

STATE OF WISCONSIN CIRCUIT COURT SAWYER COUNTY

JAMES HAUSMAN, Plaintiff, vs. Case No. 03-CV-167 SAWYER COUNTY, Defendant.

Deposition of: ROBERT J. MONTGOMERY

Date: Friday, June 17, 2005 Time: 8:40 o'clock a.m.

Reported by NANCY L. DELANEY

EXHIBIT INDEX (Continued)

Table listing exhibit numbers (178-190) and descriptions such as 'Report of Mr. Montgomery dated June 7, 2005', 'Shoreline loss report addendum', etc.

DEPOSITION of ROBERT J. MONTGOMERY,

a witness in the above-entitled action, taken at the instance of the plaintiff, under the provisions of Chapter 804 of the Wisconsin Statutes...

APPEARANCES

LAUREN L. AZAR, MICHAEL, BEST & FRIEDRICH, LLP, Attorneys at Law, 1 South Pinckney Street, Madison, Wisconsin, appearing on behalf of the plaintiff;

MATTHEW P. DREGNE, STAFFORD ROSENBAUM LLP, Attorneys at Law, 222 West Washington Avenue, Madison, Wisconsin, appearing on behalf of the defendant.

ALSO PRESENT: JAMES HAUSMAN NANCY JOHNSON DENT

EXHIBIT INDEX

Table listing exhibit numbers (175-177) and descriptions such as 'Notice of deposition and request for documents dated July 6, 2004', 'Affidavit of Robert Montgomery with attached resume dated June 4, 2004', etc.

ROBERT J. MONTGOMERY,

called as a witness, after being first duly sworn in the above cause, testified under oath as follows:

EXAMINATION

BY MS. AZAR:

Q Good morning.

A Good morning.

Q Mr. Montgomery, as you know, I'm Lauren Azar. I'm the attorney for Jim Hausman in this litigation. Before we begin, let's talk about some ground rules on the best way to insure that this deposition goes well.

First, if you could remember to always answer audibly, because that helps the court reporter and if we can try not to talk over each other, that also helps the court reporter.

A Okay.

Q If at any point in time you don't understand a question, just stop me and ask me to rephrase the question, because I want to insure that you understand what I'm asking and as well, if at any point in time you need to change any of your answers, regardless of when it happened during the day, stop the deposition and let us know that you need to change an answer. I want you to be completely comfortable with all the

1 answers you give today.  
 2 A Okay.  
 3 Q Also, if you need to take a break, just let me know  
 4 that. This is not supposed to be a torturous  
 5 activity. Do you understand those directions?  
 6 A Yes.  
 7 Q Have you ever been deposed before?  
 8 A Yes.  
 9 Q When was that?  
 10 A Actually, it was quite some time ago, I think it was  
 11 1995.  
 12 Q In what context?  
 13 A It was a valuation dispute about a property that had  
 14 wetlands. It was in Walworth County.  
 15 Q Have you given any other depositions?  
 16 A I was deposed a long time ago, this is perhaps 20  
 17 years ago, on a water reg and zoning dispute that was  
 18 across the lake in the Town of Westport.  
 19 Q Any other depositions?  
 20 A I can't recall any.  
 21 Q Have you ever testified in court?  
 22 A Yes.  
 23 Q In what context?  
 24 A The same two issues and actually, the older one was a  
 25 contested case hearing and I testified in another

1 contested case hearing more recently.  
 2 Q In what case was that?  
 3 A It was another water regulation dispute and it was  
 4 near Green Bay.  
 5 Q What's your birthday?  
 6 A November 3, 1953.  
 7 Q And please give me your educational background.  
 8 A Well, after getting out of high school, I went to the  
 9 University of Illinois at Urbana, graduated from there  
 10 in 1976, worked for a little while, went to Colorado  
 11 State University, graduated from there with a master's  
 12 degree, emphasis in water resource engineering, in  
 13 1980.  
 14 (Exhibit 175 is marked for identification)  
 15 Q I'd like you to take a look at what's been marked as  
 16 Exhibit Number 175. Can you identify that document,  
 17 please?  
 18 A This looks like the deposition request.  
 19 Q And attached to that deposition request is a request  
 20 for documents, correct?  
 21 A Correct.  
 22 Q Did you produce all the documents that were requested  
 23 in this notice of deposition and request for  
 24 documents?  
 25 A Yes.

1 Q And have you produced all the documents upon which you  
 2 reviewed in preparing your expert opinion?  
 3 A Yes, I believe so. We produced our entire file.  
 4 There might have been some things we looked at in  
 5 Stafford's offices that we didn't take copies of, but  
 6 everything that was in our file was turned over.  
 7 Q And what sorts of things did you review in Stafford's  
 8 offices?  
 9 A I can't remember anything specifically, I think you  
 10 have everything we looked at.  
 11 (Exhibit 176 is marked for identification)  
 12 Q I'd now like you to take a look at what's been marked  
 13 as Exhibit Number 176.  
 14 A All right.  
 15 Q Could you please identify what's been marked as  
 16 Exhibit 176?  
 17 A This is an affidavit that I signed last year.  
 18 Q And attached to this affidavit is your resume,  
 19 correct?  
 20 A That's correct.  
 21 Q Do you have any additions to your resume that you'd  
 22 like to add now?  
 23 A Not any that I think -- it's fundamentally more of the  
 24 same. There are more projects to describe, but I  
 25 don't think there's any big change.  
 1 Q Do you have experience with the design of dams?  
 2 A I've analyzed dams for various compliance conditions  
 3 and spillway capacity. I haven't actually prepared  
 4 plans and specifications for a new dam construction.  
 5 Q So you said you analyzed dams for essentially  
 6 adequacy?  
 7 A Yeah, for hydraulic and hydrologic issues, but I  
 8 haven't prepared -- and we've prepared some plans for  
 9 rehabilitation of dams, of a dam just recently in  
 10 Walworth County, but we have not prepared new dam  
 11 construction complete plans and specifications.  
 12 Q Have you -- do you have any experience with designing  
 13 replacement dams?  
 14 A Not specifically.  
 15 Q And do you have any experience with the operation of  
 16 dams?  
 17 A Well, yes, in the course of various projects working  
 18 on things to do with gate operation and things like  
 19 that.  
 20 Q Throughout today's deposition, we're going to be using  
 21 a lot of different terms and want to make sure you and  
 22 I are talking about the same thing. So first of all,  
 23 why don't you tell me the difference between a storm  
 24 event and a flood event.  
 25 A A storm event is basically dealing with the difference

1 between precipitation and the frequency or the rarity  
2 of some rainstorm event and a similar issue on a water  
3 body, whether it's a lake or a river. A storm event  
4 is some sort of rainfall event and a flood event is a  
5 change in water surface in a lake or river. They're  
6 related, about they're often times not exactly related  
7 in their frequency.

8 Q In your expert report that you prepared on June 7,  
9 2005, on a number of occasions you talk about the  
10 normal event versus the extreme event?

11 A Correct.

12 Q Are you talking about the normal flood event and the  
13 normal -- and the extreme flood event or the normal  
14 storm event and the extreme storm event?

15 A I would say it's more of a distinction between normal  
16 conditions and conditions you would expect to run into  
17 in general versus extreme conditions that would be at  
18 some return period of, let's say, once every ten years  
19 or once every 100 years.

20 Q So when you talk about extreme events, you consider an  
21 extreme event something that's once every ten years or  
22 more?

23 A I'd say that's a reasonable definition.

24 Q And on what do you base that?

25 A Judgment and experience. I'm trying to think if

1 there's some particular citation I can give you, but I  
2 can't think of one. I can give you a couple of  
3 references.

4 It's not specifically applicable, but storm water  
5 management in terms of analyzing storm events that  
6 create flooding in neighborhoods typically require  
7 control of storm events at the 10-year frequency and  
8 sometimes to the 100-year frequency and that's  
9 considered control of extreme events. It's not  
10 directly applicable to this situation here.

11 Q Why not?

12 A Well, it's an example of an interpretation of what a  
13 design standard would be to cover an event that's  
14 judged to be large or extreme.

15 Q And why is that not applicable to this situation?

16 A Well, I think it's generally applicable, I'm just  
17 saying storm water management is not exactly the same  
18 thing as lake management.

19 Q So you then are -- when we use the term extreme event  
20 today, you will be referring to either storm events or  
21 flood events that occur once every ten years or more,  
22 is that correct?

23 A I'm not quite sure of the questions you're going to be  
24 asking me, but I'd say that's a reasonable starting  
25 point for defining the extreme, yes.

1 Q If at any point in time I ask you a question about an  
2 extreme event and you will not be using that  
3 definition, you need to tell me.

4 A Okay.

5 Q Because I want to make sure we understand what we're  
6 talking about, okay?

7 A Okay.

8 Q A normal event, then, when we talk about a normal  
9 event today, here's the definition we'll be using,  
10 either a storm event or a flood event that occurs less  
11 than once every ten years, is that agreeable?

12 A I think there's probably somewhat of a gray zone  
13 between extreme and normal conditions, but that's  
14 fine, we can just -- I wouldn't say there's an  
15 absolute division between extreme and normal, there's  
16 a gradation.

17 It's sort of a common sense issue, but when  
18 events get large enough, you would say, well, this is  
19 an extreme event and then there's some sort of  
20 moderate event and then there's typical conditions.

21 Q Well, what do you consider to be typical conditions?

22 A Well, I would define typical conditions as the sorts  
23 of things that happen most of the time and I would say  
24 that thinking about lake levels or stream flow, most  
25 of the time, the majority of the time, conditions are

1 not extreme and so I would say normal conditions are  
2 conditions that occur most of the time.

3 Q And what is most of the time? Give me a period of  
4 time.

5 A More than 50 percent. I'm making this up as I go, I  
6 didn't have this definition in mind when I was putting  
7 together the work that I did, but if you're just  
8 asking me right here, I'd say at least half the time.

9 Q And how does that translate into storm events or flood  
10 events, would that be the annual flood event, the  
11 two-year flood event, the five-year flood event?

12 A I would say the annual or the one-year or the two-year  
13 would be in the range of normal. It would be on the  
14 outside of what typically occurs the bulk of the time,  
15 but that would be getting toward the upper end of what  
16 you'd call normal conditions.

17 Q So the one and two-year you would consider normal  
18 conditions, the five-year, what would you consider  
19 that?

20 A It's somewhere in a gray zone, but it's getting toward  
21 an extreme event. I'm not sure I'd call the five-year  
22 event -- we're not speaking of any event in  
23 particular, it could be a five-year flood, it could be  
24 a five-year rainstorm. I'm just saying that a return  
25 period of five years is somewhere in a gray zone. I

1 would put it between normal conditions and extreme  
2 conditions.

3 Q Continuing with our definition of terms here, I will  
4 be using the local datum, not the adjusted local  
5 datum.

6 A Good.

7 Q So when I give you numbers, they'll be based on the  
8 local datum and when I use the term high water on  
9 Round Lake, I'll be referring to the amount 77.25 feet  
10 local datum, do you understand that?

11 A Yes.

12 Q The State of Wisconsin has regulations specifying  
13 design parameters for dams, doesn't it?

14 A Yes.

15 Q It is important to design a dam with sufficient flow  
16 capacity, isn't it?

17 A Yes.

18 Q When designing a dam, how do you determine what the  
19 flow capacity should be?

20 A It is based upon a hazard classification and the  
21 spillway capacity. If you are subject to the  
22 Administrative Code defining design standards for  
23 dams, the spillway capacity is based upon a hazard  
24 classification and it's described in NR 333.

25 Q And do you consider what the inflows are to that

1 watershed when designing a dam?

2 A Yes.

3 Q What happens when a dam is designed without sufficient  
4 flow capacity?

5 A Well, the worst thing that can happen would be that  
6 the dam would be over topped and that could be -- that  
7 could lead to a failure of the dam.

8 Q Does the dam structure restrict flow if it has  
9 insufficient flow capacity?

10 A Well, yes.

11 Q For purposes of this deposition, we'll be calling a  
12 dam that was designed and constructed with  
13 insufficient flow capacity as an undersized dam, do  
14 you understand that?

15 A Okay.

16 Q Have you ever participated in the permitting process  
17 for the construction of a dam?

18 A Not a new dam, no.

19 Q For purposes of the next few questions, we're going to  
20 be discussing a dam that's a timber wing wall dam and  
21 one or more of the wing walls becomes unconnected to  
22 the dam, what would this indicate?

23 A When you mean a timber wing wall dam, do you mean -- I  
24 need a little more description of this. This is a  
25 hypothetical dam you're describing?

1 Q Yes.

2 A Tell me a little more about this dam.

3 Q What do you need to know besides that it's a timber  
4 wing wall dam, it's a large dam, I can say that.

5 A It is an urban embankment?

6 Q Yes.

7 A With timber wing walls to the approach to some sort of  
8 a conduit?

9 Q Yes.

10 A And repeat your question then.

11 Q If one or more of the wing walls becomes unconnected  
12 to the dam, what would this indicate?

13 A It would be a cause for concern.

14 Q Why?

15 A It's possible that the -- that there could be erosion  
16 of embankment material through the separation, however  
17 it was put together.

18 Q And how would one repair such a situation?

19 A Well, it depends completely on exactly what the issues  
20 were. You may need to reconstruct the wing wall, you  
21 may need to simply bolt things back together. I'm  
22 running out of a hypothetical here.

23 Q If one or more of the wing walls starts to lean, what  
24 would this indicate?

25 A It may indicate a problem.

1 Q And what sort of problem would it possibly indicate?

2 A If it's leaning, depending which way it's leaning, it  
3 could indicate that earth pressure from the embankment  
4 was starting to exceed the structural capacity of the  
5 wall to resist it. If it was leaning the other way,  
6 it might indicate a loss of material. I'm speculating  
7 on this hypothetical.

8 Q Is the Little Round Lake dam a large or a small dam  
9 under the definitions provided in the Wisconsin  
10 Administrative Code?

11 A From the material that I read, I think it would be  
12 classified as a large dam.

13 Q Have you ever conducted a water quality study of a  
14 lake?

15 A Not as thorough as what I -- what I've seen conducted  
16 here.

17 Q When studying water quality trends in a lake, what  
18 length of time is required for the study to draw valid  
19 conclusions about trends in water quality?

20 A I don't think that question has a specific answer. I  
21 would say a number of years and I would say it  
22 depends on the parameters involved and depends on what  
23 else you know about the watershed.

24 Q Let's go into that. It would take -- first of all,  
25 you said it would take a number of years, how many

1 years, more than five?  
 2 A Perhaps.  
 3 Q More than ten?  
 4 A I'm not sure where you're going with this, so I would  
 5 say I would have to again respond with perhaps. You  
 6 could use -- I'll just say perhaps.  
 7 Q We don't need to know where I'm going with this.  
 8 A I know I'll find out.  
 9 MR. DREGNE: Could I just ask that  
 10 you repeat the question that kind of initiated  
 11 this discussion?  
 12 (Reporter reads back previous question)  
 13 Q You were unable to give me a specific time period  
 14 besides saying that it would take years, why don't you  
 15 explain to me what factors you would consider, how you  
 16 would determine what an appropriate length of study  
 17 time is.  
 18 A Okay. The factors that you would consider would be  
 19 what you know, first of all, depending upon what  
 20 characteristic of water quality you're interested in.  
 21 You would want to understand what was going on in the  
 22 tributary watershed to the water body you were  
 23 interested in and it's possible that you would have  
 24 information on land use that had a longer duration  
 25 than the water quality data.

1 I'm speculating, I'm giving you a general  
 2 answer. So you need to look at the data that you may  
 3 have additional to specific data collected in the  
 4 water quality to put together a study plan for the  
 5 lake.  
 6 Q Well, let's assume you have a lot of information about  
 7 the tributary watershed and the land use. How long --  
 8 strike that. Let's assume that you have a lot of  
 9 information about the tributary watershed and  
 10 information on land use.  
 11 Given that assumption, what length of time is  
 12 required for the water quality study to draw valid  
 13 conclusions about trends in water quality?  
 14 A I don't think there's a definite answer to your  
 15 question, but if you had a set of data on a water body  
 16 and could project past and future water quality  
 17 inputs, you may be able to project future water  
 18 quality as a projection, a prediction, if that was  
 19 what your -- the objective of your study is.  
 20 Q I'm confused now. I'm trying to understand -- you're  
 21 a scientist, right?  
 22 A I'm an engineer, actually.  
 23 Q You're an engineer, but you've done water quality  
 24 studies, correct?  
 25 A Yes.

1 Q I'm trying to understand what a valid water quality  
 2 study is and how long it takes to conduct such a  
 3 study.  
 4 A Okay. I'm trying to describe that you could define a  
 5 water quality study in a number of ways in terms of  
 6 what is your objective. If you're trying to document  
 7 50 years of water quality changes in Lake Mendota out  
 8 here and you don't have 50 years worth of data, you  
 9 just plain can't do that.  
 10 Then you have to do some sort of technique to  
 11 project what things may have been and if you're  
 12 interested in determining what water quality may be in  
 13 the future, again, you need to use some sort of a  
 14 model to project what may occur based on physical  
 15 things that you project as occurring, like changes in  
 16 watershed use or changes in land use, so I'm  
 17 struggling here. I'm trying to give you an answer,  
 18 but I'm not quite sure how to do it.  
 19 Q If we're trying to determine the trends in water  
 20 quality on a specific lake, could you do that based on  
 21 one year worth of data -- strike that. If you're  
 22 trying to determine the water quality trends on a  
 23 specific lake, could you make a valid prediction based  
 24 on one year worth of water quality data?  
 25 A Alone?

1 Q Let's start with alone.  
 2 A I think if all you had was one year worth of water  
 3 quality data and no other analysis, you could report  
 4 what the results were, but you'd have to have other  
 5 information to conclude how the water quality was  
 6 changing through time.  
 7 Q So your answer is no, you could not make a valid  
 8 prediction on the trends in water quality based on one  
 9 year worth of water quality data if you had no other  
 10 information, correct?  
 11 A Yeah, I think that's a fair statement. I'm still  
 12 struggling a little bit -- ask that question again,  
 13 please.  
 14 (Reporter reads back previous question)  
 15 A Yeah, I think that's correct.  
 16 Q What about two years worth of water quality data?  
 17 A Well, two years would give you a differential from one  
 18 to the next. I'm not sure if you could determine a  
 19 trend from that or not. I think it would be weak.  
 20 Q A weak prediction?  
 21 A If that's all you had.  
 22 Q What if you had some, but not exhaustive information  
 23 concerning the tributary watershed and land use in the  
 24 area, could you make a valid prediction about water  
 25 quality trends with only one year worth of water

1 quality data?

2 A There are more accurate and less accurate studies, but

3 if you have land use data from which you could project

4 water quality variables, you could do a better job.

5 You could attempt to make a projection. It would

6 probably -- it would certainly be better if you had

7 data to calibrate your analysis against.

8 Q So it would be a weak prediction?

9 A As a general hypothetical situation, I would say yes.

10 Q And what if you had two years of water quality data

11 and some information on the tributary watershed and

12 land use information, could you draw a valid

13 conclusion about trends in water quality on such a

14 lake with two years of data?

15 A Keep in mind that I have not prepared such projections

16 personally, so there are variables here that I might

17 not be aware of. I'm giving you a general science

18 reasoning answer.

19 If you had two years of data and you had land use

20 data from which you could project water quality

21 trends, it would be an incrementally better

22 prediction. That's a statement of basically logic.

23 Q And would it be a valid prediction, in your mind?

24 A I think determining whether it is valid or not,

25 there's a judgment there that you would have to get

1 specific to the data in order to make.

2 Q You're being presented as an expert witness in this

3 case, correct?

4 A That's correct.

5 Q Do you consider yourself an expert witness in

6 evaluating the trends in water quality on a lake?

7 A I think I can make reasonable projections based on

8 what I'm -- the material that I'm reading, but it is

9 not my science specialty.

10 Q So given that, I want you to make -- give us opinion

11 on whether or not you can render a valid prediction on

12 trends in water quality based on the following:

13 Number one, two years of water quality data, number

14 two, moderate information on the tributary watershed

15 and the land use in the area.

16 MR. DREGNE: I object to the form

17 of the question. I think that's two questions.

18 Can you break it into -- if it's two, can you

19 break it into two?

20 MS. AZAR: Actually, it's not two

21 questions, it's two assumptions that he should be

22 making in answering the question.

23 Q Do you understand the question?

24 A I think I understand the question, but read it back.

25 (Reporter reads back previous question)

1 A I think you can't -- I think it's difficult to answer

2 that question in the abstract, because it depends on

3 the water quality parameters that you're concerned

4 about and on the kind of data that you have. I'm

5 having a difficult time giving you a yes or no answer

6 on that question.

7 Q We're going to continue with questioning while I ask

8 somebody to find a document and then we can get very,

9 very specific. We're going to come back to this line

10 of questions in just a minute, but let's continue.

11 When were you hired by Sawyer County to assist in this

12 litigation?

13 A Early 2004, but I'd have to look to make sure I

14 understood exactly when we were retained.

15 Q And why would that be a question?

16 A Just because I can't remember the exact date.

17 Q And what were you hired to do?

18 A Provide assistance in general which could lead to

19 expert witness testimony.

20 Q And what sort of assistance in general were you asked

21 to provide?

22 A Understanding of the hydrology and hydraulics of the

23 system, understanding of the issues to do with the

24 regulation of lakes, general technical assistance on

25 the project to Stafford.

1 Q And when you're talking about the system, let's make

2 sure we're again using the same nomenclature. I'm

3 going to pull out what's been marked as Exhibit Number

4 1 and when you just referenced the system, you're

5 talking about the Round Lake system, correct?

6 A That's correct.

7 Q As shown on Exhibit Number 1?

8 A Yes.

9 Q And ultimately, were you asked to render an expert

10 opinion in this case?

11 A Yes, in terms of preparing a report, yes.

12 Q And what sort of expert opinion were you asked to

13 provide? They asked you to prepare a report, right?

14 A Correct.

15 Q What did they ask you to put in the report?

16 A Our opinions regarding the issues that Mr. Hausman has

17 brought up and the reports prepared by his

18 consultants.

19 Q So your expert report then addresses two things,

20 number one, the issues raised by Mr. Hausman in his

21 complaint?

22 A Correct.

23 Q And number two, the expert opinions provided by Barr

24 Engineering, is that correct?

25 A Yes. Let me add that we weren't asked to provide some

1 sort of legal opinion about the complaint, but there  
2 were issues raised in the complaint and amplified in  
3 Barr's report and we looked at those.

4 Q And so as far as the issues raised in Mr. Hausman's  
5 report, you were asked to provide engineering expert  
6 opinion in relation to those issues, not the legal  
7 analysis, correct?

8 A Yes.

9 (Exhibit 177 is marked for identification)

10 (Exhibit 178 is marked for identification)

11 Q I'd now like to have you take a look at what's been  
12 marked as -- you've already got Exhibit 176, we'll  
13 look at what's been marked as 177 and 178. Could you  
14 please identify what's been marked as Exhibit 177?

15 A Exhibit 177 is a memorandum that we prepared in 2004  
16 based on a conference call amongst various technical  
17 folks.

18 Q And is that an accurate and complete copy of the  
19 memorandum you prepared?

20 A It looks like it, yes.

21 Q I'd like you to take a look at what's been marked as  
22 Exhibit 178, could you please identify that document?

23 A This is the report we transmitted last week to Matt  
24 Dregne.

25 Q Is that an accurate and complete copy of your report?

1 A It looks like it.

2 Q The expert opinions that you've rendered in this case,  
3 are they all included within Exhibit 178?

4 A We expect that we may present some additional  
5 discussion after I get up to Round Lake and take a  
6 look at things to do with the Hausman property and  
7 perhaps the culverts next week.

8 Q And what will that involve?

9 A Looking at some of the issues that were raised in the  
10 last memorandum prepared by Barr and taking a look at  
11 the drilling data. I can't remember the date of the  
12 memo.

13 Q Well, let's then -- you're now referring to responding  
14 to the --

15 A Oh, there it is.

16 (Exhibit 179 is marked for identification)

17 Q The supplemental -- I should say the addendum to the  
18 Round Lake shoreline loss report prepared by Barr  
19 Engineering which has been marked as Exhibit 179,  
20 correct?

21 A Yes.

22 Q So let's go back. I want to understand -- you've  
23 already rendered some expert opinions, correct?

24 A Yes.

25 Q And where would I find those expert opinions?

1 A In the report.

2 Q Anywhere else?

3 A Well, I think that they would be in the affidavit as  
4 well and I think that you could view our memorandum.  
5 This depends on a definition that I don't quite  
6 understand. We've issued three things. I am prepared  
7 to discuss all of them.

8 Q So the three items that have been marked as Exhibit  
9 176, 177 and 178 contain your expert opinions,  
10 correct?

11 A Yes.

12 Q And are your expert opinions contained in any other  
13 document?

14 A No.

15 Q Now, you just indicated that you may issue  
16 supplemental expert opinions, correct?

17 A Yes.

18 Q And the scope of that supplemental expert opinion  
19 would be to respond to Barr Engineering's addendum  
20 which has been marked as Exhibit 179, correct?

21 A Yes.

22 Q And do you expect to provide any other supplemental  
23 opinions?

24 A I don't know. I may be asked, I may not.

25 Q To date, do you have any reason to believe that you

1 will be asked to provide supplemental expert opinions  
2 on any other topics?

3 A I don't know of any right now.

4 Q How much have you been paid to date as far as this  
5 litigation? And when I say you, I'm talking about  
6 your company, Montgomery Associates Resource  
7 Solutions.

8 A I can't give you an exact figure. Paid to date is, I  
9 believe, somewhere around \$5000 to \$6000.

10 Q And how much -- is there any money outstanding as far  
11 as past due accounts?

12 A Yes.

13 Q How much is outstanding?

14 A I can't remember the exact figure, but perhaps 16. I  
15 don't remember the exact figures.

16 Q And why is so much outstanding at this point?

17 A Procedural issue with the insurance company, I  
18 believe. Is this -- is this a legal question?

19 MR. DREGNE: Go ahead and answer  
20 the question.

21 A A procedural foul-up, I would call it, at the  
22 insurance company.

23 Q And what procedural foul-up?

24 A They haven't paid our invoices for a while.

25 Q Why is that?

1 A I believe it is purely procedural, it's not that they  
 2 have been rejected.  
 3 Q Have you been given any reasons whatsoever?  
 4 A That they have a review committee and it is supposed  
 5 to be meeting very soon and the invoices will be  
 6 approved.  
 7 Q And what does the review committee take a look at?  
 8 A I actually don't know.  
 9 Q Do you have any other information about why your  
 10 invoices have not been paid?  
 11 A No. I do not have any indication that they are not  
 12 going to be paid.  
 13 Q Do you have any other information as to why they  
 14 haven't been paid to date?  
 15 A No.  
 16 (Exhibit 180 is marked for identification)  
 17 (Exhibit 181 is marked for identification)  
 18 Q I have already handed you what in previous depositions  
 19 were marked as Exhibits 125 and 126 and those are the  
 20 Barr Engineering reports dated January 4, 2005. In  
 21 front of you is also what's been marked as Exhibit  
 22 179, 180 and 181. Now, 179 is the Barr Engineering  
 23 addendum to the Round Lake shoreline loss report.  
 24 Exhibit 180 is Ms. Dent's first affidavit and  
 25 Exhibit 181 is Ms. Dent's second affidavit. For

1 purposes of this deposition, I will be referring to  
 2 all five of those documents as the Barr's expert  
 3 opinions, do you understand that?  
 4 MR. DREGNE: Would you repeat  
 5 that?  
 6 MS. AZAR: Let me rephrase that.  
 7 MR. DREGNE: I need the numbers  
 8 that you're talking about.  
 9 Q The expert opinions contained in Exhibits 125, 126,  
 10 179, 180, and 181 will be referred to as the Barr's  
 11 expert opinion, do you understand that?  
 12 A If that's the way you --  
 13 MS. AZAR: Off the record for a  
 14 minute.  
 15 (Discussion off the record)  
 16 (A short recess is taken)  
 17 Q Before we took a break, I was defining what I would be  
 18 using the phrase Barr's expert opinion as and I'd like  
 19 to point your attention to Exhibits 125, 126, 179, 180  
 20 and 181. When I say the term Barr's expert opinion,  
 21 it's the expert opinions contained in those five  
 22 documents, do you understand that?  
 23 A Yes.  
 24 Q Have you reviewed and evaluated the Barr's expert  
 25 opinion?

1 A Yes.  
 2 Q Has your review been in depth?  
 3 A It's a qualitative term. Some of the issues have been  
 4 reviewed in depth, some of the issues have been  
 5 reviewed briefly.  
 6 Q As part of your expert opinion report, you were  
 7 supposed to render an expert opinion on your response  
 8 to the Barr's expert reports, correct?  
 9 A Yes.  
 10 Q So when you rendered that expert opinion, did you  
 11 conduct an indepth review before preparing your  
 12 report?  
 13 A Yes.  
 14 Q And which documents did you review in depth before you  
 15 prepared your report?  
 16 A I read all the documents that you've defined.  
 17 Q And you reviewed them in depth?  
 18 A Yes.  
 19 Q Now, I'd like to point to Exhibit 178, which is your  
 20 expert report dated June 7, 2005 and this is the  
 21 expert report that includes your critique of the Barr  
 22 expert opinions, correct?  
 23 A Yes.  
 24 Q In Exhibit 178, your expert conclusions appear in  
 25 boldface, correct?

1 A I tried to organize the document by topics using  
 2 boldface, but all the report is there.  
 3 Q So your expert opinions then are throughout the report  
 4 and not necessarily limited to the boldface text?  
 5 A Correct.  
 6 Q But the boldface text represents topical areas of your  
 7 expert opinion, correct?  
 8 A Correct.  
 9 Q Looking on page 1, your first boldfaced topic area is  
 10 that, "Mr. Hausman's property is located in and  
 11 adjacent to regulatory floodplain area. Periodic  
 12 flooding and flood related issues should be expected  
 13 on this property," period, end quote. Do you see  
 14 that?  
 15 A Yes.  
 16 Q Does your expert opinion contained in this topic area  
 17 conflict with the Barr's expert opinion?  
 18 A I'm not sure that it does.  
 19 Q How could you become sure?  
 20 A I would have to -- I don't believe that it does, but I  
 21 would need to review the report against that question,  
 22 that issue specifically, in order to answer you  
 23 completely.  
 24 Q Why don't you take a few moments and do that. How  
 25 long is that going to take, I guess, is my question?

1 MR. DREGNE: Are you suggesting we  
2 take a break off the record so he has time to do  
3 that?

4 MS. AZAR: Sure, let's just take a  
5 break.

6 Q How long would it take you to do that?

7 A I don't think it would take me more than ten minutes  
8 to look through this and see if I can answer your  
9 question.

10 Q To give you an idea, I'm going to ask for each one of  
11 your topic areas.

12 A Right.

13 MR. DREGNE: In terms of whether  
14 there's a --

15 MS. AZAR: Whether there's a  
16 conflict.

17 A Well, I guess we're here to answer questions.

18 MS. AZAR: Let's take a break.  
19 (A short recess is taken)

20 MS. AZAR: Could you read back the  
21 last question?

22 (Reporter reads back previous question)

23 A Yes, I believe it does.

24 Q And how does it conflict?

25 A I think that the Barr analysis does -- I think we

1 concur that the property is subject to -- it is  
2 located in -- I don't believe there's a great conflict  
3 between us and Barr in the first sentence.

4 That is, that the property is located in and  
5 adjacent to a regulatory floodplain area, but I do  
6 believe that Barr's conclusions, mainly drawn in the  
7 affidavits of Nancy Dent and ours in the second  
8 sentence are in a good deal of conflict.

9 Q How so?

10 A That the high water levels that are the problem that  
11 Barr has been evaluating were the responsibility of  
12 the county to control via the Round Lake dam.

13 Q And I just want to focus in on the second sentence  
14 here. "Periodic flooding and flood related issues  
15 should be expected on this property." That's the  
16 sentence that you're saying that, in your opinion,  
17 conflicts with the Barr expert opinion?

18 A That's correct.

19 Q So do you believe that Barr does not think that  
20 periodic flooding and flood related issues should be  
21 expected on the Hausman property?

22 A In their affidavits, Barr is contending that problems  
23 related to periodic flooding and flood related issues  
24 are a problem that needs to be corrected and so I  
25 infer that they would disagree with that statement.

1 Q So the conflict then arises from Barr wanting the  
2 problem to be corrected and you not believing that the  
3 problem will be corrected, is that an accurate  
4 description?

5 A Yes.

6 Q And why don't you believe the problem will be  
7 corrected?

8 A It's not so much that -- I said yes, but it's not so  
9 much that I think that the problem will be corrected,  
10 it's an interpretation of whether or not the problem  
11 is the responsibility of the county to correct at --  
12 for the regulatory floodplain adjacency issues.

13 MS. AZAR: Could you read that  
14 back, please.

15 (Reporter reads back previous answer)

16 Q I'm not sure I understand your answer. So you're  
17 questioning whether the county has any  
18 responsibilities to lower the floodplain elevations in  
19 the Round Lake area?

20 A Yes.

21 Q And how is the floodplain elevation related to the  
22 water level elevation on Round Lake?

23 A Well, the floodplain elevation would be the water  
24 level, the flood elevation would be the water level  
25 for the event that was defined as the 100-year

1 recurrence interval event.

2 Q I'm just trying to understand the conflict between you  
3 and Barr in relation to this first boldfaced opinion  
4 on page 1 of Exhibit 178. You believe then that the  
5 inconsistency between your expert opinion and Barr's  
6 expert opinion is that Barr believes Sawyer County  
7 should control the water levels on Round Lake so as  
8 not to --

9 A That's correct, that's correct. I'm inferring that  
10 there is a conflict in Barr's expert opinion and the  
11 second sentence of that boldface by the issues that  
12 they bring up in their affidavits.

13 Q And it all has to do with whether or not the problem  
14 should be solved, not the periodic nature of the  
15 current flooding situation?

16 A Yes, I believe that's correct.

17 Q Any other conflicts that you see between your expert  
18 opinion that's included in this first boldfaced item  
19 or topical area, I should say, and the Barr expert  
20 opinions?

21 (Witness examines documents)

22 A I don't believe so.

23 Q Then let's move to page 2 of Exhibit 178 and I'm now  
24 looking at the second boldfaced item in your report  
25 which reads, quote, "Round Lake water levels regularly

1 fluctuate above and below the 1941 orders," end  
 2 quote. Do you see that?  
 3 A Yes.  
 4 Q Do the expert opinions contained in this topical  
 5 section conflict with the Barr's expert opinion?  
 6 A We developed additional data to that provided in the  
 7 Barr report regarding water level. It provides a --  
 8 it provides more data regarding water level  
 9 fluctuations. I don't think it necessarily conflicts  
 10 with the data presented in Barr's report.  
 11 Q In the expert opinions you draw within this section,  
 12 does -- do your opinions conflict with the Barr expert  
 13 opinions?  
 14 MR. DREGNE: Could you repeat that  
 15 question, please.  
 16 (Reporter reads back previous question)  
 17 A Not specifically. I would have to infer or project  
 18 something about how Barr would react to this data in  
 19 order to really answer your question. I don't believe  
 20 that there's anything that we've written down in the  
 21 materials that they have that conflict with the  
 22 material in that second section.  
 23 Q Let's turn then to page 3 of Exhibit 178 and I am  
 24 going to read your third topic area which reads as  
 25 follows: Quote, "The water levels observed in 2002

1 and 2003 were unusually high, and correspond with  
 2 other high water events observed in northern  
 3 Wisconsin," period, end quote.  
 4 Do your expert opinions contained in this topical  
 5 area conflict with the Barr's expert opinion?  
 6 A I think the only place where I saw something in the  
 7 Barr reports that directly conflicted with that was in  
 8 a discussion, now I have to try to find it. It's in  
 9 the -- let me find it.  
 10 Q Take all the time you need.  
 11 (Discussion off the record)  
 12 A I believe that the material on page 9 of Barr's study  
 13 of shoreline loss, cause of shoreline loss report  
 14 would conflict.  
 15 MS. AZAR: I'd like the record to  
 16 reflect that Mr. Dregne, while we were off the  
 17 record, informed Mr. Montgomery that he should  
 18 take a look at page 9.  
 19 Q Now, in relation to page 9, how does it conflict?  
 20 A And that was the section I was looking for. Well, it  
 21 conflicts in terms of this issue of extremes. We make  
 22 the point that 2002/2003 was unusually high and that  
 23 the analysis by Barr includes a statement that the  
 24 snow melt, at any rate, would not be considered an  
 25 extreme precipitation event, which is a bit of a

1 conflicted wording.  
 2 But I believe that there would be some conflict,  
 3 I would infer there would be a conflict of opinion  
 4 there.  
 5 Q Besides page 9 from Exhibit 125, is there anything  
 6 else in the Barr expert opinions that conflict with  
 7 your opinion that the water levels observed in 2002  
 8 and 2003 were unusually high and correspond with other  
 9 high water levels observed in northern Wisconsin?  
 10 A Not that I'm aware of.  
 11 Q let's move on to your boldfaced topical area four,  
 12 also on page 3, which reads as follows: Quote,  
 13 "Extreme high water levels such as the 100-year flood  
 14 elevation are often substantially higher than maximum  
 15 levels listed in Wisconsin DNR water level orders,"  
 16 period, end quote. Do you see that?  
 17 A Yes.  
 18 Q Does the expert opinion contained in this topical area  
 19 conflict with the Barr's expert opinion?  
 20 A Well, I think by inference, I think in many ways it  
 21 does. I don't think Barr specifically addresses this  
 22 point in their discussions, but by inference to the  
 23 issues they raise, yes, I believe there is a conflict.  
 24 Q And by inference, what by inference -- please describe  
 25 for me what the conflict is, as you see it.

1 A It again is the description of the control of water  
 2 levels to a high stage, a rare event such as is  
 3 described in Nancy Dent's affidavits. In other words,  
 4 the 100-year event. I'm inferring that there is a  
 5 conflict there in terms of that extreme event as  
 6 contrasted with the 1941 order levels and is described  
 7 as an issue.  
 8 That's not a specific -- they don't express a  
 9 direct opinion that I'm aware of on this subject of  
 10 that boldface, but I do perceive a conflict. You're  
 11 asking me to infer something that actually isn't  
 12 addressed directly.  
 13 Q I think I don't understand what your answer was, as  
 14 far as the conflict goes.  
 15 A I'm not certain there is a conflict. I'm inferring  
 16 there's a conflict.  
 17 Q I'm sorry, could you just describe for me again what  
 18 you infer the conflict is?  
 19 A Fundamentally, agreement with the statement that  
 20 control of an event such as a 100-year event to a DNR  
 21 water level order is appropriate.  
 22 Q So you believe that --  
 23 A That's my speculation on their -- excuse me, I've  
 24 interrupted you, go ahead.  
 25 Q So you believe that Barr Engineering is proposing that

1 Sawyer County maintain the water levels on Round Lake  
 2 at or below 77.25 at the 100-year event?  
 3 A The material that I have, I don't believe, makes that  
 4 point explicitly.  
 5 Q Does it make that point implicitly?  
 6 A I believe it heads that way in some of the discussion  
 7 or the issues raised in the affidavits.  
 8 Q Could you point to me where you believe that is  
 9 implied in the Barr expert opinions?  
 10 A Well, for example, in item number four in Nancy's  
 11 second affidavit.  
 12 Q I'm sorry, what exhibit number is that?  
 13 A It's Exhibit 181.  
 14 Q You said item four?  
 15 A Yes.  
 16 Q What specifically in item four causes you to infer  
 17 that Barr Engineering is proposing that Sawyer County  
 18 control the water levels so as to not to exceed 77.25  
 19 in the 100-year flood event?  
 20 A I'm sorry, a better example of this would be item  
 21 number five in that affidavit.  
 22 Q Okay.  
 23 A Where it is specifically described as an issue that  
 24 the flooding elevation is more than 200.4 feet above  
 25 the state designated maximum level and then item

1 number six goes on to describe potential floodplain  
 2 ordinance impacts of that stage. Again, I'm inferring  
 3 that there would be a conflict here. It's not  
 4 explicitly stated.  
 5 Q So nowhere in the Barr Engineering -- strike that. So  
 6 nowhere in the Barr expert opinions do they explicitly  
 7 state that Sawyer County should control the water  
 8 levels on Round Lake so as not to exceed 77.25 in the  
 9 100-year flood event, correct?  
 10 A I don't believe that's absolutely stated in black and  
 11 white, that's correct.  
 12 Q Any other inconsistencies between your opinion and the  
 13 Barr expert opinion in relation to this topical area  
 14 four, that extreme high water levels such as the  
 15 100-year flood elevation are often substantially  
 16 higher than maximum levels listed in the Wisconsin  
 17 Department of Natural Resources water level orders?  
 18 A I don't think additional to the general issue that I  
 19 brought up already.  
 20 Q Then let's move on to topical area number five, which  
 21 is found on page 5 of Exhibit 178 and your topical  
 22 area number five reads, quote, "Control of normal and  
 23 extreme events. Water level fluctuations at Round  
 24 Lake to remain within the 1941 order levels will  
 25 require substantial construction, including a larger

1 outlet structure at the Little Round Lake dam, channel  
 2 dredging, and other actions," period, end quote. Do  
 3 you see that?  
 4 A Yes.  
 5 Q Does your expert opinion as contained in this topical  
 6 section conflict with the Barr's expert opinion?  
 7 (Witness examines document)  
 8 A I don't believe so. Obviously, there is a -- we are  
 9 in a contest here, but I don't believe that -- I think  
 10 I should just answer this question yes or no and  
 11 give -- for the statements that are contained in here,  
 12 I don't believe there's a direct conflict with the  
 13 statements contained in the Barr reports.  
 14 Q Then let's move on to topical section number six, also  
 15 located on page 5 of Exhibit 178, and that section is  
 16 entitled, quote, "Installation of a new Round Lake  
 17 outlet structure and associated downstream  
 18 construction that would control Round Lake to the 1941  
 19 order levels for events up to the 100-year flood would  
 20 produce a substantial change to the hydrologic regime  
 21 downstream of Round Lake," period, end quote. Do you  
 22 see that?  
 23 A Yes.  
 24 Q Does the expert opinion contained within this topical  
 25 section conflict with the Barr's expert opinion?

1 A We describe an analysis here that is not contained in  
 2 the Barr report, although I believe it's consistent  
 3 with what is contained in the Barr report in terms of  
 4 things that would produce a hydrologic regime change  
 5 downstream of Round Lake.  
 6 So once again, I'm not certain there is a  
 7 conflict with material that we present in this section  
 8 with material that Barr has in their expert opinions  
 9 on the record.  
 10 Q When you say you're not certain, does that mean you  
 11 don't believe that's the case?  
 12 A I don't believe that there is a conflict on what's in  
 13 the record right now.  
 14 Q Then let's move on to page 7 and topical area number  
 15 seven, which is entitled, quote, "Permitting of a  
 16 proposed new Round Lake outlet structure as described  
 17 above would be extremely difficult and extremely  
 18 expensive under current regulatory requirements,"  
 19 period, end quote. Do you see that?  
 20 A Yes.  
 21 Q Does your expert opinion contained in this topical  
 22 area conflict with the Barr's expert opinion?  
 23 A I don't think Barr discusses this issue to a great  
 24 extent, and, again, I would say that I don't perceive  
 25 a conflict in what's on the record now with what's in

1 this statement.  
 2 Q Then let's move on to topical area number eight which  
 3 is located on page 8 of Exhibit 178. Topical area  
 4 number eight is entitled, quote, "The shoreline  
 5 protection installed by Mr. Hausman will provide  
 6 permanent protection from future shoreline erosion,"  
 7 period, end quote. Do you see that?  
 8 A Yes.  
 9 Q Does your expert opinion contained within this topical  
 10 area conflict with the Barr's expert opinion?  
 11 A Yes, I think so.  
 12 Q How so?  
 13 A I believe -- let me take a look here, because I know  
 14 there's some statements that I want to describe, if I  
 15 could.  
 16 Q Take as much time as you need.  
 17 MR. DREGNE: Are we off the  
 18 record?  
 19 MS. AZAR: Sure.  
 20 (A short recess is taken)  
 21 MS. AZAR: Could you read back the  
 22 last question, please.  
 23 (Reporter reads back previous question)  
 24 A Yes, I believe it does.  
 25 Q How so?

1 A I believe there are several places that Barr describes  
 2 the potential for future erosion.  
 3 Q And you -- strike that. They describe the potential  
 4 for future shoreline erosion?  
 5 A Correct.  
 6 Q And where is that?  
 7 A I believe there may be one or two other places, but I  
 8 see it in the second affidavit of Nancy Dent.  
 9 Q That's Exhibit 181, correct?  
 10 A I'm sorry, yes, Exhibit 181, item 12.  
 11 Q Where else?  
 12 A Exhibit 180, item six and Exhibit 179, item C on page  
 13 3.  
 14 Q And in your expert opinion, is Ms. -- strike that.  
 15 You've now pointed to three different discussions by  
 16 Barr Engineering in which they describe how damage may  
 17 occur to the Hausman property in the future because of  
 18 elevated water levels, correct?  
 19 A Correct.  
 20 Q Do you disagree with their discussions in the three  
 21 documents you just identified?  
 22 A Let me read it.  
 23 Q Sure.  
 24 (Witness examines documents)  
 25 A Actually, I think we're talking about a definition

1 issue here.  
 2 Q And what is that definition issue?  
 3 A Damage from high water levels versus shoreline  
 4 erosion.  
 5 Q And are you -- why is this an issue?  
 6 A You asked about a conflict and I provided three spots  
 7 where Barr was describing damage, but they don't  
 8 specifically use the phrase shoreline erosion, so I'm  
 9 not sure that they do actually disagree from the  
 10 position or the opinion that I put on page 8.  
 11 Q So you're now saying you're not sure, does that mean  
 12 you don't believe that your expert opinions contained  
 13 in the topical area number eight conflict with Barr's  
 14 expert opinions?  
 15 A Let me just make sure on this point. I don't believe  
 16 the Barr reports describe that the shoreline will  
 17 continue to erode. Those sections that I gave you  
 18 descriptions of describe the potential for damage, but  
 19 don't specifically describe shoreline erosion.  
 20 Q And your expert opinion contained in this topic eight  
 21 pertains only to shoreline erosion, correct?  
 22 A Yes, that's correct.  
 23 Q Therefore, there is no conflict between your expert  
 24 opinion contained in this topic area eight and Barr's  
 25 expert opinions, correct?

1 A Bear with me. I'm not sure there is a conflict, no.  
 2 I mean, I'm not sure there is a conflict between  
 3 Barr's opinions and our opinions in that paragraph.  
 4 Q And what would make you sure?  
 5 A That's a hard question to answer, because I don't  
 6 believe Barr directly, point blank, addresses the  
 7 issue that I describe in this paragraph.  
 8 Q So if they don't directly address it, you guys don't  
 9 have conflicting opinions on the issue, correct?  
 10 A On the exact issue of shoreline erosion, I think  
 11 you're correct.  
 12 Q Moving on to topical area number nine, it's located on  
 13 page 8 of Exhibit 178. It is entitled, quote, "Ground  
 14 water elevations on Mr. Hausman's property are related  
 15 to water levels in Round Lake. The duration of high  
 16 and low ground water elevations on the property are  
 17 expected to be similar to that observed on Round  
 18 Lake," period, end quote. Do you see that?  
 19 A Yes.  
 20 Q Are the expert opinions contained in this topical area  
 21 in conflict with Barr's expert opinion?  
 22 A I don't believe so. I quote some of Barr's  
 23 conclusions and agree with them.  
 24 Q Let's move on to topical area number 10, which is  
 25 located on page 9 of Exhibit 178. It's entitled,

1 quote, "Round Lake water quality is quite good, and  
2 available analyses do not indicate a recent negative  
3 trend in water quality," period, end quote. Do you  
4 see that?

5 A Yes.

6 Q Does your expert opinion contained in this topical  
7 area conflict with the Barr's expert opinion?

8 A Yes, I believe it does.

9 Q How so?

10 A Barr, in -- let me find it.

11 (Witness examines documents)

12 Q Go ahead.

13 A Yes, I expect there's a conflict with the statement  
14 number two on page 14 of Exhibit 125.

15 Q And what is the conflict?

16 A The Barr report describes a calculated phosphorus  
17 input to Round Lake and draws some conclusions  
18 regarding water clarity and the data we've looked  
19 at -- water clarity related to shoreline erosion.

20 The data we've looked at don't bear that out. In  
21 addition, we have some just plain calculation issues  
22 with the material that's presented in appendix D of  
23 that report.

24 Q Any other conflicts you see between your expert  
25 opinion and Barr's expert opinion in relation to this

1 topic area number 10?

2 A No, but could I ask you -- I'll just leave it at that.

3 Q Are you sure?

4 A Well, this -- I'm assuming you'll come back to this  
5 subject in some further discussion. We have received  
6 the final version of this paleoecological study and I  
7 have a copy of it here with you and we can discuss  
8 that when we get back to it.

9 MS. AZAR: Off the record for a  
10 minute.

11 (Discussion off the record)

12 Q Mr. Montgomery, we've just gone through all of the  
13 different topical areas in which Barr Engineering --  
14 strike that, in which Montgomery Associates has  
15 provided expert opinions in this litigation, correct?

16 A Yes.

17 Q And as I had explained when we began this endeavor, I  
18 wanted to understand all of the different ways in  
19 which your expert opinion conflicted with Barr's  
20 expert opinion, do you remember that discussion?

21 A Yes.

22 Q And we have just walked through your entire report and  
23 you've articulated the areas in which you stated that  
24 your expert opinions conflicted, correct?

25 A Yes.

1 Q Are there any other areas that you would -- strike  
2 that. Are there any other areas where your expert  
3 opinion conflicts with Barr's expert opinion?

4 A There ought to be, I say that in humor.

5 Q And just so you know, for purposes of the record, I'm  
6 going to ask the court reporter to read back the  
7 question and have you answer that.

8 (Reporter reads back previous question)

9 A Let me think about that a moment.

10 (Witness examines documents)

11 Q Go ahead.

12 A I think in the rest of the record --

13 MR. DREGNE: Just let me ask, are  
14 we on the record?

15 MS. AZAR: Yes.

16 A You asked whether or not I have any additional  
17 comments on the Barr opinions and I did have some  
18 comments that were in the following sections of this  
19 report.

20 Q All right, so the items then listed on page 9 and 10,  
21 you list an additional seven items there, there are  
22 seven different bullets that are, according to your  
23 report, areas in which you have, quote, unquote,  
24 "Questions," about the Barr's expert opinions,  
25 correct?

1 A Yes, that's what the report says.

2 Q And so those are additional areas in which you've got  
3 potential inconsistencies between your expert opinion  
4 and Barr's expert opinion, correct?

5 A Correct.

6 Q Let's just walk down through each of those bullets  
7 then and you can tell me where the inconsistencies  
8 are. So the first bullet is located on page 10 and it  
9 reads as follows, quote: "Ms. Dent describes as  
10 damage requirements for compliance with Sawyer County  
11 floodplain zoning regulations as a damage, whereas  
12 such compliance is appropriate given the regulatory  
13 floodplain status and calculated floodplain elevations  
14 at the property," period, end quote.

15 Please describe for me whether your expert  
16 opinion in relation to this -- strike that. Please  
17 first -- what is your expert opinion in relation to  
18 this issue?

19 A It's that the compliance with floodplain ordinance  
20 requirements is a consequence of the location and  
21 elevation of the property.

22 Q And how does that conflict with Barr's expert opinion?

23 A They describe compliance with their calculated  
24 floodplain elevations as a cost, as a damage, as an  
25 issue for Mr. Hausman.

1 Q Let's go to the second bullet then. It states, quote,  
 2 "High water is described as creating damage due to  
 3 increased ground water levels, whereas ground water  
 4 levels are actually closely related to Round Lake  
 5 levels, fluctuate with time, and are only rarely near  
 6 the ground surface. Occasional, an intermittent high  
 7 lake and associated ground water levels should be  
 8 expected given the landscape position of the property,  
 9 and its location with respect to regulatory floodplain  
 10 areas." What is your expert opinion in relation to  
 11 this?  
 12 A That's it.  
 13 Q And how does that conflict with the Barr expert  
 14 opinion?  
 15 A Again, in the -- I believe this is the second  
 16 affidavit, items seven, eight and nine describe issues  
 17 associated with high ground water as problems for  
 18 Mr. Hausman.  
 19 Q And you don't believe that those are problems for  
 20 Mr. Hausman?  
 21 A They may be problems, but my statement is what's in  
 22 the report, in that bullet point.  
 23 Q Let's move on then to pull the bullet point number  
 24 seven, quote, "High water levels and adjacent wetland  
 25 areas are described as potentially damaging landscape

1 Q How could you become certain?  
 2 A Well, I'd have to review the septic design and confirm  
 3 the facts that are in here and compare that to a  
 4 projection of 100-year stages.  
 5 Q So you need further information to know if there's a  
 6 conflict in your expert opinions?  
 7 A I think that's probably -- yes, I'd say that's  
 8 correct.  
 9 Q Let's move on then to the sixth bullet there that  
 10 says, "We cannot follow the rationale for the creation  
 11 of the adjusted local datum or for the specific 0.50  
 12 foot alteration of the elevations specified in the  
 13 1941 other period," end quote. What is your expert  
 14 opinion in relation to this issue?  
 15 A Well, that's it. This is definitely along the line of  
 16 a commentary as opposed to something that we're  
 17 presenting as a conflict. The statement is our  
 18 opinion based on what we know right now.  
 19 Q So you -- this is more of a question than a conflict,  
 20 correct?  
 21 A Yeah, it is. I mean, the statement stands for  
 22 itself. We cannot follow the rationale, we can't  
 23 follow the arithmetic. We're not quite sure where  
 24 this is going. We're not sure if we -- I think there  
 25 might be implications about this that we would

1 plantings and the access driveway, whereas such  
 2 features installed adjacent to wetland areas subject  
 3 to occasional flood stage elevations should be  
 4 designed accordingly," end quote.  
 5 Where is the conflict here between your opinion  
 6 and Barr's expert opinion?  
 7 A Again, it's in relation to Nancy's second affidavit,  
 8 item number 10. That's Exhibit 181.  
 9 Q Moving on to the next bullet, bullet number four, it  
 10 says, quote, "Possible performance or code compliance  
 11 issues to a septic system are described as damage,  
 12 whereas any issues related to high water level  
 13 conditions should be anticipated for in construction  
 14 in an adjacent to floodplain and wetland areas," end  
 15 quote.  
 16 What is the conflict between your expert opinion  
 17 and Barr's expert opinion?  
 18 A Barr's opinion is in item 11 of Nancy's second  
 19 affidavit and essentially theorizes that it may be  
 20 subject to failure and it's -- I'm not sure this is a  
 21 specific conflict or not, but it's a response to that  
 22 question of septic system issues.  
 23 Q So you're not sure if your expert opinion conflicts  
 24 with Barr's expert opinion on this issue?  
 25 A I'm not certain if this is a conflict or not.

1 disagree with, but we'd be relying on other  
 2 information. It was a question.  
 3 Q We'll get to that later then.  
 4 A The statement stands for itself.  
 5 Q Then I suspect the same response will occur with  
 6 bullet number seven which states, quote, "We could not  
 7 follow the conclusions regarding the performance of  
 8 various modifications to the Highway NN culverts based  
 9 on the text."  
 10 "Review of model data supplied separately has  
 11 yielded different results regarding structures  
 12 required to maintain 1941 order levels as described  
 13 above," end quote.  
 14 A Right.  
 15 Q What is the conflict between your expert opinion and  
 16 Barr's expert opinion?  
 17 A Some of it was just material that we couldn't track in  
 18 the discussion of the control, possible schemes for  
 19 control of water levels. There were some statements  
 20 in the Barr report, I have to figure out which report  
 21 it is, that we couldn't track from the appendices, but  
 22 we did get close to that in looking at the model.  
 23 And then we looked at some other issues  
 24 associated with the models and that's what that  
 25 statement is about.

1 Q Just so you know, after lunch, we will go into  
2 specifics as to where you think -- where you had  
3 questions, so if you could look for that specific item  
4 in the report, that would be helpful.

5 A I'll find it. There was a bullet point you jumped  
6 over.

7 Q I'm so sorry, I think it was bullet point number five  
8 I jumped over, isn't it?

9 A Yes.

10 Q Let's go back to that. It says, quote, "Surface water  
11 inundation of portions of Mr. Hausman's property  
12 during extreme high water events is described as a  
13 damage, whereas they are an expected consequence of  
14 the location of the property. In any event, we do not  
15 believe that wave heights of four feet as discussed in  
16 item 12 could be developed at the Hausman property  
17 shoreline," period, end quote.

18 Please describe the conflict between your expert  
19 opinion and Barr's expert opinion in relation to this  
20 issue.

21 A Barr describes -- in item number 12 of Exhibit 181,  
22 Barr describes the potential for damage due to  
23 over-topping of the retaining wall in 100-year flood  
24 conditions and our statement about expected  
25 consequences of the location of the property with

1 expected floodplain at that extreme event, 100-year  
2 event, is where I believe we have a conflict.

3 Barr doesn't actually calculate or propose  
4 that wave heights of four feet could develop at the  
5 shoreline, that's a quotation from Mr. Hausman, so I  
6 don't believe that's exactly Barr's opinion and so I'm  
7 not sure that -- it's a commentary on the reporting  
8 described in Barr's item number 12 and I don't think  
9 that's exactly Barr's opinion. They don't state one  
10 way or the other.

11 Q We have now gone through each of the additional items  
12 that you have identified in Exhibit 178 that could  
13 possibly be construed as an inconsistency between your  
14 expert opinion and Barr's expert opinion. Are there  
15 any other areas in which your expert opinion conflicts  
16 with Barr's expert opinion?

17 MR. DREGNE: I'll object that the  
18 term your expert opinion is vague. We have, I  
19 believe, a definition of the Barr expert opinion  
20 and I don't believe you established a definition  
21 for what you were referring to when you say your  
22 expert opinion to Rob. Are you referring to  
23 Exhibit 178?

24 Q I'm referring to the expert opinion of the expert  
25 hired by Sawyer County. Is that you, Mr. Montgomery,

1 or is that Montgomery Associates? You can tell me.

2 A It's me with support from personnel in Montgomery  
3 Associates.

4 Q So I'm asking for your expert opinion.

5 A It's kind of a fishing expedition question.

6 MS. AZAR: And I'm going to ask the  
7 court reporter again to read the question back, so  
8 the answer goes with the question.

9 A That's fine.

10 (Reporter reads back previous question)

11 A That is a difficult question to answer, to just close  
12 the door. We provided a fair amount of description of  
13 issues that Barr doesn't directly describe. We've  
14 reviewed their models and have minor issues with this  
15 or that. It is difficult for me to say that beyond  
16 what we've talked about, we're in perfect agreement.

17 I can't really say that, but it's difficult to  
18 churn through a list of issues to specifically answer  
19 your question.

20 Q Well, you were hired, and in fact, your June 7 report  
21 was intended to provide a critique of Barr's expert  
22 report, correct?

23 A Well, not actually. I was asked to provide a report  
24 describing what we thought was important to bring  
25 forward. I wasn't actually directed to critique point

1 by point the Barr report, except as is important.

2 Q So then all of the material expert conclusions --  
3 strike that. Your report addresses all of the Barr  
4 expert opinions that are material in this litigation,  
5 correct?

6 A That was our attempt with this list, that's correct.

7 Q And therefore, if you disagreed with or questioned any  
8 of those material Barr expert opinions, those would be  
9 contained within Exhibit 178, correct?

10 A Yes.

11 Q And we have then just walked through each one of those  
12 inconsistencies, correct?

13 A Yes.

14 Q So then let me rephrase the question. Are there any  
15 other material areas in which your expert opinion --  
16 strike that. Are there any other areas in which your  
17 expert opinion conflicts with the material portions of  
18 the Barr's expert opinion?

19 A I don't believe so.

20 Q Let's jump to page 1 of your report. In the section  
21 called terminology, you discuss the local datum and  
22 the NAVD88 datum?

23 A Mm-hm.

24 Q In this paragraph, you use a conversion factor of  
25 1267.75, isn't that correct?

1 A I will have to -- let me just do the math. I don't  
 2 know that number right off the top of my head.  
 3 Q Sure.  
 4 (Witness does calculation)  
 5 A Yes.  
 6 Q How did you calculate the conversion factor of  
 7 1267.75?  
 8 A We used the material supplied by Carthel as an  
 9 appendix to their report.  
 10 (Exhibit 183 is marked for identification)  
 11 Q I'm handing you what's been marked as Exhibit 183, is  
 12 that the Carthel report you just referenced?  
 13 A Yes.  
 14 Q Could you please point to me where in this report the  
 15 conversion factor of 1267.75 is described?  
 16 A It's on the first page of the 11 by 17 attachment.  
 17 Q Where on that page?  
 18 A About midway, under description for 9/29/41.  
 19 Q And how did you calculate that?  
 20 A Well, we didn't calculate it, we used it.  
 21 Q I'm sorry, I'm not seeing the number, where is the  
 22 number?  
 23 A It's not there. It's --  
 24 Q How did you derive it then from the data that's here?  
 25 A Well, by subtraction. If you look at ordered normal

1 Round and Little Round -- excuse me. If you look at  
 2 the ordered levels, there is a determination of NAVD88  
 3 elevation for those levels, that's what we used.  
 4 Q So for instance, here it says ordered maximum Round  
 5 and Little Round Lakes WSE, the NAVD88 is listed as  
 6 1345.00 and the local datum is listed at 77.25,  
 7 correct?  
 8 A That's correct.  
 9 Q So to get 1267.75, you simply subtracted 77.25 from  
 10 1345.00, correct?  
 11 A Yes.  
 12 Q Do you have any reason to question the accuracy of  
 13 this conversion factor?  
 14 A There's been a great deal of discussion on the water  
 15 level datums in material presented by Barr and in  
 16 material that we've read, but after reviewing the  
 17 detail to which Carthel went in evaluating this issue,  
 18 we decided to utilize his continuous record of water  
 19 levels and calculated water levels or calculated  
 20 datums.  
 21 Q Let's jump to page -- well, going from pages 1 to 2 of  
 22 your report, you discuss the FEMA floodplain maps?  
 23 A Mm-hm.  
 24 (Exhibit 185 is marked for identification)  
 25 Q I'd like to have you take a look at what's been marked

1 as Exhibit 185. This is the FEMA floodplain map of  
 2 the area that includes the Hausman property, correct?  
 3 A Yes.  
 4 Q And as your report -- and when I reference your  
 5 report, I'm referring to your June 7, 2005 report, do  
 6 you understand that?  
 7 A Yes.  
 8 Q Your report discusses that Mr. Hausman's property is  
 9 in a Zone A designation on this Exhibit 185, correct?  
 10 A That's correct.  
 11 Q Who develops the Zone A on these flood insurance rate  
 12 maps?  
 13 A FEMA.  
 14 Q And how do they develop them?  
 15 A Well, in the case of Zone A, it is a determination of  
 16 areas subject to 100-year flood inundation, but  
 17 developed using approximate methods and a specific  
 18 floodplain elevation has not been determined.  
 19 Q So this Zone A as referenced in Exhibit 185 is simply  
 20 an approximation, correct?  
 21 A That's correct.  
 22 Q Your report states that FEMA has analyzed several  
 23 requests for some specific floodplain elevation  
 24 designations, correct?  
 25 A Correct.

(Exhibit 186 is marked for identification)

1 (Exhibit 186 is marked for identification)  
 2 Q I'd like to you take a look at what's been marked as  
 3 Exhibit 186.  
 4 A Okay.  
 5 Q Are those the designations you're discussing in your  
 6 report?  
 7 A Yes, it looks like it, that's correct.  
 8 Q Do you know how the designation of 1345.3 feet was  
 9 determined by FEMA?  
 10 A No.  
 11 Q And do you know if the county has established any  
 12 regional floodplain elevations on Round Lake?  
 13 A I don't believe they have, other than being aware of  
 14 what FEMA has determined.  
 15 Q And do you know how FEMA evaluates whether or not to  
 16 issue these determinations as shown in Exhibit 186?  
 17 A It's on request from a property owner. It's a request  
 18 for a determination which results in this letter of  
 19 map amendment.  
 20 Q Now, in your report, you indicate that -- again, I'm  
 21 on page 2 of your report. You indicate that, quote,  
 22 "Subsequent work by FEMA, Carthel and Barr have  
 23 established 100-year flood elevations that are  
 24 consistent with the Zone A maps," do you see that?  
 25 A I know I said that, but I can't quite see where it's

1 written here.

2 Q Right here.

3 A Yeah.

4 Q What subsequent work was conducted by FEMA?

5 A What I mean by that is these letter map amendments

6 issued by FEMA, that's the subsequent work.

7 Q So these letter map amendments that find the

8 floodplain elevation of Round Lake at 1345.3, NGVD29,

9 is what you're referring to in relation to FEMA,

10 correct?

11 A That's correct.

12 Q Now, in relation to the Barr work, the floodplain

13 elevations analyzed by Barr Engineering are discussed

14 in Exhibit 126, correct?

15 A Yes, that's correct.

16 Q And what floodplain elevation does Barr Engineering

17 find for Round Lake?

18 A They determined a series of flood elevations.

19 Q And where are those located in Exhibit 126?

20 A On page 9. Wait a minute, hang on. Sorry, page 6.

21 Q And then as far as the Carthel Engineering subsequent

22 work, is that floodplain elevation presented in what's

23 been marked as Exhibit 183?

24 A That's correct.

25 Q And if so, where?

1 (Witness examines document)

2 A On page 8.

3 Q And Mr. Carthel is proposing that the regional flood

4 elevation on Round Lake is 1346.87 feet, NAVD88,

5 correct?

6 A Correct.

7 Q All these numbers are different, aren't they?

8 A Yes.

9 Q Yet you conclude that they're consistent with the Zone

10 A maps, correct?

11 A Yes.

12 Q Why do you conclude -- how can you conclude they're

13 consistent with the Zone A maps?

14 A Maybe I should have used the expression generally

15 consistent. The Zone A map indicates that the

16 property is subject to flooding by approximate

17 methods. These analyses also indicate that there is

18 some level of property flooding for the 100-year

19 event.

20 Q And when you say property flooding, you're talking

21 about the Hausman property?

22 A Yes, that's correct.

23 Q And what is the elevation of the Hausman property?

24 A I don't have an elevation survey for that property.

25 Q Then how do you know whether or not the Hausman

1 property is subject to flooding at these proposed

2 floodplain elevations?

3 A Primarily, from material that's described in the Barr

4 report, conclusions on extent of flooding adjacent to

5 Mr. Hausman's house.

6 Q And when you say adjacent to Mr. Hausman's house, is

7 that on the Hausman property or on neighboring

8 properties?

9 A No, I believe it's on Hausman's property.

10 Q So your conclusions about the 100-year floodplain --

11 strike that. So you rendered an expert opinion

12 concerning damage to the Hausman property during the

13 100-year flood event without knowing the elevation of

14 the Hausman property?

15 A Without having a topographic survey of the property,

16 that's correct.

17 Q Now, in your expert report, on page 2, at the end of

18 the first paragraph, you state, "Although these

19 detailed analyses yield different results, they all

20 indicated that low areas on the Hausman property will

21 be flooded and the area surrounding the home will not

22 be flooded by the 100-year flood on Round Lake."

23 What do you mean by the Hausman property will be

24 flooded -- strike that. What do you mean by the low

25 areas on the Hausman property will be flooded, but the

1 areas surrounding will not be flooded?

2 A What I mean is the Hausman property has low areas

3 adjacent to the lake and also adjacent to the wetlands

4 that are connected to the lake on the east. Those

5 areas will be subject to occasional flooding. Based

6 on the descriptions of the ground elevations right at

7 the Hausman home, I concluded that the property itself

8 would not -- or excuse me, the home, would not be

9 inundated by the 100-year flood stage.

10 That is based on material provided by Barr. I

11 did not have a topographic survey of the property.

12 Q So based on the analysis you conducted for purposes of

13 your report, the area on which the Hausman home

14 actually sits is not in the regional floodplain,

15 correct?

16 A Well, I think you could -- you'd have to do a number

17 of things. It's not in the floodplain as calculated.

18 It probably is still subject to ordinance

19 requirements, unless the ordinance is revised, so.

20 Q And so is it your understanding that Sawyer County

21 intends to submit Exhibit 183 to the Department of

22 Natural Resources?

23 A Actually, I don't know.

24 Q Do you know if Sawyer County intends to try to

25 establish a regional flood elevation on Round Lake?

1 A No, I don't know that.

2 Q On page 2, in the second paragraph there, it states,  
3 quote, "Based on these analyses, occasional times of  
4 flooding or near flooding of the Hausman property  
5 should be expected." What do you mean by occasional  
6 times of flooding?

7 A Well, the analyses indicate a range of potential  
8 100-year flood elevations, all of which would inundate  
9 the margins of the Hausman property. I don't have the  
10 specifics, because I don't have a topographic map and  
11 if that's the extent of the 100-year stage, more  
12 frequent floods would be lower and would encroach  
13 less.

14 That is the rationale for my statement,  
15 occasional times of flooding or near flooding. That  
16 is, elevations getting near the ground surface  
17 wherever you are, so I say occasional as opposed to  
18 flooding at the 100-year stage, because there will be  
19 occasional times that the water levels are high, but  
20 they are not at the 100-year stage.

21 Q But there will still be flooding on the Hausman  
22 property?

23 A I believe so. I can't describe specifically the  
24 details of how it would be flooded, because I don't  
25 have a topographic map.

1 Q And when you use the word occasional, is that --  
2 strike that. It's estimated that the regional flood  
3 will happen once every 100 years, correct?

4 A Well, technically. The way to look at it is the odds  
5 of it happening this year are one percent.

6 Q I'm trying to get a framework as to what occasional  
7 means to you. Is that once every 50 years, once every  
8 year, once every two years, once every five years?

9 A It doesn't have a particular frequency. The low  
10 areas -- I mean, there is not a frequency attached to  
11 this. It's, in my mind, a fairly logical statement.  
12 We have a piece of property on a water body, the water  
13 body is subject to stage fluctuation.

14 We have a top end of that stage fluctuation, if  
15 you consider the 100-year flood the top end and there  
16 is a range between a pool elevation and normal  
17 elevation and there, that area is subject to  
18 occasional flooding. The higher the elevation is, the  
19 lower the frequency of expected inundation would be.

20 Q So is it fair to say that flooding on the Hausman  
21 property will be intermittent?

22 A That is a fair thing to say.

23 Q And is it also fair to say that flooding on the  
24 Hausman property should be expected?

25 A Yes.

1 Q Would flooding on the Hausman property -- strike  
2 that. Should we expect flooding on the Hausman  
3 property on an intermittent but regular basis?

4 MR. DREGNE: Object to the  
5 question. The word regular is vague and  
6 ambiguous. Subject to the objection, you can  
7 answer the question, if you can.

8 A I would phrase it as it is subject to intermittent  
9 inundation on a continuing basis.

10 Q So I noticed that you replaced the word regular with  
11 continuing?

12 A Regular somehow implies every year, every day, every  
13 something and it's not like that.

14 Q Let's just pull out the dictionary.

15 A Now you know it's getting bad.

16 Q Well, we wouldn't have had this problem, had your  
17 counsel not objected. Your counsel said the word  
18 regular was vague, so we're going to make sure we all  
19 know what the word regular means.

20 MS. AZAR: Off the record for a  
21 minute.

22 (Discussion off the record)

23 Q Mr. Montgomery, we've been looking at what is the  
24 Webster's Third International Dictionary and how the  
25 term regular is defined. What we've found is the

1 definition that includes returning, recurring or  
2 received at stated, fixed or uniform intervals, do you  
3 see that?

4 A Yes.

5 Q And earlier, I had asked whether or not you could  
6 testify that -- you had indicated that the flooding on  
7 Mr. Hausman's property was consistent, but you weren't  
8 willing to say it was regular?

9 MR. DREGNE: Objection, the term he  
10 used earlier was continuing.

11 MS. AZAR: Thank you.

12 Q Continuing, can you define for me why continuing is a  
13 better description of the flooding on the Hausman  
14 property than regular, given the definition of regular  
15 I just read to you?

16 A Regular implies some regular period, every month,  
17 every year or every ten years and flooding is an  
18 irregular occurrence. It might occur this year, it  
19 might occur next year, it might occur three years in a  
20 row or might not occur for five years.

21 Q So it's unpredictable as to when the flooding is going  
22 to occur on the Hausman property, correct?

23 A That's correct.

24 Q Now, you said that it's continuous flooding?

25 A Continuing. What I meant to say, what I was trying to

1 get across was intermittent flooding, that is flooding  
 2 on an irregular interval, but the continuation of that  
 3 condition.  
 4 Q So continuation indefinitely into the future?  
 5 A That's what I was trying to get across in my  
 6 suggestion.  
 7 Q We can expect then that the flooding on the Hausman  
 8 property will continue into the future, correct?  
 9 A Unless physical conditions change.  
 10 Q The only thing that you can't do is predict exactly at  
 11 what intervals the flooding is going to occur,  
 12 correct?  
 13 A That's correct.  
 14 Q And that's why you can't use the term regular to  
 15 define the flooding of the Hausman property, correct?  
 16 A That's correct, from a definition standpoint, although  
 17 it may well have been used someplace to mean  
 18 continuing. I don't know the situation that you're  
 19 referring to exactly, but I think what we have here is  
 20 grammatically a good description.  
 21 Q Should Sawyer County have expected the damage to the  
 22 Hausman property?  
 23 A I'm not sure that they should have expected it, in the  
 24 sense that I'm not sure they should have been  
 25 anticipating what properties might be inundated under

1 what circumstances at which times. I'm not aware that  
 2 they should have anticipated anything.  
 3 Q You testified earlier, though, that the flooding on  
 4 the Hausman property should be expected, correct?  
 5 A That's correct. By whom?  
 6 Q Let me ask that question.  
 7 A Well, what I meant to say was that looking at the  
 8 situation here in terms of the Zone A map and the  
 9 subsequent analyses, if you're on Mr. Hausman's  
 10 property, looking at the information you had  
 11 available, you should expect some intermittent  
 12 flooding.  
 13 The question you asked me was about whether  
 14 Sawyer County should have expected that and perhaps  
 15 they could have, if they had looked specifically at  
 16 Mr. Hausman's property. I'm not aware that they were  
 17 needing to do so for some reason.  
 18 Q And does Sawyer County have any responsibility for  
 19 floodplain zoning in the area?  
 20 A Well, yes, as part of their general zoning  
 21 obligations.  
 22 Q And so that would be a reason, for instance, that  
 23 Sawyer County may be interested in what properties get  
 24 flooded, isn't it?  
 25 A Yes.

1 Q Now, have Sawyer County's actions since 1937 affected  
 2 the regional floodplain elevation on Round Lake?  
 3 A Yes, they have.  
 4 Q How so?  
 5 A By construction of the facilities that are physically  
 6 there now, they have, and others, the general  
 7 situation, but the facilities and Round Lake system  
 8 that exists today are the basis for calculating a  
 9 100-year flood stage.  
 10 Q And so specifically, what Sawyer County actions have  
 11 affected the regional flood elevation on Round Lake  
 12 since 1937?  
 13 A I'm not prepared off the top of my head to answer that  
 14 question, but it would be, in general, the  
 15 characteristics of the structures that provide for  
 16 flow into and out of the lake.  
 17 Q The characteristics of the structures, so that would  
 18 include the Tiger Cat dam?  
 19 A Yes.  
 20 Q The Lake Placid dam?  
 21 A Yes.  
 22 Q Diversion channel number four?  
 23 A Yes.  
 24 Q And if at any point in time you don't know what I'm  
 25 referring to, you let me know, okay?

1 A Diversion channel number four is from the Lake Placid  
 2 structure to Round Lake, correct?  
 3 Q That is correct.  
 4 A Yes.  
 5 Q The Little Round Lake dam?  
 6 A Yes.  
 7 Q The County Highway B bridge?  
 8 A Yes.  
 9 Q The northern drainage channel, which is the channel  
 10 located between the Little Round Lake dam and Osprey  
 11 Lake?  
 12 A It's a factor in the analysis. I'm not sure to the  
 13 extent that something was done in the '40s, it figures  
 14 into the analysis.  
 15 Q The culverts at NN?  
 16 A Yes.  
 17 Q So all of those structures have affected the regional  
 18 flood elevation on Round Lake, correct?  
 19 A They are taken into account in calculating it, yes.  
 20 Q If the volume of inflow to a watershed is increased,  
 21 assuming everything else remains the same, will that  
 22 increase the regional flood elevation in that  
 23 watershed?  
 24 A In general, yes.  
 25 Q Did Sawyer County's creation of the Tiger Cat dam

1 increase the inflow into the Round Lake watershed?  
 2 A Tiger Cat and the Lake Placid structure did, yes.  
 3 Q Did Sawyer County's successful request in 1950 to  
 4 raise the maximum elevation of the Tiger Cat flowage  
 5 increase the inflow into the Round Lake watershed?

6 MR. DREGNE: I'm sorry, could you  
 7 read back the question?

8 (Reporter reads back previous question)

9 A To really answer very accurately, I'd need to review  
 10 that request, but that was one of the incremental  
 11 requests, is that correct?

12 Q That was a request to incrementally increase the  
 13 designated levels on the Tiger Cat flowage, yes, and  
 14 if you'd like to see that document in order to answer  
 15 the question, I can give it to you.

16 A No, no, you're asking a general question here, go  
 17 ahead.

18 MS. AZAR: Could you read back the  
 19 first question?

20 (Reporter reads back previous question)

21 A I think there's two parts to that question and answer.  
 22 The first part would be whether or not that increased  
 23 the typical, continuing, day in, day out inflow and  
 24 the other one would be whether or not it changed  
 25 conditions that would be taken into account in

1 calculating a 100-year event.

2 Q Why don't you answer for both of those then. First,  
 3 why don't you answer for the typical day in and day  
 4 out water level.

5 A To a small extent, yes.

6 Q And let me just back up. I'm not talking about the  
 7 floodplain elevation at this point, you realize, I'm  
 8 just talking about the inflows into the Round Lake  
 9 watershed.

10 A Okay, all right, good, thank you.

11 Q Let me reread the question then and maybe we can start  
 12 there. Did Sawyer County's successful request in 1950  
 13 to raise the maximum elevation of the Tiger Cat  
 14 flowage increase the inflow into the Round Lake  
 15 watershed?

16 A I would say the answer is probably yes.

17 Q Did Sawyer County's successful request in 1984 to  
 18 raise the maximum elevation of the Tiger Cat flowage  
 19 increase the inflow to the Round Lake watershed?

20 A And this is the second incremental increase?

21 Q Yes.

22 A And again, my answer would be probably yes.

23 Q Did Sawyer County's creation of diversion canal number  
 24 four increase the inflow into the Round Lake  
 25 watershed?

1 A Not by itself.

2 Q In conjunction with the creation of the Tiger Cat  
 3 flowage, did Sawyer County's creation of diversion  
 4 canal number four increase the inflow into the Round  
 5 Lake watershed?

6 THE WITNESS: I'm sorry, read that  
 7 again, please.

8 (Reporter reads back previous question)

9 A Again, not by itself.

10 Q Why are you qualifying that?

11 A Because that structure could pass no flow to Round  
 12 Lake or pass flow to Round Lake, depending upon its  
 13 operation.

14 Q I'm talking about the canal, not the dam.

15 A But you're talking about the canal downstream of the  
 16 dam?

17 Q The dam is in the canal. I'll get to the dam in a  
 18 minute, what a surprise.

19 A All right.

20 Q Should we go and read the question again?

21 A Let's go back and go through this again.

22 Q Did Sawyer County's creation of diversion canal number  
 23 four increase the inflow into the Round Lake  
 24 watershed?

25 A The creation of the canal, that portion of the canal

1 upstream of the diversion structure would present a  
 2 small area incrementally that could discharge to the  
 3 ground water system, so again, I'd have to answer  
 4 probably, to a very minor extent, yes.

5 Q Does the water running over the Lake Placid dam  
 6 increase inflow into the Round Lake watershed?

7 A Yes.

8 Q Does the water running through the stop logs on the  
 9 Lake Placid dam increase the inflow into the Round  
 10 Lake watershed?

11 A Yes.

12 Q When the outflow capacity of a watershed is decreased,  
 13 assuming everything else remains the same, will that  
 14 affect the regional flood elevation in that watershed?

15 A I'd have to answer generally, yes.

16 Q How?

17 A It's a general question at this point?

18 Q Yes, it is.

19 A If there's a certain flood volume that's entering a  
 20 water body and the outlet has restricted capacity  
 21 compared to what it was before, it would create an  
 22 incremental increase in the water surface elevation.  
 23 That's a general answer.

24 Q So in this next question, I'm going to be contrasting  
 25 an appropriately sized dam and an undersized dam, do

1 you remember how we described undersized dam?  
 2 **A** Would you define undersized again?  
 3 **Q** An undersized dam is a dam that was designed and  
 4 constructed with insufficient flow capacity.  
 5 **A** That's a very broad definition, but insufficient  
 6 meaning -- let's just explore this a little bit,  
 7 because I want to make sure I can answer the  
 8 question. Define insufficient.  
 9 **MS. AZAR:** Off the record for a  
 10 minute. Let's take a break for lunch.  
 11 (Noon recess is taken)  
 12 (12:15 p.m. to 1:20 p.m.)  
 13 **Q** Mr. Montgomery, we just took an hour long break and  
 14 you had an opportunity to sit with Sawyer County's  
 15 counsel for a while. What did you guys discuss?  
 16 **A** We talked about the need to make sure I stay awake and  
 17 stay focused during the rest of the afternoon, talked  
 18 a little bit about what had gone forward so far, you  
 19 know, just the need to be careful, et cetera, et  
 20 cetera.  
 21 I talked with Matt a little bit about the  
 22 paleoecological study that I gave you guys a copy of  
 23 and talked a little bit about that, and we spent some  
 24 time talking about storm water management in Mount  
 25 Horeb.

1 **Q** And when you were discussing what had gone on so far,  
 2 what was the discussion about?  
 3 **A** Well, I think it was in general, you are right to be  
 4 sure you ask very clarifying questions and -- I'm  
 5 trying to think, I know you would like for me to say  
 6 something very specific. I'm trying to think if we  
 7 discussed any specific point of what I've testified so  
 8 far about.  
 9 I don't think it was specific. It wasn't  
 10 specific like you shouldn't have said that or you  
 11 should have said this, it was in general about staying  
 12 focused and making sure I ask clarifying questions.  
 13 **Q** Do you have any corrections to make from your  
 14 testimony this morning?  
 15 **A** Not so far.  
 16 **Q** When we left our discussion, we were talking about  
 17 undersized dams and we're going to come back to that  
 18 later, we won't continue with that right off the bat.  
 19 **A** Okay.  
 20 **Q** Do the existing culverts at NN restrict the outflow  
 21 capacity of the Round Lake watershed?  
 22 **A** Yes, I believe they do. They're part of the system  
 23 that -- they are one of the controls from a hydraulic  
 24 standpoint in that system.  
 25 **Q** And they are one of the controls that actually

1 restrict the flow, correct?  
 2 **A** Well, every element of that system restricts flow, I  
 3 mean, it affects flow, but they are -- most downstream  
 4 of those elements that we evaluated, anyway.  
 5 **Q** Let's turn to page 2 of your report. I'm now going to  
 6 be talking about your expert opinion under the topic,  
 7 "Round Lake water levels regularly fluctuate above and  
 8 below the 1941 orders." In this section, you state  
 9 that Mr. Hausman's property is occasionally, but not  
 10 continuously subject to lake level conditions that  
 11 exceed the 1941 order levels, do you see that?  
 12 **A** Yes.  
 13 **Q** On what specific data did you render that opinion?  
 14 **A** The data that was attached to the report.  
 15 **Q** Is that -- give me the specifics, which data?  
 16 **A** It's the -- well, let's see here. It's basically the  
 17 first three figures and the last figure on page 15, in  
 18 other words, it is data that we had assembled from  
 19 various record sources and the data that Barr had  
 20 described in their report.  
 21 **Q** You say occasionally, but not continuously. Let's  
 22 just take a look at that first figure there, the Round  
 23 Lake water level observations from 1931 through 2005.  
 24 **A** Right.  
 25 **Q** Where did you obtain the data for this figure?

1 **A** We obtained it from the observation summary that's  
 2 attached to the Carthel floodplain analysis.  
 3 **Q** Exhibit 183?  
 4 **A** Yes, that's correct, and we obtained it from data that  
 5 was collected by Sawyer County recently, more  
 6 recently, anyway, and from data that we obtained from  
 7 a Frederic Zietlow.  
 8 **Q** Do you know why Mr. Zietlow is collecting data?  
 9 **A** He said he has been collecting data because he wants  
 10 to kind of develop an understanding of lake level  
 11 fluctuations regarding the installation of docks. I  
 12 believe he has some kind of business where he's  
 13 installing or pulling in, pulling out for the winter  
 14 or whatever, something to do with docks.  
 15 I didn't pursue it in detail with him, but it  
 16 wasn't -- it was related to an activity that he had on  
 17 the lake related to docks.  
 18 **Q** You indicated that Sawyer County had been collecting  
 19 data, is that data that's being collected by Dale  
 20 Olson and his staff members?  
 21 **A** Yes, I believe that's correct.  
 22 **Q** Any other sources for the data in Figure 1?  
 23 **A** No.  
 24 **Q** Let's jump to Figure 2, which is the second figure on  
 25 this and it says, "Round Lake water level

1 observations, 2000 to 2005." What was the source of  
 2 the data for that?  
 3 A Exactly the same, it's the same data, it's just an  
 4 expanded scale.  
 5 Q I'd like to go back to that Figure 1 that's up above.  
 6 You indicated that you obtained some of the data from  
 7 Mr. Carthel's report that's been marked as Exhibit  
 8 183, correct?  
 9 A Correct.  
 10 Q Did you use any conversion factors from Mr. Carthel's  
 11 data?  
 12 A No.  
 13 Q So you took it straight from Exhibit 183?  
 14 A Right, NAVD88 as determined by Carthel.  
 15 Q Let's jump to page 3 of your report. You state that,  
 16 quote, "Our water level analysis indicates the water  
 17 levels that occurred in 2002 and 2003 were unusually  
 18 high"?  
 19 A Yes.  
 20 Q And from what specific data did you draw that  
 21 conclusion?  
 22 A The main data source was this data right here,  
 23 attached to the back of the report.  
 24 Q So it's those Figures 1 and 2 that we were just  
 25 discussing?

1 A In other words, that doesn't take into account Barr's  
 2 data.  
 3 Q Figure 1 is all data compiled --  
 4 A It's actually not our data either, it is the three  
 5 data sources that we compiled and in that sense, we  
 6 didn't directly collect this data.  
 7 Q Well, that's -- so you base the statement, "The water  
 8 level observed in 2002 is higher than any level  
 9 observed since 1946," and just looking at Figure 1, it  
 10 appears as though there's a Carthel Engineering data  
 11 point in approximately 1967 that is quite close to the  
 12 level shown in 2002, isn't that correct?  
 13 A That's right.  
 14 Q And indeed, there's also some data elevations shown in  
 15 2001 that are very close to those shown in 2002,  
 16 correct?  
 17 A Yes, that's correct.  
 18 Q Would you state that those -- strike that. Are water  
 19 measurements on the Round Lake system taken on a  
 20 consistent basis?  
 21 A Not to my understanding.  
 22 Q So it's somewhat random as to when people are going to  
 23 be recording the water levels on Round Lake, correct?  
 24 A Yes, our data is somewhat random, that's correct.  
 25 Q So can you make any conclusions with regard to whether

1 A That's correct, and combined with the information that  
 2 Barr had on the third figure.  
 3 Q So Figures 1 through 3, and in fact, you didn't put  
 4 figure numbers on your report. Why don't we just do  
 5 that right now so that we're all discussing the same  
 6 thing. Figure 1 will be the Round Lake water level  
 7 observations 1931 through 2005. Figure 2 will be the  
 8 Round Lake water level observations 2000 to 2005  
 9 Figure 3, the Round Lake water level observations  
 10 superimposed to Barr Engineering Figure 5.  
 11 Figure 4 will be the Shell Lake water level  
 12 observations on page 14 and Figure 5 will be the Apex  
 13 survey data. So you based the statement, "Our water  
 14 level analysis indicates that the water levels that  
 15 occurred in 2002 and 2003 were unusually high," you  
 16 based that on the data presented in Figures 1 through  
 17 3, correct?  
 18 A That's right.  
 19 Q And you then continue to say, "The water level  
 20 observed in 2002 was higher than any level observed  
 21 since 1946." From what specific data did you draw  
 22 that conclusion?  
 23 A It was the data in this -- in the plot in Figure 1,  
 24 yes, and that actually is our data.  
 25 Q What do you mean, that is actually our data?

1 the water levels observed in 2002 were in actuality --  
 2 strike that. Can you make any conclusions with regard  
 3 to whether or not the water levels in 2002 were  
 4 actually higher than any other year since 1946?  
 5 A I cannot state that with certainty, because we don't  
 6 have daily data or weekly data or some large amount of  
 7 data from which to draw conclusions. From the data  
 8 that we have, it was the conclusion that was drawn.  
 9 Q And in fact, from the data that you show here on  
 10 Figure 1, there are high water levels in 2001 and 1967  
 11 that are likely within the same range of error as the  
 12 level observed in 2002, correct?  
 13 A I'm not sure about the error, but they're certainly  
 14 close.  
 15 Q Now, on Figure 3, page 13, you've superimposed data  
 16 onto a Barr figure, correct?  
 17 A Yes, that's right.  
 18 Q Now, is the data that you superimposed the data from  
 19 Figure 1?  
 20 A Yes.  
 21 Q What conversion factor did you use in superimposing  
 22 the data from Figure 1 onto Figure 3?  
 23 A Well, what we tried to do was to get the data -- to  
 24 have it be on a consistent datum and therefore, we  
 25 realized that the projected state designated maximums

1 and minimums were the adjusted datum values, so we  
 2 tried to put our data superimposed on Barr's data so  
 3 that they were to the same datum.

4 That was our objective, to have that data on a --  
 5 to be a consistent datum. That's why the 1941 order  
 6 levels that we superimpose are a little -- are  
 7 different than the ones that are direct from Barr's  
 8 figure. Barr's figure are the dashed lines, so that's  
 9 what we tried to do. We tried to put everything to  
 10 the same datum, as opposed to the same definition of  
 11 maximum and minimum.

12 Q Well, Barr used an adjusted local datum, correct?

13 A Right.

14 Q And the black diamonds on page 13 of your report are  
 15 adjusted local datum?

16 A Correct.

17 Q And so when you put your purple dots over top on this  
 18 figure, you had to convert these purple dots into  
 19 adjusted local datum, correct?

20 A Yes, and we did that by adjusting upward these data  
 21 points. We didn't adjust them upward, we tried to  
 22 make them all to the same consistent datum.

23 Q How did you do that, specifically?

24 A We had data to NAVD88, we had the stages that were --  
 25 that are the 1941 order levels to NAVD88. We placed

1 that data over the Barr data. We did this  
 2 graphically. If you want to know exactly what we did,  
 3 we scanned the Barr figure.

4 We had essentially a transparency, an electronic  
 5 format of our figure, adjusted the dates to be  
 6 consistent, the X axis to be consistent and  
 7 graphically overlaid them. We didn't create a  
 8 combined database of all of that data, we superimposed  
 9 our data in a graphical sense on the data presented in  
 10 the Barr report.

11 Q So your data is plotted relative to the 1941 orders  
 12 that you superimposed on Barr's figure?

13 A That's correct.

14 Q So if indeed, as Barr's indicated in the adjusted  
 15 local datum, the ordered level should actually be  
 16 76.75, all of your points are off, correct?

17 A I don't think so, because I think our data -- I think  
 18 there's two questions in what you're posing. What  
 19 we're trying to describe here has nothing to do with  
 20 what water levels frankly are or ought to be or might  
 21 have been. We're trying to get this data on to the  
 22 same -- we have data, Barr had data.

23 We're trying to put the data together to tell a  
 24 story of what water level fluctuation has been like on  
 25 Round Lake. That is the objective of what we're doing

1 on Figure Number 3.

2 Q So again, your points, the way you did this is you  
 3 developed your points in relation to the 1941 order  
 4 levels at 77.0 and 77.25, correct?

5 A Yes, although we had the data assembled in NAVD88.

6 MS. AZAR: Off the record for a  
 7 minute.

8 (A short recess is taken)

9 Q On page 13 of Exhibit 178, why did you mark in the  
 10 blue lines at 77.0 and 77.25?

11 A Purely for consistency with Figure Number 2, 1 and 2.

12 Q And in the adjusted local datum are the state ordered  
 13 levels 77.0 and 77.25?

14 A Well, no, I think in the adjusted datum, Barr  
 15 interpreted those levels to be 76.5 and 76.75 and we  
 16 left that on there.

17 Q For every single point that you superimposed on page  
 18 13 for Figure 1, did you use the same conversion  
 19 factor? Let me ask that in a different way.

20 A No, the answer is yes, because we did it graphically.

21 Q Do you know what the conversion was?

22 A Again, there wasn't a conversion. We referenced the  
 23 Y axis, so to speak, of our data against 77 and 77.25  
 24 and then checked some of the data points. Obviously,  
 25 the data don't correspond exactly, because we did

1 check several of the data points that were very close  
 2 to the same date and they came out to be fairly close  
 3 to the same elevation, although certainly, there are  
 4 departures here.

5 We're not trying to critique Barr's data in this  
 6 analysis, we're simply trying to take advantage of two  
 7 data records to give an impression of water level  
 8 fluctuation on the lake.

9 Q Now, on your report on page 3, you state, "In  
 10 addition, review of water resource data in the area  
 11 indicates that stream flow and water levels in  
 12 northern Wisconsin were unusually high during 2002, do  
 13 you see that?"

14 A Yes.

15 Q So the quote, "unusually high," end quote, stream flow  
 16 and water levels were not isolated to the Round Lake  
 17 watershed in 2002, correct?

18 A It didn't look like it to us, no. There was a period  
 19 of high water in a number of locations.

20 Q From what specific data did you draw that conclusion?

21 A Well, the -- I think the most important piece of data  
 22 to draw the conclusion that the water levels were  
 23 unusually high on Round Lake was the Round Lake data  
 24 itself, but then we look in other locations, and we  
 25 described specifically Shell Lake, which is an

1 isolated lake that had quite a severe flooding problem  
 2 about this same time, and that's what the other figure  
 3 is.  
 4 Q Besides Round Lake and Shell Lake, what other data did  
 5 you use to conclude that the unusually high stream  
 6 flow and water levels in 2002 were not isolated to the  
 7 Round Lake watershed?  
 8 A We had looked at a couple of other rivers in the area,  
 9 I'm trying to remember. We didn't include the data in  
 10 this report, but I believe it's in the file data. The  
 11 names are escaping me right now.  
 12 Q And what did the river data show you?  
 13 A That the -- that 2002/2003 conditions were high  
 14 relative to the bulk of the record. In general,  
 15 that's what they said.  
 16 Q And what would cause, quote, "Unusually high," end  
 17 quote levels of stream flow and water levels on a  
 18 regional level?  
 19 A Either as snow melt -- precipitation conditions in  
 20 general being high for a number of years. The  
 21 response to a river and a lake would be different, but  
 22 they're both responding fundamentally to  
 23 precipitation.  
 24 Q What else would cause unusually high levels of stream  
 25 flow and water levels on a regional level?

1 A Well, that's the fundamental driver.  
 2 Q Is precipitation?  
 3 A That's correct, it could be translated to direct  
 4 runoff or ground water contributing to base flow, et  
 5 cetera, but the fundamental driver is precipitation.  
 6 Q Did you look at precipitation on a regional level for  
 7 the year 2002?  
 8 A We did look at precipitation.  
 9 Q What did you find?  
 10 A We got some precipitation data from a gauge at  
 11 Hayward.  
 12 Q What did it include?  
 13 A I think they were monthly, I think it was monthly data  
 14 at Hayward. I believe it's in the -- it was in my  
 15 data file and because it was monthly data, it didn't  
 16 show a big jump in precipitation, but you know, I'm  
 17 running right on memory. I ought to -- I can't answer  
 18 your question specifically sitting here.  
 19 Q Did you look at any other precipitation data for the  
 20 regional area that includes Round Lake?  
 21 A I don't believe we did in any detail.  
 22 Q Did you look at any snow melt data?  
 23 A No, we didn't specifically.  
 24 Q Did you look at any ground water level data?  
 25 A We did, yes.

1 Q What did you look at?  
 2 A We looked at some data, there's a marina site that  
 3 apparently there's a leaking underground storage tank  
 4 that site right on Round Lake, on the south end of the  
 5 lake by the -- I think it's adjacent to County Highway  
 6 B, and we took a look at some of that data and were  
 7 starting to think about how we could look at the  
 8 relationship between ground water -- we weren't  
 9 looking at it from the point of view of regional high,  
 10 but we were looking at it from the point of view of  
 11 understanding ground water fluctuations adjacent to  
 12 Round Lake.  
 13 And then the most recent Barr information came  
 14 in, which was kind of directly along the lines of what  
 15 we were trying to evaluate.  
 16 Q So you looked at ground water elevations to determine  
 17 the relationship between the surface water elevations  
 18 and the ground water elevations at Round Lake?  
 19 A Yes, that's correct, we started to, that's right.  
 20 Q And so you did not look at ground water elevations in  
 21 relation to what would cause unusually high levels of  
 22 stream flow and water levels on a regional level,  
 23 correct?  
 24 A That's correct.  
 25 Q Now, in northern Wisconsin in 2002, in your expert

1 opinion, what caused the unusually high levels of  
 2 stream flow and water levels?  
 3 A Well, I believe it was precipitation and snow melt  
 4 events. What we wanted to -- we didn't so much delve  
 5 into the specific cause. The objective of what we  
 6 were trying to do was to understand was this an  
 7 unusually high event or a typical high water event and  
 8 so we -- and we concluded that it was unusually high.  
 9 Q So were the precipitation levels in 2002 unusually  
 10 high?  
 11 A I think as far as an annual precipitation, I'm not  
 12 sure if they are. I'd need to look at the data, but  
 13 it doesn't stand out in my mind that they were  
 14 unusually high.  
 15 Q Were the precipitation levels during periods of 2002  
 16 unusually high?  
 17 A Yes, I believe that they were and I base that from  
 18 some discussion in the Barr reports. We don't have --  
 19 I'm running on memory of material that I don't have in  
 20 front of me here. I don't believe we have  
 21 precipitation data that would provide specific answers  
 22 to that in our possession, but I could -- obviously, I  
 23 could look, but that's my understanding.  
 24 Q But the precipitation data that you collected upon  
 25 which your expert opinion is based can be found in the

1 documents that you produced, correct?  
 2 A That is correct.  
 3 Q You state, "We believe it is reasonable to conclude  
 4 that 2001 to 2003 were years of unusually high water  
 5 levels and discharges in northern Wisconsin," period,  
 6 end quote. Please provide all the bases for this  
 7 conclusion.  
 8 A The bases for that conclusion are more specifically  
 9 related to Round Lake. We observed directly the water  
 10 level record that we had. We observed data from Shell  
 11 Lake and made general observations on several rivers.  
 12 In retrospect, what we're trying to conclude here at  
 13 the end of this section is the same thing that we were  
 14 trying to describe at the beginning of the section.  
 15 And that is, that the water levels in Round Lake  
 16 in 2002/2003 were unusually high. It's a little broad  
 17 to say that applies to all of northern Wisconsin.  
 18 Q And so you based your conclusion on four things, Round  
 19 Lake, Shell Lake and two rivers, correct? Strike  
 20 that, let me state that again. You based your  
 21 conclusion and you've already qualified, indicating  
 22 that you think it may have been a little too broad,  
 23 but you based the conclusion, quote, "We believe it is  
 24 reasonable to conclude that 2001 through 2003 were  
 25 years of unusually high water levels in discharges in

1 northern Wisconsin," period, end quote.  
 2 You base that on the water levels in Round Lake,  
 3 the water levels in Shell Lake and the water levels on  
 4 two different rivers, the names of which you don't  
 5 remember right now, correct?  
 6 A Yes.  
 7 Q But I can find the names of the rivers in the files  
 8 that you produced, correct?  
 9 A I believe so, yes.  
 10 Q Now, if this was a regional event, we should be able  
 11 to see high water levels in 2001, 2002 and 2003 on all  
 12 of the lakes in the area near Round Lake, correct?  
 13 A If it was a -- yeah, that's true, if it was a  
 14 universally high level event, yes, that's true.  
 15 Q And isn't that what you're trying to say here, that  
 16 this was a regional event, rather than a localized  
 17 event?  
 18 A The point we're trying to make here is that the water  
 19 levels on Round Lake in 2002/2003 were unusually high  
 20 and that that does correspond to other data from  
 21 northern Wisconsin. We haven't done a study that  
 22 would describe that it was a universally high water  
 23 event and I don't think I could make that statement.  
 24 Q So you're not giving the expert opinion that the high  
 25 water levels on Round Lake were regional in nature,

1 correct?  
 2 A Yes, you are correct in saying that.  
 3 Q So it is possible that the high water levels observed  
 4 on Round Lake in the years 2001, 2002 and 2003 were  
 5 localized to the Round Lake watershed, correct?  
 6 A Compared to some other lakes that we haven't looked  
 7 at, that's certainly possible.  
 8 Q So you're not -- let me strike that.  
 9 MS. AZAR: Off the record.  
 10 (Discussion off the record)  
 11 Q Mr. Montgomery, is it your expert opinion that the  
 12 high water levels seen on Round Lake between 2001 and  
 13 2003 were a result of regional events?  
 14 A No. The water levels were the result of local events  
 15 with respect to Round Lake that corresponded to high  
 16 water levels in at least some other rivers and lakes  
 17 in the area.  
 18 Q Now, you indicated that you investigated the  
 19 precipitation rates in 2002 through a gauge located in  
 20 Hayward, correct?  
 21 A That's right.  
 22 Q And did you also investigate the precipitation rates  
 23 in 2001 and 2003?  
 24 A Yes, I believe we had a record of some duration. I'd  
 25 need to look at the data to tell you what the duration

1 was.  
 2 Q You did not look at the snow melt rates, correct?  
 3 A No.  
 4 Q Did the conditions in 2001 reach the 100-year flood  
 5 level?  
 6 A I don't believe so.  
 7 Q Did the conditions in 2002 reach the 100-year flood  
 8 level on Round Lake?  
 9 A Let me take a look.  
 10 Q Okay.  
 11 (Witness examines documents)  
 12 A Okay, I'm ready.  
 13 Q I think the question pending was whether or not the  
 14 conditions in 2002 reached the 100-year flood level on  
 15 Round Lake.  
 16 A I don't believe they reached the elevation of 79.2,  
 17 Barr's adjusted local datum. They did not reach that  
 18 elevation in the 2001/2002 time frame.  
 19 Q Did they reach that elevation in 2003 on Round Lake?  
 20 A No, they did not, from the data that we have.  
 21 Q You used Shell Lake as an example of a lake that is  
 22 located near Round Lake and according to your report,  
 23 Shell Lake also had record high water levels in 2002,  
 24 correct?  
 25 A That's correct.

1 Q And you compare Round Lake and Shell Lake, noting  
 2 that -- strike that. You compare Round Lake and Shell  
 3 Lake, stating that they are both seepage lakes, are  
 4 both primarily ground water fed and are both  
 5 surface -- have surface inflows consisting of overland  
 6 run off from a relatively small watershed, correct?  
 7 A Yes, the primary difference between the two is that  
 8 Round Lake does have an outlet and Shell Lake has not,  
 9 until very recently.  
 10 Q Why did you pick Shell Lake to include in your report?  
 11 A Because it had a good data record and the relevant  
 12 part of the discussion on Shell Lake is that portion  
 13 of the record from about year 2000 up to when they  
 14 finally got the outlet going, I believe that was in  
 15 late 2002, early 2003.  
 16 There was a very rapid rise in Shell Lake water  
 17 levels during that time period, driving it to an  
 18 extreme high level.  
 19 Q And do you believe the cause that drove the rapid rise  
 20 in the Shell Lake water level was the same cause that  
 21 drove the rapid rise in the water level on Round Lake?  
 22 A I believe it was, but we have not evaluated snow pack  
 23 and precipitation data in great detail on Shell Lake.  
 24 Q So what was that cause?  
 25 A My -- I believe it was snow melt and precipitation.

1 residential communities that have grown a lot in the  
 2 last 10 to 20 years, but specifically, I don't have  
 3 data.  
 4 Q Do you quantitatively know -- strike that. Do Round  
 5 Lake and Shell Lake share an aquifer?  
 6 A Well, they're both lakes that sit in an -- in glacial  
 7 soils with a local water table. In that sense, you  
 8 could say that they both share the upper glacial  
 9 material aquifer in that area.  
 10 Q Do they have similar ground water elevations?  
 11 A Well, I don't know that specifically.  
 12 Q Does the amount of impervious surface affect the  
 13 volume of runoff into a lake? Let me ask that again,  
 14 so it's in English. Does the amount of impervious  
 15 surface in a watershed affect the amount of volume --  
 16 the volume of runoff in that watershed?  
 17 A Yes.  
 18 Q Did you look at the amount of impervious surface in  
 19 the Round Lake watershed?  
 20 A Not numerically, no.  
 21 Q Did you look at the amount of impervious surface in  
 22 the Shell Lake watershed?  
 23 A No.  
 24 Q Do you know how the amounts of impervious services in  
 25 the Round Lake watershed compares with the amounts in

1 Q But you haven't investigated the precipitation levels  
 2 in the Shell Lake area, correct?  
 3 A No.  
 4 Q And you didn't investigate the snow melt levels -- I'm  
 5 sorry, snow melt volumes in either Round Lake or Shell  
 6 Lake, did you?  
 7 A No, not with respect to numbers.  
 8 Q Now, looking at Exhibit -- I'm sorry, Figure 4 in your  
 9 report, where did you obtain this data?  
 10 A As we described in the report, part of it was from the  
 11 GS and part of it was from a local website that was, I  
 12 believe, a City of Shell Lake website.  
 13 Q Is that data accurate?  
 14 A Well, I believe it is, but I did not quality control  
 15 the elevation data. I believe it's an accurate  
 16 record.  
 17 Q Now, have you looked at the rates of development  
 18 around Shell Lake?  
 19 A Not specifically.  
 20 Q Have you looked at the rates of development around  
 21 Round Lake?  
 22 A Not specifically.  
 23 Q Do you know how the rates of development around Round  
 24 Lake and Shell Lake compare?  
 25 A Qualitatively, they are similar, in that they are

1 the Shell Lake watershed?  
 2 A No.  
 3 Q Would the graph shown as Figure 4 in your report be  
 4 influenced by increases in the amount of impervious  
 5 surfaces in the area?  
 6 A Well, graph four is data, so it's a record of what  
 7 happened.  
 8 Q Would the data change -- strike that. The amount of  
 9 impervious surfaces will affect the data that's  
 10 recorded on Figure 4, correct?  
 11 A Yes, that's right.  
 12 Q So as the --  
 13 A Among other things.  
 14 Q -- amount of impervious surfaces change, the data will  
 15 also change on Figure 4, correct?  
 16 A That's correct.  
 17 Q You state in your report that the water level of Shell  
 18 Lake declined subsequent to 2003 due to installation  
 19 of an outlet, correct?  
 20 A Yes.  
 21 Q What controls the water levels on a lake that is  
 22 landlocked?  
 23 A Well, it's a complicated situation. Fundamentally,  
 24 what controls the water level is the long-term balance  
 25 between precipitation and evaporation, but in a

1 landlocked lake, there's a carryover effect from one  
 2 year to the next, so you don't instantly see those  
 3 changes, so you see -- the lake responds to the  
 4 accumulation of precipitation excess and deficit,  
 5 either from evaporation or ground water discharge.  
 6 It's a general question or general answer to a general  
 7 question.  
 8 Q What controls the water levels on a lake that has an  
 9 outlet?  
 10 A Below the outlet, the same sort of things that we  
 11 discussed here just now. Above the outlet, to the  
 12 extent of the capacity of the outlet, the outlet  
 13 provides direct relief to high water levels.  
 14 Q And if you change the size of an outlet on a lake, how  
 15 will it affect the water levels?  
 16 A If the outlet is altered from one hypothetical  
 17 condition to another that has higher discharge  
 18 capacity, the fluctuation of water levels above the  
 19 level of that outlet would be decreased.  
 20 Q If the water levels on Round Lake had been maintained  
 21 at or below 77.25, would the storm in 2002 that caused  
 22 the shoreline erosion -- strike that. If the water  
 23 levels on Round Lake had been maintained at or below  
 24 77.25, would the storm that occurred in 2002 have  
 25 caused the shoreline erosion on the Hausman property?

1 A There's a couple of clarifications I need to ask in  
 2 order to answer that question. If the water levels --  
 3 and I'm not sure I can answer it yet, but the water  
 4 levels at the time of the beginning of these storms  
 5 were at the stipulated maximum in the orders, but the  
 6 outlet was the same as it is now, is that what you're  
 7 meaning to ask?  
 8 Q Yes.  
 9 A I haven't actually analyzed that and so I -- now that  
 10 I understand your question, I'll have to say that I  
 11 haven't specifically analyzed that and I don't have an  
 12 answer.  
 13 Q Have you analyzed that if the control structure was  
 14 different?  
 15 A We have taken a look at the control of a 100-year  
 16 event, but not the events of 2002/2003, as did -- and  
 17 Barr looked at a number of scenarios, as you know, as  
 18 well, but we didn't look at the storms of 2002/2003 in  
 19 a hydraulic analysis.  
 20 Q What type of storm event caused the damage to the  
 21 Hausman property in 2002? And when I say type, I'm  
 22 talking about frequency of event.  
 23 A Well, I don't know the answer to that question  
 24 specifically.  
 25 Q Well, do you know what frequency of flood event caused

1 the damage to the Hausman property in 2002?  
 2 A I do not. We didn't analyze that specifically.  
 3 Q Let's go to page 4 of your report. Your report quotes  
 4 the Wisconsin Department of Natural Resources Waterway  
 5 and Wetland Handbook, doesn't it?  
 6 A That's correct.  
 7 Q Does your opinion rely on the DNR Waterway and Wetland  
 8 Handbook?  
 9 A Yes.  
 10 Q How so?  
 11 A In part, we're describing the situation of regulation  
 12 of the 100-year event or having a 100-year event be  
 13 called out as regulated in the sorts of operating  
 14 orders that apply to lakes, so we took a look at a  
 15 couple of things to draw a conclusion or draw an  
 16 opinion on that, and not so much based on engineering  
 17 analysis, but by some observations and by reference to  
 18 some materials, and so those were part of the  
 19 materials we looked at.  
 20 Q And do you find the handbook to be a reliable  
 21 resource?  
 22 A That's a good question. I believe the handbook is  
 23 guidance to the department in the work that they  
 24 conduct in water reg zoning. Whether it's reliable or  
 25 not, all I can assume is that it's an accurate

1 description of guidance provided.  
 2 Q Do you consider the writers of the handbook to be  
 3 recognized as experts in the field of waterways and  
 4 wetlands in Wisconsin?  
 5 A In terms of their regulation, yes.  
 6 Q You state on page 4 that, quote, "We do not believe it  
 7 is appropriate to interpret the 1941 order as  
 8 requiring control of the water levels of Round Lake to  
 9 the 1941 order levels for all events, including  
 10 extreme flood events," end quote. Do you see that?  
 11 A Yes.  
 12 Q I'd like to discuss with you what you believe is an  
 13 appropriate interpretation of the 1941 order. I'm  
 14 going to hand you what's been marked as Exhibit 50 and  
 15 that is the 1941 order. I'd like to point you to --  
 16 let's start with the second to the last page.  
 17 A Okay.  
 18 Q This says, "That Sawyer County shall maintain Round  
 19 and Little Round Lakes at the normal elevation of  
 20 77.00 feet at all times when a sufficient water supply  
 21 exists and during freshets and heavy runoff to prevent  
 22 the water levels from rising above elevation 77.25  
 23 feet. These elevations are referred to at the staff  
 24 gauge at Kaiser's Resort."  
 25 Is it an appropriate interpretation of order

1 point number three that the state designated normal  
 2 elevation of the Round Lake dam is at 77.00?  
 3 MR. DREGNE: Would you read back  
 4 the question for me?  
 5 (Reporter reads back previous question)  
 6 A I believe you're quoting back the order and I would  
 7 say that's correct.  
 8 Q Is it an appropriate interpretation of order point  
 9 number three that 77.25 is the state designated  
 10 maximum level of the Round Lake water?  
 11 A Again, that's what the order says.  
 12 Q Let's jump to order point number two. Order point  
 13 number two says, "That Sawyer County construct an  
 14 outlet channel from Little Round Lake to Squaw Lake of  
 15 the capacity to discharge 150 CFS, with a dam and  
 16 controls gate whereby the water level in Round and  
 17 Little Round Lakes may be controlled," do you see  
 18 that?  
 19 A Yes.  
 20 Q When you're designing a dam with specific flow  
 21 capacity, do you need to assume a specific water level  
 22 for achieving that capacity?  
 23 A Yes.  
 24 Q Is it reasonable to interpret order point number two  
 25 as to achieve the flow capacity of 150 CFS at a

1 A No, but I'd like to emphasize that the order does not  
 2 specify what that elevation for 150 CFS should be. It  
 3 leaves that question open, so it is open to  
 4 interpretation.  
 5 Q But really, let's just talk about this. I mean, you  
 6 indicated earlier that you can't design a dam with a  
 7 specific flow capacity without specifying a specific  
 8 water elevation, correct?  
 9 A Yes.  
 10 Q So though the PSC didn't put the water elevation in  
 11 other point number two, they did put water elevations  
 12 in order point number three, correct?  
 13 A Yes, they did.  
 14 Q So are you contending that order point number two and  
 15 order point number three need not be read together?  
 16 A No, I'm not contending that.  
 17 Q So should we read the design specifications in order  
 18 point number two with the design specifications in  
 19 order point number three?  
 20 A I would have to say you could do that.  
 21 Q You could do that or should you do that? Strike  
 22 that. Mr. Montgomery, if I gave you these design  
 23 specifications in a permit from the DNR and you were  
 24 designing a dam, would you design the dam -- tell me  
 25 how you would design the dam at what flow capacity --

1 specific water level?  
 2 A The order doesn't say.  
 3 Q You just testified that in order to design a specific  
 4 flow capacity, it's got to be designed with a specific  
 5 water elevation in mind, correct?  
 6 A If you're going to design it, that's correct, yes.  
 7 Q So it's reasonable to interpret order point number two  
 8 as to achieve the flow capacity of 150 CFS at a  
 9 specific water elevation, isn't it?  
 10 A By the time you were finished with the design, yes,  
 11 you would have developed a design that would deliver  
 12 150 CFS at some headwater/tailwater differential.  
 13 Q And is it reasonable to interpret order point number  
 14 two as to achieve the flow capacity of 150 CFS in the  
 15 context of water elevation specified in this same  
 16 order?  
 17 A Run that one by me again, please.  
 18 (Reporter reads back previous question)  
 19 A Yes, I think looking at those two items, you would  
 20 probably conclude that you needed to deliver 150 CFS  
 21 at between 77 and 77.25, given just reading those two  
 22 passages that you read to me.  
 23 Q And is there anything else in this order that would  
 24 suggest that the design capacity of 150 CFS should be  
 25 at any other water elevation than 77.0 or 77.25?

1 strike that.  
 2 Mr. Montgomery, if you were designing a dam and  
 3 you received a WDNR permit that stated the same things  
 4 in order points two and three as you see in Exhibit  
 5 50, please tell me how you would -- at what water  
 6 elevation you would design the dam to accommodate 150  
 7 CFS.  
 8 A If I was presented with these two items, really what  
 9 I'd do is I'd go back to DNR and say what do you mean,  
 10 because this is poorly described.  
 11 Q And what if they didn't respond?  
 12 A In this day and age, in this hypothetical we're  
 13 talking about now, I think what you would need -- you  
 14 know, I've not encountered this question before. I  
 15 think what you'd need to do would be to consider that  
 16 77 to 77 and a quarter is a three-inch fluctuation.  
 17 150 CFS is a reasonably large discharge.  
 18 To construct that facility, you'd need to do a  
 19 certain set of things that might have environmental  
 20 issues or water regulatory issues and you would  
 21 develop an analysis to provide 150 CFS at several  
 22 trial elevations and go through a process with DNR in  
 23 actually having the structure permitted.  
 24 This is a little bit -- obviously, this is  
 25 hypothetical, but you wouldn't get to the point of a

1 completed structure with only two clauses like this.  
 2 You would develop a design. There would be  
 3 environmental issues associated with that design and  
 4 you'd work through a process of balancing and  
 5 clarifying before you actually got to the point of  
 6 building something.  
 7 Q Now, the .770 and .725, that's between the normal  
 8 elevation and the maximum elevation, correct?  
 9 A Yes.  
 10 Q This order doesn't establish a minimum elevation,  
 11 right?  
 12 A It doesn't look like it. That's a no.  
 13 Q Thank you. So you're not designing the dam to  
 14 maintain water levels between .25 feet, correct?  
 15 MR. DREGNE: Could you read that  
 16 question back?  
 17 (Reporter reads back previous question)  
 18 A I would say that's incorrect. Given the two numbers,  
 19 you know, sitting here, whatever, 55 years later, you  
 20 would look at those two numbers and say well, the  
 21 intent here is to control lake levels within three  
 22 inches.  
 23 Q You do find the waterway and wetland handbook to be a  
 24 reliable source, right?  
 25 A Sure.

1 Q Guess what I happen to have here?  
 2 A I'll bet something I didn't read.  
 3 (Exhibit 184 is marked for identification)  
 4 Q This is Exhibit 184, I've actually handed you the  
 5 section that you quoted from, correct?  
 6 A Yes.  
 7 Q And this actually provides definitions for ordered  
 8 maximum levels, ordered normal levels and ordered  
 9 minimum levels, correct, on page 5?  
 10 A Thank you. Yes, it does.  
 11 Q So right now, as the 1941 order stands before you, it  
 12 doesn't have a minimum level, correct?  
 13 A That's correct.  
 14 Q Why don't you read those definitions to yourself  
 15 there. I'm going to ask you the question again,  
 16 whether given the definitions that the DNR has  
 17 provided to minimum, normal and maximum elevation,  
 18 whether the 1941 order requires the design of a dam  
 19 that can control water levels between 77.0 and 77.25.  
 20 (Witness examines document)  
 21 A I've read over those definitions.  
 22 MS. AZAR: Could you read the  
 23 question again?  
 24 (Reporter reads back previous question)  
 25 THE WITNESS: Read it again.

1 (Reporter reads back previous question)  
 2 A Okay. Reading these definitions from this printed out  
 3 in 2005 and the orders, it doesn't seem to me that  
 4 looking at this 1941 order, since no other elevations  
 5 are specified, it's hard for me to interpret what  
 6 might have been thought about the ordered minimum,  
 7 which is not explicitly described in this order.  
 8 There's only two numbers.  
 9 In current procedure, I believe DNR typically  
 10 specifies a minimum and a maximum. Here we have a  
 11 normal and a maximum. With two numbers, I would  
 12 interpret this as saying that we need to control stage  
 13 within .25 feet, but considering the word normal and  
 14 what the current definitions say, you could come up  
 15 with a different interpretation, I suppose.  
 16 Q Under existing conditions, what water elevation is  
 17 required for the Little Round Lake dam to pass 150  
 18 CFS?  
 19 A Didn't you ask me this already?  
 20 Q No.  
 21 THE WITNESS: Say it again,  
 22 please.  
 23 (Reporter reads back previous question)  
 24 A It's not stated.  
 25 Q I'm not talking about the order, I'm talking about the

1 actual dam itself, actual conditions.  
 2 A Oh, okay, all right. I would have to take a look at  
 3 some material, some of the material in Barr's report  
 4 to give you a specific number answer. There is a  
 5 rating relation provided in the Barr report. It's  
 6 several feet of water, not three inches.  
 7 MR. DREGNE: If you get tired and  
 8 you want to take a break, I'm just getting the  
 9 sense that you're getting a little worn out.  
 10 A I am getting a little worn out, but.  
 11 MS. AZAR: Let's take a five-minute  
 12 break.  
 13 (A short recess is taken)  
 14 Q I'd like to turn you to page 10 of Exhibit 50 and on  
 15 page 10, at findings of fact number three, it states  
 16 that the high point of the sill of the Little Round  
 17 Lake dam must be 75.25 feet, correct?  
 18 A Yes, that's correct.  
 19 Q Now, earlier we were talking that there really wasn't  
 20 a normal state designated -- strike that. Earlier,  
 21 before we took a break, you were noting that in this  
 22 order, there was not a state designated minimum level,  
 23 correct?  
 24 A Yes, that's correct.  
 25 Q However, the order does specify an elevation for the

