

1 Today's date is Wednesday, July 7, 2004

2 (Witness sworn.)

3 MS. AZAR: Lauren Azar for Michael, Best &  
4 Friedrich on behalf of plaintiff, James Hausman.

5 MR. WRIGHT: Joseph Wright on behalf of  
6 defendant, Sawyer County.

7 MS. SCHWAB: Hillary Schwab.

8 THE WITNESS: Frank Dallam, WDNR.

9 MS. AZAR: In addition to myself, Mr. James  
10 Hausman is here and Nancy Dent from Bar ^ sp  
11 Engineering on behalf of Mr. Hausman.

12 BY MS. AZAR:

13 Q. Good morning, Frank.

14 A. Good morning.

15 Q. As we go through today, I'm going to give you some  
16 instructions so that we're all working on the same  
17 page.

18 If I ask you a question and you don't  
19 understand it, please stop me and make sure that you  
20 understand the question. I want to make sure that all  
21 of your answers accurately reflect the question that  
22 has been asked.

23 Don't guess an answer unless I ask you to  
24 guess. If you're having to guess about something,  
25 please let me know that so the record clearly reflects

1 that you're guessing.

2 Ensure that all answers are verbal. She  
3 needs to write down everything so, we have a tendency  
4 to nod and shake our heads which doesn't work. I do  
5 the same thing. So let's watch each other and make  
6 sure that she needs to record everything that happens.  
7 It's also difficult for the court reporter if we speak  
8 over each other. So speak when the other one is not  
9 speaking.

10 In this case, there's been certain  
11 nomenclature that's been used; and I want to make sure  
12 that we're all using the same nomenclature. I'm going  
13 to pull out what's been marked as Carthel Exhibit  
14 No. 1 and I'm going to go through some of the  
15 different terms so that, when we use them today during  
16 the deposition, we're always referring to the same  
17 thing.

18 First of all -- wait. It's not on this  
19 exhibit. We'll talk about the Tiger Cat Dam in a  
20 moment. It is not on Exhibit 1.

21 The Lake Placid Dam is the dam that's  
22 located in Diversion Canal No. 4. Do you understand  
23 that?

24 A. Right there.

25 Q. Right there. So you do -- you know what the Lake

1 Placid Dam is?

2 A. Hm-hm.

3 Q. Great.

4 MR. WRIGHT: You need to say yes or no.

5 THE WITNESS: Yes, I'm sorry.

6 MR. WRIGHT: Thank you.

7 BY MS. AZAR:

8 Q. The dam located at the outfall of Little Round Lake,  
9 we have been calling the Carlson Road Dam. Here it's  
10 marked as the Little RoundLake Dam; so during today  
11 we can refer to it either as the Carlson Road Dam or  
12 the Round Lake Dam or the Little Round Lake Dam. Do  
13 you understand that?

14 A. I might get temporarily confused if you call it the  
15 Carlson Lake Dam.

16 Q. Carlson Road?

17 A. Carlson Road Dam. Prefer you say Little Round Lake or  
18 Round Lake Dam.

19 Q. Okay. I will try to do that. We have been calling  
20 the northern channel, the channel between Little Round  
21 Lake and Osprey Lake. Here it's shown with a red mark  
22 and a blue mark. Do you see that?

23 A. Hm-hm. Yes.

24 Q. Do you understand that that's referred to as the  
25 northern channel?

- 1 A. Yeah. I might need to be reminded on that on  
2 occasion.
- 3 Q. Okay. And Osprey Creek is marked in here with a  
4 yellow highlighter. Do you see that?
- 5 A. Yes.
- 6 Q. Do you understand what Osprey Creek refers to?
- 7 A. Yes.
- 8 Q. And the culverts at NN are the culverts located at the  
9 intersection of Osprey Creek and County Highway NN.  
10 They are marked here on Exhibit 1 as the County  
11 Highway NN culverts. Do you see those?
- 12 A. Yes.
- 13 Q. Wonderful.
- 14 A. And you might have to excuse me and correct me because  
15 I'm used to calling Osprey Lake Squaw Lake because  
16 that's what all the previous records had denoted it  
17 as.
- 18 Q. And so we can interchangeably use Squaw Lake and  
19 Osprey Lake. If we say Squaw, we mean Osprey; if we  
20 say Osprey, we mean Squaw. And that will be the same  
21 with the creek as well. Osprey Creek and Squaw Creeks  
22 are the same things; correct?
- 23 A. I believe so, yeah.
- 24 Q. And, for the purposes of this deposition, we will  
25 understand, if I say Osprey Creek and you say Squaw

1 Creek, we're referring to the yellow markings on  
2 Exhibit No. 1; correct?

3 A. Okay. Correct. Specifically, just here or all the  
4 way through?

5 Q. And --

6 A. You might have to specify Osprey Creek in-between  
7 Osprey Lake and NN, if that's the area you're --

8 Q. I'd be more than happy to and just let the record  
9 reflect that Mr. Dallam pointed to the stretch of  
10 Osprey Creek that extends beyond County Highway NN to  
11 the southwest. All right. I think we now have our  
12 language down, which always helps if you're talking  
13 about the same thing.

14 Mr. Dallam, who did you talk to in  
15 preparation for this deposition?

16 A. Ah, I talked to Hillary.

17 Q. Okay.

18 A. And I don't understand -- I've talked to a lot of  
19 people over the course of three years regarding Round  
20 Lake but not specifically for the deposition.

21 Q. Okay. What documents did you review in preparation  
22 for this deposition?

23 A. Ah, all the known documents that are in the files,  
24 that I have in my files and specific privileged  
25 communications with my attorney.

- 1 Q. And, when you say all known documents, what are you  
2 referring to?
- 3 A. The documents I have ready access to in the Spooner  
4 office.
- 5 Q. Approximately how many documents are there in your  
6 Spooner office?
- 7 A. A lot.
- 8 Q. A lot. And, when you say ready access, does that mean  
9 you've reviewed all of those documents?
- 10 A. Ah, I've breezed through 'em, yeah.
- 11 Q. Let -- maybe we can get at it a different way. I'm  
12 going to hand you what's been marked as Dallam Exhibit  
13 No. 44. Mr. Dallam, do you recognize this document?
- 14 A. Ah, it appears familiar, yes.
- 15 Q. Did you receive a copy of the subpoena back in  
16 December?
- 17 A. I believe so, yes. And did you produce documents in  
18 response to the subpoena?
- 19 A. I believe so, yes.
- 20 Q. The documents that you produced, I believe you sent  
21 directly to Icon ^ sp , correct, for copping?
- 22 A. Ah, yeah. And also for the E-mails, they were  
23 specifically sent to your office.
- 24 Q. Thank you. So there were two different waves of  
25 productions: One you sent the E-mails directly to

- 1 Mr. Furlow in my office; and, the second, you sent the  
2 documents, the physical documents to Icon ^ sp  
3 directly for copying. Correct?
- 4 A. Yeah.
- 5 Q. Now, the documents that you sent directly to Icon ^ sp  
6 for copying, are those the documents that are located  
7 in your Spooner office?
- 8 A. Yes.
- 9 Q. And were those the documents you were just talking  
10 about that you have reviewed in preparation for this  
11 deposition?
- 12 A. Yes.
- 13 Q. And did you produce all documents that responded to  
14 this subpoena?
- 15 A. Ah, in my interpretation of that subpoena, yeah.
- 16 Q. Did you have anybody assist you in interpreting the  
17 subpoena?
- 18 A. Ah, I believe my attorney helped me with some of it.
- 19 Q. Anybody else?
- 20 A. No. Not that I can remember.
- 21 Q. Have you reviewed any of the documents that have been  
22 filed in the lawsuit that's the subject of this  
23 deposition, the Hausman v. Sawyer County litigation?
- 24 A. You'd have to be specific.
- 25 Q. Well, there are documents that are filed with the

- 1 Court: Like the complaint, the answer, there have  
2 been motions back and forth among the parties.
- 3 A. I have a copy of -- I received a copy of the -- I  
4 think the latest one, from the County to dismiss the  
5 lawsuit and for the petition.
- 6 Q. Okay. Who sent you that?
- 7 A. Ah, that's privileged communication.
- 8 Q. So it --
- 9 A. Attorney.
- 10 Q. So your attorney sent you that? Mr. King ^ sp?
- 11 MS. SCHWAB: You can answer if you sent,  
12 just not what you talked about.
- 13 THE WITNESS: Yes.
- 14 BY MS. AZAR:
- 15 Q. Any other documents that were filed in the litigation  
16 that you received: The complaint, the answer?
- 17 A. I can't remember. I don't believe so.
- 18 Q. Have you talked with anybody at Sawyer County about  
19 this lawsuit?
- 20 A. Yes.
- 21 Q. Who have you talked with at the County about the  
22 Hausman V. Sawyer County lawsuit?
- 23 A. Ah, I went to any number of public meetings.  
24 Dale Olson, Jan.
- 25 Q. That's Jan Eck, E-c-k?

- 1 A. Yeah. I've had any number of County Boards question  
2 me in the hallways of Polk County Court -- I mean of  
3 Sawyer County Courthouse and I can't even remember who  
4 they were.
- 5 Q. Was that at full County Board meetings?
- 6 A. No. Just walking down the hall, to the zoning  
7 administrator or down to the County Conservation,  
8 whoever Dale works for.
- 9 Q. So you can't remember any specific person besides Dale  
10 Olson and Jan Eck who you spoke with?
- 11 A. Unless the subject came up during one of the County  
12 Board meetings I attended with.
- 13 MS. AZAR: Let's read back that question.  
14 (The pending question was read.)
- 15 THE WITNESS: From the county?
- 16 MS. AZAR: That's correct.
- 17 THE WITNESS: Maybe the zoning  
18 administrator.
- 19 BY MS. AZAR:
- 20 Q. That would be Mr. Christman?
- 21 A. Yeah. I did go in and retrieve copies of certain  
22 files for land use applications, that would have  
23 fallen under the flood-plain regulation.
- 24 Q. When did you do that?
- 25 A. Not all that long ago.

- 1 Q. Within the last --
- 2 A. After -- it would have been after you sent this.
- 3 Q. Okay. So in the year 2004?
- 4 A. I believe so, yeah.
- 5 Q. And so you were retrieving copies of documents from
- 6 Mr. Christman's files relating to the flood plain?
- 7 A. Yes.
- 8 Q. And what documents were those?
- 9 A. Ah, copy of a land use permit for replacement
- 10 structure.
- 11 Q. And whose property was that?
- 12 A. Mr. Hausman's.
- 13 Q. And why did you come in to retrieve that document?
- 14 A. Because it's part of my job responsibility for
- 15 oversight of the application of the flood-plain zoning
- 16 code with the County, and I believe his house is
- 17 located in a flood plain.
- 18 Q. And the replacement structure you're talking about,
- 19 the proposed building?
- 20 A. Yes, I believe.
- 21 Q. And did Mr. Christman ask you to do that?
- 22 A. No.
- 23 Q. Why did you do that?
- 24 A. Because it's part of my job description, job
- 25 responsibilities.

- 1 Q. And --
- 2 A. The oversight of the flood-plain zoning regulations.
- 3 Q. When is the -- prior to that time, when is the last
- 4 time you went into Mr. Christman's office to request
- 5 documents relating to proposed structures around Round
- 6 Lake?
- 7 A. I also requested from him a copy of the sanitary.
- 8 Q. For what property?
- 9 A. Mr. Hausman's property.
- 10 Q. So now we have identified two times you went into
- 11 Mr. Christman's office. One was to request a copy of
- 12 Mr. Hausman's proposed building plan for his property
- 13 on Scarlet Tanager Lane; correct?
- 14 A. I don't know the name of the lane.
- 15 Q. Well, let's just point out where the property is
- 16 located. And I'm going to actually ask you so that we
- 17 are all clear about this: Do you know where
- 18 Mr. Hausman's property is located on Round Lake?
- 19 A. Not precisely, no.
- 20 Q. Well, I'm going to --
- 21 A. It's up in here somewhere.
- 22 Q. Great. I'm going to -- for purposes of today's
- 23 deposition, I'm going to ask you to assume that the
- 24 property that's the subject of the litigation is
- 25 located on Scarlet Tanager Lane; and, right now, I'm

- 1 pointing to that on Exhibit No. 1.
- 2 A. Which one is it? This one.
- 3 Q. Okay.
- 4 A. And, as a partial correction, I believe I asked for  
5 the sanitary and the building permit. Those on the  
6 same trip.
- 7 Q. Oh, you did. Okay. And that was in 2004. The  
8 sanitary. When you say the sanitary, you're talking  
9 about the -- the sanitary permit that the County  
10 issued for the installation of a new septic tank,  
11 correct?
- 12 A. I think that's it, yeah.
- 13 Q. And the documents that you asked in relation to the  
14 new proposed building, what were you seeking: The  
15 variances that were issued in relation to land use  
16 permit or were you seeking the land use permit itself?
- 17 A. I may have gotten both.
- 18 Q. Okay. Which -- which documents would be pertinent to  
19 your responsibilities as an overseer of the flood  
20 plain?
- 21 A. Anything that had to do with land use application of  
22 the flood plain.
- 23 Q. And when you got those documents -- strike that.  
24 What documents did you get from  
25 Mr. Christman's office.

1 A. Ah, I think a copy -- it's a copy of the application  
2 for the permit, a copy of the permit. I'm not -- I  
3 can't remember if there was a variance in there or  
4 not.

5 Q. Okay. In relation to -- well, strike that.

6 Prior to going to Mr. Christman's office to  
7 retrieve these documents in relation to Mr. Hausman's  
8 property on Scarlet Tanager Lane, when was the last  
9 time that you had visited Mr. Christman's office to  
10 pick up other documents relating to the flood plain on  
11 Round Lake?

12 MS. SCHWAB: Objection, foundation. You  
13 can answer.

14 THE WITNESS: What's that mean?

15 MS. SCHWAB: You can still answer.

16 THE WITNESS: I can't really remember. I've  
17 been dealing with flood-plain concerns on Round Lake  
18 for close to ten years. .

19 BY MS. AZAR:

20 Q. Do you review all land-use permits that are issued  
21 around -- on properties adjacent to Round Lake?

22 A. Not all of them, no.

23 Q. How do you select which permits you're going to  
24 review?

25 A. Ah, you're implying a review of the permit. I needed

- 1 the information to see if they were applying, how they  
2 were applying a flood elvating on the lake.
- 3 Q. Okay.
- 4 A. Because I had an interest in that -- professional  
5 interest other than my job responsibilitis.
- 6 Q. Okay. I don't understand. Could you explain that  
7 answer?
- 8 A. Ah, Round Lake has a general flood plain. The State  
9 codes -- the State code requirements under NR 116 are  
10 based upon the adopted flood plain. If somebody is  
11 permitting a use within the adopted flood plain  
12 without a specific elevation, I would have an interest  
13 in it.
- 14 Q. And why would you have interest in it?
- 15 A. Because I oversee the County's application of the  
16 flood plain zoning ordinance.
- 17 Q. Would that be a violation of the ordinance?
- 18 A. Could be.
- 19 Q. And that's what you're looking for when you're  
20 reviewing that?
- 21 A. I just want to know what's going on.
- 22 Q. Well, obviously, you're overseeing the program and you  
23 do more than just want to know what's going on. Do  
24 you determine whether they're complying with the  
25 ordinance?

1 A. On occasion, I could be, yes.

2 Q. We can't talk over another. So let's do that again.

3 MS. AZAR: Can you read back the question  
4 and let's see what he got?

5 (The pending questions was read as follows:

6 "Well, obviously, you're overseeing the  
7 program and you do more than just want to know what's  
8 going on. Do you determine whether they're complying  
9 with the ordinance?")

10 THE WITNESS: That can fall under my job  
11 responsibilities, yes.

12 BY MS. AZAR:

13 Q. What else are you looking for?

14 A. I was looking for why they permitted the building in a  
15 mapped flood plain or if -- had permitted it in a  
16 mapped flood plain.

17 Q. And had they done that?

18 A. I believe it is in a map flood plain, yes.

19 Q. And what did you do in response to that?

20 A. Not a whole lot.

21 Q. Well, did you do anything?

22 A. Filed it in the information that I have on Round Lake.

23 Q. And those would be the documents that you reviewed for  
24 today?

25 A. Yeah.

- 1 Q. Did you produce in response to the subpoena all  
2 documents that you've retrieved to date concerning  
3 land-use permits on Round Lake?
- 4 A. I -- when the subpoena came out, I didn't have that  
5 information.
- 6 Q. But you've asked for this information in the past  
7 about other properties, haven't you?
- 8 A. For the northwestern nine counties, yes.
- 9 Q. And I'm specifically talking about Round Lake right  
10 now. Have you ever asked for the land-use permits for  
11 any other properties on Round lake?
- 12 A. I believe I may have once back in -- when I first  
13 became asked to determine the flood-plain elevation  
14 for Round Lake.
- 15 Q. When is that?
- 16 A. Maybe around '94.
- 17 Q. And whose property was that?
- 18 A. I can't remember.
- 19 Q. Okay. So between 1994 and 2004, you did not ask for  
20 any other land-use permits that were issued around  
21 Round Lake. Correct?
- 22 A. Correct, to the best of my knowledge.
- 23 Q. Why did you do it in 2004?
- 24 A. Because I wanted to see what elevation he's using for  
25 the flood plain and if it's located in a flood plain.

1 Q. Who was using?

2 A. The County.

3 Q. The County. We've been in -- you've been doing this  
4 for over ten years and you've done it twice. Correct?

5 A. On Round Lake.

6 Q. Correct. Twice on Round Lake. Why didn't you do it  
7 in the intermediary -- in the -- in-between 1994 and  
8 2004?

9 A. Because I wasn't asked to or concerned with the  
10 application of -- their application of the flood-plain  
11 zoning ordinance.

12 Q. Did somebody ask you to take a look at Mr. Hausman's  
13 documents?

14 A. No.

15 Q. And why are you concerned about Mr. Hausman's  
16 documents?

17 MS. SCHWAB: Objection. Asked and answered.

18 MS. AZAR: Answer the question.

19 THE WITNESS: Because I have oversight of  
20 the County's flood-plain zoning ordinance and that's  
21 part of my job, application of the flood plain for  
22 land-use permits.

23 BY MS. AZAR:

24 Q. How many other properties between 1994 and 2004 have  
25 been built in the Round Lake area?

1 A. I would have no idea.

2 Q. Do you think there have been properties built in the  
3 flood plain in the Round Lake area in the last ten  
4 years?

5 A. Again, I would have no idea.

6 Q. I guess, you know, I got to tell you, Mr. Dallam, it  
7 seems a little odd to me that all of a sudden you've  
8 asked for some land-use permits on Round Lake and I'm  
9 trying to figure out why.

10 Over ten years you've been overseeing the  
11 flood-plain zoning ordinance on Round Lake. There's  
12 been development most likely, and I would like you to  
13 assume that for purposes of this question. I just  
14 want you to tell me why you decided to go into  
15 Mr. Christman's office this year and ask for the  
16 documents about Mr. Hausman.

17 MS. SCHWAB: Objection, asked and answered.

18 THE WITNESS: Because of my responsibility  
19 for the oversight of the flood-plain zoning ordinances  
20 and that for the northwestern nine counties.

21 BY MS. AZAR:

22 Q. And let's go to the other counties that you oversee.  
23 What other counties are those?

24 A. The northwestern nine counties.

25 Q. Can you name them for me, please?

1 A. Ashland County, Bayfield County, Douglas County,  
2 Burnett County, Sawyer County, Rusk County, Polk  
3 County, Baron County, and there's one more. I think.  
4 Is that nine?

5 Q. That's eight.

6 A. That's eight.

7 MR. WRIGHT: Washburn?

8 THE WITNESS: Washburn. There you go.

9 MS. AZAR: Okay.

10 BY MS. AZAR:

11 Q. And in those other eight counties, besides Sawyer  
12 County, how often have you gone into the zoning  
13 administrator's office and asked for documents,  
14 land-use permit documents for purposes of overseeing  
15 the flood-plain ordinance in those counties?

16 A. Ah, that's just in Rusk County.

17 Q. Just in Rusk County doing specifically that?

18 A. Specifically one for Nitek property.

19 Q. Ninetech (phonetic)?

20 A. Nitek.

21 Q. Nitek. How do you spell that?

22 A. N-i-t-e-k.

23 Q. What is Nitek?

24 A. Ah, Nitek's the name of an individual with an illegal  
25 flood-way development.

- 1 Q. Okay.
- 2 A. Any of the counties that request assistance in us  
3 determining the RFE, I specifically ask them to give a  
4 copy of the denied building permit.
- 5 Q. So upon the County's request?
- 6 A. For engineering assistance.
- 7 Q. Let's just focus on the -- the times in which you have  
8 personally decided to go in and ask for the land-use  
9 documents, and so I'm talking about situations in  
10 which the County has not asked for assistance but you  
11 have on your own initiated the -- I'll call it an  
12 investigation. So we have one so far; it's the Nitek  
13 property?
- 14 A. Nitek property and I believe there's a couple in  
15 Douglas County.
- 16 Q. Okay. So two in Douglas.
- 17 A. Over the course of how long?
- 18 Q. Well, how long have you been overseeing the flood  
19 plain ordinance in these nine counties?
- 20 A. Approximately twelve, going on thirteen years. And  
21 there would have been numerous instances I can't  
22 immediately remember where I went in and asked for the  
23 same information.
- 24 Q. And --
- 25 A. It's also comes under community assistance visit is a

- 1 review of all permits issued in the flood plain. It's  
2 a standard deal.
- 3 Q. It's a standard deal. So any time that you think that  
4 there's a proposed building in the flood plain, you go  
5 and ask for the documents? Is that -- is that how you  
6 decide when to go in and look for documents?
- 7 A. It depends what problems associated with what  
8 property.
- 9 Q. So tell me about it depends. What problems are you  
10 thinking about? How do you make that decision?
- 11 A. Ah, if there's an enforcement issue or if I believe  
12 the County is applying their flood-plain zoning  
13 ordinance in a manner I'm not familiar with in the  
14 general A zone, I can go in and ask for copies of the  
15 land-use permit.
- 16 Q. So, if you think the County's not complying with their  
17 own ordinances, you go in?
- 18 A. That would be one instance.
- 19 Q. Okay. What else?
- 20 A. Or if there's a particular situation, and I would say  
21 Round Lake has a particular situation.
- 22 Q. What's the particular situation?
- 23 A. Well, you have the Round Lake Dam. You have this  
24 whole systems that are connected with each other.  
25 And, with Round Lake, I've had numerous phone calls

- 1 from people dealing with flood insurance who want to  
2 know what the elevation is.
- 3 Q. So you've had requests from Round Lake property owners  
4 asking about the requirements for flood-plain  
5 insurance?
- 6 A. Yeah, and what elevation to use.
- 7 Q. And what do you tell 'em?
- 8 A. Ah, what I told them is that the -- what I usually  
9 tell them is that the County, as part of doing the  
10 Billy Boy hydrology, had contracted with a consultant  
11 to study as many lakes as they could as part of the  
12 Billy Boy hydrology to come out with flood-plain  
13 elevations for use in their ordinance for that whole  
14 basin.
- 15 Q. So do you give them an elevation?
- 16 A. No.
- 17 Q. Is there currently a flood-plain elevation for Round  
18 Lake?
- 19 A. No.
- 20 Q. And so, when you're reviewing land-use permits,  
21 adjacent to Round Lake, to determine whether or not  
22 those land-use permits comply with the flood-plain  
23 ordinance, what specifically are you looking at in  
24 relation to the flood-plain ordinance to determine the  
25 compliance?

- 1 A. I'd be looking to see if the property's in the mapped  
2 flood plain and what the zoning administration had  
3 used in order to establish the permit.
- 4 Q. And the map --
- 5 A. For height.
- 6 Q. We're going to come back to this. I'm going to -- at  
7 a break go get the map of the flood plain --
- 8 A. Sure.
- 9 Q. -- so we can walk through that. Have you ever been  
10 deposed before, Mr. Dallam?
- 11 A. No.
- 12 Q. Have you ever testified before in a court proceeding?
- 13 A. Ah, I'm not familiar with all the different type of  
14 court proceedings. I testified for Shell Lake  
15 diversion permit.
- 16 Q. Anything else?
- 17 A. Not for anything dealing with the flood plain or  
18 safety, no.
- 19 Q. Outside of those areas have you testified?
- 20 A. That's going to be privileged.
- 21 Q. I think you need to talk to your counsel about that.
- 22 MS. SCHWAB: Testifying is when you're in an  
23 open Court with a judge there and a court reporter,  
24 and that's not privileged because there's people there  
25 besides your attorney.

1 THE WITNESS: And I believe the questions  
2 here were specific to the application of a job  
3 responsibilities and our programs.

4 MR. WRIGHT: Should we take a break?

5 THE WITNESS: Yeah.

6 MS. AZAR: Yeah, talk.

7 (There was a recess, after which Mr. Hausman  
8 and Ms. Dent left the room and were not present during  
9 the following proceedings:)

10 **TEXT REDACTED**

10 (The following proceedings were had, during  
8 which Mr. Hausman and Ms. Dent were present:)

10 BY MS. AZAR:

11 Q. Besides the case that we were just talking about, have  
12 you been involved in any other litigation?

13 A. Shell Lake.

14 Q. And when was that case in Shell Lake?

15 A. Ah, it was a contested case, hearing, I -- couple  
16 years ago.

17 Q. You mentioned before it had to do with a diversion  
18 permit?

19 A. Yes.

20 Q. And you were appearing on behalf of the Department?

21 A. Yes.

22 Q. Are you being paid by anybody to attend this  
23 deposition?

24 A. You guys sent me a check for travel, and I'm being

25 paid by the Department as part of my job duties.

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1 Q. Mr. Dallam, what's your education?  
2 A. Ah, I have a bachelor of science degree with a major  
3 in environmental engineering technology.  
4 Q. What university is it from?  
5 A. Pennsylvania State University.  
6 Q. And when did you graduate?  
7 A. 1992.  
8 Q. 1992. And, since 1992, what has been your work  
9 experience?  
10 A. Ah, it's been entirely with the Department.  
11 Q. The Wisconsin Department of Natural Resources?  
12 A. Yes.  
13 Q. In what positions?  
14 A. I was a flood-plain engineer.  
15 Q. Was that initially out of school you were a  
16 flood-plain engineer?  
17 A. Yes.  
18 Q. For how many years?  
19 A. Four to five.  
20 Q. And then after that?  
21 A. Ahm, water regulation and zoning engineer.  
22 Q. And has that been since approximately 1996 to '97 to  
23 today?  
24 A. Yes.

25 Q. Are you still responsible for flood plains?

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1 A. Yes.

2 Q. What else are you responsible for as a water  
3 regulation and zoning engineer?

4 A. Generally, dams and water reg engineering assistance.

5 Q. And, when you say water reg engineering assistance,  
6 what is encompassed by that?

7 A. Ah, any technical questions that the water management  
8 specialists have about certain projects and/or review  
9 of any of the hydrology, hydraulics for certain  
10 projects.

11 Q. And, when you say for certain projects, are you  
12 talking about water-control projects?

13 A. They could be culverts.

14 Q. Okay.

15 A. They could be small dams. They could be anything that  
16 goes across a waterway.

17 Q. Okay?

18 A. And has to do with the study of hydrology and  
19 hydraulics.

20 Q. And I'm going to periodically refer to that as an H&H  
21 study?

22 A. That's fine.

23 Q. Is that okay? We understand what that means, as a  
24 hydrology and hydraulic study?

25 A. Yes.

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1 Q. Yes. Do you actually conduct H&H studies?

2 A. Yes.

3 Q. As -- you have responsibility over dams.

4 Approximately how many dams do you oversee in the nine  
5 counties that are in your jurisdiction?

6 A. Hundreds.

7 Q. Hundreds. Okay. Do you review plan specifications  
8 for new dams?

9 A. Yes.

10 Q. And are you the DNR representative that's responsible  
11 for approving new dams?

12 A. For small --

13 Q. Within your jurisdiction?

14 A. For plan approvals for small dams, yes.

15 Q. Plan approvals for small dams. That's the second time  
16 that you've limited your answer to small dams. You  
17 earlier stated that you provide technical advice in  
18 relation to small dams. Do you not provide technical  
19 advice in relation to large dams?

20 A. Yes.

21 Q. That's correct, you do not provide technical advice?

22 What -- do you --

23 A. Yes, I do provide.

24 Q. Okay. Thank you. You do provide. Okay.

25 A. Can I clarify that?

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1 Q. Yes, please do.

2 A. Large -- for new large dams or structural alterations,  
3 we have a combined review in central office.

4 Q. Who in central office do you work with, with large  
5 dams?

6 A. Bill Sturtevant and Meg Galloway.

7 Q. Thank you. In relation to new dams, what are your  
8 responsibilities? And I'm talking about your current  
9 responsibilities.

10 A. Can you specify new and large dams? I mean small or  
11 large dams.

12 Q. Why don't we go through each one? So for small dams  
13 what are your responsibility, small new dams?

14 A. Plan approval, plan review and approval.

15 Q. Hm-hm.

16 A. And general assistance. I provide emergency  
17 assistance for both.

18 Q. Okay. And then new large dams?

19 A. Ah, large dams, I provided coordination and plan  
20 review; and the plan review is usually specified in  
21 the hydrology; whereas, central office usually  
22 provided the structural and also inspect large dams;  
23 and I can inspect any dam upon a complaint. And I  
24 work with Counties to deal with the flood-plain zoning

25 that results with dam failure analysis, as part of the

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1 zoning.

2 Q. The dam failure analysis, that's done when new plans  
3 are submitted for a new dam?

4 A. When a dam -- when a large dam has to come into full  
5 compliance with NR 333 or an unusual situation, a  
6 small dam, we determine that we would need one for a  
7 small dam, also, which would be rare.

8 MS. AZAR: Could you repeat that answer?

9 (The last question and answer were read.)

10 BY MS. AZAR:

11 Q. And I'm -- are we ready? I want to understand. In  
12 relation to the dam failure analysis, you were then  
13 just talking about existing dams; correct?

14 A. Or proposed.

15 Q. Okay. So the dam failure analysis is required for  
16 large dams under NR 333, but it's not required for  
17 small dams; correct?

18 A. Correct.

19 Q. But sometimes the Department will require one for  
20 small dams?

21 A. They keep the possibility open.

22 Q. And under what circumstances would the Department  
23 require a dam-failure analysis for a small dam?

24 A. It would depend upon land use and risk associated with

25 the dam.

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1 Q. With the dam failure?

2 A. Yeah.

3 Q. How much --

4 A. What's downstream.

5 Q. So how much property damage or loss of life would  
6 occur if the dam would fail?

7 A. If we have a concern because the structural height of  
8 a -- the cutoff between a large and a small dam is six  
9 feet. However, you could have a small dam that's  
10 under six feet in structural height but still have a  
11 huge volume of water that, if it failed, could present  
12 a risk.

13 THE REPORTER: You could still have a huge  
14 volume?

15 THE WITNESS: You could have a small dam  
16 that met the structural height cutoff but still have a  
17 large volume of water behind it that could present a  
18 risk if it was released.

19 BY MS. AZAR:

20 Q. Are you responsibility for overseeing compliance with  
21 dam permits and Daniel orders?

22 A. I would have to specifically look at my job  
23 description. However, I am called in upon for a lot  
24 of dam situations.

25 Q. You're called in upon -- in what regard?

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1 A. I write orders for dams, draw-down orders that are  
2 signed by other people. So I would be familiar. I  
3 also get frequent calls about any kind of general  
4 information on dams.

5 Q. We went through your responsibilities in relation to  
6 new dams. What are your responsibilities in relation  
7 to existing dams? Big sigh.

8 A. Essentially, stuff that's in my position description  
9 or anything that's required by code. It's fairly  
10 flexible. Which would apply to all the flood-plain  
11 dams, small dams, water reg.

12 Q. You've referred to your position description now  
13 twice. Could you provide me with a copy of that?

14 A. Yeah. If you write specific request for it.

15 MS. SCHWAB: I can get it from him.

16 MS. AZAR: Thank you very much.

17 MR. WRIGHT: Give it to me, too.

18 MS. SCHWAB: Sure.

19 BY MS. AZAR:

20 Q. And has your position description changed since you  
21 began with the Department in 1992?

22 A. Yes.

23 Q. Since you became a water reg and zoning engineer has  
24 it changed?

25 A. No.

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1 Q. And that was approximately in 1996. Right?

2 A. Six or seven.

3 Q. Okay. So, given your prior answer, it sounds like  
4 you've assisted other people at the Department when  
5 dams were found in noncompliance; is that correct?

6 A. Yes.

7 Q. Are you responsible for identifying when dam owners  
8 are in noncompliance with a dam? I'm sorry.  
9 Noncompliance of the order?

10 A. On occasion, I have the responsibility to interpret  
11 the orders, specifically, regards I'm a steady  
12 presence in this region, where others may not be.

13 Q. So you are responsible?

14 A. Tough question to answer.

15 Q. Why is that?

16 A. Because there could be any number of different  
17 situations regarding a dam and who's responsible for  
18 what, what person would be available from what  
19 position. If we wouldn't have a water management  
20 specialist at that time, then I could take over  
21 responsibilities that I don't usually have.

22 Q. Okay. And that's what I was trying to understand. So  
23 it's the water management specialist that normally  
24 determines whether or not a dam owner is in compliance

25 with a dam order or permit?

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1 A. During lake-level disputes, they're usually the first  
2 contact for water-level disputes.

3 Q. Okay. I'm not talking about first contact. I'm  
4 talking about who actually oversees whether or not a  
5 dam owner is in compliance with a dam permit or order.

6 A. Again, it's a tough question. It may pertain to what  
7 part of the order their -- you're looking for.

8 Q. Let's talk about --

9 A. And it could be situation specific.

10 Q. Let's talk about the different aspects. So, if it's  
11 the lake level specified within a permit or order,  
12 that would be the water management specialist that  
13 would be responsible for determining the compliance?

14 A. They would be the first contact.

15 Q. What we need to -- we need to not talk over each  
16 other. When you say they would be the first contact,  
17 what do you mean by that?

18 A. Lake-level disputes are common in a northern region.  
19 If somebody had a -- was complaining about a  
20 high-water level, the first stop would be the water  
21 management specialist.

22 Q. Again, I'm not talking about contacts from the public.  
23 Okay. I would assume the Department -- and maybe this  
24 is a wrong assumption; you can tell me this. The

25 Department issues permits and orders all of the time

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1 about a lot of different things; correct?

2 A. Hm-hm.

3 Q. And the Department has enforcement authority over  
4 those permits and orders; correct?

5 A. I believe so, yeah, depending on the situation.

6 Q. If somebody's violating the permit or the order, the  
7 Department has the power to come in and say to that  
8 party you are violating that order, do they not?

9 A. Yes.

10 Q. What I'm trying to do is figure out who at the  
11 Department in Sawyer County has the authority to say:  
12 Dam Owner, you are not in compliance with an order.  
13 And the answer is?

14 A. Whoever the Department chooses for that particular  
15 situation to go in or whoever is available that would  
16 fall under the purview of their job description.

17 Q. Okay. Now I'm speaking about Sawyer County, and let's  
18 just be as specific as possible. I'm talking about  
19 Round Lake.

20 A. Okay.

21 Q. Who at the Department is responsible for determining  
22 whether or not the dams that control the water levels  
23 on Round Lake are being constructed, operated and  
24 maintained in compliance with the orders that regulate

25 the water levels?

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1 A. That would be done in consultation with departmental  
2 attorneys. And the order would come -- direction  
3 would come by -- could be a WMS or could be an order  
4 reg and zoning engineer.

5 Q. So you would have the power, since you're the water  
6 reg and zoning engineer. So Frank Dallam. And you  
7 said the WMS. That's, just to be clear, the WMS is  
8 the water management specialist. That's currently  
9 Dave Kafura. So we've now mentioned two people that  
10 have the authority to say that the dam owner is  
11 noncompliance?

12 MR. WRIGHT: If that's a question, object to  
13 form. That's not what he testified to.

14 BY MS. AZAR:

15 Q. Why don't you correct me then?

16 A. Are you asking where the -- who would sign the  
17 specific letter or would you ask who would be involved  
18 from the Department in an effort to determine?

19 Q. Why don't you answer both questions?

20 A. I got myself in that one, didn't I? It would be  
21 situation specific. The order could be written by  
22 combination of various people, and it could come under  
23 the signature of someone else. It could be done in  
24 consultation with the Department's attorney. It could

25           come from the water management specialist. It could

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1           come from the water reg and zoning engineer or it  
2           could come from one of the -- our basin leaders or  
3           subbasin leaders. A lot would depend upon who's  
4           available and who has experience in a certain matter.

5   Q.   I want to get the whole universe of possibilities  
6           here. Let's talk about who would sign the specific  
7           letter. And, when we say the specific letter, we're  
8           talking about a letter identifying noncompliance with  
9           a dam order or dam spec -- dam permit. Are we on the  
10          same page?

11  A.   You're asking a difficult question because it could be  
12          any number of different scenarios.

13  Q.   And that's why I want to get the whole universe of  
14          possibilities. Okay. You said the water management  
15          specialist, which was Dave Kafura; correct?

16  A.   It could be Dave Kafura.

17  Q.   It could be the water reg and zoning engineer, which  
18          is Frank Dallam; correct?

19  A.   Correct.

20  Q.   It could be the basin leader, and who is that?

21  A.   I think it's Tom Artel ^ sp.

22  Q.   And you said it could be the subbasin leader. Who is  
23          that?

24  A.   I don't know if there is one for this basin

25 currently.

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1 Q. Who else could it be?

2 A. It might be whoever the Department decides to send a  
3 letter.

4 Q. And who at the Department would make that decision?

5 A. Ah, management.

6 Q. And, when you say management, who is management?

7 A. Management would be the management of the DNR for the  
8 area.

9 Q. Who is that?

10 A. Tom Artall ^ sp.

11 Q. Okay.

12 A. And it could be in consultation with other management.

13 Q. What other management would that be?

14 A. Depending upon the situation, it could go as high up  
15 as the regional leader. You could also have  
16 interpretations or things coming from the central  
17 office.

18 Q. Okay. Have you ever found a dam owner to be in  
19 noncompliance of an order or permit?

20 MR. WRIGHT: Object to form. Do you mean  
21 formally or has he ever seen it?

22 MS. AZAR: I mean formally, actually.

23 THE WITNESS: Yes. .

24 BY MS. AZAR:

25 Q. Where?

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1 A. Ah, Osceola.

2 Q. Osceola. Is the name of the dam Osceola?

3 A. Yes.

4 Q. Who's the dam owner?

5 A. Currently, it's the Department.

6 Q. Who was it before that?

7 A. James LaRue ^ sp.

8 Q. Have you ever found any other dam owners to be in

9 noncompliance with the -- their permit or order?

10 A. I'm thinking. Ah, yeah, I believe.

11 Q. What dam?

12 A. Woodley ^ sp Dam.

13 Q. Woodley ^ sp? Who is the dam owner?

14 A. It was in a -- it was then an estate.

15 Q. Okay. Any other dams?

16 A. Not that I can specifically remember for ones that had

17 written orders.

18 Q. Have you found a dam owner in noncompliance when there

19 wasn't a written order?

20 A. Yes.

21 Q. What were they in noncompliance with?

22 A. Ah, usually, they didn't have any authorization for

23 the dam, any written authorization.

24 Q. And what is a -- what sort of written authorization do

25 you look for?

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1 A. Ah, something from the Department or something that  
2 would legally authorize the dam.

3 Q. And do you look for a -- dam specifications along with  
4 an authorization?

5 A. First, I look for the authorization.

6 Q. Okay. And do you keep the authorizations for the dams  
7 in your nine counties at your office?

8 A. Yes, the ones that I have available.

9 Q. And, when you say the ones you have available, are  
10 there ones that are maintained elsewhere?

11 A. Not that I'm aware of, no.

12 Q. Why did you qualify your past answer as far as the  
13 ones that you have available -- the authorizations  
14 that you have available?

15 A. It's tough to deal with dam authorizations, as that  
16 can go back 70, 80, 100 years.

17 Q. So the Woodley dam didn't have any written  
18 authorization?

19 A. Ah, the Woodley was a -- in violation of a draw-down  
20 order.

21 Q. Okay. And why did you give a draw-down order?

22 A. Unsafe condition of the dam. Anyway it failed.

23 Q. It failed. Okay. Did -- I'm sorry. I thought that  
24 you indicated one of the two dams that you found in

25 noncompliance. Oh, I take that back. Strike that.

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1 So you found dam owners in non-compliance  
2 when they didn't have any written authorization for  
3 the dam. How many dams have you found in  
4 non-compliance when you didn't have any written  
5 authorization for them?

6 A. Over the past years, I would strictly guess.

7 Q. Hm-hm.

8 A. At least eight. And that's a guess.

9 Q. Okay. And how do you know that those dams -- strike  
10 that.

11 You indicated that in your files you've got  
12 the authorizations for many of the dams that you  
13 oversee. Correct?

14 A. Yes.

15 Q. You also indicated that some dams are -- I think you  
16 said 70, 80, 90 years old and that oftentimes you  
17 don't have authorizations for those dams; is that  
18 correct?

19 A. There's Department authorizations, there's a Mill ^ sp  
20 Dam Act; and then there's a PSC --

21 Q. Hm-hm.

22 A. -- or whatever.

23 Q. PSC?

24 A. PSC authorizations.

25 Q. Okay.

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1 A. And some dams are built without any of those.

2 Q. Okay. And, if a dam has an authorization from the PSC  
3 or was built under the Mill Dam Act or was built with  
4 authorization from the DNR, would you have those  
5 documents in your office?

6 A. I should, yes.

7 Q. And so the -- at least, eight dams that you couldn't  
8 find any written authorization for, that you found in  
9 non-compliance, they -- you had no authorization from  
10 either the PSC, the DNR or they weren't built under  
11 the Mill Dam Act; correct?

12 A. Correct.

13 Q. And what did you do -- when you found them in  
14 noncompliance, what did you do? What did you require  
15 the dam owners to do?

16 A. Depend upon specific situation.

17 Q. Well, give me examples.

18 A. Most of them were found in part of the dam transfer  
19 process. And they would need -- someone would realize  
20 there was a dammed property and they would need a  
21 permit from the Department to transfer the dam.

22 Q. Okay.

23 A. Well, if they don't have an authorization, then  
24 essentially they have to come in full compliance with

25 any applicable code requirements. And it all depends

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1 upon situations. Sometimes they're willing to fix the  
2 problem; sometimes they're not.

3 Q. So you treat it as though it's a new dam at that point  
4 in time?

5 A. Yes.

6 Q. Can you give me some names of dams in this situation  
7 that you found in noncompliance and required them to  
8 come up to full compliance with the law?

9 A. Ah, there's one in Clam Falls.

10 Q. Clam?

11 A. Falls.

12 Q. C-l-a-m?

13 A. Yeah.

14 Q. Okay.

15 A. F-a-l-l-s. Ah, there was --

16 Q. Do you remember who the owner is? I'm sorry. I  
17 didn't mean to interrupt. But do you remember who the  
18 owner was there?

19 A. It's going to be a township.

20 Q. And I could find those documents in your files?

21 A. Ah, the letter was written, I believe, by water  
22 management specialist first off. The subsequent --  
23 subsequent information I believe came from one of the  
24 basin leaders.

25 Q. Okay.

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1 A. And I provided their assistance.

2 Q. What year was that? I'm going to want to get those  
3 documents so --

4 A. Ah, I think it was just last year.

5 Q. And should I come to you to get those documents or to  
6 somebody else?

7 A. I may not have all the documents, but you're welcome  
8 to come to me for what documents I have.

9 Q. Okay. Thank you.

10 A. Specific written request and --

11 MS. SCHWAB: It would be easiest if you go  
12 through me to request them just so I --

13 MS. AZAR: Absolutely.

14 MR. WRIGHT: I'd like a copy of whatever is  
15 provided to Ms. Azar.

16 MS. SCHWAB: Sure. I'll wait for your  
17 question and then send it to you.

18 MR. WRIGHT: Thank you.

19 BY MS. AZAR:

20 Q. What other dams have you found that didn't have  
21 written authorization and you required them to bring  
22 the dams up to current regulations?

23 A. There was one in Sawyer. No, that was Rusk County.

24 Q. Okay.

25 A. That was several years ago. Done as part of a

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1 property transfer. I can't remember the specific name  
2 of it. It was a private property.

3 Q. Private property?

4 A. Determined it to be a large dam.

5 Q. Okay.

6 A. There might be one coming up in Tuscobia.

7 Q. Could you spell that?

8 A. T-u-s-c-o-b-i-a.

9 Q. And that's in process right now?

10 A. Yeah.

11 Q. Who's the owner?

12 A. Again, that would be Rice Lake Township. We haven't  
13 really called it a dam yet. If they're going to raise  
14 it, we're going to call it a dam.

15 Q. And the Clam Falls one, was that also Rice Lake  
16 Township?

17 A. No, that's in Polk County.

18 Q. Okay. Thank you. Any other dams?

19 A. There's one north of Spooner that if they -- they may  
20 have to end up calling that a dam, come in full  
21 compliance.

22 Q. When you say calling something a dam, what sort of  
23 structures are we talking about?

24 A. Elevated. Two of them were elevated culverts.

25

MR. WRIGHT: Elevated what? I'm sorry.

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1

THE WITNESS: Elevated culverts.

2

MR. WRIGHT: Culverts. Thank you.

3

BY MS. AZAR:

4

Q. And what makes a culvert elevated?

5

A. You put the inverts up above the stream channel,  
deliberately, to hold back water.

7

Q. And if -- let's say culverts were installed, I don't  
know, thirty years ago and they were elevated and the  
culverts exist today, would that be a situation in  
which you would --

10

11

A. I would provide assistance.

12

Q. And you potentially could call it a dam?

13

A. Yes.

14

Q. And, if you did call it a dam, because the culverts  
were elevated, they would need to bring those -- they  
would need to bring that structure up to compliance  
with the current regulations?

17

18

A. That would be site specific.

19

Q. Generally? I mean is that the situation you're  
talking about north of Spooner?

20

21

A. It's more complicated than that.

22

Q. How so?

23

A. Ah, a previous water management specialist had

24

supposedly authorized them to put stoplogs in front of

25 culverts.

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1 Q. Okay.

2 A. Then the road over topped in a flooding event and FEMA  
3 came in and wanted to pay for repairs and they wanted  
4 to raise the road. And, essentially, WMS came to me  
5 for assistance; and I said, no, it's going to be a  
6 dam. And they raised the road.

7 Q. So, the --

8 A. Also, they can't put authorized stoplogs in front of  
9 it.

10 Q. The one north of Spooner, what's the name of the  
11 municipality that installed the culverts?

12 A. I can't remember the name of the municipality.

13 Q. If I write a letter to Ms. Schwab and indicate the  
14 municipality north of Spooner with the elevated  
15 culverts, will you know what I'm talking about?

16 A. Yeah.

17 Q. What other dams have you found in noncompliance  
18 because they didn't have any written authorization?

19 MR. WRIGHT: Excuse me for interrupting;  
20 but, just for clarification for her letter and my  
21 convenience, do you know the name of the road?

22 THE WITNESS: I can't even remember the name  
23 of the bar that's right next to it.

24 MR. WRIGHT: Well, now we know it's a

25 mystery.

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1 THE WITNESS: Offhand, I can't remember  
2 specific; they're fairly common and could vary from  
3 situation-to-situation. It's all site specific.

4 MS. AZAR: Right.

5 BY MS. AZAR:

6 Q. What other dams have you found in noncompliance  
7 because they don't have written authorization?

8 MS. SCHWAB: Object to form. I don't think  
9 he said that it was because they didn't have written  
10 authorization, if they were not in compliance.

11 BY MS. AZAR:

12 Q. I want to clarify that because I thought that's what  
13 we were listing is that these were -- that you've  
14 designated these structures as dams and they were  
15 never authorized as dams.

16 And, when I say never authorized as dams,  
17 there was never an approval issued for a dam that you  
18 have --

19 A. The last ones we were talking about --

20 Q. Yeah.

21 A. -- that's what we were referring to.

22 Q. Okay.

23 A. And, also, we also were previously talking about dams  
24 that were in noncompliance with written orders.

25 Q. Right. But that was the Osceola and Woodley Dam,

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1 those were the two you listed for that.

2 A. Right.

3 Q. And then we moved on to this next category of at least  
4 eight dams that you have found in noncompliance  
5 because there was no written authorization in your  
6 files.

7 MS. SCHWAB: I'm going to object to form. I  
8 believe he said approximately eight.

9 MS. AZAR: That's fine.

10 THE WITNESS: Approximately eight and that's  
11 a real approximate because it seems it happens at  
12 least once or twice a year.

13 MS. AZAR: Okay.

14 BY MS. AZAR:

15 Q. We've done Clam Falls, Rusk County, Tuscodia -- Did I  
16 pronounce that correctly? -- north of Spooner. What  
17 other dams have you found in noncompliance because  
18 there's no written authorization in your files?

19 A. Ah, I can't remember the names of them. Usually,  
20 they're phone calls. People call me up or the WMS  
21 says: Do you have any kind of authorization for this?  
22 And there's almost someone that has a complaint for a  
23 structure.

24 Q. Hm-hm.

25 A. There's also been physic -- people have physically

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1 interfered with beaver dams. People have thrown rocks  
2 in the water on some places.

3 Q. When you say -- let me --

4 A. Stables like.

5 Q. Let's take those one at a time. So if people throw  
6 rocks in the water and created essentially a dam,  
7 earth and embankment?

8 A. A back water.

9 Q. And so you would get a complaint about that and have  
10 to go and investigate it --

11 A. (Indicating).

12 Q. -- and you could find that to be a dam structure?

13 A. Could.

14 Q. Then you -- before you mentioned beaver dams?

15 A. Hm-hm.

16 Q. Are beaver dams considered dams under the Wisconsin  
17 law?

18 A. We don't regulate 'em and that one in the news was  
19 actually assisted.

20 Q. Oh. So somebody helped the beaver build a dam?

21 A. Yeah.

22 Q. I understand.

23 A. That one made the internet.

24 Q. I was wondering why you had mentioned that. How often

25 do you see that where people assist the beavers in

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1 making dams?

2 A. Very occasionally. Not very often I hear about it,  
3 though.

4 Q. Okay. Just trying to figure out what very  
5 occasionally meant, but not very often. Fantastic.  
6 Are you responsible for lake-level issues?

7 A. You're going to have to be more specific.

8 Q. Are you responsible for determining a dam owner's  
9 compliance with lake levels?

10 A. I can assist in that, yes. Or I can do the  
11 determination, I believe.

12 Q. Oh, you can. Okay. How does the Department decide  
13 who's the primary staff person responsible; or is  
14 there nobody that's primary?

15 A. Again, the first stop is a water management  
16 specialist.

17 Q. Given your prior answers, it's true, isn't it, that  
18 you're responsible for any type of water control  
19 structure that's manmade in navigable waterways;  
20 correct?

21 A. I'm not the only person responsible for them, no.

22 Q. No, but you are responsible. I mean, if there's a  
23 manmade water-control device in a navigable waterway,  
24 that's within your jurisdiction, regardless of whether

25 it's a dam, a bridge, a culvert, a -- a weir, a --

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1 anything that controls waters in a navigable waterway,  
2 is that within your jurisdiction in those nine  
3 counties?

4 A. In fulfilling my job descriptions, yeah. I am -- to  
5 clarify that, I'm not the primary responsibility for  
6 every single water structure in the northwestern nine  
7 counties. I provide assistance for code  
8 applicability.

9 Q. Okay. So it sounds like you and the water management  
10 specialists work together a lot?

11 A. Yes.

12 Q. I'm trying to understand the differences in  
13 responsibilities between the two of you -- when I say  
14 the two of you, I'm talking about a water management  
15 specialist versus a water reg and zoning engineer, in  
16 relation to water levels that are formally designated.

17 A. That's why we go talk to our lawyer.

18 Q. Okay. So the boundary between the two is unclear?

19 A. On occasions, yeah.

20 Q. Okay. You recently have been discussing the  
21 differences between large and small dams. And why  
22 don't you tell me what the difference is between a  
23 large and a small dam?

24 A. What NR 333 says it is.

25 Q. Okay. What is -- what is that?

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1 A. Based on structural height and storage volume.

2 Q. Okay. And why don't you define for me what structural  
3 height is?

4 A. Structural height is a surveyed elevation from the top  
5 of the dam not designed to flow water to the bottom of  
6 the receiving spring channel.

7 Q. Okay. And what is the demarcation line between a  
8 large and a small dam in relation to structure height?

9 A. Six foot.

10 Q. Okay. I want to talk about large dams first, and then  
11 we'll talk about small dams in a minute.

12 In relation to large dams, the dam owner  
13 must show what land will be flooded by the dam;  
14 correct? Is that a yes?

15 I thought you just nodded. I want to make  
16 sure this --

17 A. You have to be, again, more specific.

18 Q. In what regards?

19 A. Is it a new dam?

20 Q. Yes.

21 A. Is it a proposed enlargement of a dam?

22 Q. I'm talking about a new dam.

23 A. A brand new dam?

24 Q. Brand new dam.

25 A. Okay. Can you repeat the question again?

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1 Q. Sure. When a new dam is constructed, the dam owner  
2 must show what land will be flooded by the dam;  
3 correct?

4 A. They have to show what land will be flowed by the dam  
5 and what land would -- what the increase of the  
6 hundred-year flood elevation would be.

7 Q. And, when you say what land would be flowed by it,  
8 that's the flowage, the back water of the dam, they  
9 have to show what area will be covered with water?

10 A. Yes.

11 Q. When a new dam is constructed and new land is flowed,  
12 must the owner of the dam receive easements from the  
13 owners of the flowed property?

14 A. I believe so, yeah.

15 Q. What would you do if somebody built a new dam, a new  
16 large dam without obtaining WDNR approval?

17 A. Navigable or non-navigable?

18 Q. Navigable.

19 A. Navigable?

20 Q. Yeah.

21 A. Again, the first stop would be the WMS and it depends  
22 upon the situation, how compliant the person was. It  
23 could be treated as violation of a permit, not having  
24 a permit for a dam on a navigable waterway.

25 Q. Would you send it over for enforcement?

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1 A. Depends.

2 Q. Depends on what?

3 A. Depends on the circumstances.

4 Q. What sort of circumstances would you use to evaluate  
5 whether to send it over to enforcement?

6 A. Ah, could be up to the WMS. Could be up to me. Could  
7 be up to the basin. But, usually, if a person wasn't  
8 willing to come into compliance within the applicable  
9 code requirements.

10 Q. When a new dam is constructed, I'm going to -- I'm  
11 sorry. Strike that.

12 Let's talk about small dams. When a new  
13 small dam is constructed, does the dam owner have to  
14 show what property will be flowed?

15 A. Yes.

16 Q. And, when a new small dam is constructed, must the  
17 owner of the small dam receive easements from the  
18 owners of the flowed property?

19 A. Yes. I should qualify all that to the best of my  
20 knowledge until lawyers get involved.

21 Q. Lawyers are already involved. I hate to break the  
22 news to you?

23 A. Well, this situation, yeah, but --

24 Q. I understand. Whether a dam's hazard potential is

25 characterized as significant or high depends on two

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1 things: No. 1, whether there is an existing  
2 development in the hydraulic shadow that will be  
3 inundated to a depth greater than two feet; and,  
4 No. 2, whether there are land use controls in place to  
5 predict future development in the hydraulic shadow;  
6 isn't that correct?

7 MS. SCHWAB: Object, fountation.

8 BY MS. AZAR.

9 Q. Do you implement NR 333?

10 A. I assist in that implementation, yes.

11 Q. And do you oversee the designation of dam hazard  
12 potentials?

13 A. I do not write the final determination of the dam  
14 hazard rating -- of the Department.

15 Q. Are you familiar with the dam hazard ratings?

16 A. Somewhat, yes.

17 Q. Who at the Department actually rates dams?

18 A. That would come out of Madison for the final hazard  
19 rating.

20 Q. Do you make recommendations to Madison with regards to  
21 how a specific dam should be rated in regards to the  
22 dam hazard potential?

23 A. I provide input.

24 Q. You make recommendations?

25 MR. WRIGHT: Object to form. Are you asking

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1 him whether he recommends a specific rating or --

2 MS. AZAR: Yes.

3 THE WITNESS: I provide input.

4 BY MS. AZAR:

5 Q. So you don't say: I believe or I recommend that X dam  
6 is -- should have a significant hazard potential?

7 A. I provide input.

8 Q. What sort of input do you provide?

9 A. Ah, a lot of it may have to do with going up to the  
10 site, see if there's actually any houses that don't  
11 show up on the topographics map that may or may not be  
12 inundated by dam failure. A lot of it might be site  
13 specific.

14 Q. What else do you do to provide input?

15 A. I review at least in the past circumstances a  
16 hydrology for the dam failure analysis.

17 Q. Okay. Do you determine the structural height of the  
18 dam?

19 A. We make the applicant submit the structural height of  
20 the dam.

21 Q. So the applicant submits the structural height. You  
22 run the hydrology, the dam-failure analysis?

23 A. I review the hydrology.

24 Q. Okay. Thank you. So does the applicant run the

25 hydrology for the dam-failure analysis?

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1 A. They're responsible for submitting it.

2 Q. And then you review that?

3 A. Yes.

4 Q. And then you submit that information down to Madison?

5 A. Yes.

6 Q. What other information do you submit down to Madison?

7 A. Ah, for a large dam, general review comments on the  
8 plans.

9 Q. In relation to the dam hazard potential?

10 A. Could be.

11 Q. Could be what? I'm sorry.

12 A. Could be.

13 Q. What could be?

14 A. Depends upon whether I see any houses downstream or  
15 not.

16 Q. So other things that you send down to Madison, when  
17 they're making the determination about the dam hazard  
18 potential, is you let them know whether or not there  
19 are any houses downstream --

20 A. Could be.

21 Q. -- of the dam? I don't understand.

22 A. Everything you're asking is -- has to pertain to a  
23 specific situation. You're asking general questions  
24 that may or may not apply to a specific instance.

25 Q. Okay. I'm trying to understand how the Department

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1 makes the determination about what a dam's hazard  
2 potential is. If you --

3 A. Okay.

4 Q. You are the water reg and zoning engineer; correct?

5 A. Correct.

6 Q. And you provide information to Madison -- and, when we  
7 say Madison, we're talking about the DMR central  
8 office in Madison; correct?

9 A. Correct.

10 Q. You provide information to the DMR central office so  
11 that they can make the determination what the dam  
12 hazard potential is for any specific dam; correct?

13 A. No, not all the information. I provide input.

14 Q. You provide input?

15 A. Yeah.

16 Q. And I'm trying to understand what input you provide to  
17 them.

18 A. There would be instances where people look to see if  
19 there's any houses downstream. The topographic maps  
20 may not show that.

21 Q. Okay. That's one of the things you do.

22 A. Could be, depending upon instance, particularly, if I  
23 know there are houses downstream.

24 Q. Okay. What else do you do?

25 A. I provide review of the hydrology that is the basis

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1 for the dam-failure analysis.

2 Q. What else?

3 A. And I provide general review comments on the plans.

4 Q. What else?

5 A. Ah, again, depends on situation. There could be  
6 something -- anything they ask for that I would have  
7 the capability of doing. It's site specific. I can't  
8 give you exactly what I do on each and every input  
9 into a plan review for large dam or the establishment  
10 of a hazard rating.

11 Oh, the -- I again, as previously indicated,  
12 I do work with the County to adopt the flood-plain  
13 zoning that results from the dam-failure analysis,  
14 which is part of getting a final hazard rating or  
15 changing it.

16 Q. For existing dams, does the dam's hazard potential  
17 drive the hydraulic design and safety requirements, if  
18 the dam ultimately -- strike that.

19 Are owners of existing dams required to  
20 upgrade their dams to meet the standards of NR 333?

21 A. They would be required to come into full compliance  
22 with NR 333 from our restructure, a total rebuilding  
23 of the dam.

24 Q. I'm sorry. I don't understand that --

25 A. Okay. And it's confusing.

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1 Q. Okay.

2 A. And everybody gets confused.

3 Q. So I'm not dumb.

4 A. We get confused. You would have to refer to NR 333

5 for specifically when they have to come in full

6 compliance with 333, and it usually involves a new dam

7 or one that has submitted plans for a reconstruction.

8 Q. Okay. With regards to the dam-failure analysis and

9 your review of the hydrology, do you also then review

10 the hydraulic shadow that results in a dam failure?

11 A. I could, yes. I wouldn't review the actual hydraulic

12 model, but I may review the applicability and mapping

13 of it to see if it meets NR 116 requirements for

14 adoption into the applicable zoning authority's

15 flood-plain zoning ordinance.

16 Q. And do you look to see if the municipality has

17 land-use controls in place that would restrict

18 development in that hydraulic shadow?

19 A. I'm there to help ensure that they do get the land use

20 controls in place.

21 Q. So you would investigate whether or not they had

22 existing land-use controls that would be sufficient?

23 A. Depends what you call sufficient.

24 Q. That would comply with NR 116?

25 A. Yes. I would -- that would be part of our -- could be

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1 part of our responsibility.

2 Q. Does Sawyer County have the land-use controls in place  
3 to restrict future development in a hydraulic shadow  
4 in the Tiger Cat Dam?

5 A. I don't believe so, no.

6 Q. Does Sawyer County have land-use controls in place to  
7 restrict future development in the hydraulic shadow of  
8 the Lake Placid Dam?

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

10 Q. Does Sawyer County have land-use controls in place to  
11 restrict future development in the hydraulic shadow of  
12 the Little Round Lake Dam?

13 A. I don't believe so, no.

14 Q. Do you oversee the operation and maintenance of  
15 existing dams?

16 A. I can, yes.

17 Q. Does anybody else -- let me -- let me be as clear as  
18 possible. In Sawyer County, do you ever see the  
19 operation and maintenance of existing dams?

20 A. As part of my job responsibility, yeah, for  
21 inspections or assisting the County.

22 Q. Does anybody else at the DNR oversee the operation and  
23 maintenance of existing dams in Sawyer County?

24 A. A WMS could be involved if there was a water-level

25 dispute.

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1 Q. Anybody else at DNR responsible for overseeing the  
2 operation and maintenance of dams in Sawyer County?

3 A. Depends on who owns the dams.

4 Q. How -- tell me about that. Why does that make a  
5 difference?

6 A. Well, Sawyer County has a primary responsibility for  
7 overseeing the operation and maintenance of their  
8 dams; and the owner has the primary responsibility and  
9 liability for overseeing operation and maintenance of  
10 the dams.

11 Q. I'm actually asking who at the Department of Natural  
12 Resources has those responsibilities. And, so far,  
13 you've mentioned yourself and you've mentioned the  
14 water management specialist, who's Dave Kafura.

15 Who else at Department of Natural Resources  
16 is responsible for overseeing operation and  
17 maintenance of dams in Sawyer County?

18 A. If there was the owner, if there's another owner,  
19 besides the Department or besides the County --

20 THE REPORTER: Slow down.

21 THE WITNESS: The owner has the primary  
22 responsibility for overseeing the operation and  
23 maintenance of the dams.

24 BY MS. AZAR:

25 Q. I really -- The owner is not an employee of the

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1 Department of Natural Resources; right?

2 A. Okay.

3 Q. I want employees of the Department of Natural  
4 Resources --

5 A. Okay.

6 Q. Okay? -- who are responsible for overseeing the  
7 operation and maintenance of dams in Sawyer County.  
8 Please list them all.

9 A. It's primarily me. If there was a water-level  
10 dispute, it could be the water management specialist.

11 Q. Anybody else at the DNR?

12 A. Not that I'm immediately aware of, no.

13 Q. What sort of operation and maintenance records are dam  
14 owners supposed to keep?

15 MR. WRIGHT: Object to the form, foundation.

16 THE WITNESS: We always recommend they have  
17 operation, inspection and maintenance plans for the  
18 dams and emergency action plans for the dams. They  
19 would only be absolutely required as part of a order  
20 or reconstruction of a dam to come into full  
21 compliance with NR 333. That's my interpretation of  
22 the code.

23 BY MS. AZAR:

24 Q. And does NR 333 require the maintenance of any other O

25 and M records?

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1 A. Pardon.

2 Q. If a dam owner is required to comply with Chapter  
3 NR 333, what sorts of O and M records are they  
4 required to maintain?

5 A. Operation, are you talking about the operations --  
6 inspection, operation and maintenance plans?

7 Q. I'm talking about any records relating to operation  
8 and maintenance; and, when I say O and M, I mean  
9 operation and maintenance.

10 A. Again, it could be site specific. And after this --  
11 (Discussion off the record.)

12 BY MS. AZAR:

13 Q. So you mentioned -- and I want to get the correct  
14 wording -- the operation, maintenance and what plans?

15 A. Inspection, operation and maintenance plans.

16 Q. And then the emergency action plan?

17 A. Yeah.

18 Q. Those are the two that you strongly recommend that dam  
19 owners have?

20 A. They're strongly recommended, and inspection reports  
21 they're always recommended, usually, when I talk to  
22 people; and they're required when the dam has to come  
23 in full compliance with 333.

24 Q. Fantastic. And do you check to see if dam owners are

25 complying with their own inspection, operation and

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1 maintenance plans?

2 A. We don't have a primary responsibility for ensuring or  
3 method of enforcing that they're in compliance with  
4 the inspection operation and maintenance plans or  
5 emergency action plans unless they'd been part of the  
6 dam grant.

7 Q. Okay.

8 A. And I need to clarify something.

9 Q. Please.

10 A. There's things that are in code that are directives  
11 and things that are absolute requirements.

12 Q. Hm-hm.

13 A. So it's -- again, site specific.

14 Q. If it's in the code -- Let me back up as to why  
15 that's a clarification.

16 My understanding is, from what you just  
17 said -- and tell me if this is right -- if a dam has  
18 to comply with NR 333 --

19 A. Full --

20 Q. Full compliance.

21 A. If a dam has to come into full compliance with NR 333.

22 Q. -- they're required to have an inspection, operation  
23 and maintenance plan and an emergency action plan;  
24 correct?

25 A. Yes, that's my understanding of the code.

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1 Q. You said that you've been in your position as the  
2 water reg and zoning engineer since approximately 1995  
3 to '96. Correct?

4 A. Since about '96 or '97, when I moved up to Spooner.

5 THE WITNESS: Can we have a bathroom break?

6 MS. AZAR: Absolutely.

7 (There was a recess.)

8 (Documents marked for identification as  
9 Exhibit Nos. 45 and 46 )

10 BY MS. AZAR:

11 Q. Mr. Dallam, I'd like you to look at what's been marked  
12 as Exhibit 45. Do you recognize this document?

13 A. Yeah. I may have seen this.

14 Q. Is it located in your files at the DNR?

15 A. Ah, I have a basic drainage delineation and I'm not  
16 sure if this is the one Carthel did or not. If I was  
17 at his office, I may have seen it, yes.

18 Q. So did you -- you did not put the marks on this  
19 document?

20 A. I can't specifically remember. I did have one map as  
21 part of a determining a survey requirements for  
22 regional flood elevation that we talked about  
23 previously that I may very well have marked up places  
24 to check.

25 Q. So this could have been the one that you prepared.

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1 Let me make representation for you, Mr. Dallam. You  
2 did produce this document --

3 A. Okay.

4 Q. -- when I requested documents. Do you remember making  
5 this --

6 A. Then why are you trying to trick me?

7 Q. I'm not. I was just trying to lay it down. Did you  
8 make -- do you know if you made the marks on this  
9 document?

10 Just -- I want to be clear, too. I'm not  
11 trying to trick you at all today. I just want to  
12 understand.

13 A. Ah, when I was in Madison, we had LTE's assist us with  
14 doing case by cases; so I may have indicated to him  
15 that I needed a drainage area map or at least a  
16 proposed one and it indicated spots that he needed to  
17 come up -- if he had a chance to come up with a survey  
18 or spots that I come up with as part of a field visit.  
19 That doesn't look like my handwriting.

20 Q. And, when you say spots, what are these spots  
21 pertaining to?

22 A. Usually, pertaining to what would have provided  
23 storage going into the basin.

24 Q. Okay.

25 A. Or something needed to provide at least a minimum of a

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1 hydrology and a hydraulic that I would be comfortable  
2 with doing, provide a flood elevation for someplace.

3 Q. Perfect. That was going to be my question. So this  
4 would be the basin that you would use to determine the  
5 flood-plain elevation?

6 A. At that time, yeah.

7 Q. And does this look like the basin that you would use  
8 currently to determine the flood-plain elevation?

9 A. Ah, I'd have to rereview it and also to see the  
10 applicability of the Lake Placid structure as I'm more  
11 familiar with the basin at the moment than I was back  
12 then.

13 Q. And, when you say the applicability of the Lake Placid  
14 structure, is the map that we're looking at right now,  
15 which is Exhibit 45, is the Lake Placid structure  
16 applicable to the flood-plain basin here?

17 A. For which specific point?

18 Q. Well, you just -- I'm trying to understand why --

19 A. For Round Lake, yeah. It may very well be.

20 Q. Okay. I'm confused now.

21 A. At the time, I wasn't familiar with the border's for  
22 the Lake Placid or whatever, I looked for any and all  
23 hydraulic inputs that would affect Round Lake or could  
24 possibly affect Round Lake, I was not familiar with

25 the operational procedure or the purpose actually of

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1 the Lake Placid spillway.

2 Q. I understand now. I'm going to hand you a  
3 highlighter. At least, I think I understand.

4 A. Okay.

5 Q. And why don't you mark on this map the line that you  
6 think you may change, given your --

7 A. I couldn't do that right now. I'd have to take it  
8 back to the office in order to give it a complete  
9 evaluation, unless depending on how much time you got.

10 Q. Well, you were just talking about a specific -- you  
11 were questioning a line on here concerning the Lake  
12 Placid dam; correct?

13 A. I --

14 Q. I'm not asking you to redraw a line. I'm just asking  
15 you to flag right now the specific line that you were  
16 questioning.

17 A. Oh, I was -- this drainage area, okay. Now, Round  
18 Lake and this is regards to setting a flood elevation  
19 on Round Lake.

20 Q. Right.

21 A. Round Lake has a limited -- immediate surface water  
22 drainage area.

23 Q. Right.

24 A. There was water that comes through here which is why

25 this extends up here is to determine how -- or how

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1 much water may or may not be able to come down through  
2 here, based upon not being familiar with what the  
3 orders were for Lake Placid at the time and when they  
4 could and could not divert.

5 Q. And what I'm asking you to do because the court  
6 reporter -- The transcript, when you keep saying here  
7 and pointing to a specific spot, when we go back,  
8 we're not going to be able to know what that is.  
9 That's why I want you to take a highlighter and I want  
10 you to mark what you were just referring to when you  
11 said here.

12 A. The Lake Placid structure, I believe, is right in here  
13 somewhere.

14 Q. Go ahead. Make sure that we can see the yellow.  
15 Thank you.

16 A. And I'm assuming it's the same location that you have  
17 marked -- or you don't have it marked. It's right  
18 down here somewhere.

19 Q. Okay.

20 Q. Why don't you take --

21 A. There's also culverts that run underneath the road.

22 Q. That feeds into the Lake Placid Dam?

23 A. Yeah.

24 Q. Yeah. Let me give you this blue marker and, if you

25 could just -- and this is standard; we're not trying

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1 to trick you or anything -- just initial the mark that  
2 you made there and date it so that we know --

3 A. That that is approximately where the Lake Placid  
4 structure is?

5 Q. Yes. And, when you were just discussing the Lake  
6 Placid structure and the flood-plain basin, that's  
7 where you're referring to.

8 A. What is today?

9 MS. SCHWAB: The 7th.

10 MS. AZAR: Darn good question. Okay. Thank  
11 you.

12 BY MS. AZAR:

13 Q. Earlier, you were discussing when dams had to come  
14 into compliance with NR 333. Do you recall that  
15 discussion?

16 A. Not in its entirety, no.

17 Q. You had mentioned that -- at least, I believe you had  
18 mentioned -- you can tell me if this is accurate or  
19 not -- that dam owners have to come into compliance  
20 with NR 333 when they basically rebuild an entirely  
21 rebuild a dam or whenever they reconstruct a dam.

22 A. Ah, reconstruct the -- what we call a reconstruction  
23 under the code definition or build a new dam?

24 Q. That was going to be my question. Is the

25 reconstruction of a dam actually defined in the code?

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1 A. Yes. Somewhat.

2 Q. Ah, I'm going to read from NR 333. Reconstruction  
3 means alteration of an existing dam in a manner which  
4 affects its hydraulic capacity or structural  
5 integrity. Does that sound correct?

6 A. Yes. Is that the latest version of 333, you got?

7 Q. It's dated January 2002. Just printed it off the  
8 internet.

9 A. Okay.

10 Q. Okay. So, if a -- a dam owner reconstructs it, then  
11 they have to comply with NR 333?

12 A. Full compliance with NR 333 --

13 Q. Okay.

14 A. -- according to my understanding.

15 Q. You had indicated that you reviewed -- for large dams,  
16 you review the hydrology?

17 A. Yes.

18 Q. Who actually reviews the hydraulics?

19 A. The dam-failure analysis would be reviewed by William  
20 Sturtevant.

21 Q. Okay. We had been talking about large and small dams  
22 and when dams had to become in full compliance with  
23 NR 333. For those dams that currently don't have to  
24 be in full compliance of NR 333, does DNR have any

25 jurisdiction over them?

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- 1 A. Ah, we have a code responsibility to inspect.
- 2 Q. And what are you inspecting for?
- 3 A. Safety.
- 4 Q. And, if a dam is found unsafe, what can DNR do?
- 5 A. Ah, when we inspect dams, we inspect them for
- 6 recommending that they come in full compliance with
- 7 333 or for anything that would fall under whether a
- 8 dam is safe, maybe even if it has a -- needs a dam
- 9 failure done or if there's structural problems to have
- 10 them fixed and repaired.
- 11 Q. If you find a dam is unsafe, one that doesn't need to
- 12 be in full compliance with NR 333, does the DNR have
- 13 the authority to issue a draw-down order?
- 14 A. Yes.
- 15 Q. Okay. Now, right before we took the break, I had
- 16 asked -- wanted to do confirm, again, you'd been in
- 17 your current position since '96 or '97 and you
- 18 indicated that it's when you moved up to Spooner that
- 19 you took your new position.
- 20 A. Hm-hm.
- 21 Q. Over that time period, since you became the water reg
- 22 and zoning engineer, has Sawyer County's operation and
- 23 maintenance of the Tiger Cat Dam changed?
- 24 A. I'm going to need a clarification, whether changed by

25 order or whether just what they would commonly do.

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1 Q. In practice, what they would commonly do.

2 A. I would not be sure of that.

3 Q. Didn't you testify earlier that you oversee the  
4 operation and maintenance of existing dams?

5 A. That's part of the general procedures. We don't  
6 usually go somewhere unless there's complaints or  
7 questions raised.

8 Q. Okay. So it's complaint driven?

9 A. Sometimes, yeah.

10 Q. So do you have any reason to believe that the -- that  
11 Sawyer County's operation and maintenance of the Tiger  
12 Cat Dam has changed since you took your position in  
13 1996 or 7?

14 A. I'm not sure. I don't believe so, no.

15 Q. Do you have any reason to believe that Sawyer County's  
16 operation and maintenance of the Lake Placid dam has  
17 changed since you took the position in 1996 or 1997?

18 A. Can you be more specific?

19 Q. What -- how -- what sort of specifics would you like?  
20 I guess I don't understand. What other information do  
21 you need to answer that question?

22 A. Ah, they were recommended to replace the stoplogs,  
23 which they did. Ah, in regards to what level or  
24 whether they were flowing water or not through it, I'm

25 not sure. Not that I've been aware of.

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1 Q. That it hasn't changed?

2 A. Not really, no.

3 Q. And has Sawyer County's operation and maintenance of  
4 the Carlson Road -- strike that.

5 Has Sawyer County's operation and  
6 maintenance of the Little Round Lake Dam changed since  
7 you took your position in 1996 or 1997?

8 A. Ah, not that I'm aware of, no. I know there's always  
9 problems down at that dam. There's a long history of  
10 people throwing in stoplogs and people pulling them  
11 out.

12 Q. So private citizens have been putting in stoplogs at  
13 the Little Round Lake Dam?

14 A. Ah, my very first visit, when I went up there the  
15 first time, back in '94 I guess it was.

16 Q. Uh-huh.

17 A. Yeah, there had been 2-by-4's thrown off to the side.

18 Q. So debris basically was --

19 A. And I was aware of people -- that there had been  
20 lake-level problems.

21 Q. Do you know who has been putting debris in the Little  
22 Round Lake Dam?

23 A. I've seen debris downstream of the dam.

24 Q. Okay.

25 A. And it looked like naturally occurring -- ah, debris.

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1 I don't know, stuff that may have been caught up in  
2 the dam that somebody pushed out. I'm not aware of  
3 people specifically putting debris in, though I  
4 wouldn't doubt it.

5 Q. Do you know if Sawyer County has investigated anybody  
6 putting debris in the Carlson -- in the Little Round  
7 Lake Dam?

8 MS. SCHWAB: Object. Foundation.

9 THE WITNESS: Ah, I believe they've looked  
10 into it; I'm not sure.

11 BY MS. AZAR:

12 Q. With regards -- I'm going to turn to the flood-plain  
13 portion of your job at this point. The flood-plain  
14 analysis looks at the volume and flow of water during  
15 the hundred-year storm event; is that correct?

16 A. Depends upon the situation.

17 Q. Okay. Tell me all -- the different situations.

18 A. NR 116 requires to look upon the storage volume when  
19 it would be affecting the flood flow seriously or  
20 under certain conditions usually regards to a large  
21 lake providing storage.

22 Q. When a municipality is about to -- does not have a  
23 flood-plain ordinance --

24 A. Okay.

25 Q. -- and they are going to be adopting a flood-plain

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1 ordinance --

2 A. Okay.

3 Q. -- what does that flood-plain analysis look at? Does  
4 that flood-plain analysis look at the volume and flow  
5 of water during the hundred-year storm event?

6 A. Flood-plain analysis is different than flood-plain  
7 ordinance.

8 Q. But to pass a flood-plain ordinance, you have to do a  
9 flood-plain analysis; correct?

10 A. No.

11 Q. You don't? Okay. Well, let's -- Why don't you tell  
12 me about when -- Why don't you tell me about when a  
13 municipality has to conduct a flood-plain analysis?

14 A. I'm not aware of a situation where a municipality has  
15 to provide a flood-plain analysis.

16 Q. You don't think they have to do a flood-plain analysis  
17 ever?

18 A. I didn't say ever. There might be situations I'm not  
19 aware of. Not to adopt an ordinance, they don't.

20 Q. Okay. What if a municipality chooses to conduct a  
21 flood-plain analysis for its basis of enacting a  
22 flood-plain ordinance?

23 A. For the basis of enacting a flood-plain ordinance or  
24 for applications in an existing ordinance?

25 Q. When a community enacts a flood-plain ordinance --

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1 A. Okay.

2 Q. Okay? -- there's a generally a flood-plain elevation  
3 that's established for purposes of that ordinance;  
4 correct?

5 A. In the northern counties, that's -- most of the flood  
6 plains are generally A zones that don't have specific  
7 elevations associated with them.

8 Q. And, when you say A zones, what are you referring to?

9 A. I'm referring to the federally provided flood  
10 insurance rate maps.

11 Q. I'm going to hand you -- This is going to be marked  
12 as -- Mark that one, please.

13 (Document marked for identification as  
14 Exhibit No. 47.)

15 BY MS. AZAR:

16 Q. I only gave you one, huh? What's the number?

17 A. 0271. Panel 125 of 375.

18 MS. AZAR: We only have one copy. That's --  
19 did you get that?

20 MR. HAUSMAN: Hm-hm.

21 BY MS. AZAR.

22 Q. Mr. Dallam, what are you looking at right now? What's  
23 been marked as Exhibit No. 47?

24 A. Ah, I'm looking at a copies of a portion of a flood

25 insurance rate map for Sawyer County, title page and

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1 what appears to -- may be actual copies of portions of  
2 the map.

3 Q. And, when you were referring to Zone A just a moment  
4 ago, were you referring to the Zone A's that -- for  
5 example, that are marked on Exhibit 47?

6 A. Yes.

7 Q. And those Zone A's are designated by whom?

8 A. Ah, they were developed by FEMA --

9 Q. Okay.

10 A. -- Federal Insurance Management Agency, although with  
11 some maps, they may have been a prior federal agency  
12 that got incorporated into doing maps.

13 Q. So, when a municipality -- and you were talking about  
14 the nine municipalities in which you provide  
15 flood-plain assistance, you said the majority of those  
16 municipalities rely on the Zone A's, I believe, for  
17 the basis for their flood plain.

18 A. The municipalities are required to apply, whenever an  
19 adopted ordinance that references these maps, they're  
20 required to apply the flood-plain zoning requirements  
21 on these maps unless they have a specific elevation  
22 that would supercede them.

23 Q. That's what I wanted to understand. So, when you were  
24 saying zone, most of your nine municipalities referred

25 to Zone A, they are referring to these FEMA maps;

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1 correct?

2 A. Yes. And, for clarification, appear most of the  
3 counties don't have much for detailed studies.

4 Q. If a municipality is going to be doing a detailed  
5 study --

6 A. Okay.

7 Q. -- they do that for the purposes of actually  
8 establishing a flood-plain elevation, don't they?

9 A. If they're doing a detailed study for establishing a  
10 flood-plain elevation, yes. It can also be done as  
11 part of a dam-failure analysis; also, could be done in  
12 regards to any applicable water-regulation permit.

13 Q. So right now I'm talking about -- when I say  
14 flood-plain analysis, I'm talking about the analysis  
15 that a municipality would do to establish the regional  
16 flood-elevation determination as part of an --  
17 adopting it as part of their flood-plain ordinance; do  
18 you understand that?

19 A. Yes.

20 Q. The flood-plain analysis then looks at the volume and  
21 flow of water during the hundred-year storm event;  
22 correct?

23 A. Depends on site-specific situation.

24 Q. Tell me about that. What site-specific situations do

25 you look at, is driven by this flood-plain analysis?

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1 A. If NR 116 requires storage to be calculated, then they  
2 have to calculate the storage involved and then  
3 determine the flow. There may be some flood-plain  
4 analyses that don't use the storage, essentially,  
5 riverine ^ sp systems where storage factors wouldn't  
6 be the ultimate controlling factor in determining the  
7 flow.

8 Q. So, if storage is not used, you can ignore the  
9 hundred-year storm event?

10 A. No.

11 Q. That's not correct?

12 A. No.

13 Q. Okay. So I don't then understand why the flood-plain  
14 analysis doesn't simply look at the volume and flow of  
15 water during the hundred-year storm event?

16 A. Because not all of them look upon the volume.

17 Q. Ah, I see.

18 A. They're -- again, it's site specific.

19 Q. So, if a -- it is always based then on a hundred-year  
20 storm event?

21 A. It was based upon the technical requirements in  
22 NR 116.

23 Q. Are you responsible for applying NR 116?

24 A. The County is the primary responsibility for

25 application of the flood-plain zoning ordinance. I

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1 have responsibility for overseeing the County in that,  
2 yes.

3 Q. So do you understand NR 116?

4 A. I have a fair comprehension of it, yes.

5 Q. So is NR --

6 A. Do you understand NR 116?

7 Q. Is NR 116 based on the hundred-year storm event?

8 A. Yes. Most of the technical requirements are based  
9 upon establishing -- use a hundred-year storm event to  
10 help establish, or a simulation thereof, to help  
11 establish a hundred-year flood elevation.

12 It would be more correct to say it's based  
13 upon a hundred-year flood elevation.

14 Q. When is the last time the Round Lake area had a  
15 hundred-year storm event?

16 A. I am not aware of any.

17 Q. So, during your tenure in this area, either as a  
18 flood-plain engineer or a water reg and zoning  
19 engineer, there's not been a hundred-year storm event?

20 A. You'd have to be more specific.

21 Q. About what?

22 A. Where?

23 Q. In the Round Lake area.

24 A. Not that I'm aware of, no.

25 Q. Has Sawyer County conducted a flood-plain analysis for

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1 Round Lake?

2 A. They hired someone to.

3 Q. Has it been completed?

4 A. Not to my knowledge, no.

5 Q. Can I get what's been marked as Exhibit 46. I think

6 you've got it down there. You should have a copy

7 here, Frank. There you go.

8 Would you please review what's been marked

9 as Exhibit 46?

10 A. Okay.

11 Q. Would you please identify what's been marked as

12 Exhibit 46?

13 A. It's a letter to David Heath from myself in 1993.

14 It's an informational request for Big Round Lake.

15 Q. And did you produce this letter in your ordinary

16 course of business?

17 A. Yes.

18 Q. And is this an accurate copy of the letter that you

19 sent to Mr. Heath?

20 A. Appears to be.

21 Q. In this letter, you provide advice to Sawyer County on

22 how to conduct a flood-plain analysis; isn't that

23 correct?

24 A. No. This is in regards to what the Department needs

25 for establishing a regional flood-elevation

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1 determination.

2 Q. Thank you. So you were giving him advice on how to  
3 establish a regional flood elevation?

4 A. No, I was requested survey information for  
5 establishing a regional flood elevation.

6 Q. You were requesting information?

7 A. Yes.

8 Q. And would you be establishing the regional flood  
9 elevation or would the County?

10 A. I would have have been.

11 Q. You would have been?

12 A. Yes.

13 Q. Did you establish a regional flood elevation for the  
14 Round Lake area?

15 A. No.

16 Q. Why not?

17 A. They never provide the survey, and it would have been  
18 incumbent upon the property owner -- clarification.

19 The Department provides technical assistance for  
20 establishing regional flood elevations for land-use  
21 permits depending on whether or not the person meets  
22 the requirements of NR 116. In this case, somebody  
23 had a land-use permit, which at that time I'm not sure  
24 if I requested a copy of the land-use permit or not,

25 which is why generally now I do; and, if they -- it's

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1 a legitimate land-use permit and they are under  
2 \$125,000 or under five acres in area or they're not  
3 doing it for commercials and, if they provide the  
4 survey information and are willing to wait, then we  
5 would provide the technical assistance.

6 Q. Okay. And so, when you would provide the technical  
7 assistance, you would actually then --

8 A. Do it.

9 Q. -- do it and come up with the RFE; and, when I say  
10 RFE, it's the regional flood elevations; correct?

11 A. Yes.

12 Q. The establishment of the RFE here, the methodology  
13 that you would have used --

14 A. At that time.

15 Q. -- at that time, is that the same methodology a  
16 municipality would use at that time to develop the  
17 regional flood elevation?

18 A. The municipality would -- doesn't usually have the  
19 technical capability to establish -- they could hire  
20 somebody, if they would choose to hire someone to  
21 establish that RFE, that may or -- it should be fairly  
22 close to this or at least have further detailed  
23 information to explain why some things may not need to  
24 be required or something additional may need to be

25 required.

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1 Q. But, in general, since this is about --

2 A. And --

3 Q. Let me finish, please. This is in relation to  
4 Round Lake. If Sawyer County had been determining the  
5 regional flood elevation back in 1993, you would have  
6 expected them to need the same information and use the  
7 same guidelines that you were specifying in this  
8 letter; correct?

9 A. I would have looked to this letter for initially  
10 starting the review of whatever their consultant had  
11 submitted in regards to approving it, yes.

12 Q. And, besides just looking to this, would you have  
13 expected them to more or less follow the guidelines  
14 that you put in here?

15 A. At that time, yes.

16 Q. And let's -- you keep --

17 A. Again, they're not guidelines. They're what the  
18 Department -- what I personally felt comfortable with  
19 requiring to use, information to use for establishing  
20 a regional flood elevation.

21 Q. You thought that this was a reasonable way to conduct  
22 the analysis; correct?

23 A. At that time, yes.

24 Q. You keep qualifying this with, quote, at that time,

25 end code: Have the requirements changed?

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1 A. I haven't specifically put out the requirements or  
2 have a chance to reevaluate what are or were not  
3 required. A lot of it may have depended upon further  
4 knowledge of how they're actually operating the bottom  
5 dam and -- how they're actually operating Round Lake  
6 Dam and what's actually going on at the Lake Placid  
7 Dam.

8 THE WITNESS: And, again, I've got to  
9 interrupt here. I need to go to the bathroom.

10 MS. AZAR: Okay.

11 (There was a recess.)

12 (The last question and answer were read.)

13 ^ ENDPART1

14 BY MS. AZAR:

15 Q. Have the requirements for how one establishes the  
16 regional flood elevation changed since September 27th,  
17 1993, to the present?

18 A. Not that I'm aware of, no. Add clarifi -- Can I add  
19 clarification to that?

20 Q. Sure.

21 A. The circumstances certainly have changed.

22 Q. How so?

23 A. There always is a specific flood-plain engineer.

24 Q. Hm-hm.

25 A. And reviewed most everything in detail.

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1 Q. Hm-hm.

2 A. He's going to a water regulation and zoning engineer  
3 with three problematic responsibilities; sometimes I  
4 have only a checklist that they supply with their  
5 analysis that comes from private consultants; and,  
6 again, that's situation specific. I may not have had  
7 the time. That's strictly a practical application of  
8 a number of studies I get or had to do or involved  
9 their different programs in a reduction of personnel.

10 Q. Okay. Do you recall when -- I just want to remind you  
11 that, when I'm talking about a flood-plain analysis,  
12 I'm referring to an analysis that a municipality would  
13 conduct to establish the regional flood elevation for  
14 purposes of establishing using that in a flood-plain  
15 ordinance; do you remember that?

16 A. Yes, and I remember clarifying most municipalities up  
17 here don't actually conduct those.

18 Q. Right. But I just want to make sure because I'm going  
19 to continue to talk about the flood-plain analysis and  
20 I want to make sure we're talking about the same  
21 thing. Do you understand --

22 A. And what you should be referring to is flood-plain  
23 analysis that Department may approve for use in zoning  
24 ordinance.

25 Q. I'm sorry.

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1 A. You should be referring to a flood-plain analysis that  
2 a county uses in its application of flood-plain zoning  
3 ordinance.

4 Q. Okay. That's what I mean by flood-plain analysis.

5 A. Okay.

6 Q. Fair enough?

7 A. Or, otherwise, I'll have to keep being more specific.

8 Q. Well, that's exactly what I'm talking about. When  
9 conducting that flood-plain analysis, oftentimes, a  
10 municipality will hire a consultant; correct?

11 A. Most times a municipality won't up here. Specific to  
12 this situation, Sawyer County did as part of a  
13 dam-failure hydrology. My understanding is they hired  
14 Mr. Carthel to include as much flood elevations on  
15 various lakes that would contribute to the Billy Boy  
16 Dam failure to get as many flood elevations that he  
17 could in a ^ ck crystal services community; and he did  
18 so under my advice.

19 Q. When a municipality does a flood-plain analysis, do  
20 they have to conduct computer modeling?

21 A. That would be site specific. Most of the applications  
22 now are computer modeling. I can't automatically  
23 preclude them in all instances using a computer model.

24 Q. When this type of flood-plain analysis is conducted,

25 is it the DNR policy that, for a dam, the modeler

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1 should assume that there are gates or stoplogs are in  
2 place for that dam?

3 A. It's not a strict DNR policy to establish regional  
4 flood elevations as a part of the flood-plain analysis  
5 upstream of the dam; although, I've been fighting for  
6 it for years.

7 Q. You think that's a reasonable way to do it?

8 A. That's the way I prefer it to be done. I advise  
9 communities, and I can't require it, that they do that  
10 because then it provides the purposes of not wasting  
11 an analysis when basically the hydrology is mostly all  
12 there and it's just a couple extra steps to establish  
13 a flood-plain elevation so they get the benefits of  
14 that without a lot of extra work or without having  
15 someone to go back years later and try to interpret  
16 what someone did in that analysis to establish flood  
17 plain elevation upstream; however, we don't require  
18 that.

19 Q. And what about the downstream dam? And let me just  
20 make sure the record is clear as to what I'm asking.

21 Do you believe it's reasonable to assume  
22 that the stoplogs or gates are in place for the  
23 downstream dam when conducting a flood-plain analysis?

24 A. Again, it's site specific; but, if I'm reviewing

25 strictly for a flood-plain analysis, depending upon

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1 sites, I usually want to see the stoplogs that move  
2 upstream, if that's easily obtainable, because it  
3 provides more flow and is a more cautious analysis.

4 Q. So stoplogs are moved on the upstream dam. On the  
5 downstream dam, are there stoplogs in place or not?

6 A. If they're citing a flood elevation for regulatory  
7 purposes, it depends upon operation or whether they  
8 have a specific -- to fulfill the requirements of a  
9 specific guidance that the Department put out that  
10 they need the stoplogs in since they have a his --  
11 generally, trying to remember if they don't have a  
12 history of debris blockage or difficulty in -- Let me  
13 rephrase that because now you're getting me confused.

14 We have a guidance for establishing  
15 flood-plain elevations upstream of the dam that they  
16 leave all the stoplogs in, along with what's commonly  
17 there or depending upon what the situation or what the  
18 capability they have of or had demonstrated previously  
19 they had done without removing them, you said the  
20 upstream flood-plain elevation from the dam, unless  
21 they meet specific criteria that are spelled out in  
22 guidance; and I believe some of those criteria are  
23 they don't have a history of operating problems, they  
24 don't have a history of ever becoming plugged up with

25 debris and that the owners sign off on it.

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1 Q. And is the -- do you generally follow that guideline?

2 A. Yes.

3 Q. And is that guideline found in the Waterway and  
4 Wetland Handbook that's produced by the Department of  
5 Natural Resources?

6 A. I believe it should be, yes.

7 Q. Is one of the three conditions as to whether or not  
8 stoplogs should be considered when establishing the  
9 regional flood elevation is whether or not there's an  
10 existing and adequate operation plan for flooding  
11 events?

12 A. Operation and maintenance plan or however they have  
13 worded that, yes.

14 Q. And that operation and maintenance plan has to  
15 specify -- has to include assurance concerning  
16 operation of the gates 24 hours a day. Is that  
17 correct?

18 A. I'm not quite sure if it says 24 hours a day, but it  
19 has to be a specific operation plan.

20 Q. Okay.

21 A. Not just a general one.

22 Q. But, again, you follow the guidance that the  
23 Department has set out with regards to --

24 A. I try to, yeah, unless there's a certain site-specific

25 situation that may fall out of the norm.

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1 Q. And, when one is conducting a flood-plain analysis,  
2 should the modeler assume that debris or beaver dams  
3 exist or don't exist?

4 A. We, generally, all flood-plain studies are based upon  
5 no debris or ice.

6 Q. No debris or ice?

7 A. Generally speaking, yeah.

8 Q. And when should a modeler assume that an upstream dam  
9 fails when establishing the regional flood elevation?

10 A. When they're required to do a dam-failure analysis.

11 Q. In regards to conducting -- doing this flood-plain  
12 analysis and establishing a regional flood elevation,  
13 when should they assume that an upstream dam fails?

14 A. We cannot require them to do a dam-failure analysis  
15 for establishing a downstream flood elevation for  
16 zoning purposes.

17 Q. When do you think it's reasonable for a party to  
18 assume that?

19 MR. WRIGHT: Objection, form and foundation.

20 THE WITNESS: It's code required as part of  
21 a dam-failure analysis when they come in full  
22 compliance with NR 333.

23 BY MS. AZAR:

24 Q. All right. Why does a WDNR set maximum, minimum and

25 normal water levels?

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1 MS. SCHWAB: Objection, foundation.

2 MS. AZAR: Then let me back up. Strike  
3 that.

4 BY MS. AZAR:

5 Q. You indicated earlier that -- let me just make sure I  
6 get the correct wording.

7 What are your responsibilities in relation  
8 to the minimum, maximum and normal water levels that  
9 can be designated for lakes or flowages?

10 A. Depends on the situation.

11 Q. That's what I recall you saying. And why don't you  
12 describe the situations in which you are involved?

13 A. The situations where I'm involved is when someone asks  
14 for assistance.

15 Q. And why would they be asking for assistance?

16 A. Any number of reasons.

17 Q. And what do you do when they call and ask for  
18 assistance?

19 A. I can be reviewing the orders. A list of the original  
20 orders are in my office, and I don't believe that most  
21 of the original orders are in the WMS's office.

22 Q. And, when you review these orders, do these orders set  
23 the maximum, minimum and normal water levels?

24 A. They may or may not.

25 Q. And, if they do set the maximum, minimum and normal

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1 water levels, does it sometimes specify why the  
2 Department has set those levels?

3 A. On occasion, yeah. Or the department or whoever had  
4 done the order.

5 Q. And what reasons has the Department given for setting  
6 the maximum, minimum and normal water levels?

7 A. It's site specific. You have to review all the files.  
8 I couldn't answer that just out of hand. It's site  
9 specific in each and every instance.

10 Q. This is a situation in which I'm going to ask you to  
11 guess. Okay. Why do you believe that the WDNR sets  
12 maximum, minimum and normal water levels?

13 MR. WRIGHT: Objection, form and foundation.

14 MS. SCHWAB: You can answer.

15 THE WITNESS: It's a balance of everybody's  
16 rights on a lake upstream, downstream; and they try  
17 and come to a conclusion about where the order --  
18 watermark would be and what may or may not be a  
19 reasonable range to hold it in.

20 MS. AZAR: Okay.

21 THE WITNESS: And, also, in places where  
22 people have a fluctuating level beyond their affecting  
23 other people negatively or positively try to give a  
24 range that they can operate under. I'm guessing.

25

MS. AZAR: I understand. In fact, I asked

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1 you to guess so I appreciate that you do that.

2 BY MS. AZAR:

3 Q. When a new dam is built, does WDNR usually set a  
4 maximum, minimum and normal water level?

5 A. Not always, no.

6 Q. When -- for purposes of this next series of questions,  
7 I want you to assume that the Department has  
8 designated a normal maximum and minimum?

9 A. For what?

10 Q. For water level.

11 A. Where?

12 Q. For a dam.

13 A. Any dam?

14 Q. For right now, let's just say any dam.

15 A. It's going to be hard to get a specific answer.

16 Q. Let's see if you can. Dams are supposed to be  
17 operated to usually achieve the normal elevation.

18 Correct?

19 MR. WRIGHT: Object, form and foundation.

20 THE WITNESS: That would be site specific.

21 BY MS. AZAR:

22 Q. Do you know what the definition is of normal  
23 elevation, when the DNR designates a normal elevation?

24 A. I'm not familiar with DNR designating that many normal

25 elevations.

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1 Q. So you don't know what the definition of normal  
2 elevation is, in DNR guidances?

3 A. No.

4 Q. Do you know what the DNR definition of ordered maximum  
5 is?

6 A. Essentially.

7 Q. What's that?

8 A. That's the highest lake level that the water is  
9 supposed to be ordinarily maintained at.

10 Q. Do you know what the ordered minimum means?

11 A. Same, only minimum.

12 Q. When you say same, you mean --

13 A. It's to establish a range that ordinarily they're not  
14 supposed to be below.

15 Q. And so you don't know what the normal level means?

16 A. I don't have a specific definition for normal level,  
17 no.

18 Q. For purposes of this series of questions, I want you  
19 to assume that normal level means the level ordinarily  
20 commonly held by a dam? Okay. That's the designated  
21 level.

22 A. Again, I'm not aware of any.

23 Q. Any what?

24 A. Not the -- okay. Under that definition of normal

25 level.

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1 Q. I'm sorry; I don't understand.

2 A. Under your definition of normal level.

3 Q. I'm going to show you the WDNR Waterway and Wetland  
4 Handbook here.

5 I hand you what is Chapter -- and I'm going  
6 to make this representation; I ask you to accept it --  
7 what is Chapter 130 of the Wisconsin Waterway and  
8 Wetland Handbook --

9 A. Okay.

10 Q. -- concerning water levels and flow. I'm turning to  
11 Page 5 of that, and it talks about criteria for  
12 establishing level or flow requirements. Okay. And  
13 on Number 3 here I've highlighted it in pen?

14 A. Hm-hm.

15 Q. They have defined normal level. And what does that  
16 say? Would you please read that into the record?

17 A. It says: Normal level means level ordinarily commonly  
18 held by dam.

19 Q. So, for purposes of these questions, I'd like you to  
20 assume that that's the definition of normal level?

21 A. Okay.

22 Q. Dams are supposed to be operated to usually achieve  
23 the normal level. Correct?

24 MR. WRIGHT: Objection, form and foundation.

25

THE WITNESS: In my opinion, dams should be

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1 operated to, first of all, assure the safety of the  
2 dam..

3 BY MS. AZAR:

4 Q. Okay. And assuming that the dam operation is safe,  
5 okay, are they supposed to be operated to usually  
6 achieve the normal level?

7 MR. WRIGHT: Objection, form and foundation.

8 THE WITNESS: Ah, if there is DNR-ordered  
9 min and max levels, they should normally be operated  
10 to be within those levels.

11 BY MS. AZAR:

12 Q. That's going to be my next question.

13 A. I'm not aware of any law saying the dam has to be  
14 operated to maintain a normal level.

15 Q. Okay. For the purposes of these questions, I asked  
16 you to assume that the DMR has designated a normal  
17 level, a maximum level and a minimum level.

18 A. Hm-hm.

19 Q. And then I asked you to assume that the definition of  
20 normal level is what's been defined in the WDNR  
21 guidance, Waterway and Wetland Handbook. Do you  
22 understand that, Mr. Dallam?

23 A. Hm-hm.

24 Q. That's yes?

25 A. Yes. And that's a definition; it's not a requirement.

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1 Q. I understand, but we're asking you to assume two  
2 different things now: Number one, that WDNR has  
3 designated a maximum, minimum and normal level. Okay.  
4 So it is designated, do you understand that, for a  
5 specific dam?

6 A. Okay.

7 Q. Okay. This dam -- Okay. And, rather than talk about  
8 dams generally, let's talk about this dam, that the  
9 Department has designated a normal and minimum and  
10 maximum levels, it should be operated to usually  
11 achieve the normal level; isn't that correct?

12 MR. WRIGHT: Objection, form and foundation.

13 THE WITNESS: I wouldn't have an answer for  
14 that.

15 BY MS. AZAR:

16 Q. Why not?

17 A. Because, once again, it should be -- if the DNR has  
18 designated a min and max level, it should be operated  
19 between the min and max levels.

20 Q. Then why did the DNR designate a normal elevation in  
21 that case?

22 A. You have --

23 MR. WRIGHT: Objection, form and foundation.

24 MS. AZAR: I'm going to ask you to guess.

25

THE WITNESS: I wouldn't have a guess for

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1 that.

2 BY MS. AZAR:

3 Q. So you don't, even looking at the definition of normal  
4 there, you wouldn't -- you wouldn't be able to even  
5 guess as to why they may designate a normal level?

6 MR. WRIGHT: Same objections.

7 THE WITNESS: I'm not aware of -- of a law  
8 that says that people have to maintain a normal level.  
9 And I'm also aware -- I'm not aware of anyplace where  
10 we have lawfully required someone to operate at normal  
11 level. Min and max levels, yes.

12 BY MS. AZAR:

13 Q. So you have never seen a -- an order from either the  
14 WDNR or the State, generally, whether it be from the  
15 PSC or some other agency, that has designated a normal  
16 elevation?

17 A. They've indicated normal levels, perhaps, in the  
18 orders but not -- it's not a requirement to be held to  
19 that.

20 Q. Okay. And, when you say indicate, what does indicate  
21 mean versus ordered?

22 A. If it's indicated, it's in the findings. If it's  
23 ordered, it's in the order.

24 Q. So you have never seen an order that specified a

25 normal elevation in the order points issued by the

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1 State of Wisconsin for a dam?

2 A. Maybe in the PSC orders.

3 Q. Okay. And, in those orders -- and I'm asking you to  
4 guess -- what do you think the PSC meant by normal  
5 elevation?

6 MR. WRIGHT: Objection, form and foundation.

7 THE WITNESS: Ah, I -- my guess is they had  
8 a target range that they would like everyone to be  
9 held at.

10 BY MS. AZAR:

11 Q. So I think you testified earlier that you've seen DNR  
12 orders, and I would assume PSC orders as well, that  
13 have specified a minimum and maximum elevation;  
14 correct?

15 A. I've seen DNR orders that specified min/max elevations  
16 and I've seen permutations of a combination of  
17 therein.

18 Q. You testified earlier that when a new dam is built,  
19 the dam owner must receive easements for the flowage  
20 on the back water; is that correct?

21 A. If he affects anybody else's property, he needs  
22 easements from them for the flowage and the flood  
23 plain. And, when I refer to flood plain, I talk about  
24 the hundred-year flood plain.

25 Q. And is the dam owner required to obtain an easement

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1 for the flowed land when the lake is at the  
2 legally-designated minimum water level?

3 A. It's my interpretation that the dam owner has to  
4 require easements from any land that is flowed and  
5 that would be in the range that the dam was designed  
6 to hold back-water flow.

7 Q. So let's say there's a minimum and maximum and there's  
8 a three-foot difference between the minimum and the  
9 maximum.

10 A. Hm-hm.

11 Q. Would they be required to obtain easement if the land  
12 flowed at the minimum level or maximum level or some  
13 other level?

14 A. I would be guessing. Because I've never been that  
15 specific before. I would think the max level.

16 Q. Okay. Would the dam owner be required to obtain an  
17 easement for land that was flowed when the lake  
18 exceeded the legally-designated maximum?

19 MR. WRIGHT: Objection, form and foundation.

20 THE WITNESS: You really should be asking an  
21 attorney that.

22 Ah, yeah, they would need an easement for at  
23 least up to the hundred-year flood elevation increase.  
24 In the hundred-year flood elevation increase, it's

25 probably not -- the only thing you can do with the

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1 normal and min/max levels.

2 BY MS. AZAR:

3 Q. Are you involved in making the ordinary high-water  
4 mark determinations for the WDNR?

5 A. No.

6 Q. Do you know if the operation of dams affect the  
7 ordinary high-water mark in an area?

8 A. I would guess they could very well.

9 Q. And how could they?

10 A. If you held the water higher over a constant period of  
11 time, it may very well rise to -- very well may raise  
12 your ordinary high-water mark. Or, if you draw down  
13 the dam, you may over years very well lower the  
14 ordinary high-water mark.

15 MS. AZAR: Let me get this one marked,  
16 please.

17 (Document marked for identification as  
18 Exhibit No. 48.)

19 BY MS. AZAR:

20 Q. I'd like to have you look at what's been marked as  
21 Exhibit No. --

22 A. 48.

23 Q. -- 48. That'll be -- Could you please identify that,  
24 if you could?

25 A. Looks like a printout from the DNR's dam repository.

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1 At least, a map.

2 Q. And the second page?

3 A. It's also a printout from the dam repository.

4 Q. And what dam does it relate to?

5 A. Field File 57.34, Little Round Lake.

6 Q. So it relates to Little Round Lake Dam?

7 A. Yes.

8 Q. It characterizes the Little Round Lake Dam as a small  
9 dam. Correct?

10 A. Yes.

11 Q. And is the Little Round Lake Dam specified as a small  
12 dam because of it's structural height?

13 A. On here, it appears to be.

14 Q. And what does it specify the structural height is on  
15 there?

16 A. 6.0 feet.

17 Q. What I would like you to do, Mr. Dallam, is I'm going  
18 to give you a sheet of paper; and there used to be --  
19 a there's the blue pen. Can you -- I want to  
20 understand what the structural height refers to when  
21 we're talking about the Little Round Lake Dam?

22 A. Okay.

23 Q. Okay. And so, if you could just draw a stick figure  
24 of the Carlson Lake Dam and show me how one measures

25 the structural height there that would be wonderful.

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1 A. It's easier to give you a definition.

2 Q. I know what the definition is.

3 A. I'm not aware of the lowest point on that roadway  
4 crossing. That wasn't designed to flow water so I  
5 couldn't point you to the exact place to do the  
6 survey.

7 Q. I don't want the exact point. Why don't we start by  
8 drawing the dam and then I want to know what the  
9 different factors are in -- in determining what the  
10 structural height is.

11 A. Looking up -- downstream and upstream. You got a  
12 bridge. This is downstream and upstream you got  
13 stoplogs that go across. This is downstream.

14 Q. Okay. Where are we? Are we a bird right now?

15 A. Ah, no, we're looking essentially straight on from the  
16 downstream end. This would just be a slightly  
17 different dimension.

18 Q. So we're looking from the downstream end?

19 A. Standing in the creek looking up at the dam.

20 Q. Looking up at the dam. Okay?

21 A. Okay.

22 Q. Yah. And here's the bridge?

23 A. Yeah.

24 Q. I'm going to come around there. Okay. So can you

25 just put bridge right there so we know what that is.

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1 And could you identify what that point is  
2 right down there? That's the invert. So is that the  
3 bottom of the sill of the dam?

4 A. No, that's the bottom of the receiving stream channel  
5 as in the definition NR 333.

6 Q. So the invert is the bottom of the stream channel  
7 right outside of the dam structure itself?

8 A. Right downstream of the dam structure itself.

9 Q. And so, when you're measuring the structure height,  
10 what are you measuring?

11 A. You're measuring from the bottom of the downstream  
12 channel to the top of the dam not designed to flow  
13 water, the lowest elevation on the top of the dam not  
14 designed to flow water.

15 Q. So where on this picture if you could tell me what I  
16 would measure here?

17 A. You'd have to go out, first of all, and determine  
18 what's the lowest elevation on the top of the dam not  
19 designed to flow water; and, since it doesn't have an  
20 emergency spillway, that could be the top of the road  
21 or it could be one of the embankments.

22 Q. How does one determine that?

23 A. One goes out and surveys it and finds the lowest spot.

24 Q. And since it has a --

25 A. And then compare the elevations, and the one with the

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1 lowest elevation would be the one you would use in the  
2 determination to subtract this elevation from that one  
3 to determine the structural height.

4 Q. And I just wanted to note that you pointed, so the --  
5 they're going to be two values in this equation;  
6 right?

7 A. Okay.

8 Q. And is one the bottom of the invert?

9 A. One's the bottom of the downstream channel.

10 Q. At the end of the structure?

11 A. Below the structure, yeah.

12 Q. Below the structure. So where the stream bed or  
13 channel bed first starts?

14 A. Where the stream channel is, yeah.

15 Q. So you measure that elevation. It's going to be under  
16 water, obviously?

17 A. Yeah, in most instances.

18 Q. And then the other factor -- excuse me if I'm a little  
19 dense about this.

20 A. There's no problem.

21 Q. The other factor is what?

22 A. The top of the dam not designed to flow water, which  
23 means --

24 THE REPORTER: The top of the dam not

25 designed to flow water, which means --

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1 MR. WRIGHT: You don't go to the top of the  
2 emergency spillway is what I think you said.

3 THE WITNESS: Yeah. You go to the top of  
4 the dam not designed to flow water. That could be  
5 part of the embankment. In this case, it could be the  
6 bottom level of the bridge. The actual what the tires  
7 ride on. It depends on what the lowest elevation is  
8 not designed to flow water.

9 BY MS. AZAR:

10 Q. The lowest elevation not designed to flow water so  
11 whatever is lower is what you would take?

12 A. Yes, the lowest.

13 Q. Okay. Okay. Let me just ask you, is there any way  
14 for you to put an A and a B on this and show -- now we  
15 are invert --

16 A. These are approximate locations.

17 Q. I'm with you. Yup.

18 A. And this differs in opinion among various engineers;  
19 but I usually insist that, even if there's a scour  
20 below the structure, they go to bottom of that because  
21 structural height is really height that holds back the  
22 water and that would be subject to the actual force of  
23 that height. There's the road. A's the downstream  
24 invert or what I call the invert. B would be anywhere

25 along the road -- anywhere along the embankment, which

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1 in this case would include the road. That's actually  
2 embankment defined that's actually holding back water.  
3 The lowest height is not designed to flow water.

4 Q. So, if the water got high enough, it's where the water  
5 would break away over the embankment first?

6 A. Yeah.

7 Q. And that would be what we're going to call B here?

8 A. Okay.

9 Q. So and I want to go back to A. How far -- how far  
10 downstream do you go from the structure for A? Is it  
11 literally right off? You said, if there are scour  
12 marks --

13 A. Again, it's site specific.

14 Q. Okay.

15 A. And I know it's confusing. It confused a lot of DNR  
16 people, including myself on occasion; but say, if you  
17 have an apron, a poured apron downstream of dam which  
18 there are cases of that's not the natural stream  
19 channel so you go down to where the natural stream  
20 channel actually starts and measure that bottom  
21 elevation which may or may -- which would be lower or  
22 higher than actual physically placed thing of what the  
23 dam is. In this case, it would lower, immediately  
24 downstream and then it goes back up.

25 Q. It's scary, but I think I got it. Can you initial

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1 this sheet and date it, please?

2 THE REPORTER: And I'm going to need a  
3 break.

4 THE WITNESS: What's the date?

5 MS. SCHWAB: The 7th.

6 THE WITNESS: Still the 7th. And see how  
7 bad my memory is.

8 MS. AZAR: Let's get the marked.

9 (Document marked for identification as  
10 Exhibit No. 49.)

11 MS. AZAR: Frank, I know you want to clarify  
12 something; but, if you don't mind, I'd like to have  
13 her read back something first and then you can clarify  
14 it, if that's okay.

15 THE WITNESS: Sure.

16 MS. AZAR: Okay. There was a question and  
17 answer in regard to -- This is going to be -- I don't  
18 know if we'll be able to do this. Can you do a  
19 search? It's the last question concerning easements  
20 and whether or not dam owners are required to obtain  
21 easements.

22 (Testimony read.)

23 BY MS. AZAR:

24 Q. Did you hear the question and answer?

25 A. (Indicating).

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1 Q. Were you stating that the dam owner would need to  
2 obtain an easement for the regional flood elevation?

3 A. For the increase in the regional flood elevation over  
4 the existing proposed condition. And -- Okay. Make  
5 it quicker, I'll explain it to you somewhat because it  
6 is confusing.

7 Any project essentially going over a  
8 navigable waterway, especially, if it's in a flood  
9 plain, the code as written -- and had been interpreted  
10 and the interpretation may change on some instance  
11 soon -- is that they have to do a calculation between  
12 the existing and the proposed regional flood  
13 elevation.

14 Q. Okay.

15 A. And they need an easement for any property that would  
16 be in-between the two.

17 Q. Okay.

18 A. Okay. Because, essentially, you're causing something  
19 on someone else's property, you would need an  
20 easement. The hundred-year flood elevation easement  
21 can be written to cover both the flow, which depends  
22 on the asment, which is why it's so hard to be  
23 specific. That easement could cover flowage easement,  
24 also. Usually, the easement is -- the hundred-year is

25 greater --

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1 Q. Than the flowage easement?

2 A. -- than the flowage easement. Depending on how it's  
3 written, that could cover both of them.

4 Q. So it's the greater of the two, the flowage easement  
5 or the regional flood elevation?

6 A. They need both. They need both, but how -- depending  
7 how they write the easement, it could be included  
8 under one. They need to have an easement for flowage;  
9 they need to have an easement for the increase in the  
10 hundred-year.

11 Q. And, when you say increase in the hundred-year flood  
12 elevation, if somebody changes the water-flow  
13 structure that raises the hundred-year flood  
14 elevation, that's what you're talking about, the  
15 difference in existing RFE and the proposed or new  
16 RFE; correct?

17 A. Yes, and there's always been an exception, and DOT has  
18 one, where they just have to -- the DOT bridge, they  
19 just have to notify the property owners of it. So  
20 there's always been exceptions.

21 Q. That's what makes your job so interesting; right?

22 A. Confusing.

23 Q. All right. That was the question I had. You had a  
24 clarification?

25 A. Yah. Clarification is on the dam repository

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1 information.

2 Q. Yes.

3 A. That, at least, when I deal with structures and with  
4 dams, if someone were to propose an alteration to this  
5 that would involve a difference between it being a  
6 large and small dam, I would require them to submit  
7 the survey. I wouldn't automatically go by what's in  
8 the dam repository.

9 Q. So you'd ask them to submit a survey that would show  
10 the structural height?

11 A. And the volume calculation if it was anywhere close.

12 Q. And you said you would only do that if they were  
13 proposing alterations to the dam?

14 A. Or if there had been some enforcement situation,  
15 depending upon how to apply the applicable code,  
16 whether it meets 333 requirements or just the  
17 requirements for a small dam.

18 Q. And, if somebody were to send you a survey of a dam  
19 that had been characterized as a small dam but the  
20 survey showed that the structural height was actually  
21 that of a large dam and it would include a survey both  
22 of the structural height as well as the volume?

23 A. Hm-hm.

24 Q. Would DNR potentially redesignate the dam as a large

25 dam? I mean what sort of response would the DNR have

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1 to that situation?

2 A. The response would be that it would have to fulfill  
3 the applicable code requirements which in this case  
4 would be the ones for large dam.

5 Q. Okay. Thank you. And so let's talk very specifically  
6 right now, if the DNR were to receive some information  
7 in relation to the Little Round Lake dam that showed  
8 that the structural height exceeded six feet, what  
9 would the DNR's response be to that?

10 MR. WRIGHT: Object to form.

11 THE WITNESS: We treat it as a large dam.

12 BY MS. AZAR:

13 Q. And how would your treatment of the Little Round Lake  
14 Dam change at that point in time, when it changed from  
15 a small dam to a large dam?

16 A. Ever it changes to a large dam, any proposed  
17 alterations have to meet the code requirements of  
18 NR 333.

19 Q. And what constitutes an alteration?

20 A. Reconstruction. Say, if they were to go in there and  
21 rebuild the dam, even if it didn't constitute a  
22 reconstruction, then we'd still want to see the plans  
23 for it, in order to see what they're applying for.

24 Q. And, if somebody raised the sill of the dam, would

25 that be considered an alteration?

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1 A. If it had been a DNR-approved sill elevation, yeah,  
2 I'd consider that an alteration.

3 Q. You mean, if the prior sill elevation had been -- if  
4 the prior sill elevation had been approved by DNR and  
5 a new sill -- that sill was elevated, you would  
6 consider that an alteration?

7 A. Oh, yeah.

8 Q. And what if the dam structure was initially never  
9 approved at all?

10 A. Then I consider it a non-authorized dam and I have to  
11 fulfill all the applicable code requirements.

12 Q. Okay.

13 A. Then -- and -- I'd have to make an exception because  
14 there are always exceptions. It also depends upon a  
15 specific situation.

16 Q. What sort of situations -- what sort of factors do you  
17 consider in deciding?

18 A. Maybe how long it's been there, and who's complaining  
19 about it.

20 Q. And --

21 A. And if they had -- they may have received prior  
22 approvals through various agencies that wouldn't meet  
23 current code requirements.

24 Q. And --

25 A. Because there are so many things different things,

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1 it's really hard to be specific.

2 Q. So you said one of the factors would be who's  
3 complaining about it?

4 A. (Indicating).

5 Q. Tell me the different factors in relation to that they  
6 would have an impact on your decision?

7 A. Someone would have to complain about it for us to even  
8 know about it.

9 Q. Okay. But let's assume somebody is complaining,  
10 right, and you said it depends on who is complaining?

11 A. Well, that essentially means somebody is complaining.

12 Q. So that's all that matters is that you received a  
13 complaint?

14 A. Again, it's site specific.

15 Q. What I want to do is I want to try to narrow down the  
16 factors. I want to figure out what factors you use in  
17 determining how to respond to a dam that never had an  
18 authorization from the get go. Okay?

19 A. Okay. Any authorization from any agency are you  
20 talking?

21 Q. That is correct. From any State agency.

22 A. Okay.

23 Q. Okay? And let's say it's a large dam so we're  
24 presuming it's a large dam. We're presuming that

25 there's no authorization for that large dam?

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1 A. Hm-hm.

2 MR. WRIGHT: And just for clarification,  
3 we're not talking about Little Round right now; we're  
4 talking about any dam?

5 BY MS. AZAR:

6 Q. This is a hypothetical large dam. In that situation,  
7 what would you do as the DNR individual who oversees  
8 dams in a nine-county range?

9 A. I'd probably be advising the WMS that if it's on a  
10 navigable waterway that they would need a permit for  
11 the dam; and then I'd cooperate with anybody for the  
12 technical requirements of the permit.

13 Q. So it would be the responsibility of the WMS to  
14 respond to the situation?

15 A. Usually, they would be the first contact, yeah,  
16 because it's a permit violation; it would be a  
17 Chapter 30 permit violation. If there wasn't a  
18 WMS, currently employed in that place, then I may have  
19 to step in or a supervisor may have to step in or --  
20 and what legislator is involved, it may be beyond a  
21 supervisor. That's why it's hard to be specific.

22 Q. All right. I'm now returning to the Little Round Lake  
23 Dam. Have you conducted any studies of the flow  
24 capacity of the existing structure?

25 A. No.

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1 Q. When you're evaluating whether the Little Round Lake  
2 Dam complies with the law, what do you consider?

3 A. You have to --

4 MR. WRIGHT: Objection, form, foundation.

5 THE WITNESS: -- be specific.

6 BY MS. AZAR:

7 Q. Okay. Well, you're responsible for overseeing the  
8 dams in the nine-county area; right?

9 A. Hm-hm.

10 Q. And including whether or not those comply with the  
11 Wisconsin Statutes and the DNR rules. Correct?

12 A. That would be part of it. Yes.

13 Q. What else would be part of it? What else would you --  
14 would you look at to see what they complied with?

15 A. If they were going for a reconstruction, they would  
16 have to be complying with 333.

17 Q. Okay. I -- I don't mean to interrupt, but I do mean  
18 to interrupt. We're talking now about a very specific  
19 dam, the Little Round Lake Dam?

20 A. Okay.

21 Q. Okay. And I'm wondering how you evaluate whether or  
22 not that dam complies with the law.

23 A. I first try and look at the original authorization,  
24 and you would have to make a distinction about whether

25 it was complying with the original authorization or

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1 whether it's complying with current law, and there may  
2 very well be a difference.

3 Q. And, if there is a conflict between the original  
4 authorization and the current law, which one applies?

5 A. Then I see --

6 MR. WRIGHT: Objection to form. Go ahead.

7 THE WITNESS: I seek the advice of an  
8 attorney.

9 MS. AZAR: That's a good thing to do.

10 THE WITNESS: Or somebody with more  
11 experience than I have.

12 (Document marked for identification as  
13 Exhibit No. 50.)

14 BY MS. AZAR:

15 Q. Mr. Dallam, would you please identify what's been  
16 marked as Exhibit No. 50?

17 A. Public Service Commission Order 2-WP-513, finding and  
18 order.

19 Q. And we were just talking about the original  
20 authorization requiring Sawyer County to construct the  
21 Little Round Lake Dam. Is this the order that you  
22 were thinking of?

23 A. In reference to thinking of what?

24 Q. You were referring to the original authorization that

25 Sawyer County had to construct the Little Round Lake

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1 Dam. Is this the authorization --

2 A. No, you were speaking in general as I understand it.

3 MS. AZAR: Read back the question, please.

4 THE WITNESS: The previous questions were in  
5 general.

6 MS. AZAR: Let's read back the questions.

7 (Testimony read.)

8 MS. AZAR: I think that's far enough.

9 THE WITNESS: You're correct.

10 BY MS. AZAR:

11 Q. When I'm correct, is this the original authorization  
12 that you were referring to when we were speaking about  
13 the Little Round Lake Dam?

14 A. Yes.

15 Q. Have you seen this document before?

16 A. Yes.

17 Q. Is this document contained in the DNR's files?

18 A. Yes.

19 Q. And is it maintained in the ordinary course of  
20 business of the DNR?

21 A. Maintained --

22 Q. You maintain it in your file --

23 A. Yes.

24 Q. -- filing system at the DNR?

25 A. Yes.

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1 Q. And is this an accurate copy of the document that's  
2 maintained in the DNR files?

3 A. Appears to be.

4 Q. Okay. What else -- when you're evaluating whether or  
5 not the Little Round Lake Dam complies with the law,  
6 you mentioned the originating order, which has now  
7 been marked as Exhibit 50. What else do you consider?

8 A. Ah, sub -- subsequent orders.

9 Q. Okay.

10 Q. And what subsequent orders relate to the Little Round  
11 Lake Dam?

12 A. Subsequent and/or previous Lake Placid order.

13 Q. All right.

14 MS. AZAR:

15 (Document marked for identification as  
16 Exhibit No. 51).

17 BY MS. AZAR:

18 Q. Mr. Dallam, I'd like to refer you to what's been  
19 marked as Exhibit 51. Can you identify that document?

20 A. Looks like a Public Service Commission Order 2-WB-298.

21 Q. Is this the Lake Placid order that you were just  
22 referring to?

23 A. I believe so, yes.

24 Q. Is this document maintained in the files of the

25 Wisconsin Department of Natural Resources?

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1 A. Yes, it is.

2 Q. Is it maintained there in the ordinary course of  
3 business?

4 A. Yes.

5 Q. And is this an accurate copy of the document that's  
6 maintained at the Wisconsin Department of Natural  
7 Resources?

8 A. Appears to be.

9 Q. What besides Exhibit 50 and 51, what else do you  
10 consider in relation to the compliance of the Little  
11 Round Lake Dam?

12 A. The orders for Tiger Cat Flowage.

13 Q. And there would be three of those?

14 A. I believe so. The initial authorization plus two  
15 raising -- two that raise the levels. There's at  
16 least two of them, maybe three.

17 Q. Let's do this in order.

18 MS. AZAR: Here's one.

19 (Documents marked for identification as  
20 Exhibit Nos. 52 through 55.)

21 BY MS. AZAR:

22 Q. Okay, Mr. Dallam, you have now received what has been  
23 marked as Exhibits 52 through 55. Correct?

24 A. Yes.

25 Q. Let's walk through these. Exhibit 52, can you

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1 identify that?

2 A. Ah, it appears connected with 2-WP-255, a Public  
3 Service Commission order. Looks like a permit.

4 Q. Is this the permit to construct the Tiger Cat Dam?

5 A. Ah, the application herein is for a permit to  
6 construct, operate and maintain a dam in and across  
7 the north fork of the Chief River. I'm assuming it's  
8 for the Tiger Cat Dam.

9 Q. Let me call your attention to the caption. Let me  
10 just point this out there.

11 A. Sure. The same caption that's on Exhibit Number 53?

12 Q. Correct.

13 A. Okay.

14 Q. And it refers to the Tiger Cat. Correct?

15 A. Yup.

16 Q. Have you -- I guess -- Did you answer the question  
17 whether or not this was the original authorization to  
18 construct and maintain and operate the Tiger Cat Dam?

19 A. I believe so; I have to look at the signed date.

20 Q. You have to look at the what?

21 A. Signing date. I get confused, too, with so many  
22 orders. I usually go look for the one with the  
23 earliest date and see if it authorizes the dam.

24 Q. Why don't we walk through each one. This one is dated

25 February 5th, 1927. Let's hold off questions on that

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1 one right now. Let's go to next one. And the next  
2 one is Exhibit 53. Now, the top of Exhibit 53 -- and  
3 I'm going to walk you through these and then we can go  
4 back and I'll try to authenticate the documents.

5 Okay?

6 A. Okay.

7 Q. The very first page of Exhibit 53 is dated May 25th,  
8 1937. Correct?

9 A. Oh, there it is, yeah.

10 Q. And what this document says is that it's correcting an  
11 error in the original order in Docket No. 2-WP-255; is  
12 that correct? In the first paragraph --

13 A. It's hard reading it.

14 Q. Yeah. In the first paragraph -- let me read the first  
15 paragraph. On Page 3 Line 4, at the top of the page,  
16 in the typewritten permit in the above-entitled  
17 matter, an error occurs in this, comma, that in place  
18 of the word, quote, maximum, end quote, found in said  
19 line, the word, quote, normal, end quote, was  
20 intended, period.

21 A. That's what it says, yes.

22 Q. Let's just keep walking through then. Let's go to  
23 Exhibit 54. What is Exhibit 54?

24 A. It's an application of Sawyer County for a permit to

25 raise and enlarge an existing dam known as Tiger Cat

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1 Dam, 2-WP-766.

2 Q. And the permit itself is dated when?

3 A. The permit's dated 2nd day of June, 1950.

4 Q. Let's go to Exhibit No. 55. No. 55 is another  
5 application to raise the water level on the Tiger Cat  
6 Dam; isn't that correct?

7 A. Yah, yeah. With a signed order, I believe.

8 Q. And the permit itself is dated August 8th, 1984.

9 Correct?

10 A. Yes.

11 Q. Are these all the orders that you know that relate to  
12 the Tiger Cat Dam?

13 A. Ah, yes, directly relating to the authorization to  
14 construct it and raise the height of it; and, in all  
15 honesty, the Lake Placid orders would relate to Tiger  
16 Cat Dam, too, because that was part of the purpose of  
17 the original purpose of the Tiger Cat -- first Tiger  
18 Cat Dam order was to create a volume and height of  
19 water to be able to divert down to Round Lake.

20 Q. And the Lake Placid order we've already marked and  
21 identified as Exhibit 51; correct?

22 A. Yes.

23 Q. And so Exhibits 52 through 55 are the remaining orders  
24 that relate to Tiger Cat Dam; correct?

25 A. Yes.

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1 Q. What I'd like to do now is go through -- it's rather  
2 formal, but I'm going to ask you about each document  
3 like I have been.

4 A. Okay.

5 Q. Exhibit 52, which I think we've identified as the  
6 original order of the Tiger Cat Dam; correct?

7 A. Yes.

8 Q. Is this maintained in the records of the DNR?

9 A. I believe so. Yes. But you have it copied in a way  
10 that's sideways copied. I don't immediately recognize  
11 it. I believe we have the original order, yes.

12 Q. Do you want me to get you a different version of this;  
13 would that be helpful?

14 A. No, this is fine.

15 Q. And is this order maintained at the DNR in its  
16 ordinary course of business?

17 A. Yes.

18 Q. And is this an accurate copy of the order besides the  
19 fact that it's sideways? Is it an accurate copy?

20 A. It appears to be, yes.

21 Q. Thank you.

22 A. Without going through it word-by-word, it appears to  
23 be.

24 Q. Thank you. Exhibit 53. Now, Exhibit 53 is an errata.

25 The top sheet is an errata sheet of the original

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1 order, and then it attaches the original order in a  
2 form that you may be more comfortable with because the  
3 text is --

4 A. What's an errata?

5 Q. It's an error sheet. It explains an error in the  
6 original order.

7 A. Thank you.

8 Q. Is this document maintained in the records of the DNR?

9 A. Yes.

10 Q. And is it maintained in the ordinary course of  
11 business?

12 A. Yes.

13 Q. And is this an accurate copy of the document that's  
14 maintained at the WDNR?

15 A. Appears to be.

16 Q. Exhibit 54 is an order dated June 2nd of 1950,  
17 permitting Sawyer County to raise the elevation of the  
18 designated levels on the Tiger Cat Flowage; correct?

19 A. Correct.

20 Q. And is this document maintained at the DNR?

21 A. Yes.

22 Q. And is it maintained in the ordinary course of  
23 business?

24 A. Yes.

25 Q. And is this an accurate copy of the document that's

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1 maintained at the DNR?

2 A. Appears to be.

3 Q. Exhibit No. 55 is a permit issued to Sawyer County  
4 dated August 8th, 1984, authorizing another raising of  
5 the level of the Tiger Cat Flowage, and it designates  
6 the maximum level, normal level and minimum level of  
7 that flowage; is that correct?

8 A. Yes.

9 Q. And is this document maintained at the WDNR?

10 A. Yes.

11 Q. In its ordinary course of business?

12 A. Yes.

13 Q. And is this an accurate copy of the document that's  
14 maintained at the WDNR?

15 A. It appears to be.

16 Q. Thank you. Okay. Now, where we were, after all this  
17 formality, is we were talking about, when you're  
18 looking at the Carl -- the Little Round Lake Dam and  
19 you're determining whether or not it's complying with  
20 the law, what you look for; and so far we have now  
21 identified Exhibits 50 through 55. What else do you  
22 look for?

23 A. I look for any other DNR permits that may apply to the  
24 overall situation.

25 Q. And what permits would those be?

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1 A. Specifically, they would be dredging permits for  
2 the -- for the North Channel and the Osprey Creek. I  
3 believe there was two dredging permits issued by the  
4 DNR back in the 70's.

5 Q. I know you're going to be shocked and I'm about to  
6 give them to you.

7 (Documents marked for identification as  
8 Exhibit Nos. 56 through 57.)

9 BY MS. AZAR:

10 Q. Mr. Dallam, I'd like you to look at what's been marked  
11 as Exhibits 56 and 57.

12 A. Okay.

13 Q. Are those the two dredging permits that you were just  
14 discussing?

15 A. Yes.

16 Q. And let's take them one at a time. Exhibit 56, is  
17 this document maintained at the DNR in its files?

18 A. Yes.

19 Q. In its ordinary course of business?

20 A. Yes.

21 Q. Is this an accurate copy of the document that's  
22 maintained at the DNR?

23 A. Appears to be.

24 Q. And Exhibit 57, is this document maintained at the

25 DNR?

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1 A. Yes.

2 Q. And is it maintained in your ordinary course of  
3 business?

4 A. Yes.

5 Q. And is this an accurate copy of the document that's  
6 maintained at the DNR?

7 A. It appears to be.

8 Q. Hot dog. Okay. Now, we've identified Exhibits 50  
9 through 57 as items which you would rely on to  
10 determine whether or not the Little Round Lake Dam  
11 complies with the law. Is there anything else?

12 A. Yes.

13 Q. What is that?

14 A. Ah, any official correspondence.

15 Q. Any official cor --

16 A. Relating to previous opinions done by the Department,  
17 especially legal.

18 Q. What opinions are you thinking about, specifically?

19 A. Specifically, I'm thinking about the Attorney  
20 General's letter.

21 Q. Okay.

22 Q. And what's that dated?

23 A. Mid-eighties, I think.

24 Q. What else?

25 A. Any copies I would have had of correspondence from the

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1 attorney.

2 Q. From which attorney?

3 A. Mike King ^ sp.

4 Q. Okay. What else?

5 A. Any copies that I have access to from basically any  
6 DNR employee or anything that would be in the files,  
7 specifically, the Todd Naas letter.

8 Q. Which Todd Naas letter?

9 A. They all appear to be based around the same situation  
10 in the early nineties. I think he has departmental  
11 correspondence and he has one I think they've got  
12 written to, ah -- oh, to some member of the public and  
13 then he also had a summary of the Round Lake  
14 situation, a dated summary.

15 Q. And is that in your files?

16 A. Originally, it wasn't. I believe I got a copy of that  
17 from the Hayward office.

18 Q. Okay.

19 A. I did a file search through his files also at a later  
20 date.

21 Q. What date was that?

22 A. I can't remember.

23 Q. And, when you say a later date, later than what?

24 A. Later than the original search I -- later than the

25 original trying to dig up information to figure out

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1 what was going on in the Round Lake situation on this.

2 Q. So later than my subpoena?

3 A. I can't remember. I'm not trying to dodge you, I just  
4 can't remember.

5 Q. So any documents that the Department would have sent  
6 to Sawyer County in relation to this you would  
7 consider germane to --

8 A. A good possibility, yeah. Or to the public.

9 Q. Letters sent to the public as well?

10 A. Yes.

11 Q. So essentially your entire file?

12 A. If the situation was ongoing, yeah.

13 Q. I'm going to hand you what's been marked as Exhibit  
14 No. 31. Is that the letter from Todd Naas that you  
15 were just referring to?

16 A. I believe that's one of them.

17 Q. Okay. Let's mark that one next.

18 (Document marked for identification as  
19 Exhibit No. 58.)

20 BY MS. AZAR:

21 Q. Mr. Dallam, we've handed you a document that's been  
22 marked as Exhibit No. 58. Could you please identify  
23 that document?

24 A. That's an E-mail I sent to David Kafura and Sawyer

25 County regarding Round Lake.

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1 Q. Could you -- Well, I'm just going to read the first  
2 sentence here. Strike that.

3 This E-mail exchange has to do with someone  
4 placing boards in the Little Round Lake Dam; correct?

5 A. Correct.

6 Q. And Mr. Kafura was writing you to find out if you had  
7 made any direction to the County that no board should  
8 be placed in the dam; is that correct?

9 A. Ah, that's correct. Although clarifying it is when  
10 the lake elevation is higher than what had been  
11 indicated in the original order.

12 Q. Okay. And your response was, quote, if the boards are  
13 being used to maintain the lake level at higher than  
14 the authorization specifies, they must be removed  
15 immediately, unquote; correct?

16 A. Correct.

17 Q. And, when you say higher than the authorization  
18 specifies, what number specifically are you referring  
19 to?

20 A. The upper level that's in the original order for Round  
21 Lake.

22 Q. And what number is that?

23 A. I'd have to look at the order. It's the one that I  
24 gather on the .25 feet.

25 Q. Exhibit 50, you should probably look at.

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1 A. I can look at 'em here. You've got me a whole pile of  
2 them.

3 Q. We aim to please.

4 A. Okay. If the water level is up above 77.25 feet and  
5 they're using boards to actually hold the water higher  
6 than that, then they've got to remove the boards.

7 Q. And where are you looking at right now, specifically?

8 A. Under order, it is therefore ordered.

9 Q. Order Point No. 3?

10 A. Yeah, Sawyer County shall maintain Round and Little  
11 Round Lakes.

12 Q. So Sawyer County shall maintain Round and Little Round  
13 Lakes at the normal elevation of 77.00 feet at all  
14 times when a sufficient water supply exists and during  
15 freshets and heavy runoff to prevent the water levels  
16 from rising above elevation 77.25 feet, period, end  
17 quote. Correct?

18 A. Correct.

19 Q. Okay. And you're stating that the authorized levels  
20 that you're discussing in Exhibit 55 is this 77.25  
21 feet; correct?

22 A. Correct.

23 Q. Is that maximum designated water level?

24 A. Now, I recall a discussion you and I and

25 Mike King ^ sp had. This is a level that's in the

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1 order that's supposed to maintain and not exceed  
2 according to what's in this order.

3 Q. So are you stating that it is or it is not a maximum  
4 designated water level?

5 A. I take literally what's in the order. Do they have it  
6 identified in there specifically the max/normal? And  
7 I'm looking now.

8 Okay. It doesn't appear under the order  
9 part of the document referring to it as therefore  
10 ordered, Number 3, it does not specifically identify  
11 it as a normal maximum or a normal. It just says to  
12 prevent the water levels from rising above 77.25 feet.

13 Q. Does it matter whether or not they actually use the  
14 term maximum or not?

15 A. It may or may not.

16 Q. When would it?

17 A. If it was a DNR-ordered level?

18 Q. Hm-hm.

19 A. I would certainly be paying -- if they had a  
20 specifically outlined max and min level --

21 Q. Hm-hm.

22 A. -- then, if they were -- and had the capability of  
23 holding it above and were holding it above the max  
24 level, then they should be making appropriate

25 arrangements to drop it down to the range they had

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1 specified.

2 Q. And is this the DNR's position or your personal  
3 position?

4 A. I don't speak for the whole WDNR. From what I'm aware  
5 of, it's how generally water orders are treated, water  
6 order levels.

7 Q. And so, as I understand your position, you don't  
8 believe that the maximum water elevation is specified  
9 in the 1941 order; correct?

10 A. I believe they intended to set a range for the County  
11 to hold the water levels at and then, when you look at  
12 the findings, that it's obvious that it depends upon  
13 downstream conditions.

14 MS. AZAR: Would you read back the question,  
15 please?

16 (The last question and answer were read.).

17 BY MS. AZAR:

18 Q. Is the term maximum elevations a term of art at the  
19 WDNR?

20 A. A term of what?

21 Q. A term of art. Does it mean something specific?

22 A. You -- you'd have to ask other people that.

23 Q. Well, you just indicated that if they had actually  
24 stated in the order that this was a maximum elevation

25 that you would be treating this differently.

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1 A. If it was a DNR-ordered maximum level --

2 Q. Right.

3 A. -- and they were holding it above that DNR-ordered  
4 maximum level and had the capability of effecting it  
5 back down to the indicated range, then they should be  
6 dropping it to that indicated range.

7 Q. If it's a PSC-ordered maximum level, would you have  
8 the same conclusion?

9 A. Yes, if they had the capability of operating it within  
10 that range and that's what the E-mail indicates.

11 Q. So I want to understand whether you think this order  
12 contains that kind of maximum level designation.

13 MR. WRIGHT: Object to form, foundation.

14 MS. AZAR: Let me back up. I want to make  
15 sure that we get this correct.

16 BY MS. AZAR:

17 Q. You're talking about a maximum water elevation that  
18 triggers obligations; correct?

19 A. Correct.

20 Q. And you put some stock in the term maximum; is that  
21 correct?

22 MR. WRIGHT: Object to the form.

23 MS. AZAR: You can still answer it.

24 THE WITNESS: Oh, I put -- yeah, I put stock

25 in whether it's maximum and I also put stock in it if

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1 it's even not labeled maximum. And I put more stock  
2 into whether it's physically capable of being  
3 maintained at that level.

4 BY MS. AZAR:

5 Q. Right now I want to put that last point aside for a  
6 moment. We will be coming back to that.

7 A. Of course, you do.

8 Q. I just want to figure out whether or not you believe  
9 there's a maximum water level designation in the 1941  
10 order.

11 A. I don't believe there's a maximum level order  
12 designation. However, I would be treating the level  
13 indicated as what the intended range of the order was  
14 and, if it was physically capable of them to maintain  
15 it, then I would be advising them to remove stoplogs  
16 to do it.

17 Q. So you would be treating the 77.25 as though it was a  
18 maximum water level --

19 A. Yes.

20 MR. WRIGHT: Object to form.

21 MS. AZAR: Did you get my entire question  
22 and his answer?

23 THE REPORTER: I did not get the answer.

24 THE WITNESS: Essentially, with a

25 clarification depending upon whether they actually had

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1 the physical capability of maintaining that lake  
2 level.

3 BY MS. AZAR:

4 Q. And we're going to go into that.

5 A. Oh, I can't wait. You're going to get to the more  
6 difficult part of it.

7 Q. We've just begun, Frank. Let's keep Exhibit 50 out.

8 A. All right.

9 MS. AZAR: And what time is it? Off the  
10 record for a minute.

11 (Discussion off the record.)

12 BY MS. AZAR:

13 Q. I'd like to discuss the order points in the 1941  
14 order.

15 A. Exhibit No. 50?

16 Q. Ah, yes. Thank you. Exhibit No. 50. Order Point  
17 No. 2 is on Page 10 and 11 of Exhibit 50, requires the  
18 Sawyer County to construct a dam with capacity to  
19 discharge 150 CFS, whereby the water level on Round  
20 and Little Round Lakes may be controlled; correct?

21 A. Correct.

22 Q. Continuing with Order Point No. 2 of the 1941 order,  
23 it requires the County to construct an outlet channel  
24 from Little Round to Squaw Lakes with a capacity to

25 accommodate 150 CFS whereby the water level in Round

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1 and Little Round Lakes may be controlled; correct?

2 A. Is that in the findings or is that in the order?

3 Q. I'm going to read No. 2. The Sawyer County construct  
4 an outlet channel from Little Round Lake to Squaw Lake  
5 with capacity to discharge 150 CFS?

6 A. Okay.

7 Q. Whereby the water level in Round and Little Round  
8 Lakes may be controlled; do you see that?

9 A. Yeah.

10 Q. Okay.

11 A. I'm sorry I got confused for a minute.

12 Q. That's okay. And we just -- well, actually we didn't.  
13 Strike that. Order point No. 3 of the 1941 order  
14 requires the County to maintain Round and Little Round  
15 Lakes at the, quote, unquote, normal elevation of  
16 77.00 feet; correct?

17 A. Correct.

18 Q. And we've already discussed the 1941 order requires  
19 the County to prevent the water levels from rising  
20 above 77.25 during freshets and heavy runoff; correct?

21 MR. WRIGHT: Object to form.

22 THE WITNESS: Correct.

23 BY MS. AZAR.

24 Q. And what are freshets?

25 A. I'm not exactly sure.

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1 Q. Could that be spring runoff?

2 A. Could be. Could be fall.

3 Q. But you would --

4 A. Is that what you mean by spring runoff, snow melt?

5 Q. Correct. Yes.

6 A. Could be.

7 Q. The 1941 order does not specify minimum water

8 elevation; correct?

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

10 Q. Therefore, the 1941 order specifies a normal water  
11 elevation?

12 A. Correct.

13 Q. And something that's similar to a maximum water  
14 elevation but not called that?

15 MR. WRIGHT: Object to the form.

16 MS. AZAR: And let's -- let's -- Let me  
17 speak frankly here, Frank. What I'd like to do is  
18 call it a maximum elevation here because otherwise  
19 we're going to get objections every time I say  
20 something that's sort of like a maximum elevation.

21 MR. WRIGHT: You're still going to get an  
22 objection. Say whatever you want.

23 BY MS. AZAR:

24 Q. I'm going to ask you to presume for the purposes of

25 this line of questions that this order -- the

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1 following phrase, which is that Sawyer County shall  
2 maintain Round and Little Round Lakes during freshets  
3 and heavy runoff to prevent the water levels from  
4 rising above elevation 77.25, as a maximum water level  
5 designation; do you understand that?

6 A. I think. That means I don't have to agree with you  
7 that that's what it means.

8 Q. That is correct.

9 A. But that's what you're using it in context of this.

10 Q. That is correct.

11 A. This -- a -- whatever this is.

12 Q. So assuming my definition of maximum water elevation  
13 in the 1941 order, I'm going to ask you a question.

14 The 1941 order specifies a normal water  
15 elevation, a maximum water elevation but not a minimum  
16 water elevation; correct?

17 MR. WRIGHT: Object to the form and  
18 foundation.

19 THE WITNESS: Taking into account your  
20 definition for or assumption of maximum level, I would  
21 assume that's correct. Yes.

22 BY MS. AZAR:

23 Q. Do other individuals at the DNR agree with you that  
24 there is no formal maximum water elevation in the 1941

25 order?

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1 MR. WRIGHT: Objection, form and foundation.

2 MS. SCHWAB: Objection, foundation.

3 BY MS. AZAR:

4 Q. Do you know if anybody else at the WDNR --

5 A. You have to ask them.

6 Q. Have you ever seen any documents from the WDNR, in  
7 which DNR staff has specified that the 1941 orders  
8 designated a maximum level?

9 A. Might be in Todd Naas's letter.

10 Q. Anything else?

11 A. Ah, he was rather explicit about them not being able  
12 to raise the level above the 77.25.

13 Q. Are there any other documents from the DNR that  
14 specify that -- that the 77.25 in the 1941 order is a  
15 maximum level?

16 A. I may have actually called it that in the first  
17 discussions with the County.

18 Q. Really? And why would you have called it that?

19 A. Because I hadn't had time to go through all the orders  
20 and realize the implications of everything.

21 Q. And what is the implication of calling it a maximum  
22 level?

23 A. I believe it's treated as a DNR-ordered maximum level  
24 and it's not DNR-ordered maximum level.

25 Q. I'm sorry; I didn't understand the answer.

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1 A. I believe that, when you say that, it's associated  
2 with a DNR-ordered maximum level. I can mess up, too.

3 Q. Do you believe -- strike that. You've been  
4 continuously focusing on the order points, we both  
5 have, in relation to the 1941 order. I'd like to turn  
6 us to the findings of fact at this point.

7 Looking at finding of fact No. 3, it states  
8 that in order for the County to achieve the designated  
9 levels that are in the order, that the dam and outlet  
10 channel between Little Round and Osprey Lake would  
11 have to be 10 feet wide. Correct?

12 A. I believe the order states that in order that the  
13 normal elevation of Round and Little Round Lakes may  
14 be maintained, it will be necessary to construct an  
15 outlet canal not less than ten feet in width from  
16 Little Round Lake to Squaw Lake the high point of  
17 which shall be at an elevation of not more than 75.25  
18 feet and which should contain or control or regulate  
19 the water levels of the Lake.

20 Q. You essentially just read the order point; right?

21 A. Yes.

22 Q. I want to understand what that order point means.

23 A. Are you going to go back and ask somebody that  
24 originally wrote it?

25 Q. No. I'm going to ask you, because you're -- you're

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1 responsible for implementing this order, aren't you,  
2 on behalf of the DNR?

3 A. I'm going to make a guess that that means that the  
4 sill -- what they intended in the findings is that  
5 that sill shouldn't be any higher than that or any of  
6 the outlet canal shouldn't be any higher than that.

7 Q. And, when you say sill, you're talking about the sill  
8 of the control structure that's currently called the  
9 Little Round Lake Dam; correct?

10 A. Correct. And it would also include upstream of the  
11 control structure.

12 Q. Okay. And the County was required to submit plans for  
13 the control structure and the channel on or before  
14 December 1st, 1941; correct?

15 A. I believe so, yes.

16 MS. SCHWAB: Objection, foundation.

17 BY MS. AZAR:

18 Q. I'm going to point you to Point No. 4 for that.

19 A. It appears that's what they require.

20 Q. Do you know if the County submits plans by that date?

21 A. They submitted plans. I'm not sure if it was exactly  
22 by that date or not.

23 Q. And were plans ever approved?

24 A. I'm not -- I don't believe plans were ever officially

25 approved. I could be mistaken on that, but --

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1 Q. So, in your files, you don't have any approvals for  
2 the existing Little Round Lake construction?

3 A. I don't remember any, no.

4 Q. You don't remember any?

5 A. No.

6 Q. Do you think you would remember if you saw one?

7 A. With this many orders and plans --

8 Q. Am I entertaining to you guys?

9 MR. WRIGHT: Yeah, I just asked her what  
10 happened on December 7th, 1941, but go ahead.

11 THE WITNESS: With this many orders or  
12 plans, I may not remember. I don't believe there's  
13 something that was officially construed as an  
14 approval; I'm not sure.

15 BY MS. AZAR:

16 Q. Does the Carlson Road Dam have the capacity to  
17 discharge 150 CFS, whereby, the levels of Round and  
18 Little Round Lakes need to be controlled within the  
19 water elevations specified within the 1941 order?

20 A. Now, what exactly are you referring to in the order?

21 Q. Well, this would relate to --

22 A. Hm-hm.

23 Q. -- Order Point No. 2.

24 A. I believe it has the capacity to discharge 150 CFS.

25 At what level would be questionable.

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1 Q. That wasn't my question, though.

2 A. Okay.

3 Q. Does the Little Round Lake Dam have the capacity to  
4 discharge 150 CFS whereby the levels of Round and  
5 Little Round Lakes may be controlled within the water  
6 elevation specified in the 1941 order?

7 MR. WRIGHT: Object to form.

8 THE WITNESS: You have to be specific,  
9 please. Please be specific to the elevation instead  
10 of just saying the elevations referenced.

11 MS. AZAR: Let me state that again then.

12 THE WITNESS: Okay.

13 BY MS. AZAR:

14 Q. Does the Little Round Lake Dam have the capacity to  
15 discharge 150 CFS, whereby the levels of Round and  
16 Little Round Lakes may be controlled within 77.0 and  
17 77.25 feet?

18 A. I don't believe so.

19 Q. Does the outlet channel from Little Round to Squaw  
20 Lakes have the capacity to discharge 150 CFS, whereby  
21 the levels of Round and Little Round Lakes may control  
22 the water elevations between 77 and 77.25?

23 A. I don't believe so.

24 Q. Does the outlet channel from Little Round Lake to

25 Squaw Lake have a width of 10 feet?

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1 A. I'm not sure.

2 Q. Is the elevation of the outlet channel from Little  
3 Round to Squaw Lakes at or below 75.25 feet?

4 A. I believe it's above according to the last survey I  
5 received.

6 Q. So you believe it exceeds 77.25 feet?

7 A. I believe so, yes.

8 Q. Does the Little Round Lake Dam have a width of  
9 10 feet?

10 A. I believe it's at least 10 feet. I could be mistaken.

11 Q. Is the elevation of the sill of the Little Round Lake  
12 Dam at or below 75.25 feet?

13 A. I believe it's above according to the last survey,  
14 going by the benchmark they used.

15 Q. You believe the sill level exceeds 75.25 feet?

16 A. I believe so, yes.

17 Q. Is the Carl -- I'm sorry. Is the Little Round Lake  
18 Dam able to prevent the water levels of Round Lake  
19 from rising above elevation 77.25 feet during freshets  
20 and heavy runoff?

21 A. It depends upon what water elevations started at and  
22 how big the freshets and heavy runoff was. Can I add  
23 a clarification --

24 Q. Oh, please.

25 A. -- to the previous questions?

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1 Q. Yes.

2 A. When I look at the order, I don't see a specific  
3 reference in Order Point No. 2 as to what elevations  
4 they have to pass under 150 CFS.

5 Q. So let's read Order Point No. 2.

6 A. Okay.

7 Q. That Sawyer County construct an outlet channel from  
8 Little Round Lake to Squaw Lake of the capacity to  
9 discharge 150 CFS with a dam and control gates whereby  
10 the water level of Round and Little Round Lakes may be  
11 controlled. Order point No. 3 requires the County to  
12 control the water levels so they don't exceed 77.25  
13 feet; correct?

14 A. Correct, from rising above.

15 Q. That is correct. So if Sawyer County is complying  
16 with this order, they would be maintaining the water  
17 levels at or below 77.25 feet. Correct?

18 A. If they had the capability of discharge through the --  
19 had the actual capability of maintaining the lake  
20 which means there wouldn't have to be any downstream  
21 constructions.

22 Q. Let's assume no downstream constructions, okay, and  
23 let me ask -- let's assume no downstream constructions  
24 and then I want her to read back the question, since

25 I'm getting tired, too.

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1 THE WITNESS: Bathroom break coming up.

2 (The pending question was read as follows:

3 "So if Sawyer County is complying with this  
4 order, they would be maintaining the water levels at  
5 or below 77.25 feet; correct?")

6 MS. AZAR: I'd like you to answer that  
7 question and assume that there are no downstream  
8 restrictions.

9 MR. WRIGHT: I'll object to form and  
10 foundation. Go ahead.

11 THE WITNESS: I would be concerned if they  
12 weren't maintaining the level within the range  
13 designated here under ordinary-type conditions as in  
14 they were using stoplogs to actually physically  
15 maintain the water higher and there wasn't any  
16 downstream constructions.

17 And assuming they were in compliance with  
18 the order, I'd go back to your previous questions  
19 about what all I'd review to determine if they were in  
20 compliance with the order and that would include all  
21 the items that you had brought out displayed.

22 BY MS. AZAR:

23 Q. In the July 2003 land and water conservation committee  
24 meeting, you stated -- and I'm making this

25 representation?

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- 1 A. Okay.
- 2 Q. You stated that there were scour marks upstream of the  
3 Little Round Lake Dam which is reflective of debris  
4 being placed on the dam floor. Do you recall that?
- 5 A. Not exactly. I recall discussing that there were  
6 scourables, appeared to be scourables upstream and  
7 upstream from the dam but not from debris. It would  
8 be from an increase in velocity when it goes through a  
9 construction.
- 10 Q. Okay. So the scour marks wouldn't have to -- wouldn't  
11 be caused by debris?
- 12 A. No.
- 13 Q. Could they be caused by the removal of debris?
- 14 A. Possibly.
- 15 Q. Okay. When a roadway goes over a dam like the Little  
16 Round Lake Dam, are there special regulations that  
17 apply?
- 18 A. If it's a dam, it still needed to be treated as a dam.
- 19 Q. Are there any other --
- 20 A. Should be. And, in a lot of -- sometimes that's  
21 site-specific, too. We try and avoid people putting  
22 dams in roadway crossings any more. And so does DOT.
- 23 Q. Why don't we -- Could any markings on the lake bottom  
24 reflect debris on the sill of the dam?

25 A. Could any mark -- Repeat the question, please.

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1 Q. If you have markings on the lake bottom and I'm going  
2 to stay away from the word scour --

3 A. Okay.

4 Q. -- is there anything that might be on the lake bottom  
5 that would be indicative of debris being on the dam  
6 floor?

7 MR. WRIGHT: Object to form and foundation.

8 THE WITNESS: I can't even understand that  
9 question.

10 MS. AZAR: Yeah, well, I honestly can't  
11 either so.

12 THE WITNESS: Is there any number of  
13 physical situations which may?

14 (Discussion off the record.)

15 (The deposition adjourned at 2:29 p.m.)

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