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DAVID JAMES KAFURA,

having been first duly sworn on oath, was interrogated and testified as follows:

\* \* \* \* \*

DIRECT EXAMINATION

BY MR. FURLOW:

Q. Mr. Kafura, could you state your full name, please?

A. Sure. It's David James Kafura.

Q. Where do you live, Mr. Kafura?

A. I live at W6839 County Highway 8, Spooner, Wisconsin.

Q. And how long have you lived there?

A. 19 -- 1992.

Q. And have you had your deposition taken before?

A. Yes, I have.

Q. I'll give you a couple of rules. I'm a lawyer for

Mr. Hausman, and my voice drops. So we're going to fix that now.

If you don't understand a question that I ask you, just let me

know. Do you understand that?

A. You bet. Yes.

Q. That's Rule No. 2 is you've got to answer audibly. Nods of

the head, that kind of thing, don't get registered. Understand?

A. You don't put that in? Okay. All right. Yes, I do.

Q. And, if you'd like to take a break, just let me know and we'll do that.

A. Yes.

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Q. If you don't understand something I ask, just let me know; and we'll go back and take care of that.

A. Sounds good.

Q. Can you just give me a history of your education, Mr. Kafura, from high school forward?

A. Sure. High school, graduated 1977 from Appleton High School East. Entered University of Wisconsin-Stevens Point; and, in 1984, received a bachelor's of science from the College of Natural Resources. Have a major in forestry management, a major in water resources with emphasis on watershed management and a major in natural resources management with a minor in environmental law enforcement.

Q. And you did all that at UW-Stevens Point?

A. Correct. I also have some post-graduate course work, including a physical hydrogeology from University of Wisconsin-Eau Claire.

Q. And did you receive a post-graduate degree?

A. No, I did not.

Q. How much course work is left to go?

A. Oh, I was not working towards a graduate degree. Just picking up graduate courses.

Q. And you joined the DNR when?

A. August of 1984.

Q. That was upon your graduation from Stevens Point?

A. Correct.

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Q. And, when you joined the DNR in August of '94, what was your first position?

A. My first position was as a limited term employee. LTE is the common phrase. I was a park ranger at the Bong Recreation Area, which is down off the Racine and Kenosha County Line.

Q. And how long did you hold that position?

A. Until 1987.

Q. And, in 1987, how did your position change?

A. I moved to Spooner, Wisconsin, took a position in water supply as a water supply specialist in February of 1987.

Q. And what did you do as a water supply specialist?

A. As a water supply specialist, I dealt with potable and non-potable supply wells; potable being those that service the public for drinking purposes and non-potable wells from a standpoint of mainly ^ dye ^ die capacity wells for irrigation systems, agricultural uses. For the most part, private water supply was working with well drillers, pump installers, observing their drilling systems, responding to stop complaints on water quality issues. I also worked with municipal water supply with our engineers the look at municipal water supply systems during annual inspections.

Q. And did that job description change at all when you were the water supply specialist?

A. No, I think the water supply specialist job description pretty much stayed the same when I was in it. I was only in that

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position from February of '87, I believe, to November of 1989,  
when I switched.

Q. In November of 1989, you switched to a different position at  
DNR?

A. Correct.

Q. And what position was that?

A. I was a hazard waste specialist.

Q. And what did you do as a hazard waste specialist?

A. As a hazardous waste specialist, my main job duties were to  
do compliance inspections and complaint follow-up on industry and  
businesses that would be regulated under our hazardous waste  
regulations at the State level. So I do compliance inspections  
of industry to determine whether they're handling their hazardous  
waste in a proper manner. I was also involved with cleanups,  
whether they be business driven is the best way of getting -- to  
put it, I suppose, or a responsible party financed cleanup; we  
also had some environmental response cleanups under an  
environmental repair program and also was involved in super fund  
^ sp cleanups.

Q. Ah, dealing with most of my clients?

A. Hm-hm.

Q. Okay. How long were you a hazardous waste specialist?

A. From November of 1989 until January of 2003.

Q. And January of 2003, what job did you take?

A. Unfortunately, sounds like I took this one at the wrong

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time. On January of 2003, I became the water management specialist based out of the Hayward service center.

Q. So water management specialist is different than water supply specialist?

A. Correct.

Q. Let's -- tell me what you do as a water management specialist.

A. For the most part, the majority of my work is involved with Chapter 30 of the statutes for water issues such as culverts, bridges, shoreline erosion controls, dredgings, enlargements, boat landings; and another portion of it, outside of Chapter 30, would be the water quality certification or wetland fill.

Q. Are those two things? Water quality surveying --

A. No, I call them the same. Wetland fill it just more of a common term for what we call the water quality certification.

Q. Now, when you took your position as a water management specialist at the DNR, did you receive any additional training?

A. Ah, there was minimal training when I first came on board, as far as the history, of course, of Wisconsin water law and -- and, basically, on-the-job work with a lot of the projects. To some degree, I've been involved in items on the peripheral when I was in waste management or in the hazardous waste specialist position from the standpoint of issues with wetland fill. So -- and also, as a hazardous waste specialist, we also had the NR 135, which is the non-metallic mining program which crosses

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over a little bit into water management specialist background because you have gravel pits, depending on where they're located, they're either covered under the Chapter 30 permits or under the 135's.

Q. Are you familiar with someone by the name of Todd Naas?

A. Todd Naas was a person that was a water management

specialist prior to my coming on board, I believe, a couple of them before me.

Q. Do you know Mr. Naas?

A. I don't know him very well at all because I didn't deal with him much when he was in water management specialist or the water reg and zoning specialist; and then, when he left, I believe he came the wildlife -- or became a wildlife staff person so I don't have much involvement with him at all.

Q. And have you worked with Mr. Frank Dallam?

A. Yes, I do.

Q. And describe for me the working relationship you have with Mr. Dallam?

A. Frank is our dam safety specialist or dam safety engineer.

Q. That's dam with just an M; right?

A. Yeah. And my working relationship with Frank is he is my expert person when it comes to dam issues under Chapter 31 or whether a culvert is a dam or whether it is a culvert; so, yes, I work with him on -- on those items that -- that fall into his area of Chapter 31 expertise.

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Q. And -- because you're mostly in Chapter 30?

A. Correct.

Q. And he's Chapter 31?

A. Hm-hm.

Q. So, if Mr. Dallam would say, for example, that certain culverts are a dam, you would defer to his judgment on that?

A. I certainly would. Yes.

Q. Now, in your work under Chapter 30, do you deal with dams at all?

A. Some I do. Most of my dealings so far on dams have been related to transfer of -- of dam ownership between parties.

Q. Other than transfer of dam ownership between parties, what other involvement have you had with dam -- with dams generally from January 2003 to the present?

A. Ah, very little. I would say most of my dealings on dams outside of, generically speaking, would be the Little Round Lake Dam, what I would call the McClaine Road Dam, are the two specifically that I've been involved with or at least observed.

Q. And just to get our terminology down, which baffles me at every ^ ck moment, the Little Round Lake Dam, is that the same as

the Carlson Road Dam?

A. This one.

Q. Okay. Tell you what, we've got an exhibit out here that we've marked as Carthel Exhibit No. 1.

A. Okay.

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Q. And I want you to point for me where you see the little Round?

A. This is your Little Round Lake Dam.

Q. You're pointing to the place where it says Little Round Lake Dam on Exhibit No. 1?

A. Hm-hm.

Q. And you also talked about a McClaine Road dam?

A. Yeah. It's not marked on the exhibit, but it would be this one. Right here.

Q. So you're now pointing, on Exhibit No. 1, in the area where Lake Placid --

A. Dumps under McClaine Road and then down to Round Lake.

Q. Okay. Fair enough. And that's the McClaine Road dam to

you?

A. Yeah.

Q. Have you ever heard that called the Lake Placid Dam?

A. Yes, I have.

Q. Those two are the same in your mind?

A. Yes. I use McClaine Road Dam because I know that's McClaine Road, and there's no questioning what -- what dam we're talking about.

Q. Okay. Fair enough. Let's go then to your Chapter 30 responsibilities as a water management specialist.

A. Hm-hm.

Q. Can you just describe -- You gave me the areas that you

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would be involved with. Will you describe generally what your tasks are on a regular basis as a water management specialist?

A. As far as most of -- most of my job responsibilities relate to -- to permitting processes for somebody that would like to make changes to the environment around a navigable body of water. Again, culverts are a great example. Somebody wants to get

across a navigable stream to another portion of their property, we would evaluate and go through the process of getting them to the point of deciding to apply to the Department of Natural Resources for a culvert permit. Or, for instance, a clear-span bridge would also be another one. So going through and make sure that what they're submitting to us is a complete application, addressing our concerns and then going through the process of reviewing the submittal internally and then ultimately making a decision whether to issue the permit or to ^ ck identify or modify the permit.

Other areas, like I mentioned earlier, beyond bridges and culverts, might be shoreline erosion controls, whether they be biological erosion controls or hard armory on the lake, what is, normally, commonly referred to as riprap. More people are doing shoreline protection from unusual or accelerated erosion on their shoreline.

Work with municipalities, whether they be local units of government or counties or cities on public boat ramps, whether they need to do repairs on them or whether they're looking at

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putting in a new one.

To a lesser extent, we'll have things like spawning reefs or fish cribs, which are habitat and improvement structures that people would like to put in as a lake association; or somebody might come in and say: Well, we'd like to put in a little nesting platform or something like that.

Q. And do you intersect with the wildlife arm of DNR to determine the impacts to the environment of certain conditions?

A. Exactly. Exactly.

Q. And, if I could just go for a moment to shoreline erosion control?

A. Okay.

Q. That's an area that you're involved with?

A. Hm-hm.

Q. You have expertise in that area?

A. Hm-hm.

Q. And do you understand or have you come to understand the effects of shoreline erosion on water quality?

A. Yes, I do.

Q. What effects are those?

A. Accelerated erosion of shoreline, you would have a number of

situations. Depending on the water body, you may have accelerated impacts or you'd have delayed impact; but, for the most part, you have shoreline erosion going on, you have suspended solids entering the water column. You have erosion of

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stabilized shorelines in some instances that -- that speed the continual erosion of the shoreline into the lake; so not only is it a suspended solids, but it might be a nutrient impact; and, in northern Wisconsin, most of our situations that we have, we have plenty of available nitrogen and we have -- have plenty of available potassium, mainly because of the inorganic natures of our soils around here and the aquatic environment. So a limiting impact that we have for impacts on our water systems is phosphorous. So, as we lose shoreline into the lake, we're providing more available phosphorous into the aquatic environment that can allow for growth, whether it's an algae or a plant growth. So you have some impacts from that standpoint on the water quality, also.

Q. And does shoreline erosion have any impact on fish in lakes?

A. Yes, as far as short term you might have impacts to spawning habitats because your near-shore areas, especially, for a lot of pan fish and some of your bass, you may have siltation going on that can impact those spawning beds and spawning reefs; so yup.

Q. And have you seen an circumstance -- strike that. If you have shoreline erosion does that affect -- strike that.

Have you ever heard of a phrase called silting?

A. Silting or siltation, sure. You know, it's mainly, if -- if -- in my interpretation of silting or siltation would be where you have the suspended solids or materials that are entering the water column and then settle out over the top of something like a

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gravel or a sand environment where you have spawning areas and siltation or silting in of those beds have an impact on the success rate of the hatching off of those beds by ^ ck larvae.

Q. And does siltation also affect the level of the lake or river bed?

MR. WRIGHT: Object to the form and foundation.

MR. FURLOW: Let me ask a different question. He can object;

and, unless someone says not to answer, you go ahead and answer.

THE WITNESS: Okay.

MR. FURLOW: I didn't tell you that before; I'm sorry. But let me ask it this way.

BY MR. FURLOW:

Q. What effect, if any, does siltation have on the level of the lake or stream bed?

MR. WRIGHT: Same objections.

THE WITNESS: In my opinion, it would have minimal or nominal impacts on the water levels.

BY MR. FURLOW:

Q. Because?

A. For two reasons: One of them, the materials that are entering the water column, in my opinion, on a normal erosive affect would have minimal displacement. So, if you add X number of cubic yards of material to a water column, it's going to displace some water; but you have to have the ability to show the inputs and the outputs to be able to clearly definitively state

that this amount of material entering a water column is going to displace this much water. The other thing to keep in mind, too, is, when you have a cubic yard of sand, for instance, and you put it into a water column, you do not displace a cubic yard water because obviously a load of sand is going to have many voids between them, which are then going to be replaced by water; so a cubic yard of sand is not going to equal a cubic yard of displacement of water.

Q. Have you observed the area downstream of what I call the Carlson Road Dam or Little Round Dam?

A. Yes, I have.

Q. And have you observed at all whether there's been any siltation in that area?

A. Ahm, I would say that there is some in there. It's real tough to tell what type of siltation we're dealing with in there because you do it obviously in a riverine environment, which in my mind, the diverse channel coming out from Little Round Lake Dam is, depending on the velocity and the water column that's moving through there, it's going to scour or remove bed materials and then slower or -- or less velocity water you're going to have more settling out of material. Good way to look at it is, is to

see what kind of materials you actually have in there. Do you have the fine organic matter, what I would call the black streaking on top of the sand or gravel substrates in the stream. That usually gives you indication that, okay, the water flow

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is -- to a -- to a rate that is allowing for those finer materials to settle out of the water column.

Q. Now, have you examined that in particular with respect to the area below the Little Round Dam?

A. Have I gone down through that area?

Q. Right. To look at what effects of siltation, if any, there have been.

A. I did not go through there to actually do any kind of quantitative measurements and say, okay, this is the fine layers; it is soft depositions over a harder bottom. No, I have not.

Q. Now, let me go back a moment to the permitting which we were talking about.

A. Okay.

Q. You're familiar with the culverts at County NN?

A. Yes, I am.

Q. And are you aware of whether Sawyer County ever had a permit to install those culverts?

A. Ahm, I'm going to preface my statement by saying the most recent replacement of the culverts I do not have any records of a permit being issued for that. It is my understanding that there is a document for a dredge permit on Osprey Creek that supposedly sets the water level of Osprey Lake, and I am assuming that the culverts are set according to that level, but the most recent replacement is my understanding was no permit was issued from DNR under Chapter 30; and, in checking with our environmental

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analysis staff in Spooner who deal with ^ ck Trans 207 culvert replacements, there's no records of them issuing a ^ ck Trans 207 permit for the culvert replacements.

Q. And as -- and have you received any information from the County to obtain a permit for those culverts that were put in?

A. Yes, I have. I have received an after the fact culvert permit application for that crossing.

Q. Now, have you seen that kind of thing before, an after-the-fact application?

A. Yes, I have.

Q. Is that common or uncommon?

A. More common than I'd like to believe. Just give you a little background on after the fact, there are many situations -- or I shouldn't say many, but there are situations that occur commonly where an activity has occurred on a navigable body of water where a permit was not applied for and, after the activity has -- has happened, then through an enforcement action or other means an after-the-fact permit application is submitted to the department. So we have that occurring on riprap applications. In this particular instance, we have it occurring for a culvert crossing. We've had it for bridge situations.

Q. And what's the status -- let me back up. Who's responsible for evaluating the after-the-fact permit application from Sawyer County?

A. For this particular case, for the Double N crossing, it came

into my office. I worked internally with -- with Frank Dallam, who is our dam safety engineer, and with our central office because I was aware that these culverts are elevated; and one of the problems, historically, that we've had is where structures are placed in navigable bodies of water act as a dam, they should by definition be handled as a dam.

Q. And did you understand that the culverts at Double N are, in fact, operating as a dam?

A. That is my assertion that they are acting as a dam.

Q. And what effect does that have on the waters that come to the Double N culverts?

MR. WRIGHT: Objection, foundation.

MR. FURLOW: Let me back up.

BY MR. FURLOW:

Q. Do you have experience to tell us what effect those culverts acting as a dam have on the water approaching the Double N culverts?

A. I would say it has one major effect in that it does create a back water. In other words, a culvert that is being elevated does not allow for unobstructed base flow exiting the Osprey Creek system down towards Courte Oreilles.

Q. And what impact does that have, if any, on the environment?

MR. WRIGHT: Objection, foundation.

THE WITNESS: In this particular instance, it's -- it is very difficult for me to tell from a -- again, from a quantitative

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standpoint because I can't tell you how much back water is being held there compared to if these culverts were truly at the -- shall we say the bottom of a -- of Osprey Creek.

So, quantitatively, it's tough to tell you. Qualitative, I'd say there's probably pluses and -- negatives to that particular scenario. One of them, of course, would be a reduction of -- or increase in sediment load being deposited in the upstream area above the Double N culverts; but, by the same token, if the culverts were lowered, where would that sediment lower be deposited ^ ck other where.

So it's just a issue of whatever is in suspension within the water column, where would it ultimately be deposited? So, if you by have a mass of X amount of material and it happens to be deposited above the Double N culverts, would it be deposited below the Double N culverts, if they were at the creek bottom?

It's possible. But I mean, ultimately, there could be some positive benefits to it, too, because you might have some areas that are more of an wetland aquatic environment and so you create more edge adding it, so.

BY MR. FURLOW.

Q. Let me backup. When you say there could be increase in sediment load because the level is raised --

A. The sediment load would in my opinion be more likely to deposit in the stretch above Double N than it would be if the culverts were at -- at stream bottom, shall we say.

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Q. And the stretch above Double N is the stretch between Double N and Osprey Lake?

A. Osprey Lake proper.

Q. Sometimes known as Squaw Lake?

A. Yeah.

Q. And, looking at this Exhibit No. 1, I'm going to backup.

And if you have an increase in sediment load upstream from Double N towards Squaw or Osprey Lake --

A. Hm-hm.

Q. -- what affect does that have on the flow of water through the NN culverts?

A. Again, without actually measuring the quantitative effect, it's tough to answer. I would suspect that you might have some reduced flow going through there, but whether it's measurable is tough to say.

Q. You've not measured it one way or the other?

A. No, I have not.

Q. And have the culverts been -- strike that.

Is it fair to conclude that the -- had the culverts properly been installed, they would have been at the stream bed?

A. If the culverts were installed at stream bed, they would not be dams. How's that for an answer?

Q. That's fine.

A. Okay.

Q. Do you know where the culverts should have been installed?

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A. No, I do not. I did not do any kind of surveying on those

culverts. Again, it's through visual looking and being in waders, walking in that stretch that ^ ck it is my opinion that the culverts are elevated because of -- of just being in that environment and walking in it and coming up to the aprons on the inlets of the culverts that my interpretation that they are elevated.

Q. And does the size of the culverts affect how much water can pass through them?

MR. WRIGHT: Objection, foundation.

THE WITNESS: Yes, they would. Normally, a -- a culvert size the square footage of a culvert opening is directly related to the capacity that the culverts can handle as far as water flow.

BY MR. FURLOW:

Q. Now, before the culverts were at NN, do you know what structure was there?

A. No, I do not.

Q. If the structure before the culverts was a clear-span bridge, would that change to culverts affect the water flow?

MR. WRIGHT: Objection, foundation.

THE WITNESS: If -- if this Double N crossing of Osprey Creek were a bridge, I would not expect other than the approaches to that bridge to have a -- a back water effect on Osprey Creek.

BY MR. FURLOW:

Q. Now, have you -- I'm looking at Exhibit No. 1, Mr. Kafura.

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Have you seen a map such as this? Or have you seen this map in particular?

A. I have not seen this map in particular.

Q. Are you familiar with the levels between say Osprey Lake and Round Lake?

A. Ahm, I have seen the Dan Carthel report. If I'm not mistaken, based on his surveying from Little Round Lake down to Osprey Lake, if I remember correctly, it was like .24-foot elevation difference.

Q. So less than a foot?

A. Yes. If I remember correctly. Again, that it's from -- if I remember correctly, it was from the Dan Carthel report. I believe he did that in fall of 2002.

Q. Now, this Exhibit No. 1 says: Prepared for Sawyer County by Carthel Engineering; right?

A. Hm-hm. Correct.

Q. And I notice that there are some elevations of Little Round Lake and Osprey Lake here?

A. Correct.

Q. And what's the difference in those elevations?

A. Based on this map, the elevation difference between Little Round Lake, which is listed on this map as 1346 and Osprey Lake which has an elevation listed as 1344, would be interpretation to say that Little Round Lake is 2 foot higher than Osprey Lake according to this map.

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Q. And that sounds like that's different than what was in the Carthel Engineering report?

A. That's my understanding, yes.

Q. Do you know why that different exists?

A. I do not know.

Q. Have you ever asked Mr. Carthel?

A. No, I have not.

MR. FURLOW: Let me get my exhibits straightened out.

(Document marked for identification as Exhibit No. 106.)

BY MR. FURLOW:

Q. Now, Mr. Kafura, you had referenced an after-the-fact permit that Sawyer County had requested?

A. Hm-hm.

Q. Did you refer that -- strike that. Start over.

Did you review that after-the-fact permit application?

A. Yes, I did.

Q. And did you reach a conclusion as to whether the application was adequate?

A. I reached a conclusion that it was not adequate.

Q. And what -- why was it -- what was the basis of that conclusion?

A. Can I see my letter?

Q. Sure. I'm going to hand you Exhibit 106?

A. Okay.

Q. It's all very carefully scripted and done at least when you

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think about right.

But, putting that aside, Mr. Kafura, I've shown you what's marked

as Exhibit No. 106. If you review that, please, when you've had a chance, let me know; and I'll ask you some questions.

A. Okay.

Q. Have you had a chance to review Exhibit 106?

A. Yes, I have.

Q. And what is that exhibit?

A. That exhibit is a letter from me to Sawyer County, acknowledging that we had received their after-the-fact culvert permit application and informing them that the information that they had submitted was inadequate and we made a determination that the permit application was incomplete. We also informed them that we'll be reviewing the application to determine whether it's more appropriately regulated under Chapter 30 under the generic culvert regulations or under Chapter 31 for consideration as a dam and then also requested additional information from them for the culvert placement.

Q. Now, has there been a determination yet whether the culverts would be properly regulated under Chapter 30 or Chapter 31?

A. No, we have not.

Q. And have you received the information from Sawyer County to go further?

A. I have not.

Q. And have you had communications with the County about when

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that information may be arriving?

A. I have not.

Q. Is there -- Have you had any contact with Sawyer County

about the permit other than the letter -- excuse me -- the

application and the response?

A. I informed the County Land and Water Committee -- I was at

their July -- July committee meeting, and I gave them my heads up

that we would be responding back to them with incompleteness,

just giving them a heads up on that.

Q. So, in July 2004, you attended the Sawyer County Land and

Water Committee meeting?

A. Correct.

Q. And you told them that their application would be -- was

inadequate?

A. Incomplete.

Q. Incomplete?

A. Correct.

Q. And that they would require additional information?

A. Also, informed them that we were evaluating it whether it was more appropriately handled under Chapter 30 or Chapter 31.

Q. And, since that meeting, you've not heard anything from Sawyer County?

A. I have not heard anything from Sawyer County.

Q. And is there a point in the process when the Department needs to take a next step for enforcement because of a culvert

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situation such as this?

A. Specifically, in this particular case, it is my understanding that -- that we will be waiting until some of the other issues are addressed so this all gets taken care of in one comprehensive addressing of the project.

THE REPORTER: So this all gets taken care of in one --

THE WITNESS: Apparently, one comprehensive agreement or whatever, the basis being that we're not going to, as I understand it, address it as a stand-alone because there are many

items to be dealt with on the whole Round Lake system; so to address just this particular situation in what I will say a vacuum as opposed to making sure that it's all covered in the whole issue of Round Lake water-level elevations, it's my understanding of how -- how it is being proposed from our Madison staff.

BY MR. FURLOW:

Q. And are you still expecting that Sawyer County submit the requested information?

A. I have not been told that an agreement had been reached as far as this being addressed as one big system. It just came through to me as a secondhand. So I can follow-up on that and find out for you, for sure.

Q. So -- let me just make sure I understand. Are we -- is the DNR expecting the County to provide the requested information from Exhibit 106 or not?

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A. We would expect that information, yes.

Q. Do you have a time line of when that information should be

submitted?

A. No, I do not.

Q. And don't tell me if you talked to the lawyers; but, if you talked to anybody but the lawyers, how is it that you came to understand that there would be this comprehensive approach?

A. Without talking to the lawyers, there is nobody.

Q. So you learned this from the lawyers?

A. Yes.

Q. Okay. The lawyers at the DNR, in particular?

A. Yes.

Q. And -- now, have the culverts at NN had any effect in the level of Osprey Lake, if you know?

MR. WRIGHT: Objection, foundation.

THE WITNESS: Ahm, my answer is yes. I -- it's my interpretation that the culverts at NN have an impact on the water level of Osprey Lake.

BY MR. FURLOW:

Q. And what impact is that?

A. My interpretation would be that they have an elevating effect on Osprey Lake.

Q. In other words, they raise the level of Osprey Lake?

A. They have the potential to raise the level of Osprey Lake,

correct.

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Q. And do you believe they have?

A. Ah, scientifically, yes. Visually, on this body of water, I've been on it a number of times. I do not see the outward impact of an elevated lake level on that Lake.

Q. Would an elevated impact of Osprey Lake have an effect on the level of say the Little Round Lake?

MR. WRIGHT: Objection, foundation.

THE WITNESS: In my opinion, yes, it would. As water seeks its own level, if you have a receiving body of water that is higher or you have a small gradient from the up end to the lower end, you would have a reduced velocity of flow going from one body of water to another.

BY MR. FURLOW:

Q. So if the -- if the Osprey Lake were elevated because of the culverts, it would have -- it would reduce the drop between Little Round Lake and Osprey Lake?

A. That would be a correct statement.

Q. And that would reduce the velocity of the water through Little Round Lake to Osprey?

A. That's correct. My interpretation.

Q. And that would create a situation where you could have more siltation on the bottom and raise the lake bed?

MR. WRIGHT: Objection, foundation.

THE WITNESS: You -- it's a tough one to give you a definitive statement on. Again, if you had exceedingly high water elevation

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on the one end compared to the other, you would still expect that you could have the velocity enough to carry either what was deposited or what is carried in the water column down through the system.

Again, with no gradient across a system, you have slower velocities; therefore, you do not have a scour or improvement of sediment along the bottom of the stream and essentially you also have a situation where slower velocities allow materials that are in suspension to settle out, too.

BY MR. FURLOW:

Q. To the bottom of the -- bottom of the bed?

A. Hm-hm.

Q. And, to move up the chain as it were, a higher elevation of the Osprey Lake would affect the whole chain above Osprey Lake or close into it?

MR. WRIGHT: Objection, foundation.

THE WITNESS: I would say it does.

BY MR. FURLOW:

Q. And that would include Round Lake?

A. Yes.

Q. And is that because the higher level Osprey is the less ability there is to discharge from Round Lake through the system?

A. Correct. From a quantitative sampling.

Q. And have you -- you've canoed through Osprey Creek?

A. I have canoed a number of times from Little Round Lake Dam

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down through the diversion channel into Osprey Lake, through Osprey Lake into Osprey Creek and exited Osprey Creek at the Double N culverts.

Q. And, when you call it the -- the diversion -- you know, that's also known as the Northern Channel?

A. On your map, it is called the Northern Channel; correct.

Q. That's between the Little Round Lake Dam and Osprey Lake?

A. Correct.

Q. And have you observed the condition of the wetlands in that area?

A. Yes, I have.

Q. And has the water level affected the wetlands?

A. Ahm, in the area of the North Channel, I would say no. I have not been up at the interface of the wetland and the -- what you would call non-wetland either on the north side or the south side of the channel because, as you come through on the channel and finally enter this wetland complex that fringes Osprey Lake, it ^ ck widened out pretty significantly and the channel that you're canoeing through puts you in a situation that you cannot readily observe that interface between the wetland and the highland.

Q. I think I understand what you just said, but -- let me make sure I -- I do.

Have you seen a situation where the lake levels have basically

taken weeds from the floor of the Lake and just raised them.

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A. Ah, not in the north channel. In what I would call Osprey Lake proper, as you're coming down out of Osprey Lake on the -- onto Osprey Creek, I have observed organic materials, mat material, that has popped loose from the bottom of the lake or it has been moved through natural processes in this area.

Q. And the area you're referring to is the area just upstream of the Double N culverts?

A. Correct.

Q. And did you -- do you have a conclusion as to how those weeds popped off the bottom?

A. There are many conditions that can affect that. One of them, obviously, would be water elevations. Another one would be thickness of ice and another one would be wind/wave action and, finally, another one would be just decomposition processes of organic material producing methane gas, carbon dioxide, you name it. I've observed that material many a time in other environments where you have this activity breaking loose,

basically, organic or hydric soils, organic mats that can break

^ ck 'em loose and move them around.

Q. Do you have an opinion whether or not these weeds breaking loose, for lack of better term, is a result of the high water itself or have you not reached a conclusion?

MR. WRIGHT: Objection, foundation. Go ahead.

THE WITNESS: I can't -- I can't reach a conclusion on any one process that would cause this material to break loose.

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BY MR. FURLOW:

Q. Now -- when did you first get involved with the Round Lake water concerns?

A. Periphery? Or -- I'll interpret your question. How's that.

Q. Sure.

A. My first involvement was very soon after coming to the Hayward Service Center as the water management specialist. I was involved with Mr. Hausman on a shoreline erosion situation that he had at his A-frame property at -- if I'm not mistaken, Dale Lang who was sitting in place while there was a vacancy had

been involved to some degree with Mr. Hausman on his shoreline property at A-frame location.

Q. And that would have been sometime in the -- strike that. Do you know when that was that you first became involved with Mr. Hausman and shoreline erosion?

A. I'm going to safely say it was February of 2003. It might have been towards the end of January of 2003, but -- if you give me a one month leeway, I'd say it's February.

Q. That I can do.

MR. WRIGHT: Mr. Hausman, I know you're well-intentioned; but please stop nodding or shaking your head when the witness is testifying.

MR. HAUSMAN: Okay.

MR. WRIGHT: I'm serious. Thank you.

BY MR. FURLOW:

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Q. Now, when you became involved with Mr. Hausman in his shoreline erosion, did you have occasion to go out and observe the conditions on the property?

A. Yes, I did.

Q. When was that?

A. Ah, again, I'm going to say it was right in that same time frame, early February, again, giving me a one-month leeway without my calendar.

Q. And did you at any time go out and -- well, what did you observe when you went there?

A. Ahm, my first time out -- and I was out there a couple of times if I'm not mistaken there during that winter time period. I believe the first time was to meet Mr. Hausman, and Mr. Lang and I went through some of his concerns on his shoreline erosion. Again, I wasn't privy to what had precipitated before my coming to -- to this position; but, from the time I met Mr. Hausman going forward, he had photographs of his shoreline; and I kiddingly explained to him that he's got more pictures of his shoreline than I've got of my three kids of which he's documented his shoreline during the time frames of concern.

Also, observed his property shoreline being mostly landscaped with his house and garage and parking area and boat ramp. We observed lateral cracks in the surface soil and, again, this would have been February 2003. In that particular time frame, we had very little snow cover; and it was easy to see ground surface

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on wind-swept areas. But he had what I call lateral fissures of failure cracks along his shoreline where he has, I believe, red pines that are in pole stage with his -- I believe a stoplight system, or his green, red, yellow stoplight out there, were the areas that it was very obvious that he had fissures in the upward areas of his shoreline.

Q. And, based upon your experience, did you reach a conclusion as to how those fissures or failure cracks occurred?

MR. WRIGHT: Objection, foundation.

THE WITNESS: I have a hypothesis on the cause of -- of the fissures there.

One of them, if you backtrack into the fall of 2002, we had significant precipitation events in late October into November, which would have provided for a high moisture content in our soils before freeze came upon us. When water freezes, it expands; and, if you have saturated conditions and that water freezes, you'd have expansion and, depending on the type of soils that you have, you could have these fissure-like cracks in the

ground that occurred.

Also, because -- that fall -- actually, the winter of 2002-2003, because we didn't have any snow cover, we also had some of the more deepest frosts that we've had in recent memory with people's septic systems freezing and, actually, driven wells were freezing up on 'em, also. So the depth of frost is a significant factor in this situation, also; and, of course, the precipitation events

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that we had into the fall lead me into the conclusion that some of these are caused by -- by saturated soils.

Q. And did you have an opportunity -- you understand that Mr. Hausman is making a claim in this case about high water from a storm event that caused erosion?

A. Hm-hm. Correct.

Q. And, when you observed his property, what conclusions did you reach with respect to erosions caused by high water and storm event?

MR. WRIGHT: Objection, foundation.

THE WITNESS: Again, based on looking at Mr. Hausman's

photographs, what I would call well-documented shoreline situation conditions at the time he took photographs, including measurements from structures on his property to the waterline, Mr. Hausman submitted an application to the department under and also requested under the evulsion rule to be able to recoup shoreline or property that he had lost during a short term -- or short-event storm that removed portions of his shoreline.

BY MR. FURLOW:

Q. And who would have been in charge of reviewing that application that was submitted by Mr. Hausman?

A. That was a combination of myself and Dale Lang.

Q. And after -- do you recall when you received that application?

A. No, I don't.

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Q. Upon receiving it, did you do some investigation to determine the accuracy of that application?

A. Yes, I did.

Q. What did you do?

A. I went back out on the site with Mr. Hausman to look at the site and further review his photographic documentation of the site. Upon review of all that information, we issued the permit for him, under a riprap application, to restore his shoreline and hard armor of the shoreline in front of the A-frame.

Q. Hard armor means to put metal down; right?

A. Well, that was a stretch. Hard armoring in most situations is people placing fieldstone, clean fieldstone along their shoreline in a riprap fashion.

Q. When you issued the permit to restore the shoreline, had you gone out and to do any measurements?

A. I did not do the measurements myself. I was on-site while measurements were taken, I believe, if I remember correctly, just trying to make sure all the documents were up to speed, was ^ ck just looking at Mr. Hausman's pictures again and then along with Dave Reider ^ sp, who Mr. Hausman had hired as a surveyor, we ran a tape out from his deck on the front of the A-frame out to the lake and determined whether his case for evulsion would be -- would stop in determining how much he could recoup.

Q. Now, did this -- so you were on-site with Mr. Hausman and Mr. Reider ^ sp when these measurements were being done?

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A. Hm-hm.

Q. Was that done over one day?

A. I would say, yes, it was; I can't tell you for sure. My recollection would be that the majority of the work was done in one day.

Q. And that was the measuring work?

A. Measuring work and then we set flags along the beach and determined this is where he can recoup, too.

Q. And, as you were observing this, were you checking to make sure Mr. Reider ^ sp was placing these flags accurately?

A. Correct.

Q. And you were satisfied he was?

A. I was very satisfied, correct. I was confident that, based on the photo documentation that Mr. Hausman had and the measurements that we were taking that what we were setting for ^ ck finding would have been where his shoreline was previous to the storm event of 2002.

Q. And do you know from that review how much shoreline was

eroded away in the storm event?

A. I do not recollect.

MR. FURLOW: Let's just take a couple minutes and get my documents straightened out.

(Recess.)

BY MR. FURLOW:

Q. Mr. Kafura, you had mentioned you took photographs in

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conjunction with your investigation of Mr. Hausman's damage?

A. Hm-hm.

Q. Can you give me your best estimate of how many photographs you reviewed? A magnitude?

A. Rolls and rolls. How is that for an answer?

Q. More than a hundred?

A. I won't say it was more than a hundred. More than 20, less than 100. How's that?

Q. I hand you what's marked as Exhibit 107. I'll just ask you if you've seen that photograph before.

A. The second photograph I remember; the first one I don't

necessarily remember.

Q. Okay. And what do you -- do you recall what the second photograph was depicting?

A. Yes, I believe it was the measurement off of the corner of the deck to the lakefront.

Q. And, in reviewing that photograph, what does that tell you, if anything?

A. It tells me somebody was measuring from the edge of the deck to the waterline.

Q. And does it show you anything about the shoreline erosion?

A. Ah, in further review of picture No. 2, I'd say you can see some sluffing behind the rock riprap of the front lawn. Another sluffing I call it -- is another term for subsidence.

Q. And what does that tell you when you see subsidence or

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sluffing behind the riprap?

A. Frankly, it tells me that the riprap was installed wrong.

Q. Does it tell you anything else?

A. No.

Q. Does it tell you where the water would have gotten to?

A. Ah, not from this picture, no.

Q. Did you ever reach a conclusion about how high the water had gotten on Mr. Hausman's property in comparison to his riprap?

A. From the photographs he had taken, I believe it would have been end of April, early May of 2002 based on the documentation that he had on the photographs. Yes, you could see that the water was up into the rock. Normally, you'll see staining on the rock riprap and you don't see that in these pictures.

Q. I'm going to hand you what we've marked as Exhibit 108, and have you seen Exhibit 108 before?

A. Yes. All except the Todd Naas one, yes. For the most part, I remember most of this.

Q. And what do you understand No. 108 to be?

A. A cover letter that basically gives a summary of documents that had been submitted previously by Mr. Hausman to do the riprap repair and then going into further documents on previous history on the site along with measurements by Dave Reider ^ sp was a document that was included which showed the shoreline previous to the storm and then after the storm with measurements and then photographic documentation of Mr. Hausman's shoreline,

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also.

Q. And when receiving 108, did you review that material?

A. Yes, correct.

Q. And one of the documents included was a survey from

Mr. Reider ^ sp?

A. Yes.

Q. And do you know when that survey was taken?

A. Ah, according to Mr. Reider's ^ sp document here, 3-3 of '03.

Q. And does that remind you of when you were there while measurements were being taken?

A. I won't say I remember it was 3-3-03; but, yes, I was out there with Mr. Hausman and Mr. Reider ^ sp when -- ^ ck .

Q. I'm going to ask it this way. The survey that was attached

by Mr. Reider ^ sp to Exhibit 108, is that the survey that

Mr. Reider ^ sp did when you were on the property?

A. Honestly, John, I don't remember; but it was a document that was used as part of the determination of the Department to issue the -- the new riprap.

Q. And, after reviewing -- Well, let me go back to the time then you were on the property. Did you come to reach a conclusion about how much shoreline Mr. Hausman had lost as a result of the storm event?

A. Ahm, I would say yes. I concurred with Mr. Reider ^ sp, and we did the measurements off of the deck. Specifically, I call it

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the northwest corner of the deck was the -- was the main one that we worked off of because the fire pit is out there, also, so it gave us another point of reference; and that was, also, the area most of his photographic documentation that -- that was taken of the high water in 2002 and then post-storm of 2002 showing that measurement, so.

Q. And how many feet of shoreline had been lost by Mr. Hausman?

A. I believe we agreed that it was the 8-foot that Dave Reider ^ sp had measured and that we had remeasured then.

Q. And you were there that day when the measuring was being done?

A. I was there on a day that we did do measuring, yes.

Q. And were you confident that the measurements were accurate?

A. Yes, based on the measurements and the photo documentation, I would say, yes, they were accurate.

Q. Did you observe, other than the one time you mentioned to me, did you observe other cracks or fissures in Mr. Hausman's property?

A. All within that same time frame, correct, yes, it would have been all that late winter, February, March of 2003.

Q. And do you know if there's a relationship between those cracks and fissures and the storm event?

MR. WRIGHT: Objection, foundation.

MR. FURLOW: Or the water level, excuse me.

THE WITNESS: I'd say, no, I can't make direct correlation

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between the two.

BY MR. FURLOW:

Q. Have you done any studies to figure that out?

A. No, I have not.

Q. In your experience, can there be a connection between cracks

and fissures on land and high water?

MR. WRIGHT: Objection, foundation.

THE WITNESS: I haven't run into them, I mean, where you can make a direct correlation between the two. I'm sure there's a possibility of -- of that, yes.

BY MR. FURLOW:

Q. Now, in this -- this time period -- well, strike that.

Now, when Mr. Hausman's property was damaged, do you know whether or not there were beaver dams that were constricting water flow?

A. Mr. Hausman pointed me in the direction of -- and I will refer to you Carthel No. 1 Exhibit. There is a permitted clear-span bridge coming out of this unnamed pond, lagoon.

Mr. Hausman's place I would say is this dot here. And the dot that's right here would be Mr. Morales. Mr. Morales owns the property that comes across and is adjacent to Mr. Hausman.

Mr. Morales has a permit for a bridge crossing the outlet of this body of water going into Round Lake, and I did observe beaver activity, beaver structures being -- being constructed within this outlet channel on Morales's property.

Q. Did you ever observe beaver dams or beaver obstructions in

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the Northern Channel or down through Osprey Lake or through

Osprey Creek?

A. In the Northern Channel, I have not observed any beaver activity. I did not specifically look for beaver activity unless it would kind of hit you square in the head. There is brush material that is in the stream channel itself specifically right below the bridge, but I'm guessing that most of that is material that had been removed as normal floating debris that people are removing from a dam and throwing off to one side. It does not look like a bank hut or a food cash hut at all, and I did not observe any material that would give me indication of beaver activity through the North Channel.

There is historic and current activity observed in Osprey Creek downstream from Osprey Lake from the Double N culverts north to Osprey Lake. There are some pretty impressive historic beaver dams that are coming across this channel that no longer are -- are active and are not acting as a constraint to water flow, but you can -- you can see these structures and --

Q. That's in Osprey Creek?

A. Yeah, in Osprey Creek or in the wetlands associated with a portion of Osprey Lake. I'm not quite sure which is the proper term for the stretches that was in. But there are some old historic beaver dams going across that have been breached and are no longer active, and I think there's one out there that's got to have like a 20-year-old white pine growing on the darn thing. So

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you can see over time beaver activity has been present in Osprey Creek and currently is present in Osprey Creek.

Q. Based upon the observations you've made, do you believe that the beaver activity as you've described it has contributed to high water on Round Lake?

A. It has definitely impacted the water levels of Osprey Lake in my opinion and, therefore, indirectly, with Osprey Lake being elevated, have an impact on the Little Round, Round Lake system. If I remember correctly, not only did you have like a .24 foot drop from Little Round to Osprey, but you had in Carthel's report a significant elevation drop from Osprey Lake to the Double N crossing, if I remember correctly from his report.

Q. And when did you make the observations of the beaver activity that you described?

A. That would have been May, June into July of 2003; and I have looked upstream earlier this year from the Double N culverts and you can see one of the structures back up in here in early 2004, observed after -- after leaf -- leaf-on ^ sp so.

THE REPORTER: After what?

THE WITNESS: Leaf-on ^ sp.

THE REPORTER: Leaf-on ^ sp?

THE WITNESS: Trees leafed out so some time after.

BY MR. FURLOW:

Q. And do you know whether or not there was any beaver activity or dams constricting water flow in 2002?

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A. I do not know.

Q. Do you know of any information that would suggest there was beaver dams or activity constricting or inhibiting water flow in 2002?

A. Only from the Dan Carthel report which as I understand it

was done in 2002 where he identifies beaver dams in Osprey Creek downstream from Osprey Lake.

Q. And you have not looked at those at that point then to see if that's accurate?

A. Yes.

Q. So you haven't looked at it?

A. I have looked at the beaver dams.

Q. Oh, in 2002?

A. No, not in 2002.

Q. Now, you've described to us -- well, strike that. After the application for Mr. Hausman's property was -- I take it that was approved?

A. Correct.

Q. And there were shoreline reclaimed?

A. Yes.

Q. And that was about eight feet of shoreline?

A. Correct. Based on what we flagged.

Q. Because, to figure out what to reclaim, you had to put flags out in the lake to figure out how far to go?

A. Correct.

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Q. And you were involved in that?

A. Correct.

Q. Now, you've been out to Mr. Hausman's property on a number of occasions?

A. Correct.

Q. Are there other areas of the property where there is no riprap or wall to prevent water from coming in?

A. From his northwest property line with Bemis, it is -- there's -- there might be a little stretch there that is not.

Bemis is his neighbor to his west, what I call his Northwest. So across his front proper over to the boat ramp is armored, and then just on the other side of the both ramp is armored. I'm not positive whether that armoring goes all the way to the property line with Morales or not; but, for the most part, it's got to be somewhere in neighborhood of 98 percent of it is riprap or ^ CK .

Q. Is there a portion of the property in the rear that is not riprapped?

A. Oh, yeah. I assumed you were talking Round Lake itself. To the back side of his property? No, there's no hard armoring on the back side of his property.

Q. And, if there were other more high-water event, storm events, is there any risk of further shoreline damage?

A. On Mr. Hausman's Round Lake frontage?

Q. Hm-hm.

A. Ah -- ah, I would say that he's pretty much hard armored

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that to the point where you're not going to have much if any erosion impact from -- from elevated lake levels and storm events that would be associated with higher lake levels.

Q. And what about the area around the back? Would higher levels or storm events create erosion there?

A. I would say -- my opinion would be, no, because he does have a vegetated front that would be going into the wetland fringe around this lake. So elevations in the pond behind here, I would say, would have little to no erosive effect on the aquatic environment back here, the open water column of this body of water.

Q. And there's a road to get to the property?

A. Correct.

Q. And what effect could high water have on the road?

A. About biggest impact that I would say is, if high water got up enough that it would impede or -- or prevent access to people's properties along that lakefront, that would be the biggest impact that I would see because this road coming off Sandy Beach Road, which is Scarlet Tanager Lane coming down, does go through a couple of wetland complexes before it goes out on to this -- out on to the point proper where Mr. Hausman's house is, A-frame.

Q. So the high water event could cause the road to be submerged?

A. Yes, there would be drastic increase in water levels,

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though, to get to that point; but it is conceivable that if the water were high enough that you would have that road under water or have water right up to the edge of it.

Q. Now, I want to put -- strike that. Let me ask a different question -- well, no, go back to there. I'm talking to myself.

MR. WRIGHT: Don't do that. It's tough for the court reporter.

BY MR. FURLOW:

Q. Does high water affect septic systems around Round Lake?

MR. WRIGHT: Objection, foundation.

MR. FURLOW: Let me ask it differently. Do you know whether or not high water can affect septic systems around Round Lake?

MR. WRIGHT: Same objection.

THE WITNESS: Depending on the property elevation and proximity to the open water environment, yes, it could.

By MR. FURLOW:

Q. How?

MR. WRIGHT: Same objection.

THE WITNESS: By having elevated water levels, you're going to have an associated elevation in the ground water elevation, also; and septic systems act as a filtering system. Your drain field takes the nutrients and bodily waste material and filters it through and then unsaturated soil column, thereby, trying to remove some of the pollutants that are in domestic waste and as elevated ground water encroaches on that improve -- or on that unsaturated soil column. It reduces the amount of filtering that

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would be available to the septic drain field.

BY MR. FURLOW:

Q. And has it been -- as part of your duties with DNR, have you had any responsibility over time for reviewing septic systems and impacts of high water on septic systems?

A. No, I have not.

Q. And can you just explain so we know what basis of knowledge you have to provide the information on septic systems and ground water?

A. Sure. Basically, my -- my background within my waters degree included waste water treatment systems and included soils classes, which all add up to -- you know, addressing how the philosophy -- or theory behind a septic system works as far as filtering.

Q. And are you familiar on Round Lake in particular what level the water would get to when it starts impacting septic systems?

MR. WRIGHT: Objection, foundation.

THE WITNESS: I could not.

BY MR. FURLOW:

Q. Are you aware -- strike that. Does ground water level --

excuse me. That's a bad question.

Does the water level on Round Lake affect the availability of building permits?

MR. WRIGHT: Objection, foundation.

MR. FURLOW: If you know.

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THE WITNESS: I do not know. Because I'm not -- excuse the cookie. I don't get -- I don't get in-trained or thoroughly involved with building permits that are issued at the town or county level except for particular instances where there might be wetland impacts or wetland concerns.

BY MR. FURLOW:

Q. What about flood plain insurance? Are you familiar with all of the effects of higher water on the availability and need for flood-plain insurance?

A. Very little do I get into the flood plain areas. Most of -- most of the flood plain issues are dealt with through our dam safety engineers.

Q. That's Mr. Dallam?

A. Correct.

Q. Now, I want to put aside for a moment Mr. Hausman's property. Can you describe for me, Mr. Kafura, what other kind of work and observations you've done on the Round Lake water issues?

A. I've dealt with a number of projects on Round Lake. Some of them pertain to access issues to get out onto the main part of the -- of the water body. Some of them pertain to building projects where a person is looking for a draining permit. Draining permits are required if you have 10,000 square footages of disturbed soil on a navigable bank of a body of water so I've been involved in a number of those on this lake. Also, just

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trying to catch the essence of the whole system, I have been up through -- the only McClaine Road diversion channel, whatever you want to call it; but, also, up through the wetlands associated with McClaine Road -- and Tiger Cat doesn't show on this but, also, looking at what we have for watershed on the Tiger Cat Flowage. In addition to that, I've also worked on projects

related to both Tiger Cat and Round Lake for shoreline erosion controls.

My experience on the shoreland erosion controls are variable. I mean there are many situations that I've been at up here ^ ck on property and their erosion problems are self-caused or self-induced by trying to turn it into their Maplewood townhome-type of environment where they have grass right up to the water's edge, and they're not showing what I would call waterward erosion going on, it's more induced by their activities on the mainland.

I've also been on sites where there are lake or water erosion problems going on.

Q. Let me back up and ask you --

A. ^ Ck I don't know what's going on. Go ahead.

Q. Let me back up and ask this question. Do you believe that the erosion on Mr. Hausman's property was self-induced?

A. Frankly, I think there is a portion of that involved with Mr. Hausman's property. The area -- one of the conditions that I put into his permit was to do shoreland restoration and he's put

in vegetation to restore that area. Prior to that, as you can see in the pictures on his submittal, you do have a mowed lawn going to the waterfront and that prevents or does not act as a shoreland buffer. Veracious layer rooting zones, I mean that's why you go and buy yourself a roll of sod because the rooting zone is so shallow. Well, when you have, more woody vegetation, perennials, annuals, they have a tendency to have a deeper rooting zone which helps stabilize soils.

Other items that we've run into and has been identified in zoning ordinance in Sawyer County has impervious surfaces and those have impacts on people's shorelines because, as you add more impervious surfaces, whether it's ^ ck rooflines or blacktop, parking areas, turnarounds or driveways, you now have more water that's running from upland areas or the on-shore areas towards the lakefront and you do have some impact.

So, in my opinion, Mr. Hausman's situation, I think there are a number of items and one of them being, you know, the shoreline and that has been as part of that. As I mentioned, the riprap permit is requiring him to do shoreline restoration on that. And other riprap permits that we've issued on Round Lake, we've required people to do shoreland restoration to reestablish their

buffer zone so you can get some of the vegetation back on the shoreline so you can stabilize it without having to go through expensive riprapping or -- it's more of a passive control than it is an active control and, in some instances, it does work.

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Q. Now, you've seen the properties on either side of Mr. Hausman's property?

A. Yes, Mr. Bemis in particular and I've been down across in front of Morales.

Q. And they have vegetative areas to their property on the lake?

A. Bemis has some. Morales has quite a bit going from Hausman's property line with Morales over towards the Morales structure, but I don't believe Morales has much more vegetative front in front of his cabin; but, along his shoreline between his cabin and Mr. Hausman's A-frame, he does have pretty much natural vegetation across that front.

Q. And you observed erosion on both of those pieces of property?

A. Mr. Bemis does have some erosion going on, albeit not as significant as Mr. Hausman had. Morales, I would not say it is accelerated erosion; as I come over this, like across this little creek that goes out to the lake, there is erosive effect; but, because of the wooded vegetation along this stretch, it is somewhat controlled by maintaining that vegetative buffer and woody vegetation along there.

Q. Now, in your review, or work on Round Lake and the water levels, have you seen any engineering studies done by the Department of Natural Resources?

A. Not that it comes to mind right offhand, John.

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Q. And how would you characterize the level of development around Round Lake?

A. Highly developed in my opinion.

Q. Based on your experience, do you have any conclusions about whether or not the water level can be safely raised on Round Lake?

MR. WRIGHT: Object to form of the question. Go ahead.

THE WITNESS: Go ahead and ask it again.

BY MR. FURLOW:

Q. Sure. Based on your experience, do you have any conclusions about whether the water level should be raised on Round Lake?

A. Should it be raised?

Q. Yeah.

A. Based on -- based on socioeconomic impacts on this lake, I would say that it should not be raised. Mainly, from a standpoint, as development has occurred on many lakes and Round Lake is not any different than any other, we've gone from the 1940's and we go back to the '41 order, you look at what we had for development on our lakes in the '40's and '50's and even into the '60's; and there are small resorts, no impervious surfaces other than roof lines, resort cabins with maybe 800, maybe a thousand square foot, people came up here during the Memorial Day to Labor Day time periods. And now you've got places on this Lake that are, you know, basically permanent structures. You've got people that are living on this lake that have anywhere in

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3,000 to 4,000-square-foot homesites with tennis courts and giant turnaround parking lots and just a whole lot of structures; and I see this lake as being one of the prime examples of highly developed northern Wisconsin lake where you have a lot of development and a lot of changes of the shoreline environment that have turned it into a lot more impervious surface around it so you have a water flow into this lake that -- that just makes it fluctuate, in my mind.

But, that being said, again, most of this development on this lake has happened after the 1941 Order to significantly come back out here and change the water levels of Round Lake I think it would be real tough for us to make that -- that determination that they should be significantly changed.

Q. And you've referenced the 1941 order?

A. Hm-hm.

Q. Is that something you've ever reviewed?

A. I have reviewed it, but it is a -- it is a complicated order. And trying to decipher exactly what it says is a situation that I -- I, quite frankly, I don't know. You know, I don't know how to decipher what it says. I've been involved with orders before, but I've never dealt with old orders like this and

trying to interpret what people were meaning when they wrote

these orders.

Q. And have you done measurements from time-to-time on the level of Round Lake?

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A. I have looked at water levels on Round Lake not from a surveying standpoint. I have observed Mr. Reider ^ sp doing surveying based on what certain elevations are determined on -- on benchmarks that have been informally established on it, yes.

Q. And based on this survey or based on those observations, do you know whether or not Round Lake has been maintained at 77.0?

A. Based on the calculations that have been done on Round Lake, I would say that Round Lake has been above 77.0 just based on the benchmarks; but, again, I have not done the surveying to show that those benchmarks are accurate. So it's based on information that's being provided to me that says this is what the water elevations are.

Q. And as a -- as a development -- strike that. As development has increased around Round Lake, does that correspond in your

view to any need to change the outflows from Round lake?

A. From a development side? From a development side, I'd say there's no need to change the outflow of Little Round Lake, from a development side.

Q. I'm not sure what that means?

A. Well, you're asking me from a development side, do I think the water levels need to be adjusted I'd say no. From an environmental standpoint and water quality and health of the lake, I'd say yes.

Q. And you would say yes as to adjusting the levels which way?

A. I'd adjust the levels -- I personally believe that a

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quarter-foot elevation difference that was established in the '41 order is somewhat unreasonable to be maintained, knowing what our lakes are and the ground water influent and not taking into consideration what kind of events mother nature throws it -- whether it's a spring runoff with no frost on the ground or significant rainfall event, I think it's real tough to sit there and try to maintain a lake elevation that's within a quarter of a

foot.

Q. I guess what I wanted to circle back around was, is this, as you have more development in your impervious surfaces, is it fair to say that that increases runoff into the lake?

A. Yes.

Q. And that raises the lake level?

A. I think the lake level responds quicker to overflow from impervious surfaces, yes.

Q. Does that lead to any need to increase what I call the outflow out of the lake?

A. From an environmental standpoint, I would say yes. But I believe that my limited observations of this lake for the last two years shows that the lake levels elevate significantly in the spring, during the spring runoff or precipitation events; and then it takes some time for that lake level to go back down.

Q. Now, have you ever examined whether or not the dam at Carlson Road, otherwise known as the Little Round Dam complies with the requirements of the 1941 Order?

A. I don't -- I don't feel confident or authoritative enough to make that statement that the Little Round Lake Dam complies with the '41 order.

Q. And let's go a moment to -- well, back up. Again, do you believe based on your experience whether Round Lake can be controlled as to water level with the existing control structures?

MR. WRIGHT: Objection, foundation and form.

THE WITNESS: Can the Little Round Lake Dam control water levels on Round Lake? Yes, it can.

BY MR. FURLOW:

Q. And how would it do that?

A. Either by placing boards into the Little Round Lake Dam or removing the boards from Little Round Lake Dam.

Q. So you think the existing control structures can control the water level of Round Lake?

A. Yes, it can.

Q. And that's something you think the County could do?

MR. WRIGHT: Object to the form, foundation.

THE WITNESS: Yes, I think they can.

BY MR. FURLOW:

Q. And, now, you understand that there was a petition filed by

the County under Chapter 31?

A. Correct.

Q. And do you have any understanding of the circumstances

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behind that petition being made by the County?

A. I -- As far as I know, again, it's secondhand; but I had heard that the County was looking at asking for the water levels of Round Lake to be evaluated by the DNR. We, ultimately, received a letter to the Department, I believe, addressed to the secretary asking that the lake levels of Round Lake and I also believe of Tiger Cat Flowage be evaluated by DNR.

Q. And that was a letter by the Sawyer County's lawyers?

A. Yes. I believe it was signed by Matt Dregne.

Q. And have you ever spoken to Mr. Dregne about the letter?

A. Yes, I did. I had an opportunity to talk to Matt, hmm, I'm going to again guess that it was February or the end of January of 2004. I was approached by Mr. Hausman to open up a dialogue between Mr. Hausman and County-elected representatives to be able to sit down and talk about the Round Lake water levels.

Q. Mr. Hausman approached you to get that process started?

A. Correct.

Q. And, as part of that process, you spoke to Mr. Dregne?

A. That was later on. I had, previous to that, had talked with Hal Helwig ^ sp, who was -- at that time was the County Board Chairman and asked him if he would be open to establishing that dialogue, if I could act as to the so-called marriage counsellor in this particular situation to have Mr. Hausman and Mr. Helwig at least sit down and hear each other out. And Mr. Helwig was interested in that conversation until I do believe legal counsel

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caught wind off of it and then I had a conversations with Matt in which he had relayed to me that it was a good idea but at this time they would like to have that conversation going on in a more formal setting with all the parties involved to be talking about it and not to have Mr. Helwig and Mr. Hausman sitting down together probably was not going to happen.

Q. And what did you do after that discussion with Mr. Dregne?

A. I turned in my marriage counsellor's license. As 0 for 1, I

figured I screwed up -- no, I'm kidding. At that point it was pretty much okay. As I understood it, then there was discussion between the legal counsel, representatives of DNR, Mr. Hausman and the County to come up with a -- a process of which the attorneys would talk about what the orders actually meant and what were the legal standings of the orders; and the technical staff, i.e., myself, Frank Dallam, County representatives along with Rob Montgomery for the County and Nancy Dent from Barr Engineering, would establish a discussion on the technical aspects of Round Lake. Dan Tyrolt from LCO Tribal Conservation Department was also invited to enter into that discussion.

MS. KLOPPENBURG: Spell that, his last name.

THE WITNESS: T-y-r-o-l-t.

BY MR. FURLOW:

Q. Now, as part of -- Now, prior to talking to Mr. Dregne, had you had a chance to discuss these matters with Mr. Helwig and Mr. Hausman?

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A. Just plain telephone conversations between the two trying to

establish a time that they could sit down and talk.

Q. Now, have you seen the work done by Nancy Dent of Barr Engineering?

A. I know she's done significant work on it. I don't remember actually sitting down and reviewing a comprehensive report by Nancy on it.

Q. Have you reviewed a report by a company called Hansen Engineering?

A. No, I did not.

Q. Have you ever spoken to Mr. Montgomery about his conclusions?

A. I have not, other than the joint conference call that we had with -- with Montgomery and Dent and DNR and LCO Conservation.

Q. What was the conclusion of that conference call?

A. For the most part, we talked about the items that we saw as problems, while a lot of it hung on the surveying issues as far as where the benchmarks were and what datum level everybody was talking about. Of course, the -- there's a number of benchmarks available on this whole system. Two of them are up here on the McClaine Road diversion ditch dam.

Q. That's Diversion Canal No. 4?

A. Yeah. There are two benchmarks there: One up in the woods; one on the dam. There is one sitting at -- up on the easement of the Little Round Lake Dam. There is apparently one at the

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Double N culvert crossing; and then, of course, the one that's under the 1941 Order is up at the old previously known as Kaiser Resort ^ sp, which as I understand it is no longer -- that benchmark is no longer available.

Q. And you're pointing now on Carthel Exhibit No. 1 to the north part of the lake?

A. Correct.

Q. There's a little finger that sticks out?

A. Yes, up by School House Bay there.

Q. And that little finger is where the U is on the Lake?

A. I would say, yes.

Q. In that conference call, did you get a view from Mr. Montgomery about the County's interest in trying to move forward with a solution?

A. From our standpoint, at least, in that first phone

conversation that we had, teleconference and that was the one and only one that we had, was a -- again, a lot of it was regarding which benchmarks and datum everybody was using to make sure that we didn't have any dam breaks and that everybody was talking apples and apples. That was the majority of the discussion. We did talk about the Little Round Lake Dam and the -- and the North Channel that you have marked on your Carthel report and whether those could be improved. We did talk a little bit about the beaver dams down in Osprey Creek, also.

Q. And did you hear Mr. Montgomery say that he was not

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authorized to move forward to try to solve the problem?

A. I don't remember that statement; but then, again, I think it was pretty preliminary, just in that first conversation.

Q. Do you remember Mr. Montgomery saying something like that?

A. I do not. I was not sitting into the whole conversation on that particular day. There were time breaks in which I was not on the conference call itself. So, if he did state it, I don't remember hearing it.

Q. Now, do you understand, Mr. Kafura, that you are to have a role in responding to the County's petition?

A. Yeah, I tried to get my name whited off that letter that went back to the County; but, every time it came back up, I was still on it; so I'm -- apparently, I'm the one.

(Document marked for identification as Exhibit No. 109.)

BY MR. FURLOW:

Q. Mr. Kafura, I'm handing you what we have marked as Exhibit No. 109; and take a moment, please, to look at that letter; and I'll ask you some questions.

A. I'm ready.

Q. You've seen a copy of Exhibit 109 before?

A. Yes, I have.

Q. And did you see it before it was sent out?

A. Yes, I did.

Q. And you reviewed it, I take it?

A. Yes, I did.

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Q. What is 109?

A. 109 is a response letter back to Matt Dregne regarding the Department receiving the petition from Sawyer County to review and clarify orders on the Round Lake, Tiger Cat Flowage.

Q. And have you participated -- strike that. You understand -- strike that again.

How did you learn that you would be involved in this project?

A. After -- after the -- the request or petition came in, of course, it was distributed amongst the staff members that you would conceivably be involved until this and that's when I caught wind of this.

Q. And are you the point person up in this area to work on this petition?

A. Apparently, yes.

Q. And do you understand what your role will be in that ^ ck position?

A. Ah, not real clear. I assume, as point person, I will be taking all input from interested parties on evaluating and determining what the -- what the water levels are on Round Lake and Tiger Cat Flowage.

Q. And have you been given any instructions as to what you should be doing at this point?

A. No, I have not.

Q. And is there a time frame or a time line that's been set up to handle this petition filed by Sawyer County?

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A. At this time, there has not been. I expressed a concern on the time line that was looking -- being looked at on this, considering the complexity of this issue; but that part of the letter remains. This process will be initiated in the next couple months and should be completed sometime next year.

Q. And what concerns did you express about the time line?

A. From the standpoint of all parties involved, when you look at the contentious nature of any lake level, you're going to have parties that think the water level should be elevated and you're going to have parties who think that the water levels should be lowered. And so there are going to be many diverse opinions, and those have to be taken into consideration when we finally come up with an understanding of what the levels should be; and, of course, as a -- as an attorney, you know the appeals process that's going to be involved. So maybe in one year we'll get to somewhere. But I've got a feeling this one's going to take

longer than one year.

Q. How long do you think it's going to take?

A. Oh, who knows?

Q. What's your best guess based on your experience?

A. I don't know.

Q. Have you seen any documentation or time lines that have been set out that have a process?

A. I have not. I've observed and looked at some of the file documentation, in particular Burnett ^ sp County situation, that

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did take some time. Again, because of their concerns of some people that the water level would be too high and some concerns of the water level would be too low, so.

Q. And that was what county?

A. Burnett ^ sp County.

Q. You were involved in that?

A. No, I was not involved in that; but I pulled the file and took a look at what was involved with it.

Q. How long did it take in Burnett ^ sp County to get the

situation resolved?

A. More than a year. I don't remember the exact time frame.

Q. That was a water situation similar to the Sawyer County ^ ck and Round Lake?

A. Ah, yes, it's more of a flowage situation rather than what I call a true lake situation with a control structure on it.

Q. And has there been any discussion or directive that you're aware of in the Department of the steps that will be taken to move forward on the petition?

A. Not at this time, no.

Q. Do you have any individual expectations about what those steps might be?

A. From a technical standpoint or a public relations standpoint? Technical standpoint, I'm sure we're going to be having a group of staff that would be evaluating all the issues and looking at all the angles, whether it's a fisheries issue or

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aquatic biologist standpoint and then, ultimately, getting --

getting the parties on the Lake, whether it's the Property Owners

Association, Sawyer County, of course, any property owners on the Tiger Cat Flowage on down through the system, down to quite frankly probably Courte Oreilles being involved in -- in portions of this project or process.

Q. And those are all things that in your view would need to be done to address this petition by the County?

A. I would say, yes, to make it run smoothly and have full input into the process, I would suggest those are key players to have involved.

Q. And, as far as you're aware, has any part of that process started?

A. No, I do not believe it has.

Q. And does the onset of the winter months have an effect on the ability to move that project forward?

A. From the standpoint of at least my workload, yes, it's going to provide me with at least project relief to the point where I can concentrate time on this because, of course, this is one lake of many in Sawyer County and this is the building time, construction time, so most people are -- are racing, trying to get projects done. Probably, by end of October, we'll see that slack way off to the point where you got the winter months to

work on -- work on points projects like this.

Q. And do you know how this project is going to be staffed?

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A. I do not.

Q. There's not been an information spread around the Department about staffing this project?

A. Not yet.

MR. FURLOW: Why don't you give me five minutes, Joanne, if you could?

Ms. KLOPPENBURG: Yes.

MR. WRIGHT: Take five minutes? Okay.

(Recess.)

BY MR. FURLOW:

Q. Mr. Kafura, I want to go back to the controllability that we talked about a little bit earlier, because I don't know that I asked this right. Do you think that the Carlson Road Dam can prevent -- can be used to control high water on Round Lake?

MR. WRIGHT: Object to form and foundation.

THE WITNESS: Earlier, you asked me if the control structure can

regulate the water level of Round Lake. Generically, yes. If

you're asking me can it control water levels when its high on

Round Lake, I'd say, yes, it can, also.

BY MR. FURLOW:

Q. So you think the Carlson Road Dam can control the water from going above 77.25?

A. No.

Q. That was my question.

A. That wasn't the way you worded it.

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Q. I know. That's why -- see that's why I'm a lawyer and not -- here. Let me ask it clearly this time.

Do you believe that the Carlson Road Dam structure can control the water levels on Round Lake from going above 77.25?

A. I do not believe it can.

Q. Now, do you believe that the Carlson Road Dam can control water levels from going above 77.25 if changes were made to the culverts at NN?

MR. WRIGHT: Objection, form and foundation.

THE WITNESS: That would take the investigation that I requested in the notice of incompleteness on the culverts. That's one of the reasons why that was asked for, for hydraulics, hydrology study on that system.

BY MR. FURLOW:

Q. And explain to me how that might -- how changes in the NN culverts might affect the ability of the Carlson Road Dam to control water on Round Lake?

A. It's my perception that Little Round Lake Dam operates as a control structure. It controls the water levels on Round Lake to an extent. When the water levels are higher on Round Lake above 77.25 and Osprey Lake is elevated to the point where there isn't a good gradient coming from Little Round to Osprey and down through Osprey Creek through the Double N culverts on down to Couderay and it's my opinion that you do not get the flow that you need to cross that gradient. Of course, the old quantity

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equals velocity times area comes into play here and the quantity of water that can exit through the Little Round Lake Dam is a

basic equation of velocity times area. The area that you have on the Little Round Lake Dam is a definite area. It's this many square feet in vertical and horizontal manner. Now, velocity is dependent on the gradient coming out of the Round Lake system to Osprey Lake and, ultimately, down through the Double N culverts. If the gradient is flat, your velocity is low; so, therefore, the quantity of water being moved is less. If you have a greater gradient coming from Round Lake to Osprey and the Double N culverts then velocity should increase and the quantity of water moving through the fixed area should increase.

Q. The size of the culverts at County NN could have an impact on velocity?

A. They could have. If you're talking about velocity at Little Round Lake Dam, they could have secondary impact by being elevated or not being able to handle the quantity of water flow that would be expected to be discharged because obviously you have water that's discharging from Osprey Lake at an efficient rate of discharge through this Double N culvert crossing. You should reduce or you should introduce the gradient coming from the Osprey Round Lake system.

Q. You increase the gradient by increasing the size of the culverts?

A. You could increase the size of the culverts or set the

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culverts as creek bottom, either or.

Q. And, if the culverts were not set at creek bottom, I think

we talked about that earlier. It would operate as a dam?

A. Correct.

Q. And would that in return reduce or decrease the gradient

from Carlson Road Dam through the Northern Channel?

A. That is the correct interpretation.

Q. And do you know the cubic feet per second that Carlson Road

Dam can pass?

A. I do not know.

Q. Now, if I've asked you this already just let me know because

when you get to the second witness you get confused.

Did I ask you what structure was at NN before the culverts?

A. Yes, you did.

Q. And did you know?

A. I did not know.

Q. I want to go back to the August, September of '03 time

period.

A. Okay.

Q. And do you recall having a discussion with Dale Olson about whether the water levels could be raised on Round Lake?

A. I don't know if he asked if the water levels could be raised on Round Lake. I believe he asked what is the process for evaluating the water levels and the order.

Q. And what did you tell him?

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A. The petition process.

Q. And did you give him information about whether or not the water levels could be raised on Round Lake?

A. I gave him a preliminary opinion, just like I stated earlier, looking at historic growth on this Lake and looking at not only the environmental aspects but the socioeconomic aspects of this Lake that my initial interpretation would be that we would not be looking significantly at altering the water levels of Round Lake.

Q. Now, are you familiar with a survey that Sawyer County has

sent out to area residents?

A. That would have been the one leading up to the June 2003

public meeting?

Q. That's correct.

A. Yes.

Q. And did you view the -- have you seen a report called the

Carthel Engineering report?

A. That would be the fall of 2002 report with the different

options?

Q. Yes.

A. Yes.

Q. And did you believe that there were options other than the

ones set forth in that report?

A. I did not go through Dan Carthel's report with a fine tooth

comb to look at all the options that are conceivably available to

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address their only water elevations. I know there were a number

of them including do nothing but -- but specifically in detail I

don't remember all of them.

Q. And do you recall if there were options available that were not included in the report?

A. Not that I can recollect right offhand without looking at it.

Q. Did you go to the public meeting that discussed that report?

A. The -- would that be the June 2003 public meeting at the Hayward High School auditorium?

Q. That's correct.

A. Yes.

Q. And you sat through the presentation?

A. Yes, I did.

Q. And did you observe anything -- well, strike that. And did you observe any -- did you observe or hear people asking questions about the survey?

A. Specifically, on the survey that Dan Carthel had submitted as a report, no. If you're asking the survey that came out of land and water, Dale Olson, there were some comments regarding questions on -- on the survey.

Q. And what do you recall about the comments and questions about the survey?

A. For the most part, I think the public comments centered

around the lake elevations of Round lake and whether they thought

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they were high or they were just fine or too low.

Q. And did you observe any -- strike that.

Grab my Exhibit here. Did you hear any confusion or ^ hear of any confusion about what those alternatives were?

A. I don't have that detailed of -- of recollection of what people were actually getting into. The crux of it was whether they thought it was high or low or just should be the same.

Q. I'm not going to make this an exhibit, but -- I'm going to show you -- I'll just identify for the record that I have a document called Special Meeting of the Sawyer County Land and Water Conservation Committee, Saturday, June 28, '03. And I'm going to hand this to you, Mr. Kafura to examine that and I would just reference you to some bullet points there on options. Have you seen those before?

A. To do nothing, establish a revised lawful level, improve the Osprey Lake outlet stream, abandon Little Round Lake Dam and Lake Placid Diversion Dam.

Q. Are those the four options on the survey -- on the card?

A. These are the options that are identified on the mail from Sawyer County Land and Water Conservation.

Q. Looking at those options, did you have a view of some different options that were not included on that sheet?

MR. WRIGHT: Just for the record, it appears I think that you've already got that as Exhibit 81.

MR. FURLOW: Got it.

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THE WITNESS: One that sticks out in my mind on the bullets that are here is the possibility of evaluating and determining whether improvements can be made on the Little Round Lake Dam diversion.

BY MR. FURLOW:

Q. And that sticks out in your mind why?

A. That would be one of them that would be an option to look at as far as if you're trying to maintain within the established 1941 order. As a possible option to -- to address water levels.

Q. And is that an option available on the card?

A. It is not on this document that you handed me.

Q. And do you believe that option is a feasible option to address the water level issues with Round Lake?

A. It is a feasible option that should be evaluated by engineers to determine whether it was a viable option to address the situation.

Q. And yet it was not an option provided in the survey sent out by the committee?

A. Based on this document, you're correct.

Q. It was not included?

A. Right.

Q. I want to go back a moment to Mr. Hausman's property, in particular. Is there any requirement for owners of lakefront property on Round Lake to have vegetation all the way to their lakefront?

A. With the Department of Natural Resources regulations, no.

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Under the Sawyer County shoreland zoning ordinance, you have a requirement to maintain a 35 foot vegetative buffer between the ordinary high watermark going back and except for a 30-foot view

corridor or use corridor per 100 foot of shoreline that you own.

Q. Let me make sure I understand what that means. Is that -- does that mean you can't have grass up to your beach on the -- on the Lake?

A. It means you shouldn't be altering the vegetation and mowing and maintaining in a landscape manner.

Q. Anywhere on the Lake front, is that what you understand?

A. It's my understanding except for your 30-foot view corridor. You can do maintenance or improvements within that 30-foot view corridor.

Q. And do you know when that ordinance was enacted?

A. No, I do not.

Q. Do you know if it was before or after Mr. Hausman bought is property?

A. I couldn't answer that. That I do not know.

Q. And I think you had mentioned something about the riprap on Mr. Hausman's property?

A. Hm-hm.

Q. Do you think that was installed improperly?

A. Ah, based on the pictures that I saw of what was placed as the most recent before the improved situation, my view of it is I did not see filter fabric behind the rock. That doesn't mean it

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isn't there; but, normally, I will see a filter fabric that's established behind the rock. The filter fabric is a very important key to riprapping shoreline because it has a tendency to hold the fines, the small particles from washing back, whether it's boat wake or whether it's natural wave action. So as those waves crashed into the rock, they dissipate the energy. But, between those rocks, you have voids that you have a tendency for wave action as it recedes from the shoreline to carry material out with it and the filter fabric is used to set on the shoreline before your put your rocks on; so, when that wave activity hits the rock and dissipates some of the energy, any energy that would hit behind it, at least, if it suspends some of the soil fractions, they are trapped behind the filter fabric. It acts like a diaper, in other words, so you don't get that material to exit from the shoreline; it keeps it in place.

Q. So, for a layperson like me, you have to have the fabric to keep the sand from washing out between the rocks ^ ck when you hit it by waves?

A. In my opinion, yes, that's the key.

Q. And, if Mr. Hausman had that fabric, then his riprap would be compliant?

A. That is a part of it, correct; and then the other portions are complying with the permit that is issued for height of riprap, the angle of the riprap, the distance water that the riprap will hold.

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Q. Do you have any concerns about the compliance of Mr. Hausman's riprap in that regard?

A. Previous to that, I was not involved with it. It was a previous WMS or water management specialist along with our local conservation warden that did have issues with it.

Q. And do you -- with respect to the -- the application that was granted to reclaim the --

A. Hm-hm.

Q. Is it eight feet?

A. Yup.

Q. Were you satisfied that it was appropriate for Mr. Hausman

to reclaim that based upon the erosion?

A. Based on their assertion of the evulsion rule and the discussion within the Department, he had satisfactorily documented the loss over a very short period of time. That allowed him to recoup what he had lost, yes.

Q. And were you satisfied -- well, strike that.

(Document marked for identification as Exhibit No. 110.)

BY MR. FURLOW:

Q. I'm going to hand you, Mr. Kafura, what we've marked as Exhibit 110; and just take a look at that and I'll ask you just some identifying questions.

A. Okay.

Q. And Exhibit 110 is an E-mail that you provided to Mr. Hausman in March 2003?

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A. Correct.

Q. And it accurately sets forth your views on his shoreline erosion?

A. Correct.

Q. Are you familiar with the authorized water levels for the Tiger Cat Flowage? Is that something you've seen?

A. I'm somewhat familiar with them, not fully knowledgeable in -- in the numerous orders for water levels on Tiger Cat.

Q. Are you familiar with an authorization -- well, strike that. I'm going to hand you -- before we mark it, I'm going to hand you a document that's got a Bates Number SC 0951. Before we mark it, I want to ask you if that's something you've seen before or if it that refreshes your memory.

A. Okay.

Q. Have you seen that before?

A. Ah, in one fashion or another, yes.

Q. Does it refresh your memory as to the water level designations on the Tiger Cat Flowage?

A. From 1983 order, I'd say yes.

(Document marked for identification as Exhibit No. 111.)

BY MR. FURLOW:

Q. Now, handing you Exhibit 111, can you identify from that exhibit what the lake level des -- or the designations were on the Tiger Cat Flowage?

A. Maximum authorized level under PSC datum is 91.34 feet. The

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normal authorized level is 91.09 feet. And the minimum authorized level is 90.84 feet.

Q. And, roughly, the difference between the maximum and the minimum is a quarter foot or eight inches?

A. Three -- three -- two -- between the maximum and minimum?

Q. Yes.

A. You're pushing in the neighborhood of .5 feet hold on. Yes. .5 feet.

Q. And you recognize that those designations were set by the DNR in 1983?

A. Correct, under that authorization.

Q. And do you believe, based on those, that in fact water levels can be controlled within a half a foot if the proper control structures are in place?

MR. WRIGHT: Objection, form and foundation.

MR. FURLow: If you know.

THE WITNESS: Can they be maintained within this minimum and maximum?

BY MR. FURLOW:

Q. With the proper control structures?

A. Under normal circumstances, I would say yes; but I also believe that in a quick survey that Mr. Reider ^ sp did earlier this year at one of the benchmarks on the Tiger Cat, it was actually above the maximum authorized level. I don't remember the exact amount above the maximum, but it was after a

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significant precipitation event over a two-day period. One on a Sunday evening, and I believe one on a Tuesday afternoon.

Q. And you're saying the water level was above the maximum?

A. That was based on Mr. Reider's ^ sp survey.

Q. And you would expect that any Lake that has maximums after a precipitation event could exceed that maximum?

A. I believe you will exceed because you can't necessarily always control the water levels after ^ a major precipitation event.

Q. And, after a major precipitation event, the way you control water is to let water on the Lake?

A. Yes.

Q. So, with proper operation of the stoplogs, you can control the water within five inches?

A. You possibly could. That's not to say that it won't exceed that level for short periods of time.

Q. And, when it does exceed it for a short period of time, you have the ability to control it?

A. Yes.

MR. FURLOW: I've got nothing else.

MR. WRIGHT: I've got some questions for you, Mr. Kafura; and, just to simplify and shorten matters a little bit, Counsel, I'm going to limit my questions today to those matters that might arise with respect to the motion that's pending before the Court; and I'm going to reserve the right to follow-up further with

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Mr. Kafura at another time because I understand you're going to continue his deposition.

MR. FURLOW: I don't need to; but if you want to continue it at another time, I'm sure I might have some additional questions.

Why don't you do what you've got now?

MR. WRIGHT: I'll do that. I'll limit myself to what I think's going to come up with respect to the motion and reserve the right to recall Mr. Kafura if need be.

MR. FURLOW: JoAnne, is that satisfactory to you?

MS. KLOPPENBURG: Do you want him closer?

(Discussion of the record.)

CROSS-EXAMINATION

BY MR. WRIGHT:

Q. Mr. Kafura, I want to ask you a few questions about some of the issues that the DNR may or may not study with respect to the Round Lake system as a result of the County's petition.

Is one of the issues that the DNR will study the issue of what the inflows are into the Round Lake system?

A. I would certainly expect that to be a significant part of our study.

Q. And what are the inflows that you're aware of today into the Round Lake system, and you're referring to Exhibit 1?

A. Yes, I'll refer to Exhibit 1. Exhibit 1 does not give us a full picture of the watershed that would impact Round Lake; but, for the most part, you have your normal traditional outlying

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areas of Round Lake. The ones I'll concentrate on for Round Lake, though, include the McClaine Road area or the -- what I will call the east side of Round Lake and to some degree the northeast side of Round Lake.

Q. And those are in the vicinity of Mr. Hausman's property; correct?

A. Yes, some of it is Mr. Hausman's here on the property on Round Lake.

Q. Go ahead.

A. We have influents to Round Lake. Of course, there are a number of factors. One of them I talked a little bit earlier is development on Round Lake, and you've got a lot of impervious surface on the near shore areas as people have developed on Round Lake. That has an impact on Round Lake by having that what I will call interflow, which is water that seeps into the ground but does not become part of ground water. That is somewhat delayed reaction coming into a surface water environment, as it melts off or as you get rainfall; but, once you hit impervious surface, it has to go somewhere; and, for the most part,

impervious surface runoff is going to go towards the lake. So you end up with a situation through development on this lake and you have more impervious surface that in my opinion has more direct influence to Round Lake during spring runoff, melt-off and precipitation events. So that would be the near-shore areas that I'm talking about.

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Q. Would those -- excuse me for interrupting. Would those -- I think you called those interflows?

A. Right.

Q. Would those interflows have also affected the County's operation of the control structures with respect to Round Lake and therefore impacted the lake levels from let's say 2000 on, as far as you know?

MR. FURLOW: Objection, foundation.

THE WITNESS: I -- I would say that the impact of interruption of interflow causes more water to get into Round Lake, thereby, the Little Round Lake Dam not being able to handle that impact or the increase of flow into Round Lake being able to dump it quicker.

BY MR. WRIGHT:

Q. So that the interflows are one issue that DNR will look at in determining going forward how the Round Lake system ought to be handled; is that true?

A. I would say, yes, that will be one of the factors we'll look at.

Q. What are the other interflows into the Round Lake system that you're aware of?

A. Obviously, of the diversion ditch on McClaine Road.

Q. Also known as the Lake Placid Dam area?

A. Correct.

Q. Okay.

A. And, in this particular instance, you have water that is in

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an upland environment; and there's a culvert that, as I understand it, talking with Dale Olson, has collapsed under McClaine Road and they drove another culvert through that collapsed one to maintain that open. There is a pooled water reservoir directly behind the dam and then that has leakage

through the boards and at least once this year I've seen the water topping over the boards at this location. And so you have some influent from this, just through leakage of the dam.

Q. What's the next inflow?

A. Your next inflow and it's not quantified, but there's no question it has a major impact on Round Lake in my mind, is the fact that Tiger Cat is at a higher elevation than Round Lake and I believe there is ground water coming from the Tiger Cat flowage system to Round Lake from an east-northeasterly direction going west-southwesterly direction to Round Lake.

Q. What's the next influent?

A. Your next influent would be these wetland combinations around the outside edge. I'll stick with the ones that are north of the McClaine Road ditch or dam, and these areas have a lot of wetland environment that do flow underneath McClaine Road. I was with Mr. Reider ^ sp and Mr. Hausman after that significant rainfall event that we had earlier this year; and we did find some culvert, some of them apparently are collapsed or filled up with sediment; but there are others that do have -- have significant flow going from an east direction to a west direction

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underneath McClaine Road.

Q. What other inflows are there into the Round Lake system that the DNR would be looking at?

A. I would suspect that, in conjunction with this whole Tiger Cat and the wetland complex on McClaine Road, that we will be looking at wetland complexes at the north end of Lovejoy Lake on McClaine Road, also.

Q. Any other inflows that the DNR will be looking at as a part of it is analysis of the petition?

A. I would expect those are the major ones that we'll be looking at.

Q. So, if I'm summarizing correctly, you're going to look at the interflow with respect to runoff and rainfall; second, the Lake Placid Dam area; third, ground water from the Tiger Cat area into Round Lake; fourth, the wetland area north of the McClaine area, as you call it?

A. Right.

Q. And, fifth, wetlands near in the Lovejoy Lake area?

A. I would expect those are major influences.

Q. So your expectation today is that all of those inflows affect the level of Round Lake, Little Round Lake and downstream from there?

A. Correct. At least with the Round Lake, Little Round Lake system, yes.

Q. And, if one were to determine what caused Round Lake to be

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at a level historically at least in the past, one would look at

each of those same five inflows, at least; correct?

MR. FURLOW: Objection, form. Go ahead.

THE WITNESS: I would say yes, we would. I mean there are some that I would guess that are going to be impacted, especially, the Lake Placid or the McClaine Road Dam and the wetlands associated with -- or I should say the wetlands that are between Round Lake and Tiger Cat because, obviously, Round Lake has an old order on it; but Tiger Cat, over a number of orders on Tiger Cat Dam, have been elevated; and those over time I would guess would increase ground water influent coming towards Round Lake.

Q. And each of those orders post dated the 1941 order. That's

order Number 513, as far as you know?

A. I don't remember. But I think you're right.

Q. Okay. Okay. I want to ask you some other questions about some of the things that Mr. Furlow covered with you.

A. Hm-hm.

Q. One of the things that he mentioned was the area and I think it was in the North Channel, but tell me if I'm wrong, where you discussed with him some weeds that may or may not have been popping up. Do you remember that discussion?

A. That would be the Osprey Creek area.

Q. Okay. In the Osprey Creek area then, he was asking you some questions about weeds that may or may not have been popping up in that creek; is that right?

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A. That's correct.

Q. And is it your understanding that those weeds or other things like it in the Osprey Creek area are one of the things that the DNR is going to be looking at in connection with the evaluation of the County's petition?

A. I don't know if we'll look at them that closely, Joe, because I don't see those as having a major influence on the water levels or impacting water levels. They're natural processes within a shallow open-water environment with wetlands associated with them. I mean there is -- they're just natural processes that you see where they get pushed around by ice or gases or that kind of stuff so; but, as far as impacting the hydrology of the system, I don't see that doing that.

Q. Is the Osprey Creek area, in general, one of the things you're going to be looking at as a part of determining what the lake levels should be established for the area?

A. I would say yes it would be because, in my opinion, that Osprey Creek area does have some natural activity, i.e., beaver activity and beaver dams that impact the ability of the water to flow out of the Round Lake system.

Q. And is the same true of the Northern Channel, that is, that there are activities or conditions within that area that the DNR will be examining as a part of the examination of the petition that the County has filed?

A. I would say that we should and that we will -- I mean it

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would be to our best interests to evaluate everything and one of them is the effectiveness of the channel.

Q. Another thing that you discussed with Mr. Furlow was the question with respect to the various benchmarks, or I'll use the word gauges, that might be used to examine -- strike that.

One of the things that you discussed with Mr. Furlow are the benchmarks or gauges that either do exist or have existed historically on the Round Lake system; correct?

A. Correct, yes.

Q. And going forward, in looking at the petition that the County has filed, did I understand you to say that the DNR will be looking at those benchmarks or gauges?

A. I would say yes. I mean, from a benchmark standpoint, the critical item that we have is we have an order on Round Lake that's based on a benchmark that no longer exists or that nobody can find; and, historically, that's the one that everything's based off of for 77 or 77.25.

Now, we have other benchmarks on this system, specifically, over here at the McClaine Road Dam and also down here at the Little Round Lake Dam, those bench marks are there. Now, whether these

have ever been tied back to the Kaiser Resort ^ sp benchmark that established the Round Lake water level is an item for discussion.

Q. When you say it's an item for discussion, do you mean that that's something that the DNR intends to review as a part of evaluating the petition in order to determine what the lake level

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should be?

A. That's correct. We should be looking at -- we need to make sure that we're all talking apples and apples when we're figuring out what the heck 77 or 77.25 is out here so, if this is the benchmark that everything was based off of and that's no longer in existence, how do we tie or is there documents that tie these benchmarks here or this benchmark down here with this old benchmark; and, if there are and they're accurate, then conceivably, we can use the other benchmarks to say we can accurately say what the water level is. But, if there's a break in survey between what this benchmark used to say and what this one is when somebody might have shot these in across the ice what those breaks mean are pretty significant because, if you're

within, you know, right now we're talking about a lake that conceivably has a quarter foot elevation difference between the ordinary or normal and the max; and, if you're off by a tenth of a foot, shooting over here, that's a problem that we have to deal with internally to figure out making sure that we have an accurate benchmark and they're tied in so that we can all be talking the same water elevations.

Q. So, in order to determine whether you're talking the same water elevations going forward with respect to the evaluation of the petition, you need to look backwards to determine whether those benchmarks have been tied together historically and that the historical numbers are even accurate; is that true?

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A. That's correct.

Q. Now, is another thing that you're going to look at going forward, the construction and design of the structures that are in place in the Round Lake system?

A. I would say that's part of it, yes. I mean, ah, I would expect that our dam safety engineer will be evaluating the

current conditions of each structure and determining whether they're up to snuff or whether they have to be modified or fixed.

Q. Would you also be looking at them to determine whether they, in fact, comply with the authorization that allowed the construction in the first instance?

A. I would expect that with input from our legal staff to determine what the order actually means, yes, that would be part of it, also.

Q. And would you, also, as part of your evaluation of the petition, be looking at shoreline development over the last sixty years in order to determine what the proper lake level should be?

A. I would say that that is a significant part of it, yes.

Q. And is the shoreline development that has occurred on Round Lake over the last sixty years one of the things that influences the level of Round Lake?

A. On what we'll look at for an order or whether the order is accurate or whether the buildings have influenced the water level of Round Lake?

Q. Let me break it down. Is shoreline development one of the

things that you will look at in order to determine what the lake level should be?

A. Yes.

Q. And is shoreline development one of the historical things that you will look at in order to determine whether the benchmarks can be tied together?

A. Ah, I can't answer that one offhand. I mean, to tie the benchmarks into development is two separate items. I will tie the benchmarks in to make sure that we have accurate benchmarks is -- is the key and to tie those benchmarks into development, I think, is separate.

Q. Is it one of the things that you might need to look at, for example, the shoreline development into the area that used to be Kaiser's ^ sp Resort?

A. Yes, I'm sure we will just from the standpoint of trying to find the benchmark, if nothing else.

Q. Going forward, will the DNR look at the possibility, in evaluating the petition, of doing nothing; in other words, not changing the current regime at all?

A. That is always an option.

Q. And is one of the goals of this petition process might be to establish revised lawful levels for Round Lake; true?

A. Correct.

Q. And another thing that the DNR will be examining is whether there should be improvements made to the Osprey Lake outlet

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stream?

A. That would be part of the whole water lake system. Correct.

Q. And, in order to do that, you have to look at the Osprey Lake outlet stream and determine how that has affected historically the lake levels on Round Lake?

A. Historically, yes, and also current situation.

Q. And do you also, as a part of the DNR process of evaluating the petition, expect to review the option of abandoning the Little Round Lake Dam and/or the Lake Placid Diversion Dam?

A. I would expect that those are options to be considered, yes.

Q. And, in considering those options, will the DNR have to look historically at the effect that those structures have had on lake levels in order to determine whether to keep them?

A. I would say, in one particular instance, yes; the other one,

no.

Q. Can you explain that, please?

A. Yes, I will. I would say we definitely would be looking at it from a Little Round Lake Dam - North Channel situation. At least in reviewing the information on the McClaine Road diversion ditch, diversion dam. I don't know when the last time that thing actually was opened up to take water into Round Lake. I mean, if it's a structure for structure sake, it's one of those that we will evaluate to determine whether it's something that -- that -- that the County should consider keeping or consider abandoning.

Q. And, in considering whether to abandon the Lake Placid Dam

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or not and diversion canal isn't one of the things to look at the issue of whether that diversion canal or that area has ever been a natural stream bed?

A. We will look at that, I'm sure.

Q. And are you aware that at some point state cartographers have, apparently, said that may have been a stream bed and,

therefore, the diversion canal should not be abandoned?

MR. FURLOW: Objection, form, foundation.

THE WITNESS: I am not aware of any documents or maps that show that as being a navigable body of water connecting Lake Placid to Round Lake.

BY MR. WRIGHT:

Q. But, in order to determine whether that stream -- strike that.

In order to determine whether that canal should or should not be abandoned and the dam associated with it, Lake Placid Dam abandoned, you need to look at historically whether that is a stream bed.

MR. FURLOW: Objection, form, foundation.

THE WITNESS: We will look at all the historical documents.

MR. WRIGHT: Okay. With the understanding that, because of the hour and the limited nature of the motion, I'm going to reserve the right to ask Mr. Kafura some additional questions at a mutually agreed upon date. That's all I have right now.

MR. FURLOW: I've got a couple of follow-ups.

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REDIRECT EXAMINATION.

BY MR. FURLOW:

Q. Mr. Kafura, you answered a lot of questions about what might happen in this petition process. Have you been given any direction about what will happen?

A. No, I have not.

Q. And there's been no internal meetings at DNR about what will or won't be done?

A. No.

Q. So you're speculating a little bit about what might happen?

A. Very much so. I'm looking at all the factors that play into a determination of trying to resolve this whole situation and, as you're well aware, there are many, many different opinions on it and -- and part of this whole project is going to be looking at the human factor not just the econom -- or -- or environment aspects of it.

Q. And your answer then is to Mr. Wright about what you expect to happen are pure speculation?

A. That could -- that would be very correct, yes.

Q. There's been no decision made about what will or won't happen.

A. Right.

Q. You don't know one way or the other; do you remember?

A. No.

Q. Let me ask you. Is the DNR going to decide what happened to

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the water levels on the day that Mr. Hausman's property eroded  
away?

A. I don't know.

Q. Do you know if the DNR is going to declare what the amount  
of damage is what Mr. Hausman ^ sp suffered because of his loss  
of eight feet of shoreline?

A. As far as environmental, economic --

Q. Economic.

A. I don't know of that answer.

Q. In fact, you don't know if the DNR is going to do anything  
that assists on determining what happened to Mr. Hausman's  
property and the loss; right?

A. That would be correct.

Q. You don't know one way or the other, do you?

A. Right.

Q. And you're the point person now in Sawyer County for the project?

A. That is correct.

Q. So all this is to be decided at some time in the future?

A. Hm-hm.

Q. And you understand that there were predecessors for the DNR who had reached conclusions about water exceeding 77.25 on Round Lake?

A. Yes, there have been numerous documents of concerns about the water levels of Round Lake of which my predecessors, two or

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three people ago had -- had investigated and reviewed.

Q. In fact, you're aware that there have been numerous complaints over the years about water on Round Lake being higher than 77.25?

A. Correct.

Q. And numerous complaints in the past about erosion of water or shoreline at Round Lake because of high water loss?

A. Yes, there have been comments about the potential for erosion due to high water.

Q. And, now, have you examined to see whether or not the gage at Kaiser's ^ sp Resort has been tied into other benchmarks?

A. I have not looked into that. I've only snuck out there once to take a look and get an idea since Kaiser's ^ sp Resort has -- the term has been thrown around liberally as the location for benchmark, so I've been out there once to try to find where -- where this particular location is.

Q. Do you know there's a benchmark at the Lake Placid Dam?

A. Yes, there are actually two of them associated with the McClaine Road Dam: One right on the dam structure and one up into the woods a little bit to the south of the dam.

Q. And the Lake Placid benchmark was put in about the time that the 1941 Order came out?

A. I don't know.

Q. And, if you can take a look back at Exhibit No. 50, that's the 1941 Order. And then I'm going to turn you to Page 7 at the

top and just read a sentence to you to see if that helps you out:

Quote, it should be stated that until the staff gage was established some time after May 13, 1941, all elevations herein were referred to a gage at Kaiser's bridge at the Kaiser ^ sp resort, which was also set according to the datum of Public Service Commission Benchmark No. 899A, period, end quote. Do you see that?

A. Hm-hm; correct.

Q. Does that lead you to conclude one way or the other whether the Kaiser resort benchmark has actually been tied into another benchmark?

A. I don't know if 899-A is another benchmark or if it's the one out at Kaiser's Resort.

Q. So you don't know one way or the other whether benchmarks have been tied out?

A. No.

Q. So, as far as you know, they could be?

A. They could be.

Q. And do you believe, Mr. Kafura, that Sawyer County has an obligation to comply with the 1941 Order?

A. It -- I believe they have an obligation to comply with the

1941 Order, although, what the interpretation of the '41 order is open for debate.

Q. Do you believe that the Sawyer County has an obligation to maintain damages and control structures that it owns?

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A. Yes.

MR. FURLOW: I've got nothing else.

BY MR. WRIGHT:

Q. Mr. Kafura, the testimony you gave me about what you expect to happen during the petition process, none of that was a wild guess, was it?

A. No, I wouldn't say it was a wild guess at all.

Q. You'd say it was based on your experience in the field and your involvement in the issues in this case; true?

A. That's correct.

Q. Is it anything other than your best belief as to what the process will entail?

A. It's my best guess at what the direction of this would go to come to a -- to a -- a constructive conclusion of the water

levels of Round Lake and Tiger Cat, yes.

MR. WRIGHT: Thank you.

MR. FURLOW: Just another. This is like a tennis match. We go back and forth.

BY MR. FURLOW:

Q. Until this petition was filed, Mr. Kafura, have you been involved in a petition such as this?

A. No, I have not.

Q. So you don't have anything to match this against as to what might happen; right?

A. No, I do not.

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MR. FURLOW: Okay. I've got nothing else.

MS. KLOPPENBURG: In terms of I need to order my own copy of Dave's. I don't need the others.

(The deposition concluded at 5:17 p.m.)

