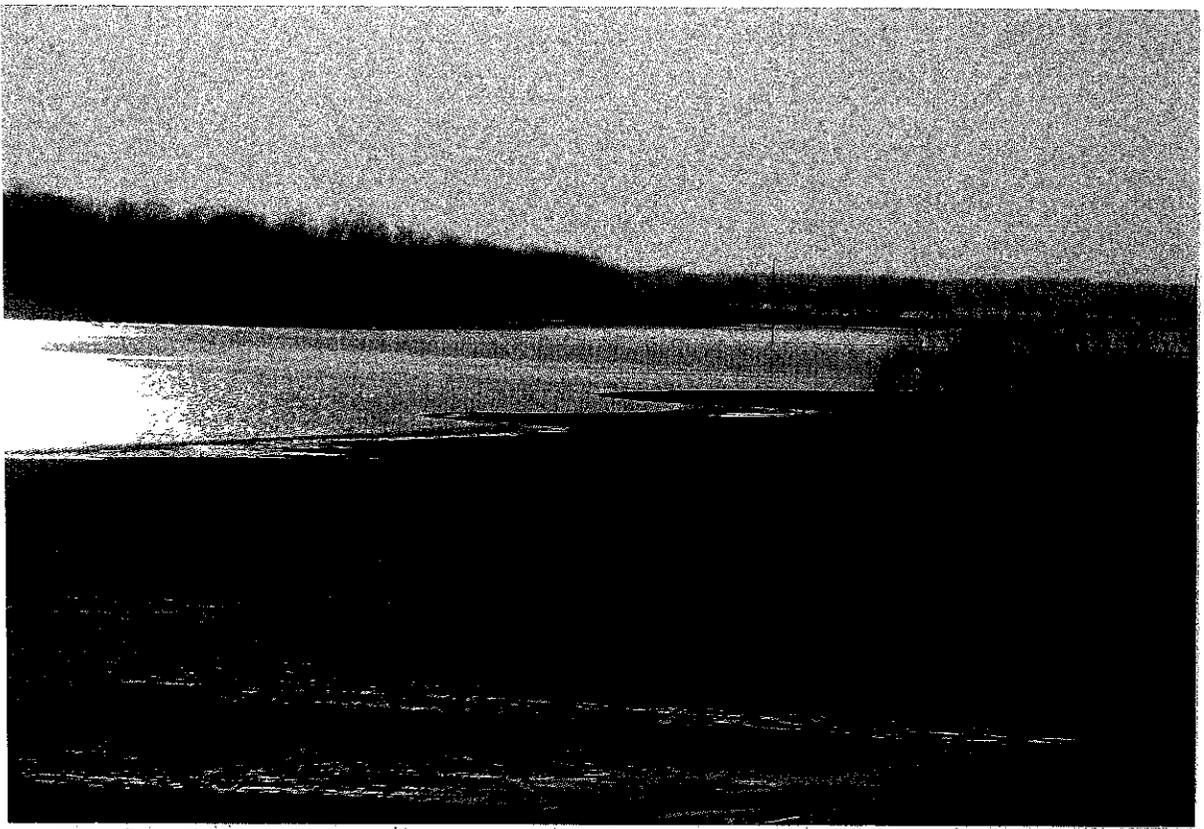


3-1-2011 5pm

Looking to the east  
towards Zumbrose  
property from our  
grain bin



3-1-2011 5pm  
Looking to the south  
of our property from  
grain bin



3-1-2011 5pm  
looking to the west  
at our property from  
our swim bin



3-1-2011 5pm  
Looking at our woods  
from grain bin



3-1-2011 5pm  
looking to the southeast  
of our property from  
grain bin

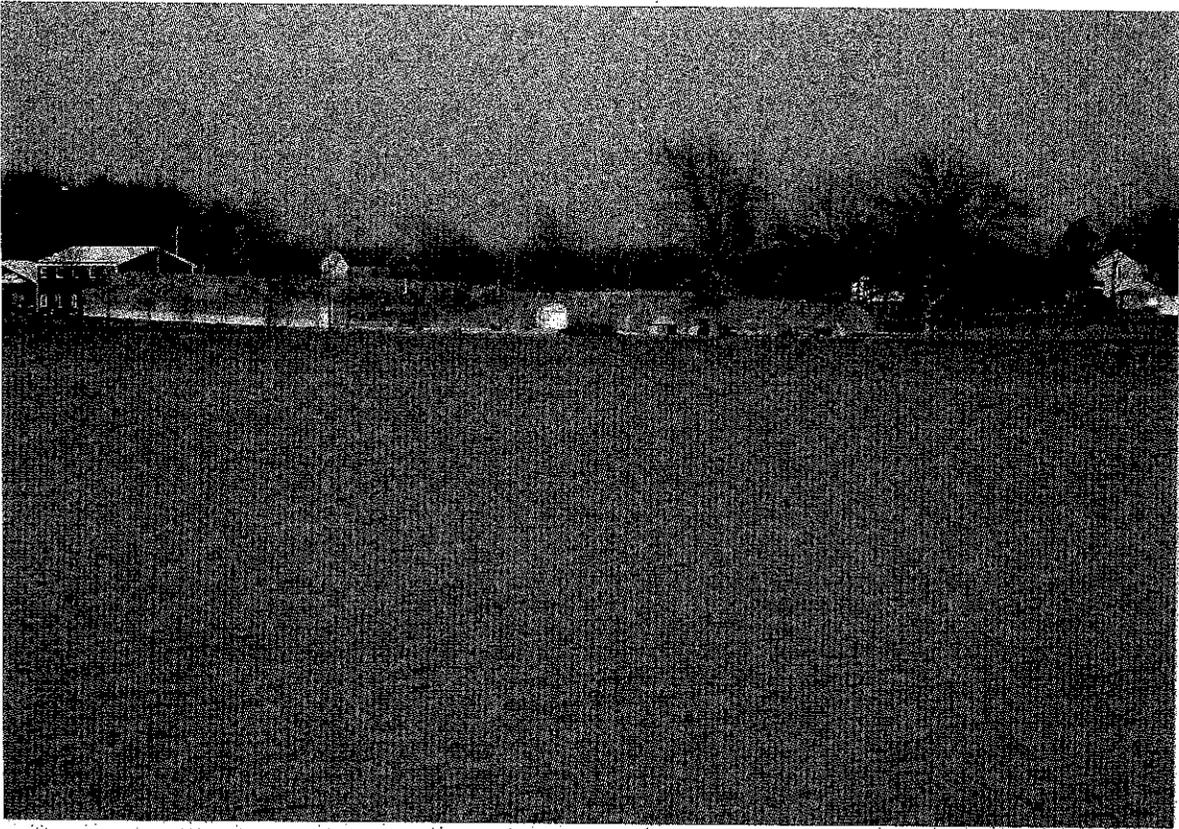


3-1-2011 5pm

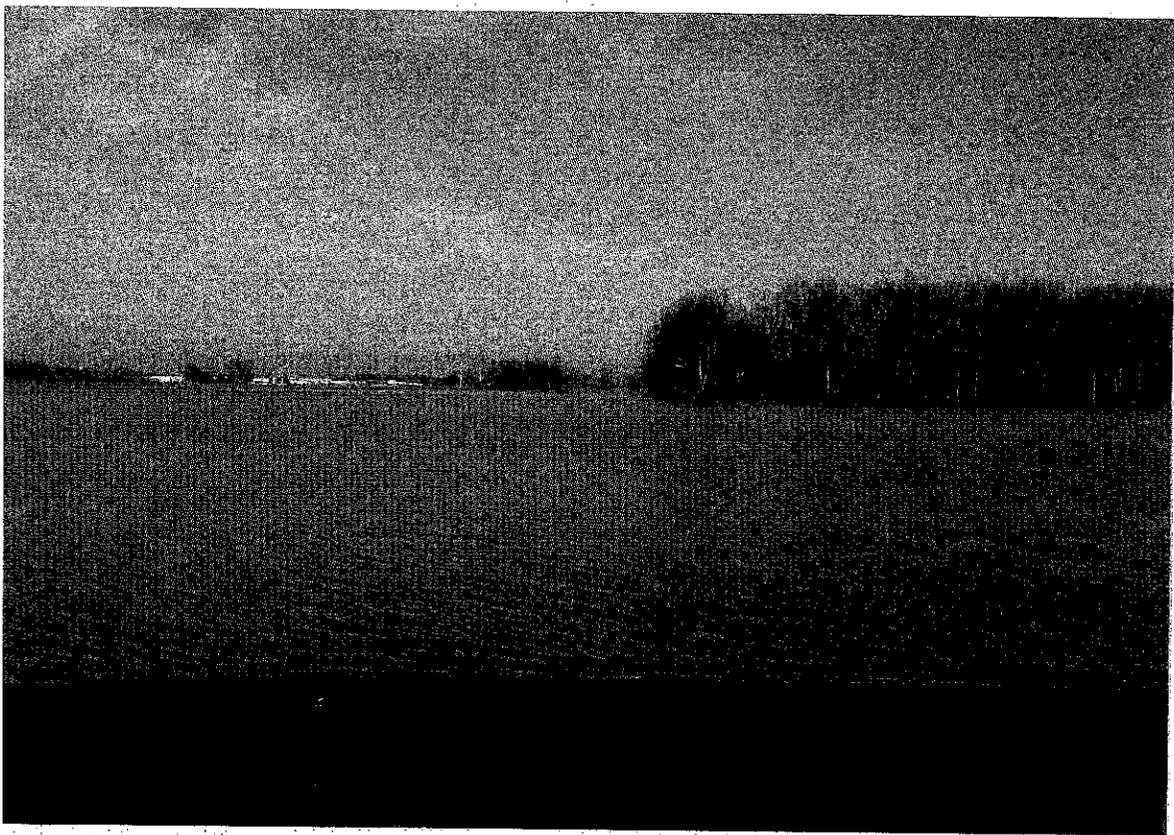
looking to the west  
at our property from  
grain bin



3-1-2011 12noon  
looking to the south east  
across flooded wheat  
field of parents property



3-1-2011 12 noon  
looking to the north east  
from Fletchford road  
across parents property



3-1-2011 Brown

Flooded wheat field of  
our ~~parent's~~ property  
looking to the east off  
Hunt Road



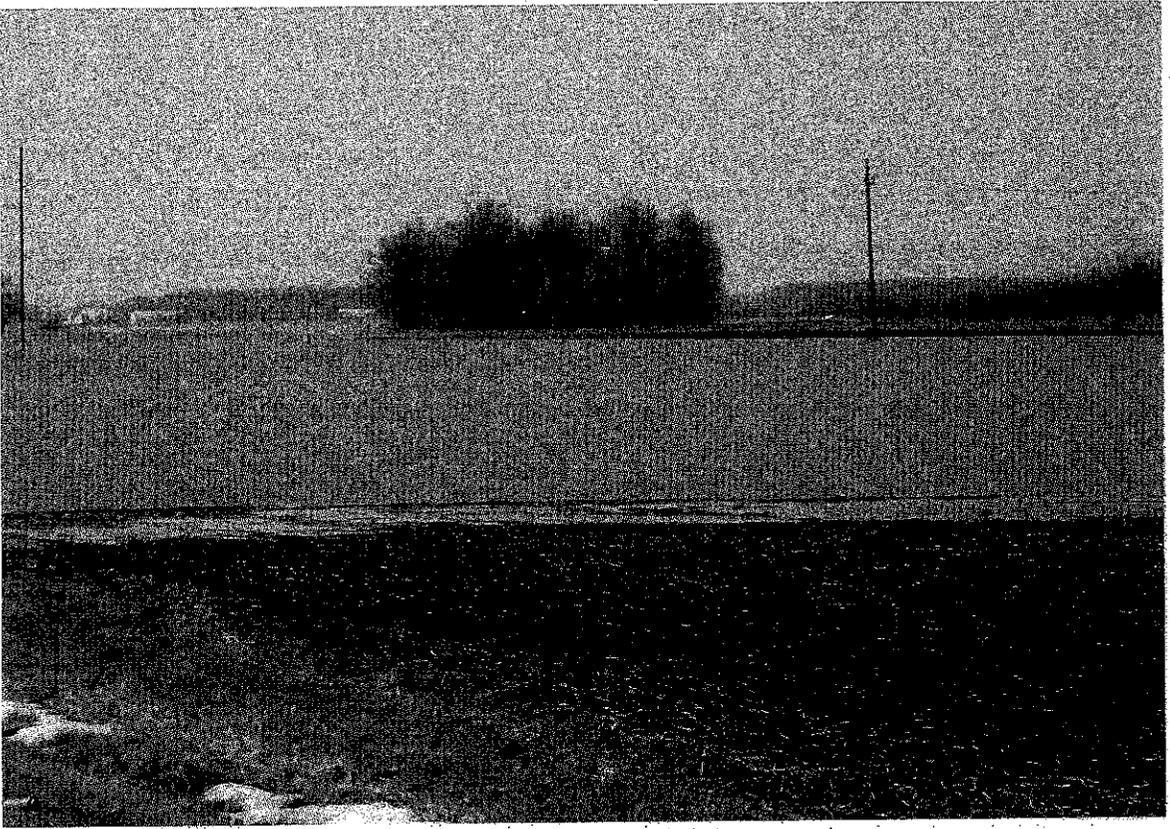
3-1-2011 12 noon

From First foot road  
looking to the west across  
county home property  
notice all the trash & debris

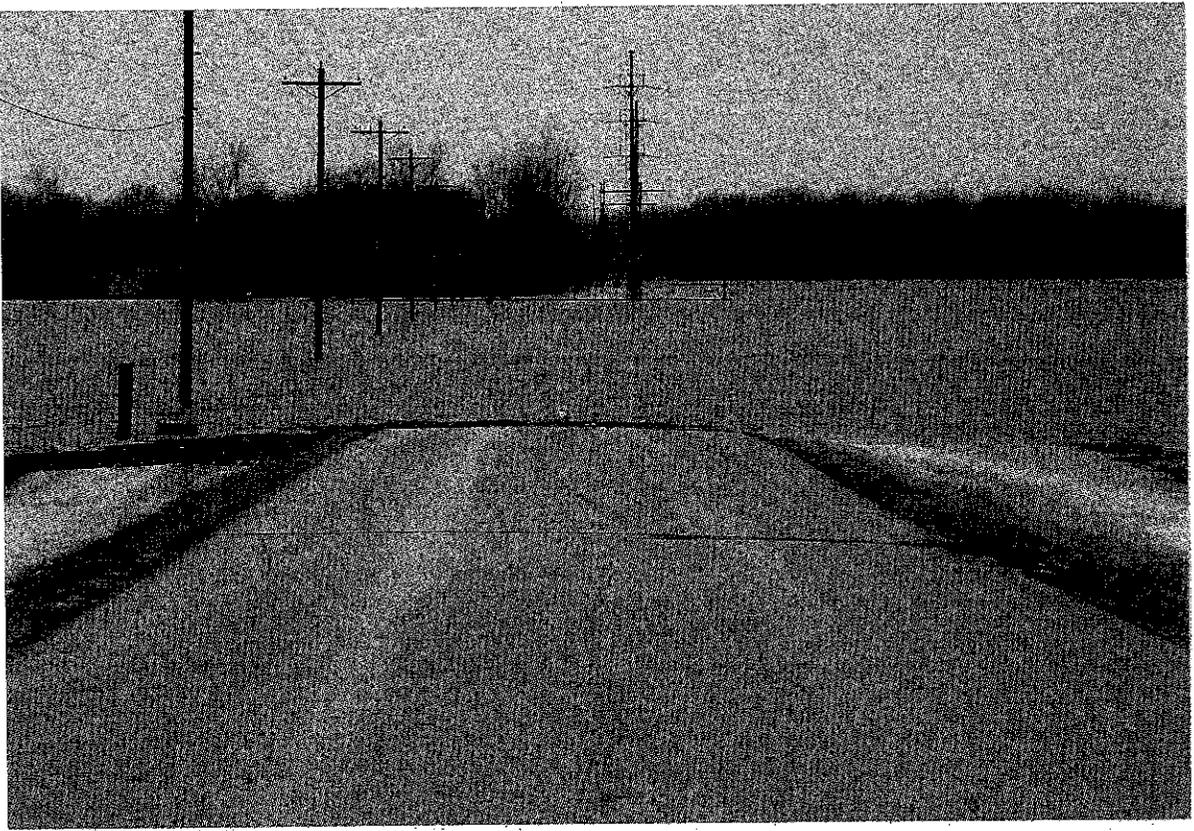


3-1-2011 Brown

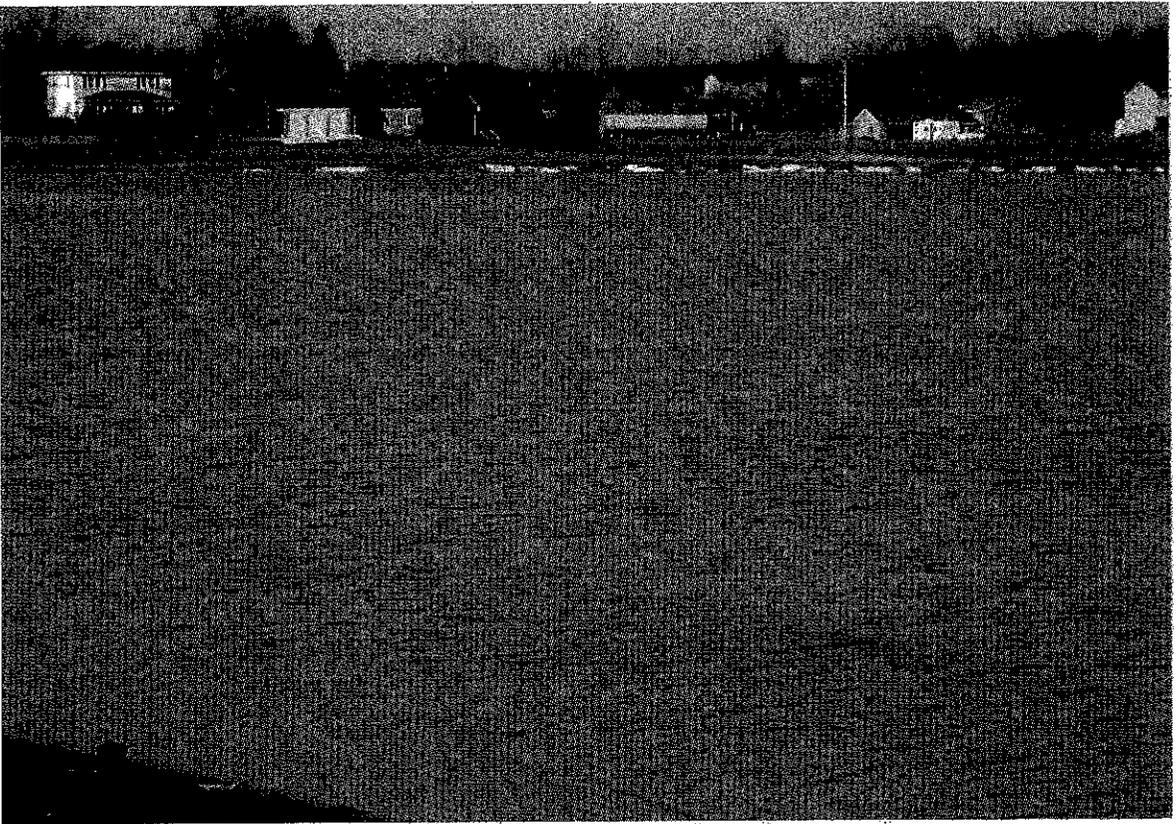
Fleet boat road looking  
east towards parents  
home



3-1-2011 12noon  
Looking towards the  
rear of our property  
from Schuyler road

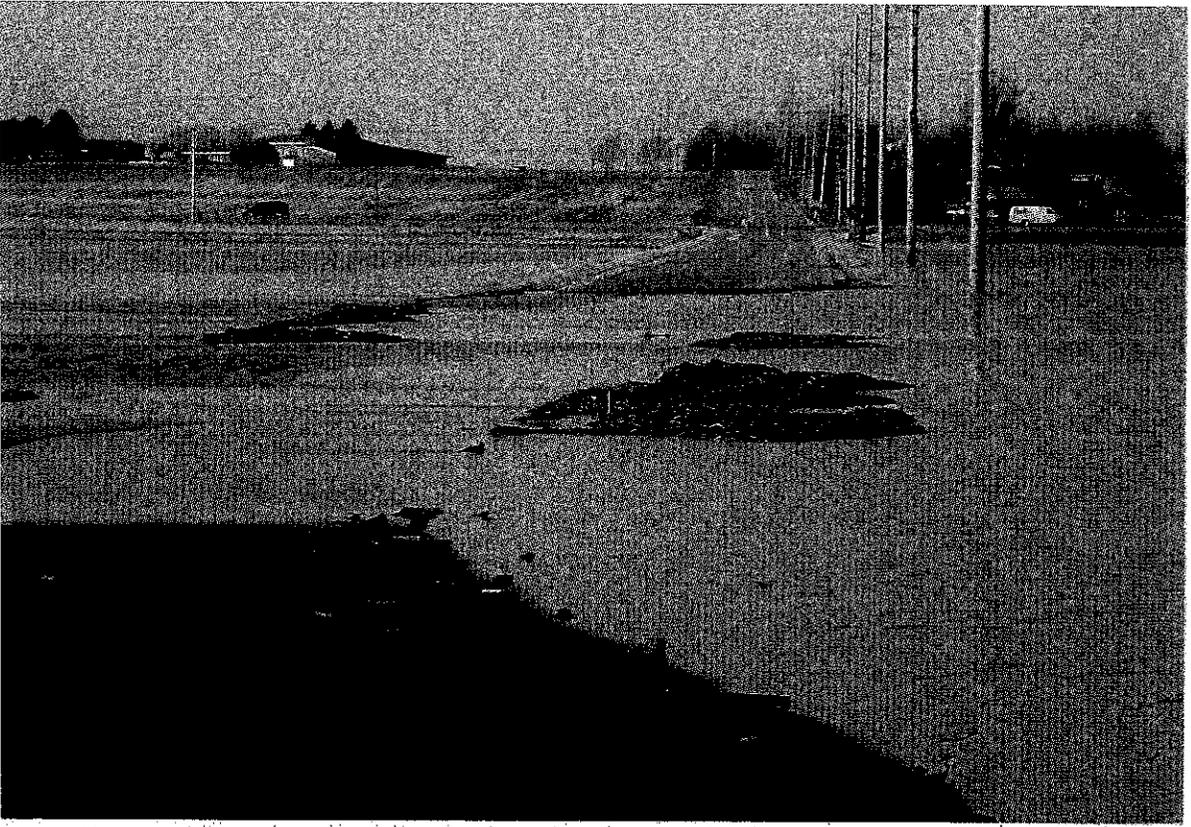


3-1-2011 12 noon  
corner of Schneck and  
Myer roads looking  
towards rear of our  
property



3-1-2011 12:00pm

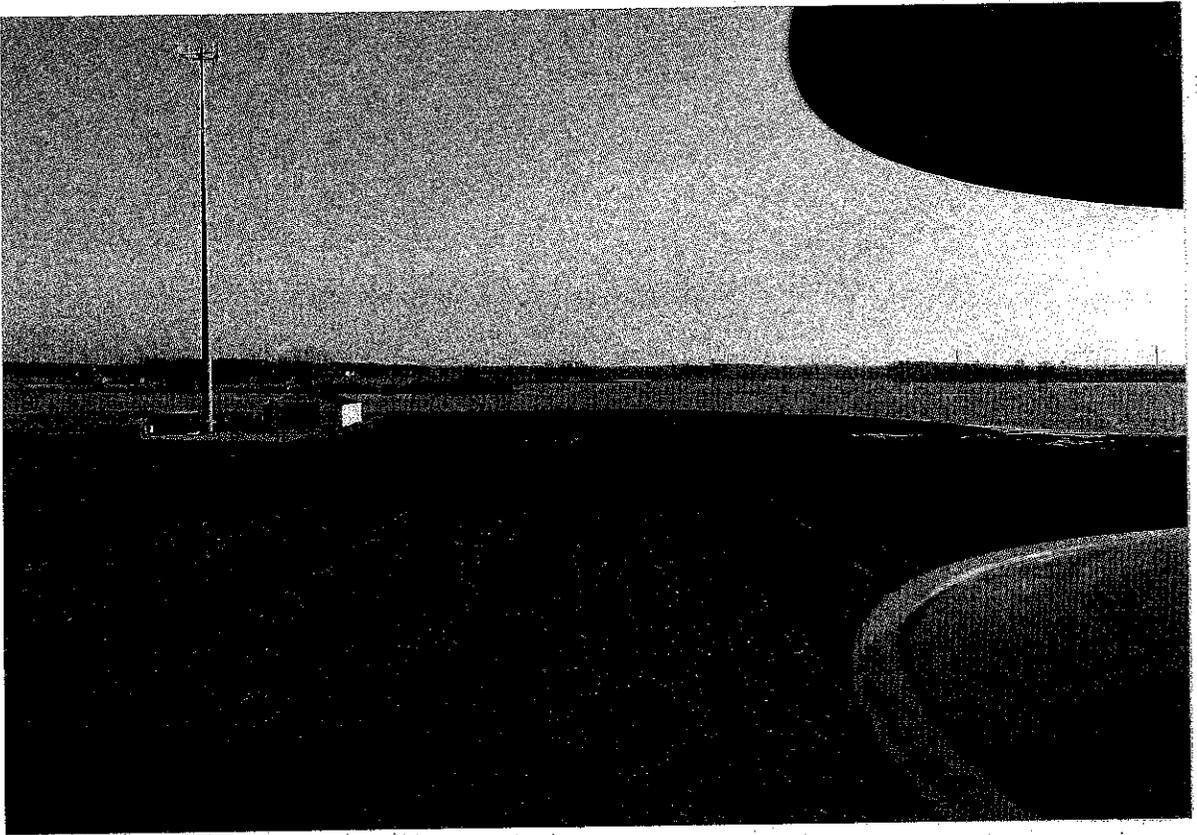
looking towards parents  
home from Photobest  
road across the field  
wheat field



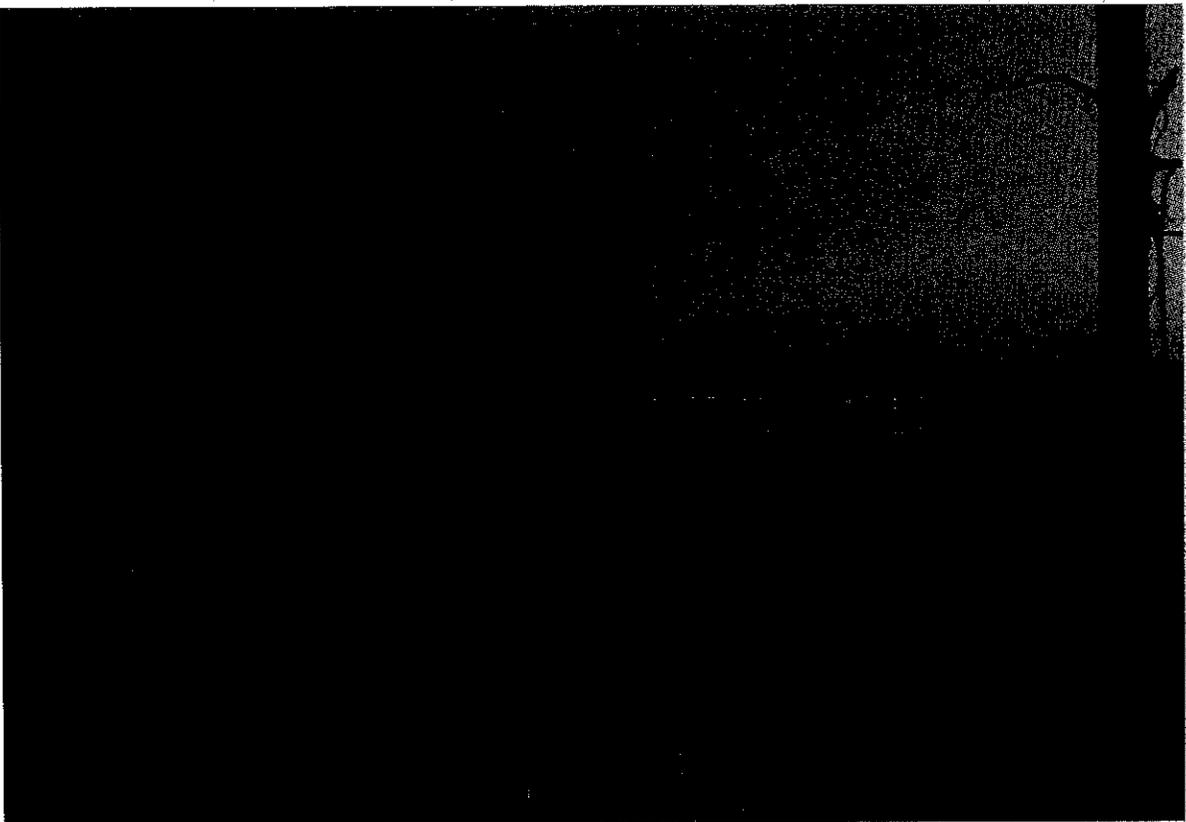
3-1-2011 12 noon  
First foot road Watkins  
north



3-1-2011 ~~12:41~~ 5pm  
Looking towards our  
woods from grain bin



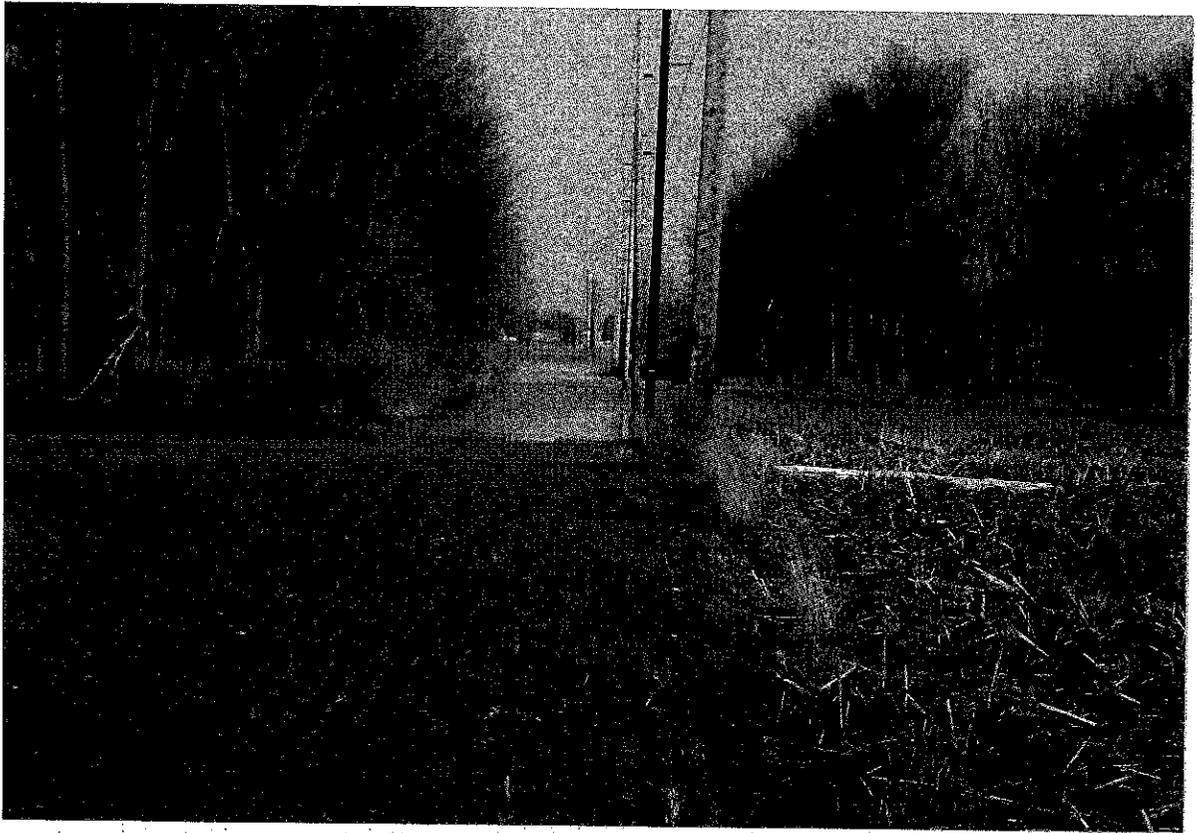
3-1-2011 5pm  
Looking to the south  
of our property from  
grain bin



3-1-2011 6pm

Looking to the south of  
our home & hate

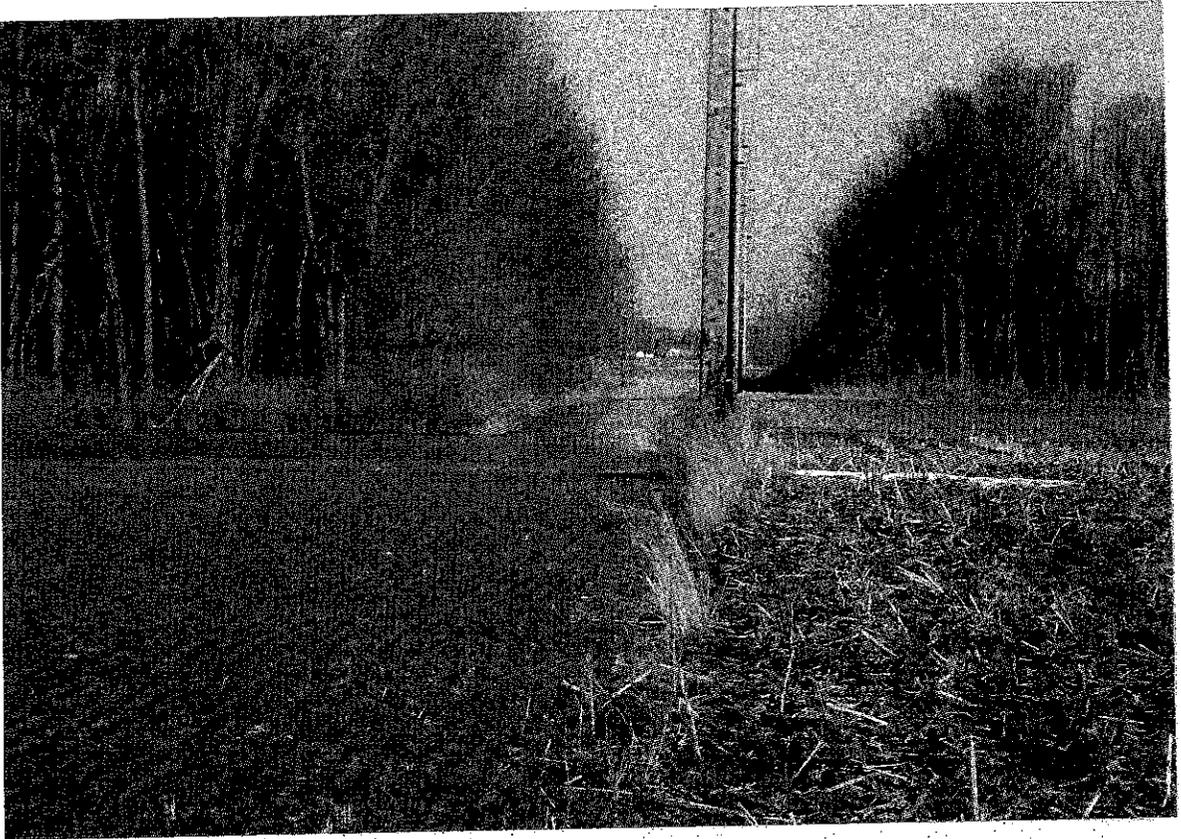
McBristan!



3-1-2011 Noon  
South property line of  
our parents & our property  
from first boat pad



3-1-2014 ~~12 noon~~  
Parents Averted ~ heat  
field looking to the  
north east from Paddock  
road



3-1-2011 12 noon  
South property line of  
parents and our property  
from First foot road

**AFFIDAVIT OF DAVID J. McNEILAN  
EXHIBIT E**



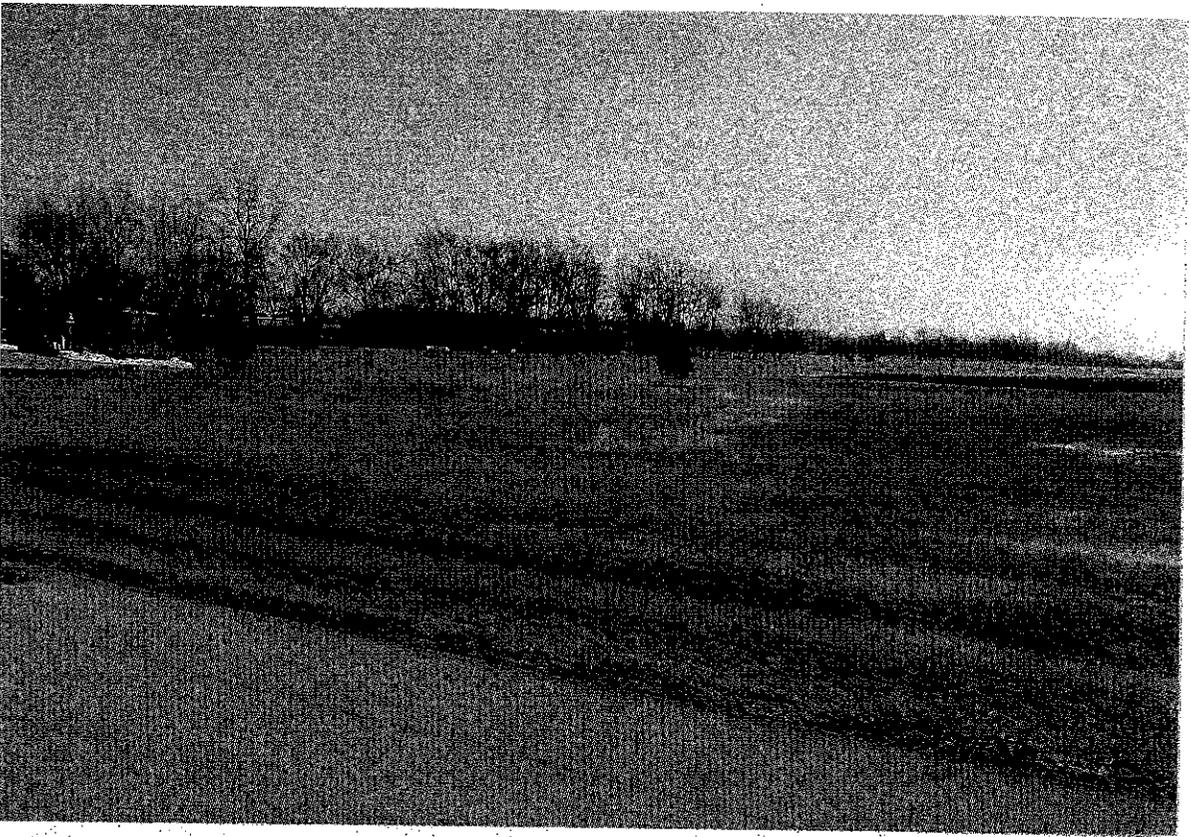
99M 2-28-2011

MIKE ZAMBURSE

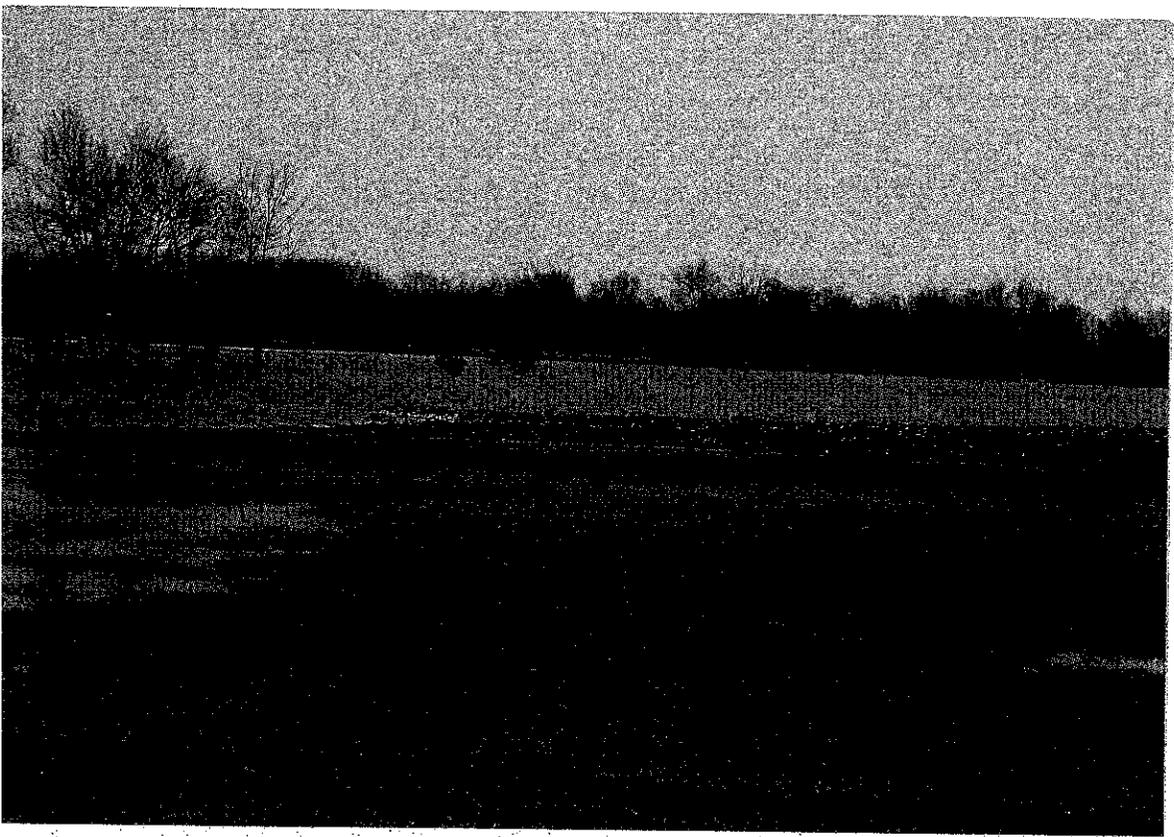
0143302000290 574 <> SAH0208

<> 03/02/11

Exhibit  
E



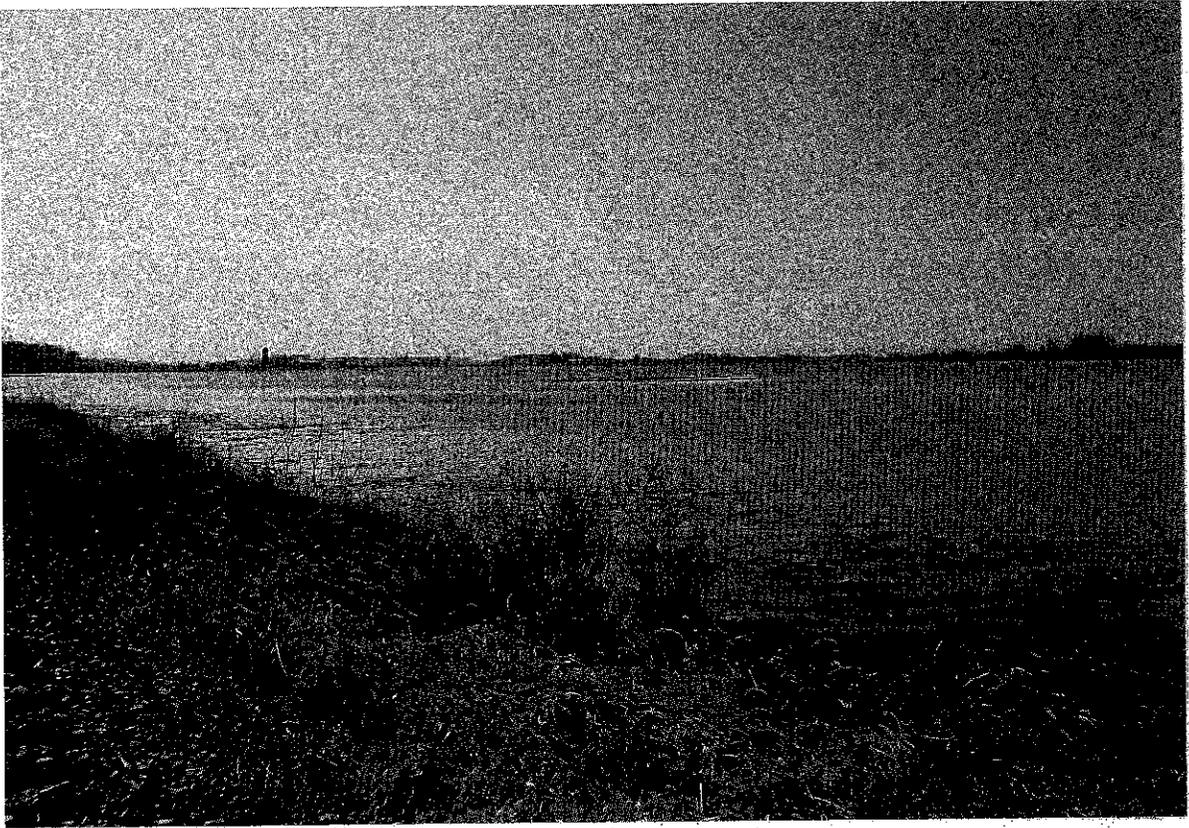
3-1-2011 12 noon  
Behind the home of  
Charly Meier from  
Schmuck Road



3-1-2011 12 noon  
Behind the home of  
Cecily Mcier from  
Schunck road



3-1-2011 12 noon  
Meier and Zumburg  
properties to the east  
from bike path ~~area~~



3-1-2011 Lansen  
Looking at Miller and  
Zam Bursz properties  
to the southwest

**AFFIDAVIT OF DAVID J. McNEILAN  
EXHIBIT F**



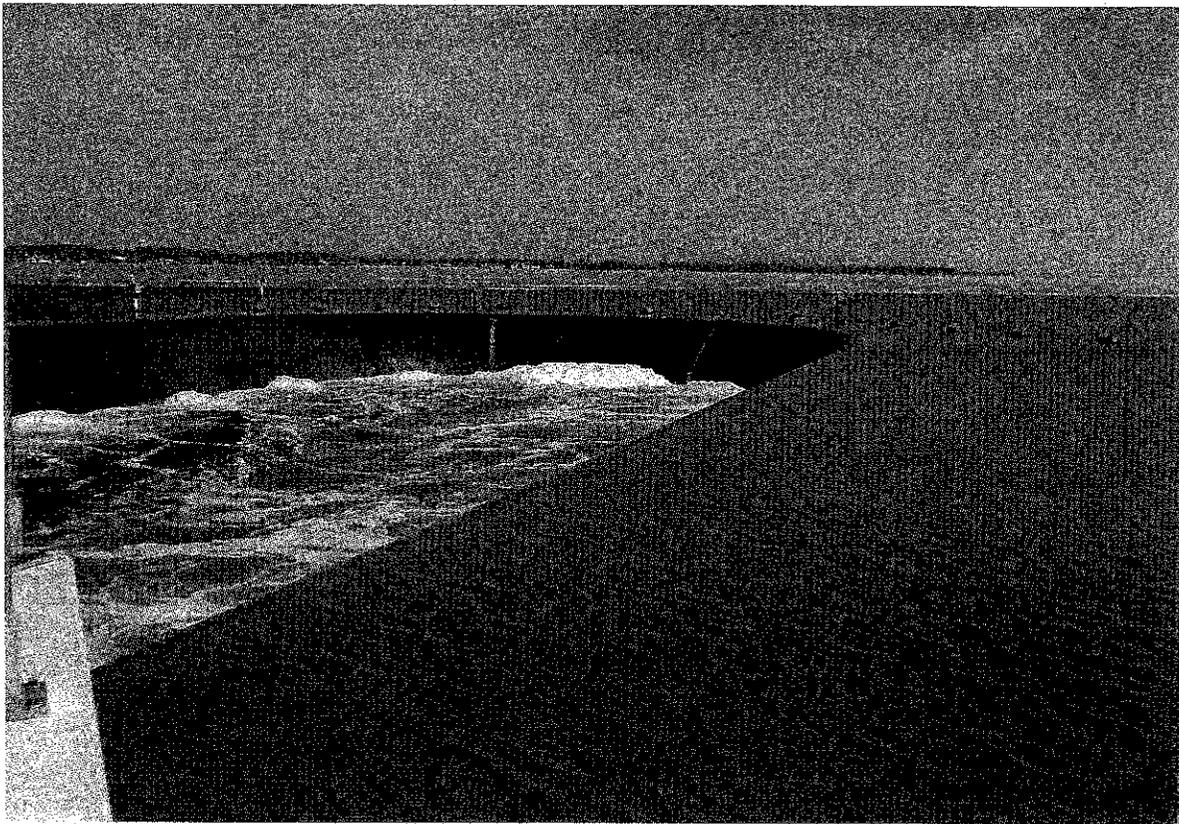
3-1-2011 Brown  
looking to the southwest  
towards Jason Hines  
home from Schunk road

3-1-2011 12 noon

Bike path bricks over  
barr track looking to the  
west towards Mason Hines  
property acrossed Zumburg  
and Mirir properties



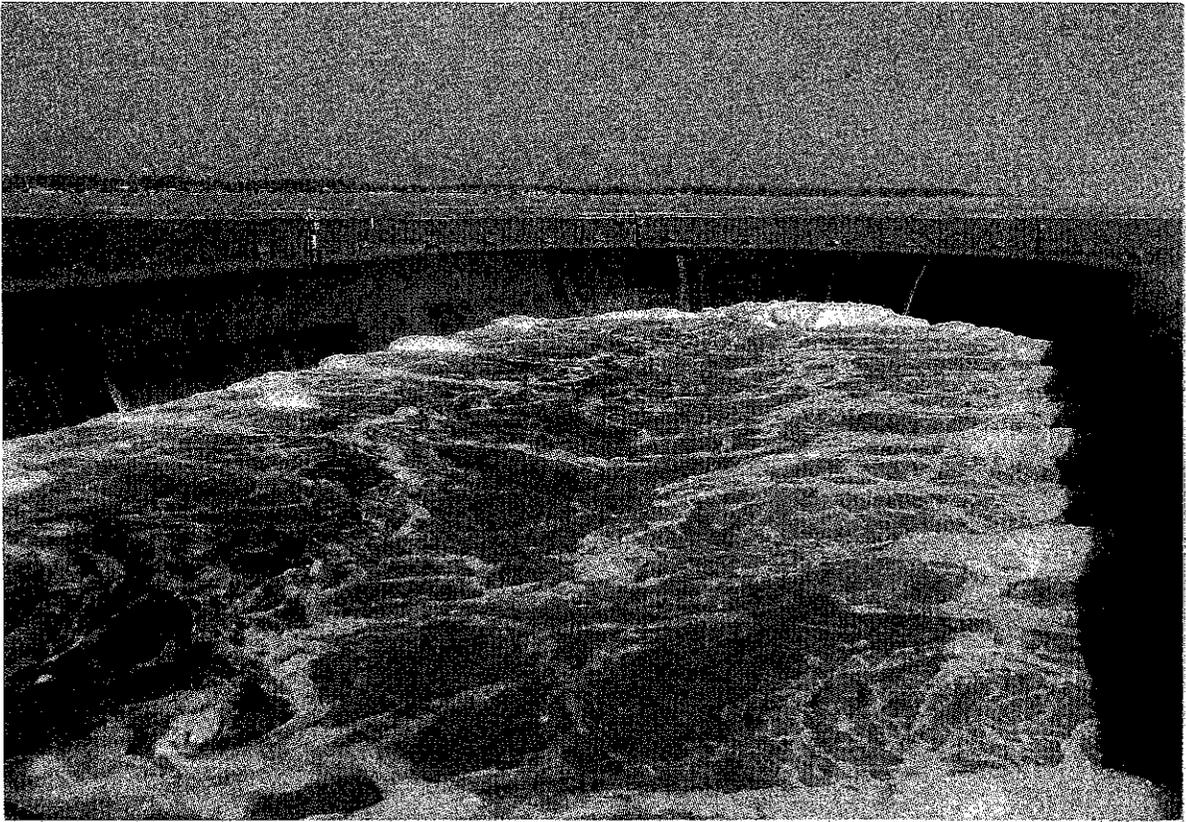
**AFFIDAVIT OF DAVID J. McNEILAN  
EXHIBIT G**



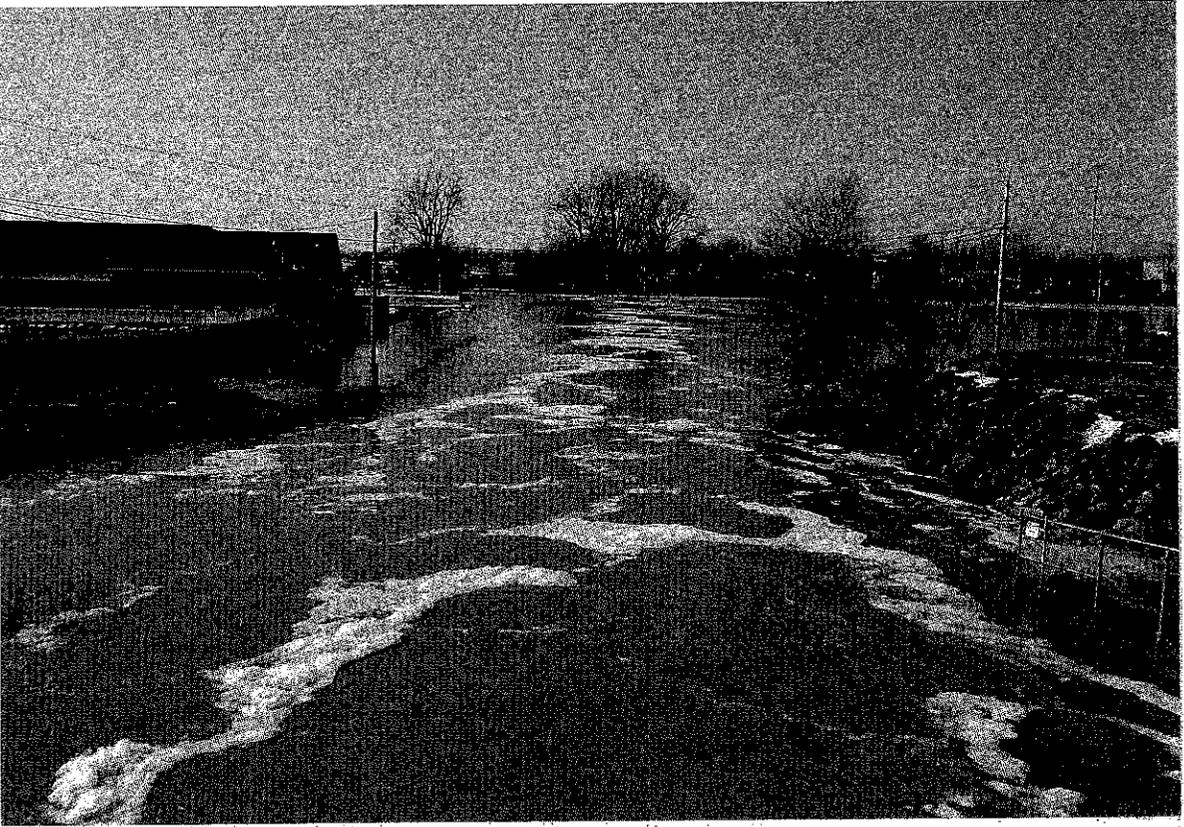
Spill way

3-1-2011 12:00 PM

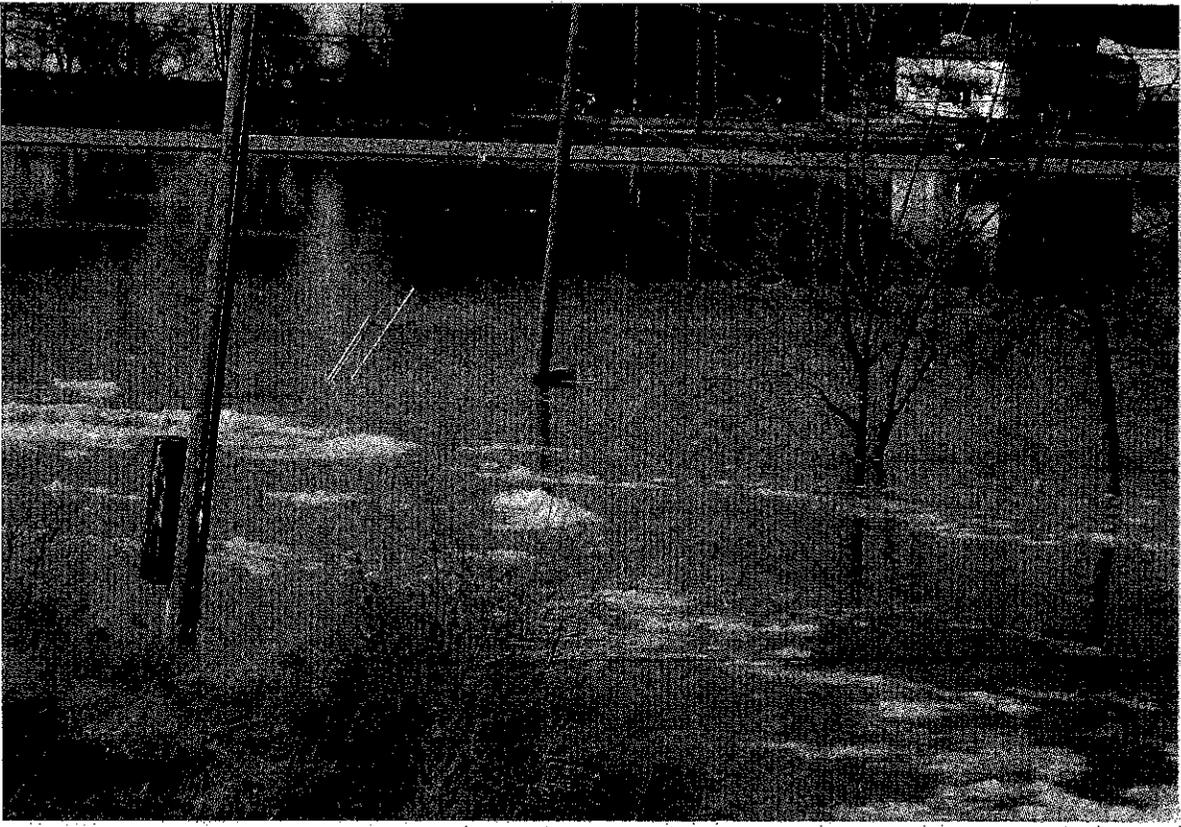
Exhibit  
G



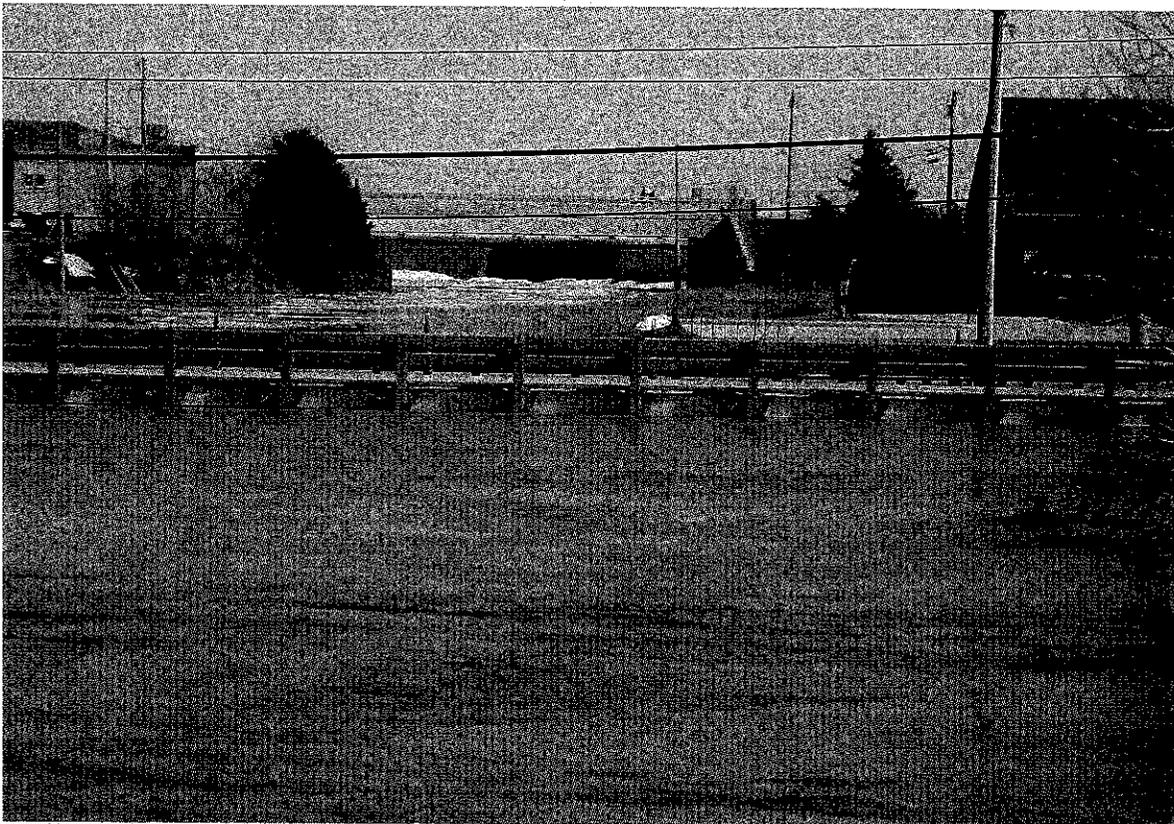
3-1-2011  
Barnes  
Spillway



3-1-2011 12noon  
from the spillway leading  
to the east at US 127  
bridge



3-1-2011 12 noon  
from spillway looking  
towards US 127 to the  
west



3-1-2011 Brown  
Looking to the US127  
bridge and spillway to the  
east from bike path bridge

**AFFIDAVIT OF DAVID J. McNEILAN  
EXHIBIT H**



3-3-2011 6pm  
East side of creek  
Looking to the south

Exhibit  
H

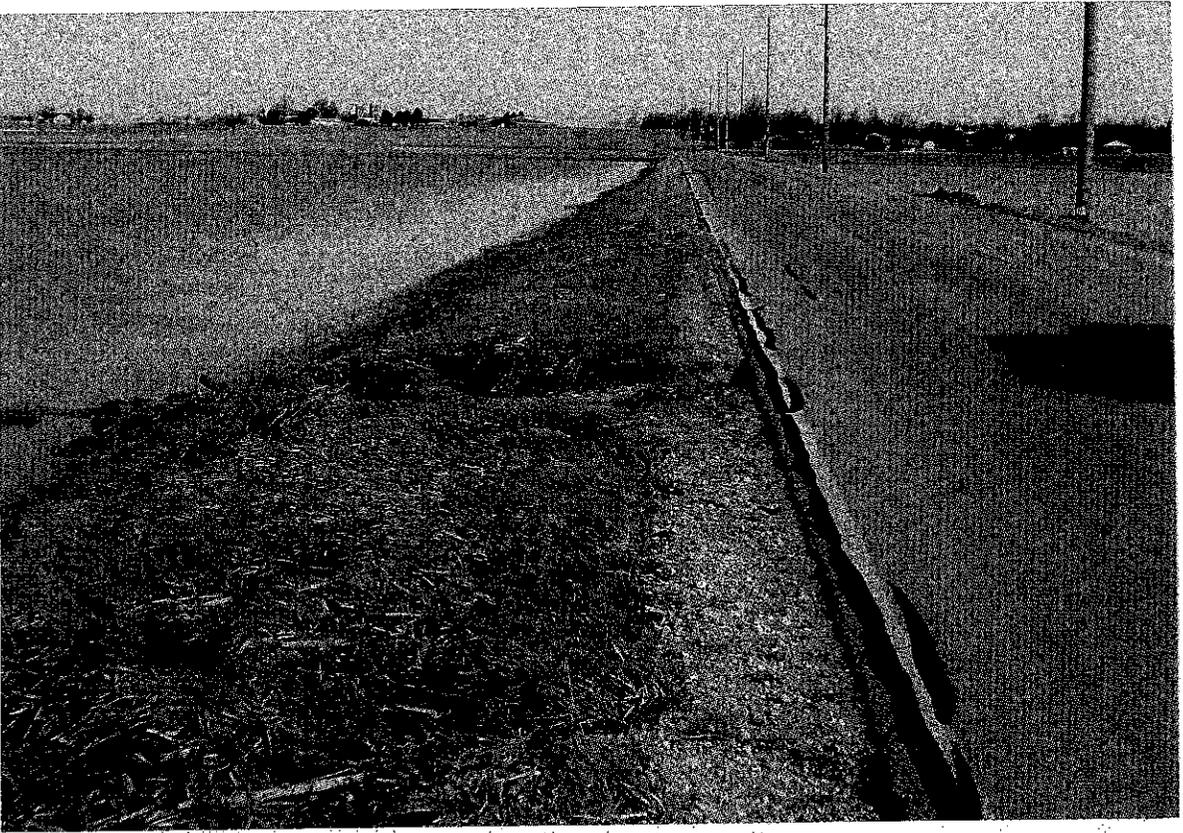


3-3-2011 4pm  
in front of our woods  
looking towards old  
bridge over Beaver creek



3-3-2011 6pm

Looking to the west  
in front of our woods



3-3-2011 10am

First foot road from

dam looking to the

west



3-3-2011 10AM

Plant foot road berm  
damage



3-3-2011 6pm

Looking south down

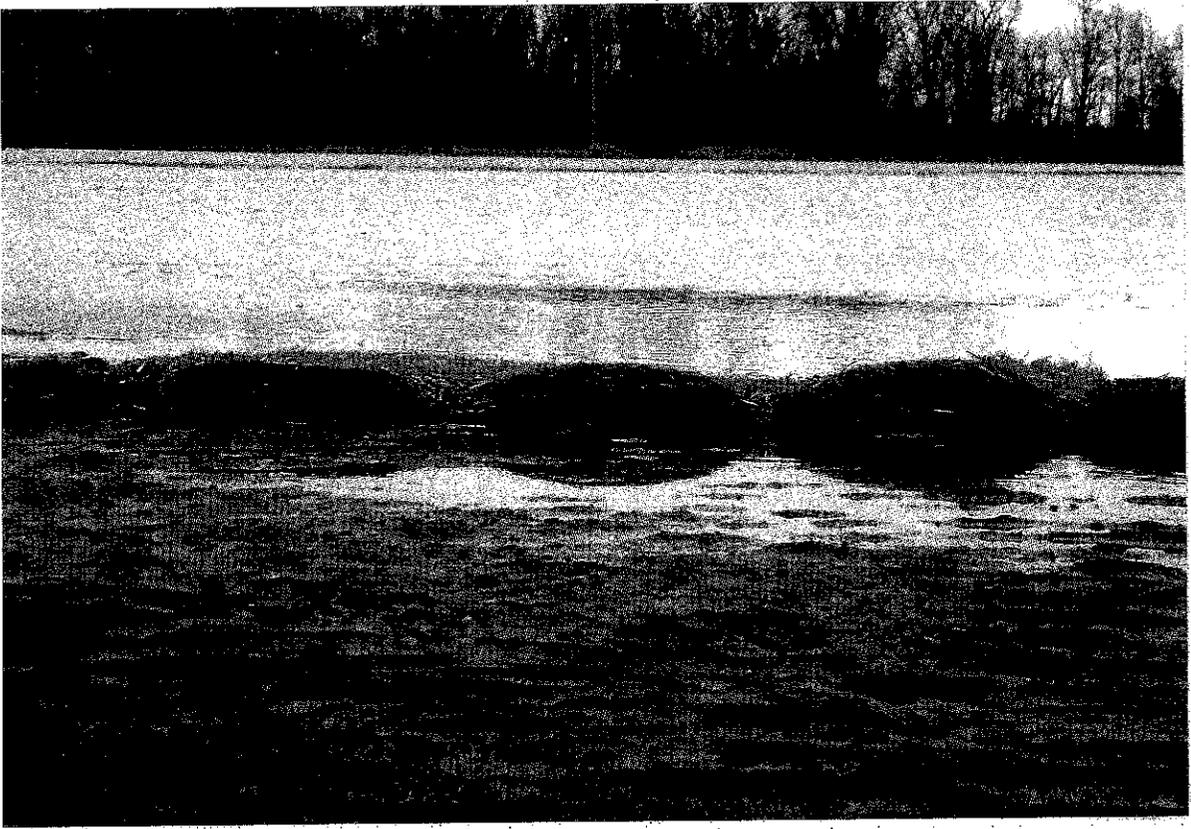
the water way as

water starts to go

down



3-3-2011 4pm  
north side of our  
woods as the water goes  
down



3-3-2011 6pm  
trash bins left as  
water goes down

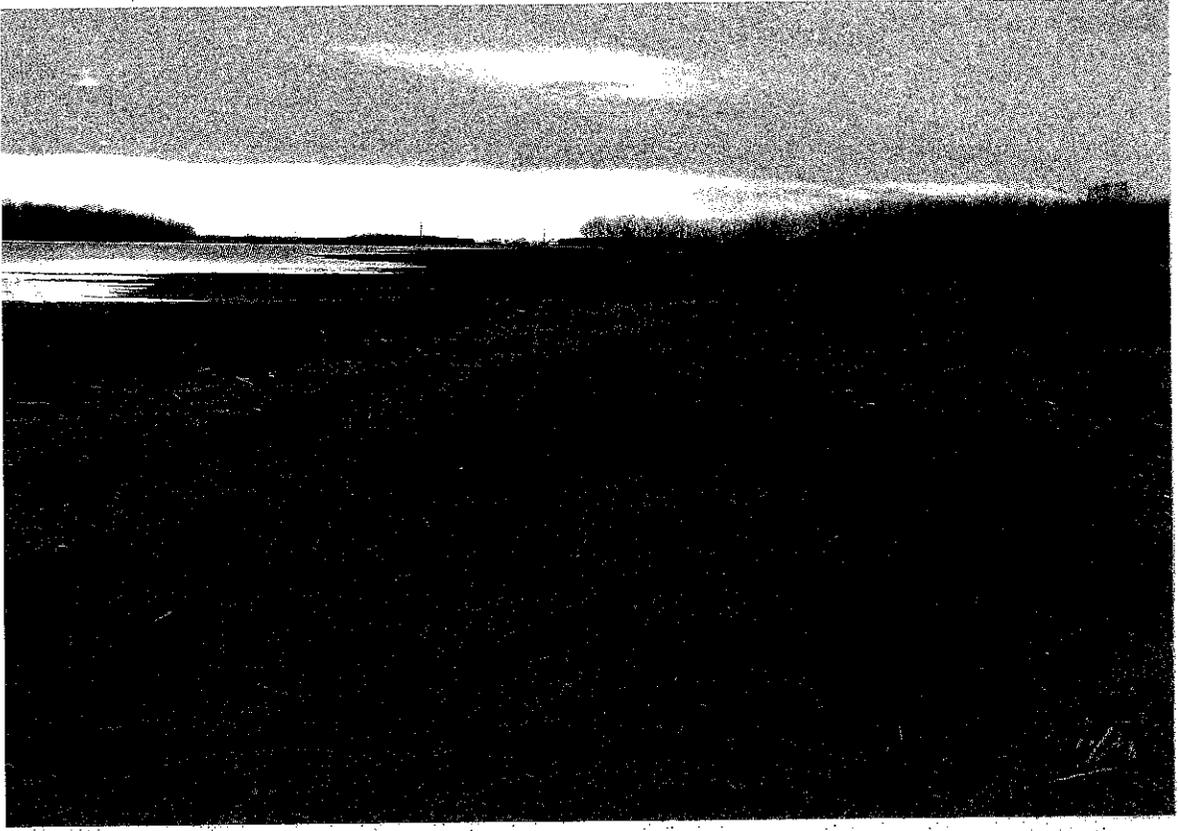


3-3-2011 4pm

trash & debris bins  
left behind

ASAP

o



3-3-2011 6pm

MORT TRB5# and

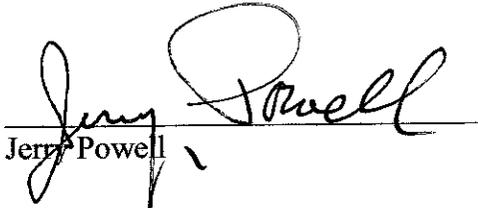
Debris 111  
000

# EXHIBIT 8

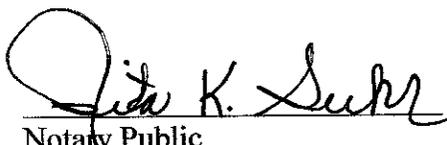


6. The handwriting adjacent to all of the photographs is that of my wife, Betty Powell, also a relator in this lawsuit.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
Jerry Powell

Sworn in my presence and subscribed before me this 17th day of March, 2011.

  
Notary Public

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

**AFFIDAVIT OF JERRY W. POWELL**

**EXHIBIT A**

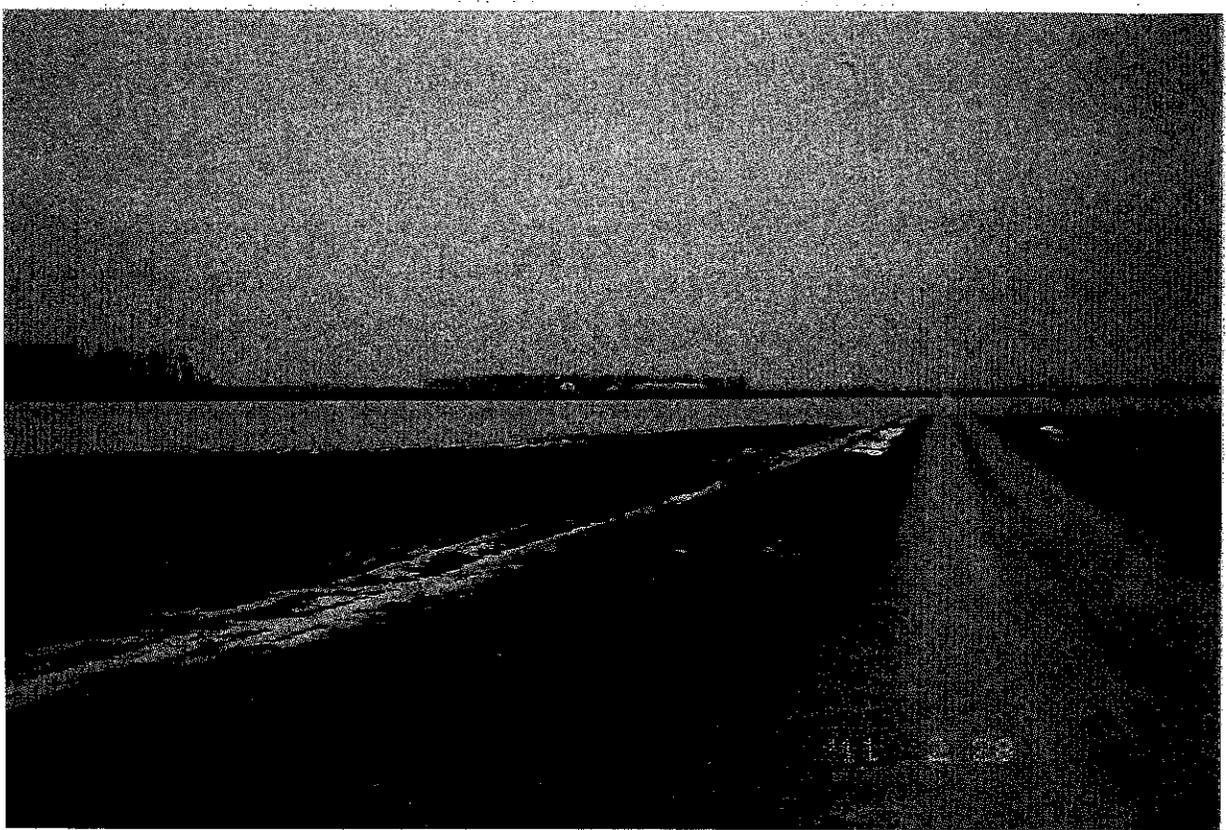


6

Stein Farm

Taken at corner of Minch Rd.  
and 49 looking southwest

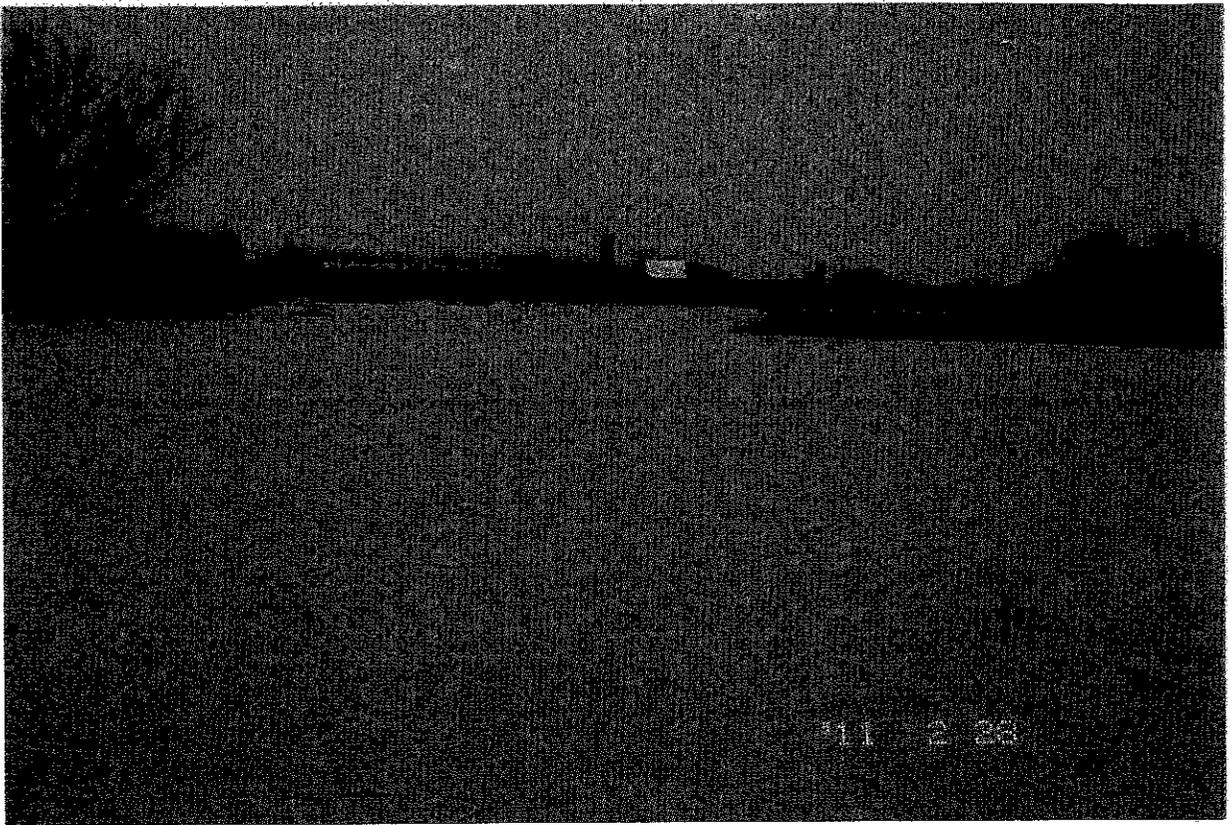
Exhibit  
A



7

Stein Farm

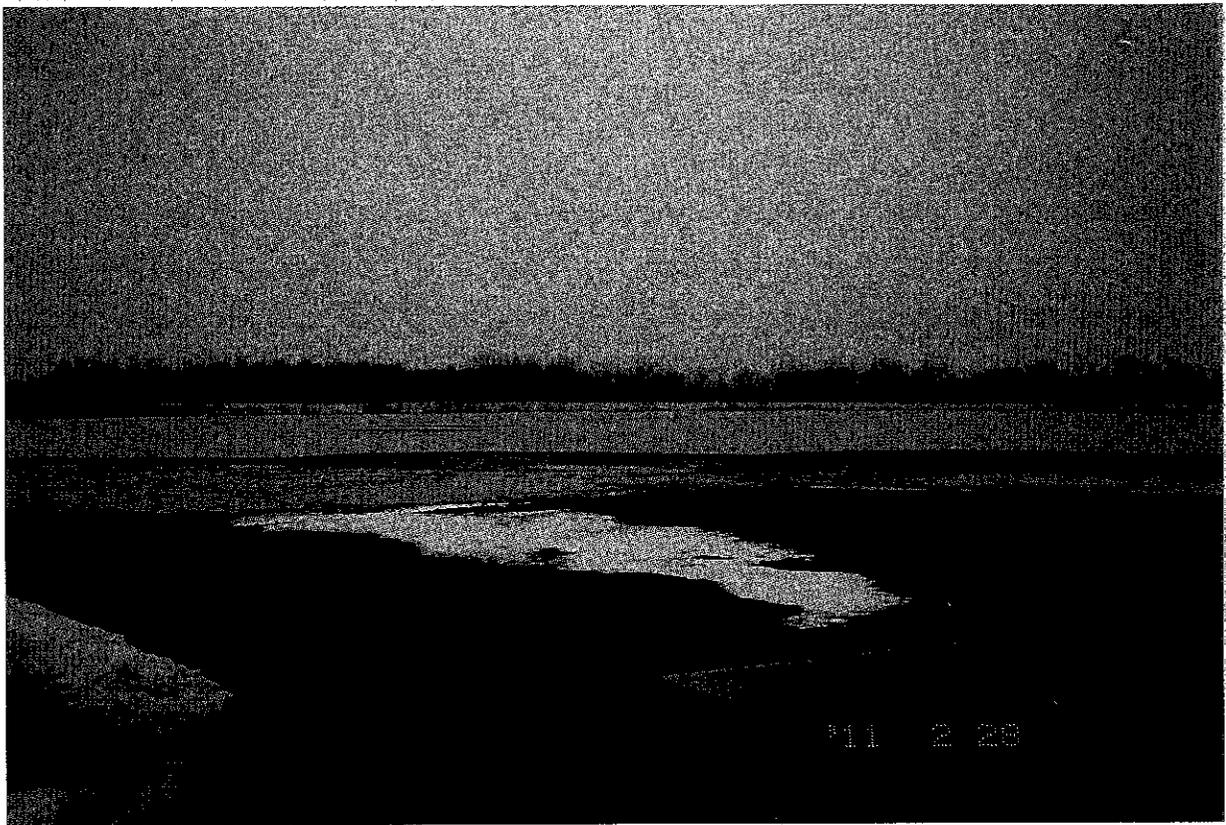
Taken off Minch Rd looking west



8

Stein Farm

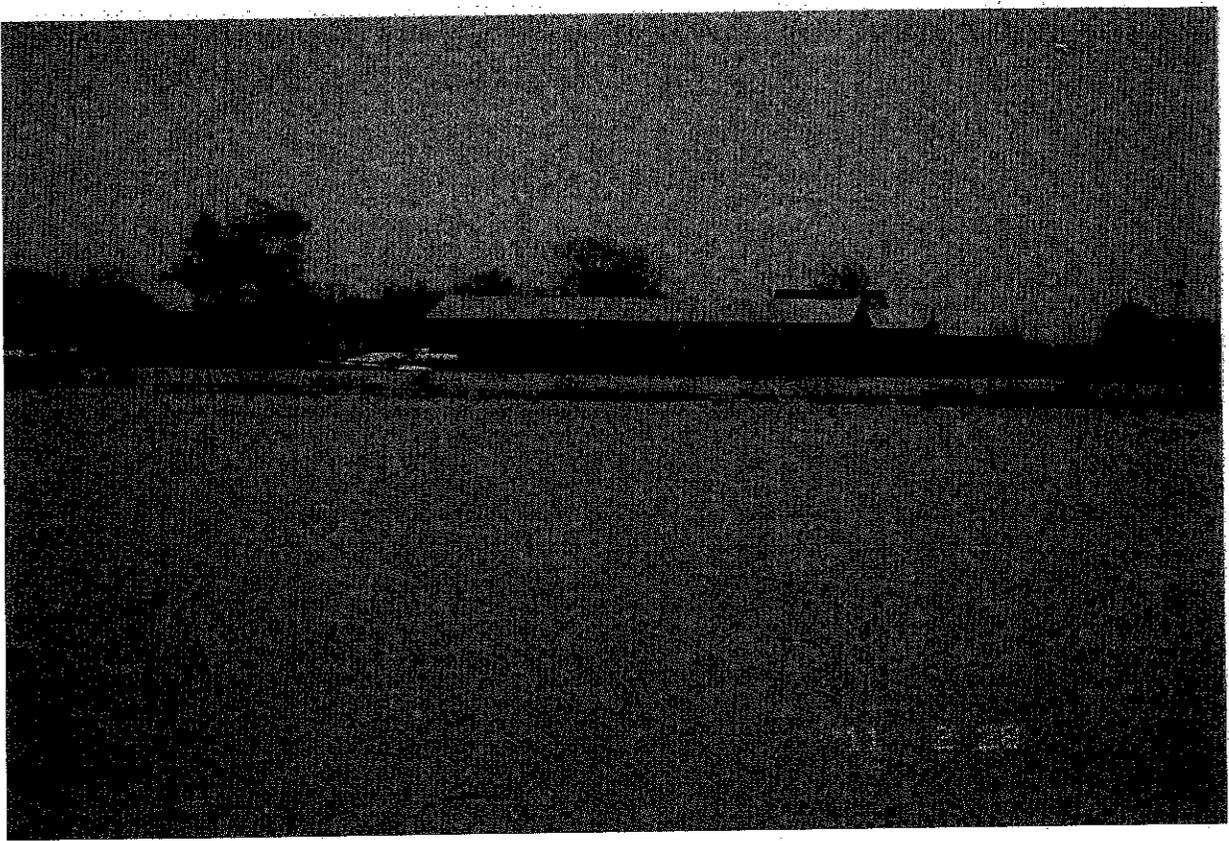
Taken off Minch Rd looking South



9

Stein Farm

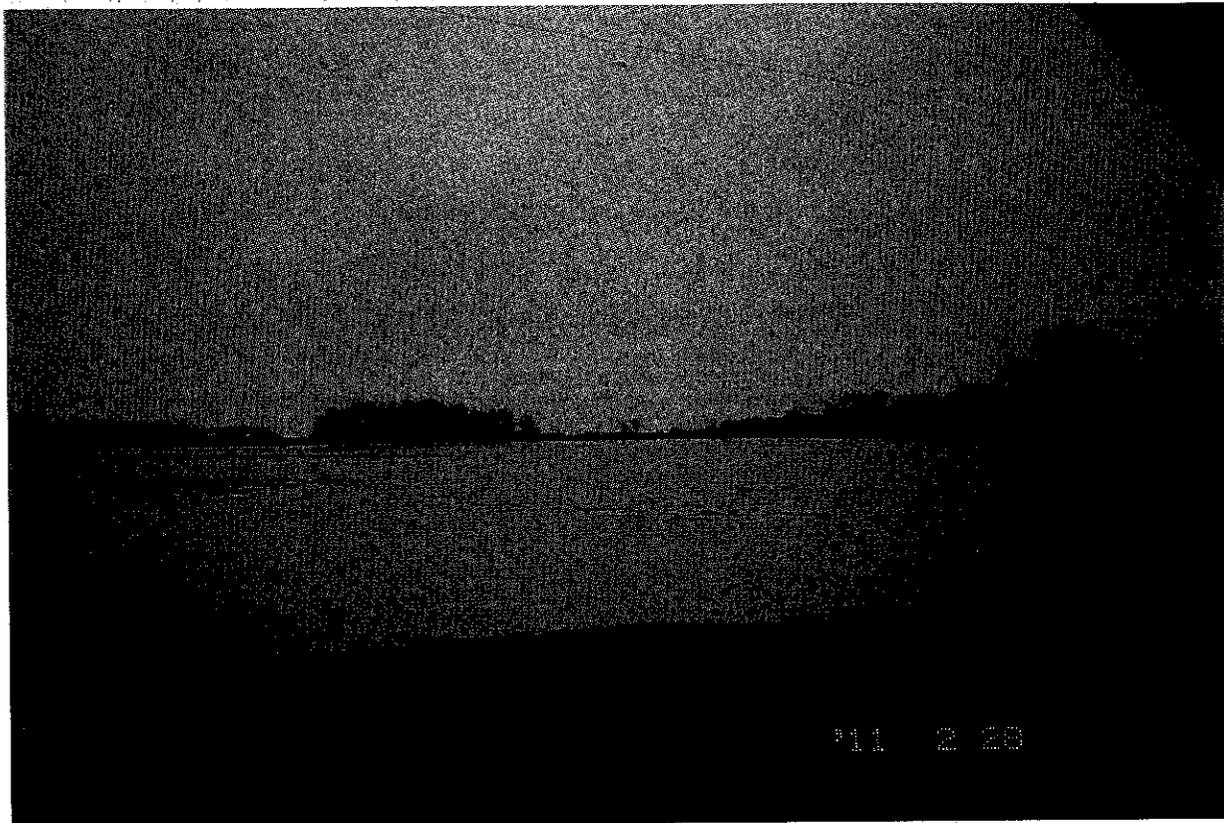
Taken in Tom Powell's barn yard  
looking North



10

STEIN FARM

Taken from Minch Rd  
looking south

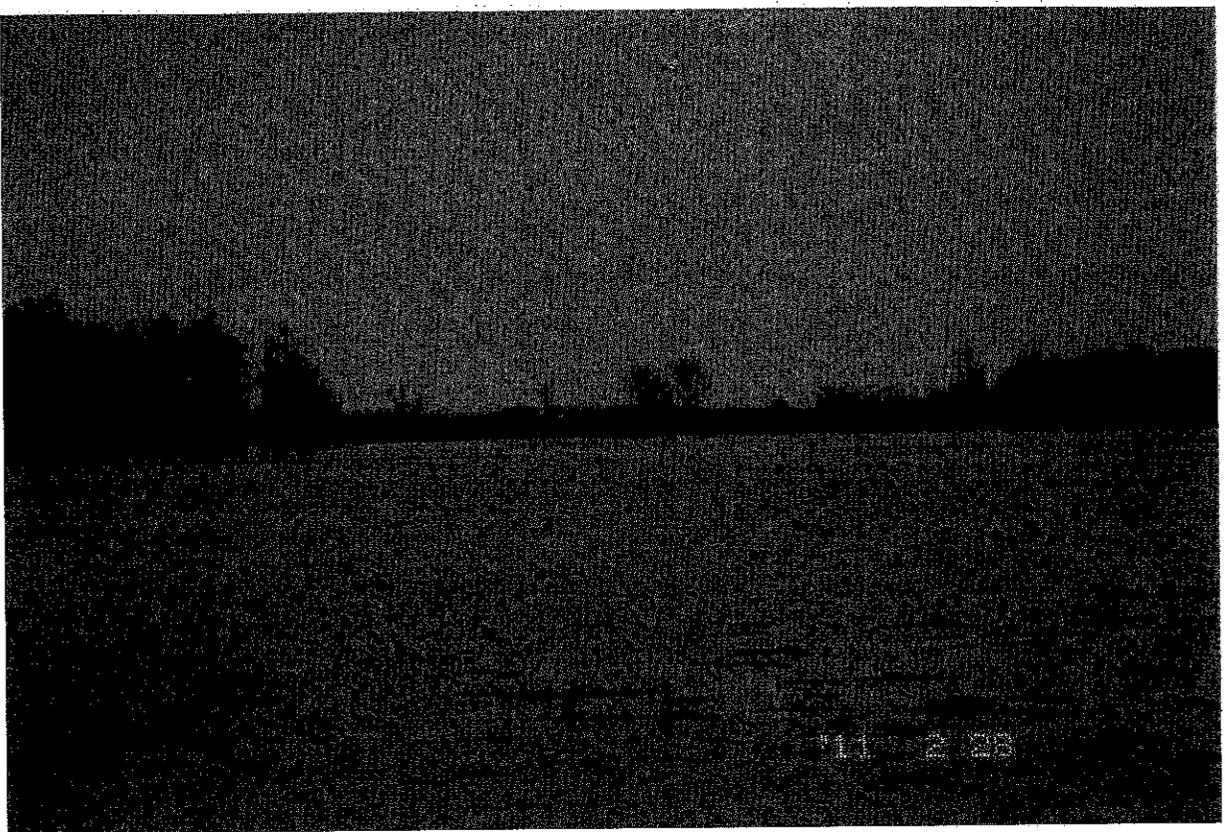


11 2 28

3

Jerry & Betty Powell  
160 Acre Farm

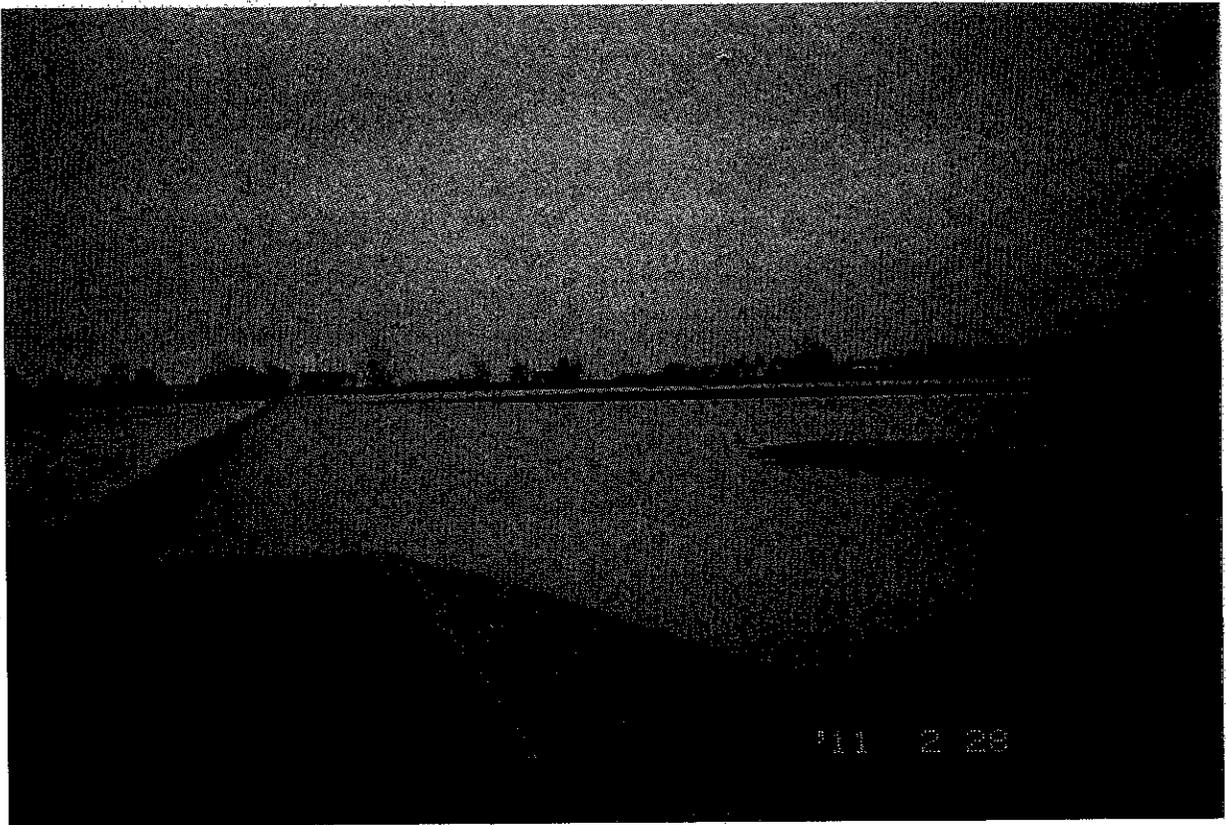
Taken off St Anthony Rd.  
looking northeast



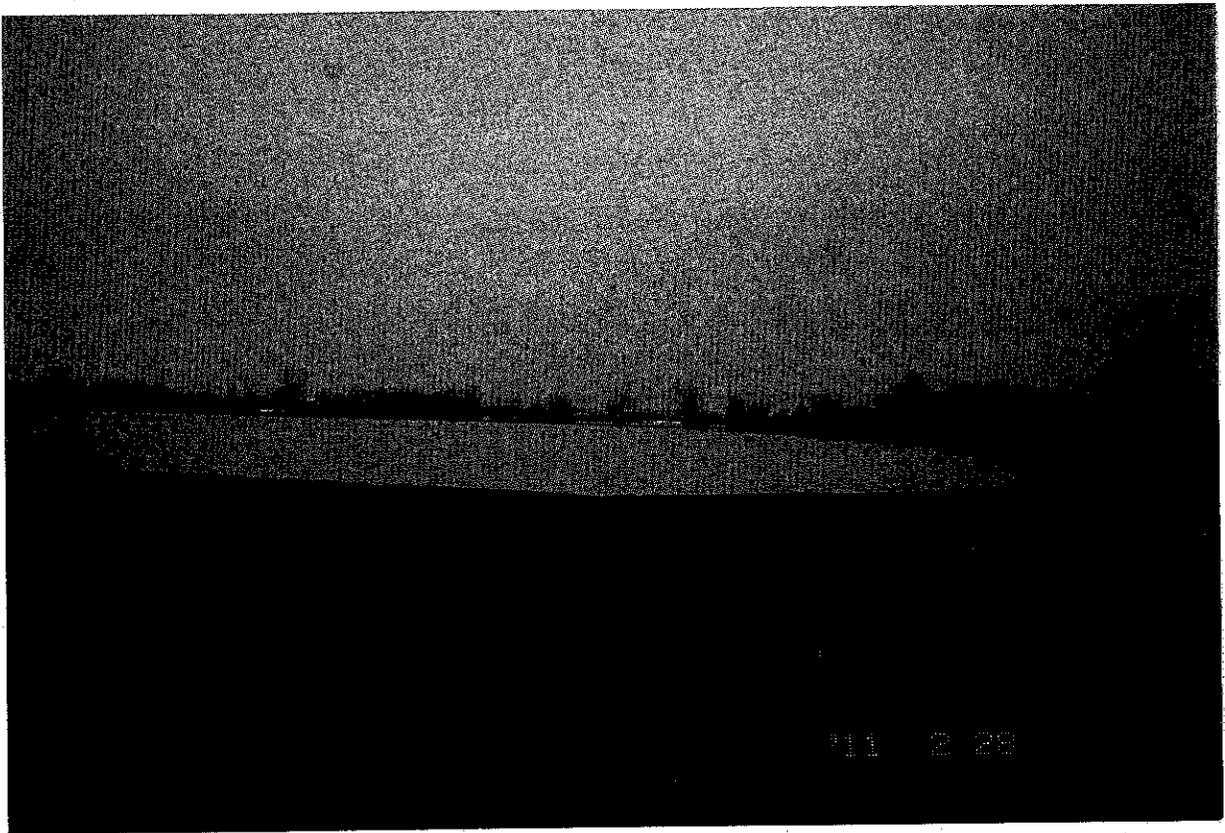
4

Jerry + Betty Powell  
160 Acre Farm

Taken off ST Anthony Rd.  
with Telescope lens  
same as No 3  
place



⑤ \* Jerry + Betty Powell  
70 ~~70~~ Acre Farm  
Taken off S Pine Rd.



2

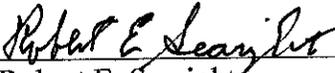
Jerry + Betty Powell  
70 Acre Farm  
taken From Barnyard looking North

## EXHIBIT 9



Searight, also a relator in this matter.

**FURTHER AFFIANT SAYETH NAUGHT.**

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

Sworn to before me and subscribed in my presence this 17<sup>th</sup> day of March, 2011.

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

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

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



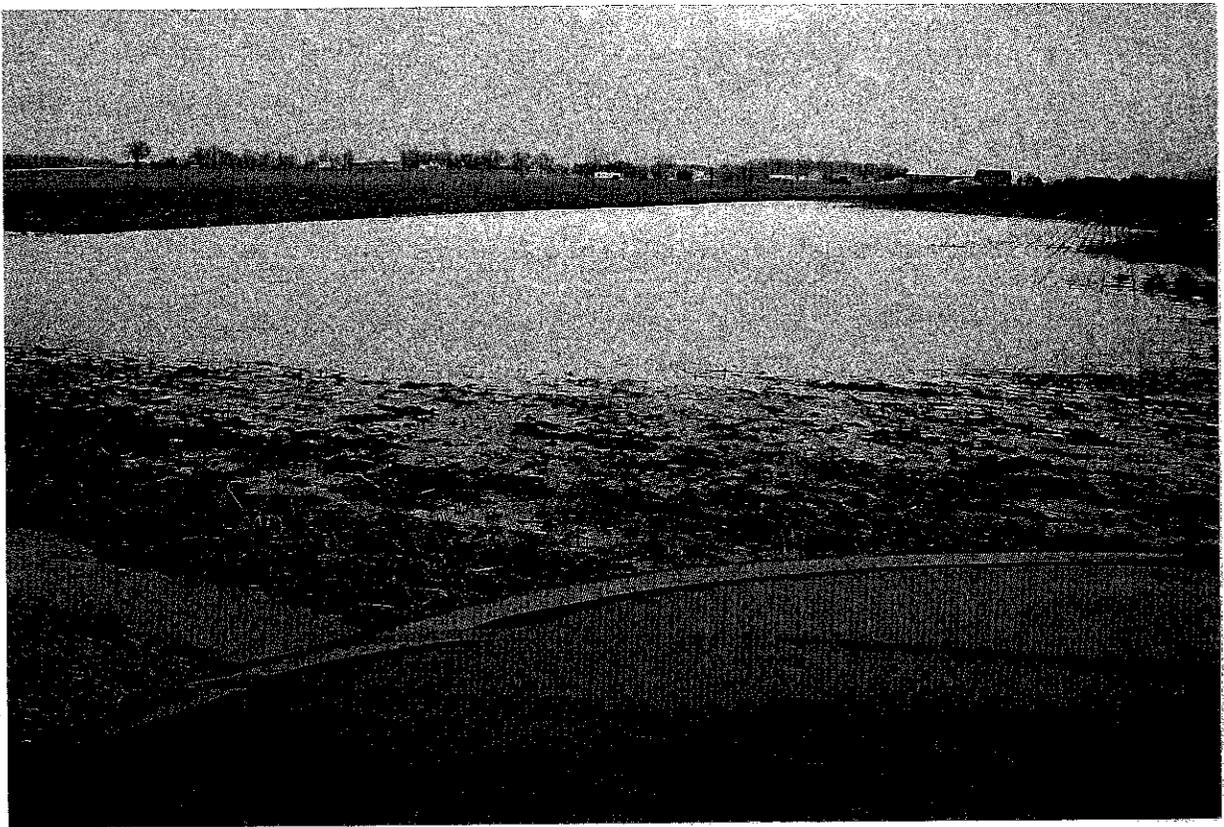
Mud Flats looking South-West

Robert Seafort

Date: Feb. 28

Time: 5: P.M.

Exhibit  
A



Mud flat looking South

Robert Seavright

Date: Feb. 28, 2011

Time: 5:00 P.M.



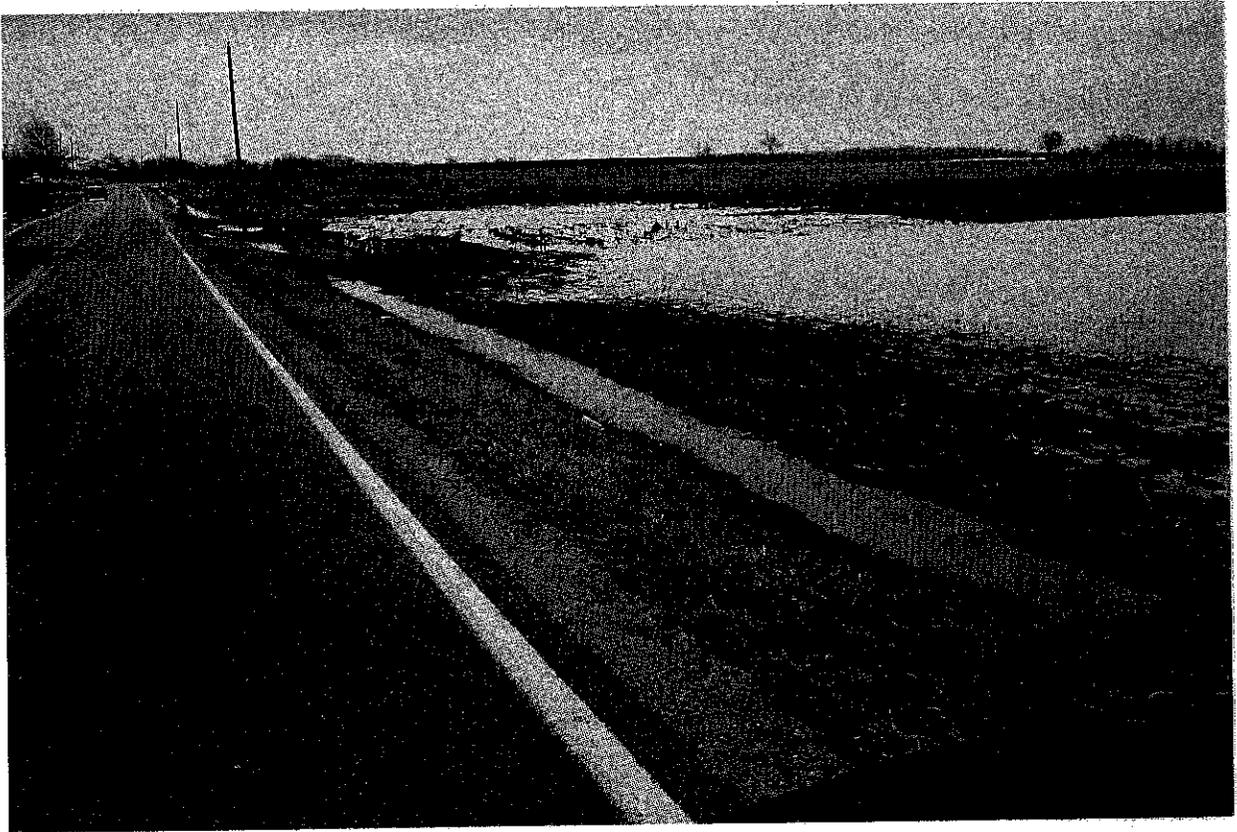
Robert Seangit

Mud Pile - Trash on Road

Feb. 28 - 5:00 P.M.

2011

\* After snow plow work there on  
South Side



Robert Seariff

From Mud Lake looking

South-east - 5:00 P.M.  
east

Date: Feb. 28, 1904



Mud Lake looking South-west

Quab. Seawall

Time: 5:00 P.M.

Date: Feb 28, 2011



Hellewath Road  
looking West

Time: 5:00 P.M.

Date: Feb. 28

Robert Seay III



Hellwath Rd. looking west  
Robert Seavight  
Date: Feb-28  
Time: 5:00 P.M.



Hellworth Rd. - Looking west  
Robert Seung  
Date: Feb-28  
Time: 5:00 P.M.

# EXHIBIT 10

**AFFIDAVIT OF JEFF A. SIEFRING**

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF MERCER            )

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

1. I am a Relator in this mandamus action against Respondent Sean D. Logan, Director, Ohio Department of Natural Resources (“ODNR”).

2. Specifically, I own real estate described as Mercer County Parcel Numbers 26-044100.0200, 26-044100.0100, 26-044100.0300, and 26-044100.0000.

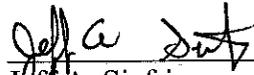
3. Starting February 28, 2011, the western spillway of Grand Lake St. Marys and current lake level management practices again caused severe flooding downstream of the western spillway along the Beaver Creek and causing its tributaries to back up and flood three of my properties, specifically Mercer County Parcel Numbers 26-044100.0200, 26-044100.0100, and 26-044100.0000.

4. This flooding was more severe in acreage than in July 2003. For the first time Mercer County Parcel Number 26-044100.0000 flooded. That flooding entered my livestock buildings forcing me to move my livestock. To my knowledge, Mercer County Parcel Number 26-044100.0000 never flooded prior to 1997.

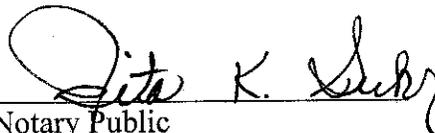
5. I attach as Exhibit A a DVD-R of true and accurate videos I took on February 28, 2011 showing the flooding of Mercer County Parcel Numbers 26-044100.0200, 26-044100.0100, and 26-044100.0000. Because I first had to save my livestock from the flooding, the flooding I

videotaped does not show the peak of the flooding, but was taken after the floodwaters receded  
some on Mercer County Parcel Number 26-044100.0000.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
Jeff A. Siefring

Sworn in my presence and subscribed before me this 17th day of March, 2011.

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

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

**AFFIDAVIT OF JEFF A. SIEFRING**  
**EXHIBIT A**

**ATTACHMENT NOT SCANNED**