

Today's date is Tuesday, August 3, 2004.

HEATHER JEAN HARRINGTON,

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

* * * * *

DIRECT EXAMINATION

BY MR. FURLow:

Q. Good morning, Ms. Harrington. My name's John Furlow. I represent Mr. Hausman in his dispute with Sawyer County.

Can you state your name, please, for the record?

A. Heather Jean Harrington.

Q. And where do you live?

A. I live 12766W Peninsula Road, Hayward.

Q. Have you ever had your deposition taken before?

A. No.

Q. Now, you're not here with a lawyer today; right?

A. Right.

Q. Let me give you a couple of instructions. If you don't understand a question, just let me know; and I'll try to rephrase it. Is that fair?

A. Yes.

Q. And you have to answer audibly to the questions so the court reporter can get that down. Do you understand that?

A. Yes.

Q. Nods of the head, things like that, they don't show up.

A. Right.

Q. If you'd like to take a break at some point, just let me know; and we'll take a break. Is that fair?

A. Yes.

Q. And, if there's a time today when you think to yourself: I'd like to change an answer; I want to go back because I thought of something, you let me know and we can go back and get those clarifications done?

A. Okay.

Q. Have you been involved in litigation before?

A. No.

Q. And did you prepare for your deposition today?

A. Somewhat.

Q. What did you do?

A. I just looked over notes in the file, ahm, contracts and that type of thing and I did try to find a couple of invoices and was unsuccessful so I did not spend much time because I didn't know how to prepare, really.

Q. And you said you looked for invoices?

A. Yeah.

Q. What invoices were you looking for?

A. I was looking for a record I have of what Dan Carthel has billed me for -- and what I have paid. And I wanted to do that before I came in. I was -- I couldn't find my 2001 records so it was incomplete.

Q. Were there other invoices you were looking for?

A. No.

Q. Do you know what -- what you've paid Dan Carthel? Is it Cartell (phonetic) or Carthel?

A. Carthel.

Q. Carthel?

A. Yes.

Q. And do you know what you paid Dan Carthel?

A. I don't know. I know what he has told me and I don't know -- I didn't verify it.

Q. And what did Mr. Carthel tell you?

A. Around -- and I can't give you the specific number, but I think it was around 7,000 something that I've paid him for the work he's done for me on the Sawyer County RFE's and the Billy Boy Dam study.

Q. The RFE being the --

A. Regional flood elevation studies.

Q. And is there more owed to Mr. Carthel by you?

A. No. I have paid everything he's invoiced me for.

Q. Is he continuing to do work?

A. Yes.

Q. And I understand he gave you a -- you have a contract with Mr. Carthel about the amount that his work will cost?

A. Yes.

Q. And that's for around \$11,000?

A. Yes.

Q. And you understand that Mr. Carthel's continuing work?

A. Yes.

Q. We'll come back to more of that later on. What notes were you looking for?

A. I just looked through my file on the -- not notes so much as the con -- the letters, the contract with Dan. I just wanted to kind of get that date back in my mind when I hired him.

Q. And did you find those items?

A. Hm-hm.

Q. And at some point you received a subpoena from our office asking you to turn over your records with respect to this project?

A. Yes.

Q. And did you turn over everything you had?

A. Yes.

Q. Including the things that you've just described now?

A. Yes.

Q. Now --

A. Except for that invoice that I was looking for. I haven't found it.

Q. Now, did you talk to anybody to prepare for your deposition?

A. No.

Q. You didn't talk to anybody about what it was like or what might happen or how it looks?

A. I did with Matt Dregne briefly at the last deposition.

Q. You had --

A. At -- during the break.

Q. So you attended the last deposition and spoke to Mr. Dregne about your deposition?

A. I just spoke to him about -- he -- I said -- I don't even remember what I spoke to him about, but I was wondering -- I don't even know what to say, because I -- I asked how it was going and -- and I just remember him -- ahm, telling me briefly what, ahm, just be calm and that type of thing. It wasn't anything specific on what to expect. You know, I -- he just asked me if I had been in a deposition before and he said just be direct with your -- with your responses; but that's just a guess, too, because I can't remember specifically the conversation.

Q. Did you talk with Mr. Dregne about the case itself?

A. No.

Q. Now, are you retained by Sawyer County for this litigation?

A. No.

Q. Are you being paid by anybody for your time today?

A. No.

Q. Have you looked at any other deposition transcripts that have been provided?

A. No.

Q. Did you sit through some of the other depositions?

A. No.

Q. So how was it that you spoke to Mr. Dregne when you --

A. It was in -- on the break. It was the break between -- when I arrived at the hotel in Chippewa Falls and I had been waiting a while, and Dan came out and Matt came out and they came out for their break, and then I was told that I wouldn't prob -- I would be needed later that day.

Q. So you didn't sit through Mr. Car --

A. Carthel.

Q. Thank you. -- Carthel's deposition?

A. Correct.

Q. I'd like to understand something about your educational background. If you could, let me know what your education is, past high school?

A. I have a bachelor of science in civil engineering from the University of Alaska, Fairbanks, 1984 and master of civil engineering, University of Alaska, Fairbanks, 1986.

Q. Any formal education beyond that?

A. No.

Q. And are you a professional engineer?

A. Yes.

Q. And you're registered in Wisconsin?

A. Yes.

Q. And, prior to -- when did you start your work with Sawyer County?

A. In 1998.

Q. Prior to that time, had you had experience on engineering projects with dams?

A. No.

Q. So your work for Sawyer County was the first work you'd done with respect to dam projects?

A. Yes.

Q. And are you familiar with requirements of NR 116?

A. I couldn't state those requirements; I'd have to read them.

Q. Have you read them from time-to-time?

A. I -- I know I have in the past, but I could not state that for you.

Q. What chapter is that of regulations?

A. NR 116.

Q. Is there --

MR. WRIGHT: I'm sorry. I'm having a little bit of trouble hearing both of you.

MR. FURLOW: Sure.

BY MR. FURLOW:

Q. What's the subject of NR 116?

A. I don't know.

Q. And what about the subject of NR 333?

A. I know it has to do with dam safety and regulation, but I -- I'd have to read it to tell you specifics.

Q. And you're familiar with the H-E-C models?

A. Yes.

Q. And what are those?

A. They are dam modeling programs, ah, and -- they're for determining -- I -- I'm just not going to be able to answer this very well because I've used the programs to -- but I'm not that well versed in their use and I'm -- I just would not be able to give you a good answer.

Q. And, prior to working with the County, had you ever used the H-E-C models. That's H-E-C, by the way. Do you know what H-E-C -- and just so we get this clear, what does H-E-C stand for?

A. I believe it's hydraulic engineering circular.

Q. And you know there's something called H-E-C-1 and H-E-C-2?

A. Yes.

Q. And just describe for us the difference between those two.

A. I would not be able to adequately.

Q. Have you ever used those models?

A. I've used HEC-1.

Q. And what does HEC-1 do?

A. It routes -- it's a program for taking the watershed characteristics and flood flow characteristics of a basin and allows you to route those flows through structures, through channels and determine flood elevations; and there are different things that you can determine from running HEC-1, depending on what output you need, flows through a structure, elevations behind the dam.

Q. And how is that different from H-E-C-2, HEC-2?

A. I'm not familiar with HEC-2.

Q. Now, had you used the HEC models before working for the County?

A. No.

Q. Have you used the HEC models in your work for Sawyer County?

A. No.

Q. Now, I understand you're with -- Let me just go back a second.

After receiving your masters in civil engineering from the University of Alaska, did you have any further engineering training?

A. No.

Q. Did you have any sort of continuing education classes or courses in engineering?

A. No.

Q. What was the nature of your engineering practice prior to 1998?

A. Transportation engineering, highway and bridge design and construction. My bridge design, though, was limited to approach work, did not actually do the bridge hydraulics and hydrology. Did some hydrology studies but on a smaller scale for culvert sizing.

Q. And I don't understand what bridge approach work is. What does that mean?

A. The -- the roadway leading up to the bridge.

Q. So you've done engineering with respect to roads going to bridges?

A. Hm-hm.

Q. But you did not do any engineering with respect to the bridge itself?

A. Correct.

Q. Then you talked about some -- was it highway?

A. Highway design.

Q. Is that different than the bridge approach design?

A. Well, it has to do with a -- a segment of highway not necessarily incorporating a bridge.

Q. And what engineering experience did you have in hydrology and hydraulics?

A. Hydrology, I had experience with determining flows at the site of a culvert or stream crossing for bridges, box culvert crossing. I did do some hydrologic work for bridge crossings when I worked for DOT. And that information was supplied to the DOT central office where they would use it to size a bridge structure.

Q. One second. And what models have you used for culvert sizing at road crossings?

A. There's a Conger method. C-o-n-g-e-r. It uses linear regression equation to model a stream and watershed. I've used the rational method.

Q. What's that method?

A. It incorporates a rainfall intensity, a co-efficient based on runoff characteristics of the basin and the basin area, determine flow.

Q. Any other models?

A. No.

Q. And, with respect to culvert sizing, have you done any analysis of the culvert sizing at County NN?

A. No.

Q. Have you done any work with respect to the culvert sizing at County NN?

A. No.

Q. Do you have plans to do that in the future?

A. No.

Q. Do you have any view of whether or not those culverts are appropriately sized or placed?

A. No.

Q. Have you ever routed runoff through structures before?

A. No.

Q. Now, after receiving your masters from the University of Alaska, 1986, where did you first go to work?

A. I went to work for the City of Fairbanks and assisted in managing a water and sewer installation project.

Q. How long were you at that job?

A. Six months.

Q. And what was your next job after that?

A. We moved back to Fair -- or Hayward, and I got employment with the Department of Transportation -- Wisconsin Department of Transportation in May of 1987.

Q. And what was your job with the Wisconsin Department of Transportation?

A. I was a construction and design engineer in the design and construction pool and I assisted in construction management of highway projects and bridge projects and I also did design work on highways.

Q. And the bridge projects were, again, bridge approaches not bridges themselves?

A. Correct.

Q. And how long did you work with DOT?

A. Three years.

Q. And, in 1990, what did you do?

A. My husband and I moved back to Fairbanks; and first thing I did in Fairbanks, back in Fairbanks, was to teach a survey course at the University of Alaska-Fairbanks; and then I was hired by a survey company to do civil engineering and I'm not sure how long I was there; I think it was just one summer season. And then I was hired by Fairbanks Gold Mining in 1991.

Q. What did you do for Fairbanks Gold Mining?

A. Environmental engineering for their baseline studies for the development of a hard-rock gold mine. I did ground water

sampling; I did surface water flow measurements; I did air sampling, monitoring air measurement equipment, that type of thing.

Q. And how long were you at Fairbanks Gold Mining?

A. Three years.

Q. And so that brings us to 1993?

A. '94.

Q. Okay. And in 1994 what did you do?

A. Moved back to Hayward and -- I have to backtrack.

Q. Sure.

A. In 1990, as I was leaving for Fairbanks, I was asked to be a partner with Dale Darwin ^ sp, the owner of True North Engineering. I was asked to become a partner in the firm he was starting up and I did become a 10-percent owner in his company.

Q. Two North Engineering?

A. True North Engineering

Q. I'm sorry. Is that True?

A. True, T-r-u-e. And, while I was in Fairbanks, I did design work, highway design work, and culvert replacement work for Dale long distance and I would send work back to Wisconsin. It was all Wisconsin-based work. And, when I came back then in 1994, I went to work full time for Dale.

Q. Were you still a part-time owner of True North?

A. Yes.

Q. Let me go back a second -- and how long were you with True

North?

A. I began in 1990.

Q. Did long distance work for four years?

A. Yes.

Q. And then in '94 went back to Hayward?

A. Yes.

Q. And how long were you at True North?

A. I was there until March of 1996.

Q. And, in March of 1996, what did you do?

A. I started my own company -- I had already incorporated end of '95, in October of '95, basically setting up my own company.

Q. What's the name of that company?

A. North Wisconsin-Based Engineers, Incorporated.

Q. And that's the company you're with now?

A. Yes.

Q. Let me go back and ask you some follow-up questions. What was your reason for leaving DOT to go back to Fairbanks?

A. My husband wanted to get his wildlife management degree.

Q. And, when you were in Fairbanks, you said you taught a survey course?

A. For one semester.

Q. What was the --

A. Elementary surveying.

Q. Land surveying?

A. Yes. I was asked by the instructor who was retiring.

Q. Then you said you were hired by a survey company?

A. Kallen & Associates.

THE REPORTER: Callan, C --

THE WITNESS: K-a-l-l-e-n & Associates.

BY MR. FURLOW:

Q. What work did you do for Kallen & Associates?

A. I -- they were hoping to get more engineering work; but I, basically, assisted with surveys and AutoCad ^ sp mapping.

Q. Are you a licensed surveyor?

A. No.

Q. And how do those licenses work? Are they state-by-state?

A. Yes.

Q. So you're not licensed -- weren't licensed in Alaska?

A. No, and --

Q. You're not licensed in Wisconsin?

A. Correct.

Q. When you worked at the -- with the Fairbanks Gold Mining, you said you took surface water flows?

A. Hm-hm.

Q. What were the circumstances of that?

A. There were streams in the -- on the property where they were trying to determine base flows and peak flows for those streams, and we had data collectors -- periodically, I would work basically as a -- a technician at the time collecting the data, downloading it and bringing it into the office, and the

transducers would lay on the bottom of the stream and it would feed information to the data collectors based on the head water above the stream and it would be correlated with stream flow measurements at certain stream levels so they would be able over time to determine the flow at that stream.

Q. So you were essentially just collecting the data?

A. Hm-hm.

Q. And someone else was doing the analysis?

A. Yes.

Q. And with respect to the air sampling, were you just collecting the data?

A. Yes.

Q. Someone else was doing the analysis?

A. Yes.

Q. And, again, same with sampling, you would take the samples for someone else to do the analysis?

A. Yes.

Q. Now, what work were you doing at True North Engineering while you were in Alaska, just surveying work?

A. Design.

Q. Design?

A. AutoCad ^ sp mapping. AutoCAD ^ sp plan preparation for highway reconstruction projects and culvert replacement projects.

Q. Is that -- and what is an AutoCAD ^ sp? Is that just drawing?

A. Drafting.

Q. Drafting. And, when you went back to True North in 1994, what work were you doing then?

A. Same.

Q. The draft?

A. Highway design and bridge approach design and what's called PS&E, plans specifications and cost estimates. It's -- it's putting all the documents together in a package so that the project can be let to bid.

Q. And in -- why did you decide to start -- I'm just going to call it NWBE. Is that fair?

A. Yes, that's what we refer to it as.

Q. Okay. And what led you to start NWBE?

A. My partner, Dale Darwin ^ sp, was pressing me to become a 51-percent owner in the company; and he wanted me to purchase 41-percent ownership from him; and, although we had a good working relationship, we were starting to get nervous about putting that amount of money and we -- we at that point would become full partner -- I referred to it as we, my husband and I, even though it was solely I who had the partnership and would be doing the purchasing, but we're a team so I refer to us as we. And I and my husband did not feel comfortable with being a partner with Dale Darwin ^ sp. We -- like I said, we had a good

working relationship and I had no problem working with him, but I had some doubts about his ethical character and made the decision

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not to purchase a full 51 percent.

Q. And what were your doubts about his ethical character?

A. Ahm, well, he was going through a divorce and he was dating a technician and he wasn't fully forthright with me with things, you know, of -- having to do with his personal life that weren't necessarily my business but would become my business if I was going to be his partner, I thought it might -- I -- I wanted to be above reproach in my partnership, and that was -- that was all.

Q. Fair enough. And how many people were at True North? Is there a large staff there? Describe for me the size.

A. It swelled in the summer months because they would hire people for construction management and so I wouldn't be able to tell you exactly -- I would say, year round, six people; and then it would swell up to twenty to thirty in the summer months.

Q. And do I understand that True North is essentially a -- it's a highway, road type of engineering firm?

A. Yes.

Q. And, when you started NWBE in 1996, where was that office located?

A. In the Brooks Building, 10597 North Kansas Avenue, where I am presently.

Q. And what --

A. Hayward.

Q. From 1996 to the present, can you describe for me the number

of staff or employees that are at NWBE?

A. Okay. I startd with myself and my husband. He would help me, and then I hired Christina Martin in November of '96. And she worked for me on -- seasonally, she would -- she was laid off and then rehired that summer and she continued and then I hired Pat Lancour in the summer of 1997 as well as William Zimmer in spring or summer of 1997 and following summer I hired Patrick Lancour.

Q. Hired him back?

A. No, hired him -- No, I'm sorry. You're right. Hired him back. It was Chris Hale, Christopher Hale, that I hired in 1998. Bill Zimmer and Chris Hale are engineers. When I hired them, they did not have their licenses yet. Chris does not have a PE license. Chris and Patrick are working for me still. Christina Martin, the one I hired in November of '96, she got a job with the State. She lives in Spooner and she got a job with the Wisconsin DOT and working out of their Spooner office and so she's working closer to home and so she left to join forces with the State as did Bill Zimmer. He's working for the Wisconsin DOT out of Spooner. And I hired Pete Dieckman in August of 2003.

Q. And Dieckman is D-e-i-k --

A. Actually it's D-i-e --

Q. Thank you?

A. -- c-k-m-a-n. And I -- I also hired Jeffrey Stellrecht.
S-t-e-l-l-r-e-c-h-t.

Q. When did you hire Mr. Dieckeman?

A. In August of 2003.

Q. Right.

A. I hired Mr. Stellrecht in I believe it was July of 2000.

And my -- my sons and my daughters work for me part time in the summer months, filling in on survey crews; and I've had other part-time help; nephews of Bill Zimmer's would work for me and --

Q. And presently who are the full-time employees of NWBE?

A. Patrick Lancour, Chris Hale, H-a-l-e, Jeff Stellrecht, Pete Dieckman and myself. We are year-round, full time.

Q. And is there a general nature of the engineering services that NWBE provides?

A. Yes, we provide construction management, mainly on Wisconsin DOT work, highways and bridges and we do design work, highway and bridge approach design work.

Q. And, prior to the 1998, what kind of work did NWBE do with respect to dams?

A. None.

Q. And prior to '98, what kind of work did NWBE do with respect to hydrology and hydraulics?

A. With hydrology with respect to sizing of culverts at highway stream crossings and hydrology for bridge crossings, but did not do the bridge design work and did not do the hydraulics for the bridge sizing.

Q. Now, you first -- when was the first time you started to

work with Sawyer County on any project?

A. 1998.

Q. And was that the project -- what project was that?

A. The Billy Boy Dam failure analysis.

Q. And was that work -- and describe for me what your understanding of that work was to be?

A. It was to examine the structure, make recommendations on structural improvements to the dam itself, complete a dam-failure analysis.

Q. Did it include flood-plain work?

A. No. Not -- in relation to -- if any work was done, it would be in relationship to developing the upstream hydrology of the -- the upstream hy -- the -- the area upstream of the Billy Boy Dam structure.

Q. And how was it that you got the work with Sawyer County in 1998?

A. I submitted a proposal, responded to their request for proposals for doing that work.

Q. So Sawyer County put out an RFP?

A. Yes.

Q. And you submitted one?

A. Yes. A proposal.

Q. And was that response to the -- RFP submitted in response to our subpoena?

A. Could you repeat that?

Q. Sure can. I'm sorry. Was your response to the Sawyer County RFP submitted to us in response to our subpoena?

A. I believe so.

Q. And what led you to believe in 1998 that NWBE had the qualifications to perform work on the dam and dam-failure analysis?

A. I felt that I had hired Bill and he had bridge experience and bridge hydrology experience and, in my estimation at the time, I felt that a bridge -- the computations that go into sizing and into routing a flood over a dam isn't much different than the hydraulic engineering that goes into structure sizing for a bridge.

Q. For a bridge or a culvert?

A. For a bridge or a culvert, either one.

Q. And had you done sizing for bridges?

A. No.

Q. And you say, because of Bill's experience. Is that Bill Zimmer, is it Zimmerman or Zimmer?

A. Zimmer.

Q. And he was with you in 1998?

A. Yes.

Q. And he's no longer with you?

A. Correct.

Q. And he left when?

A. In 2001, I believe.

Q. So was there anyone -- other than yourself and Mr. Zimmer, were there other people other than yourself that you had planned to work on this project?

A. No.

Q. And, since Mr. Zimmer has left, have you replaced his expertise on the project?

A. With Dan Carthel, that's why I hired Dan.

Q. Now, do you know who the other bidders were in the RFP process?

A. No.

Q. And was one of your jobs in the dam-failure analysis to evaluate the structural integrity of the dam?

A. Yes.

Q. Had you had experience in that before?

A. No. Only education.

Q. What do you mean education?

A. Ahm, in my -- undergraduate degree education, slope stability and structures course work and that type of thing.

Q. But you'd never done an actual project where you evaluated the structural integrity of a dam?

A. No.

Q. Now, was there a contract you signed with Sawyer County in 1998 to do the work?

A. No.

Q. And do you know what you were to be paid by Sawyer County

for your services?

A. Yes.

Q. And how much was that?

A. I mean I -- I know there's an amount. I believe it was, ahm, four thousand something; I'm not sure of the exact amount.

Q. And was that ever changed?

A. No.

Q. Now, let me hand you -- let's go ahead and mark this one.

(Document marked for identification as Exhibit No. 112.)

(Recess.)

BY MR. FURLLOW:

Q. Is it Ms. Or Mrs.?

A. Mrs.

Q. Mrs. Okay. Mrs. Harrington, after the 19 -- well, let me back up?

A. Or you could call me Heather.

Q. Formalities seem to work better in depositions, someone explained to me a long time ago.

But, Mrs. Harrington, let's go back for a minute to Bill Zimmer.

He's the person that you had hired at NWBE?

A. Yes.

Q. Was he a professional engineer?

A. No.

Q. And what experience did Mr. Zimmer have in hydrology?

A. I would not be able to detail that experience at this time

because I -- I do recall discussing with him the list of projects he'd been involved with, but I couldn't tell you specifically what they are, but they included bridges. He worked for Short Elliott Hendrickson out of Chippewa Falls and had worked for them for seven years.

Q. What experience did Mr. Zimmer have in dam-break work?

A. None.

Q. And what experience did Mr. Zimmer have in the structural integrity of dams?

A. He had experience in the structural integrity of bridges; and I don't believe he had worked on a dam, specifically.

Q. Now, did you complete the work that you were hired to completed in 1998 for \$4,000?

A. No.

Q. Is that work completed as of today?

A. No.

Q. I'm going to hand you what we've marked as Exhibit No. 112; and, before I ask you to look at that -- well, strike that.

Exhibit No. 112 is a set of minutes I received from Sawyer County, and there's a reference toward the bottom to approve of a proposal of Northern Wisconsin-Based Engineers to compile data and provide flood evaluations for lakes within Couderay Watershed for a fee of 7700. Do you see that?

A. Yes.

Q. Is that different than the project you just described?

A. Yes.

Q. How is it different?

A. It is going one step further. The regional flood elevations for the lakes contained in the watershed upstream of the Billy Boy Dam were to be determined by this agreement. We felt that since we were using HEC-1 to develop flows upstream and route the flows through the lakes and the streams upstream of the Billy Boy that we could take that information and determine the regional flood elevations for a minimal additional amount of work.

Q. I'd like to understand what you just said. So, if I'm hearing right, you were hired in '98 for four thousand dollars or so to do a failure analysis for the Billy Boy Dam?

A. Yes.

Q. And, in 2000, NWBE was hired to do an add-on project for an additional 7700 dollars?

A. Yes.

Q. Now, with respect to -- again the Billy Boy Dam project, what would -- first of all, where is that dam?

A. It's in -- it's along -- you can reach it along highway 70-27 near the Village of Couderay. It's just west of Couderay.

Q. And is there a reason why the original project on the Billy Boy Dam failure is not completed?

A. I -- ahm -- determined that it was beyond my expertise to develop the inflow hydrology into the structure because of the size of the watershed and the number of lakes and the -- and this

was after probably a year and a half of work. I had purchased the DAMBRK software, and we had spent a lot of time cross sectioning the Couderay River downstream of the Billy Boy Dam and inputting that data into the dam break model; but, when it came to the inflow hydrograph into the dam, we were kind of stuck because that was going to be no easy task to develop that inflow hydrograph; and that's when I began discussions with Dan. I knew that he had experience with dams and was qualified to develop the inflow hydrograph using HEC-1 or whatever means to model the watershed and so at that -- at the time I realized that my staff and I would not be able to adequately complete the study, I hired Dan.

Q. When was that?

A. In July of 2000

Q. Now -- and, when you say the -- you said we did this and we did that with respect to the cross sectioning, is that you and Mr. Zimmer?

A. And my other staff: Pat Lancour, Chris Hale, yes.

Q. So in July of 2000, you hired Mr. Carthel?

A. Yes.

Q. And is Mr. Carthel now working on the first part of the project?

A. Yes.

Q. And when do you expect that first part of the project to be completed?

A. I don't know.

Q. Has -- Sawyer -- I'm sorry. Go ahead.

A. It has been -- has always been my hope to complete the project, and I've told Dan that I will offer all the support in terms of surveys that he needs to complete that project.

Q. And, when we're talking about the project, we're talking about the first project?

A. The first project.

Q. Which is the failure analysis of the Billy Boy Dam?

A. Correct.

Q. And has Sawyer County paid you the \$4,000 to do that work?

A. I believe I had invoiced fully within maybe a few dollars or a few hundred dollars. I may have invoiced fully because I've invoiced based on my time involved in the project.

Q. And do you charge them an hourly rate?

A. Yes.

Q. And what's your hourly rate?

A. It varies based on my salary so I'm not sure what it was back then.

Q. And has Sawyer County paid your invoices?

A. Yes.

Q. So, now, just so I've got the time frame right, six years after the first project for \$4,000, that one's still not completed?

A. Correct.

Q. And Sawyer County's paid you for the work?

A. Yes.

Q. And is there an anticipated time frame on when that first part of the project will be completed?

A. I can't guess because -- It's been delayed beyond my comprehension, and I -- I can't -- I -- There is no set due date, and the volume of work required to complete the study has made it too difficult to set a completion time.

Q. And, again, referring again back to the first part of the project, are there reasons why there has been delay?

A. Ahm, just the difficulty, complexity and time-consuming nature of developing the model for producing the inflow, ah, an accurate as best as you know we can determine, an inflow hydrograph to review the dam.

Q. And have you had an occasion to speak with mem -- let me back up. Who is your contact at Sawyer County with respect to the first part of the project?

A. Dale Olson.

Q. And have you spoken with Mr. Olson about the time frame for the project?

A. Only in -- with respect to -- they periodically would ask for updates on the progress.

Q. And have you provided those updates?

A. Yes.

Q. And has the County provided any deadline for you to finish

the first part of the project?

A. No.

Q. And is there concern in this, again, first part of the project about the structural integrity of the Billy Boy Dam?

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

MR. FURLOW: Well, let me ask a different question.

BY MR. FURLOW:

Q. Is there a reason you would do a dam-failure analysis?

A. Yes.

Q. Does it have to do with the structural integrity of the dam?

A. Yes.

Q. And is one of the things that's being studied -- and, again, this first part of the project -- the structural integrity of the Billy Boy Dam?

A. Yes.

Q. And has there been any concern by the County that there ought to be more of a deadline for that kind of work?

A. I don't know if there has or has not. I would assume so because that's why they hired us. Ahm, we in -- initially, looking at the dam structure, Dale Olson, Dan Carthel and myself on site, just from visually looking at the structure -- and this wasn't my opinion, but it was -- I -- the consensus was that it's -- there's no immediate danger or that the dam itself is not -- doesn't appear to be failing in any way, structurally.

Q. But that wasn't your opinion?

A. No.

Q. What was your opinion?

A. I agreed with that. Just based on my -- my visual observation of the dam itself.

Q. Oh, I thought you said it wasn't?

A. Well, it was a consensus of our opinion, yes. It was not -- it wasn't a -- We were on site. We inspected the site. We looked it over thoroughly with an eye to determine if there's seepage, you know, sink holes, failing -- structure parts of the dam; and I'm just saying together it wasn't my individual opinion that they were asking; I mean we were all looking at it together. Dale having experience with dams in his own County was looking at -- at it as were we, you know -- just looking at the general condition of the dam.

Q. I guess -- I'm sorry --

A. Go ahead.

Q. I guess I heard you saying -- correct me if I'm wrong -- I understand there was a consensus, but did you have a separate view that -- as to the integrity of the dam?

A. No.

Q. And when was that review?

A. I don't recall.

Q. Do you recall a year?

A. No, I can't. I would just not be --

Q. Was it already on the project or after the second part of

the project started?

A. It was -- it was probably in 2000 so it wasn't, although, I'm sure -- I believe I met with Bill Zimmer and Dale Olson and myself on the site soon after we were awarded the project because we would do a site visit, but I would not be able to tell you when that occurred either.

Q. Would that have been in 1998 then about?

A. I would assume so, but I can't -- I would think it would have been in the fall of '98.

Q. Now, going back to the second part of the project, that was related to the first part of the project in your mind?

A. Yes.

Q. And did Sawyer put out bids for the second part of the project?

A. No.

Q. And did you make a proposal to do the second part of the project?

A. Yes, verbally.

Q. And who did you make that proposal to?

A. Bill Christman, the Sawyer County Zoning Administrator.

Q. And was that sometime in 2000?

A. Yes.

Q. And, after your experience with the dam-failure analysis, what led you to believe that you could do the second part of the project?

A. Because I believed that we would complete the first part of the project. I -- there was no reason for me to believe that -- from hiring Dan and getting his assistance that we would not complete the first part of the project.

Q. So, in 2000, before the second part of the project started, was there a time frame that you thought you would complete the first part of the project?

A. Yes.

Q. When was that?

A. I -- I felt that we would complete it by the end of 2000.

Q. And what happened between the time you got the second part of the project that made it difficult to complete the first part of the project?

A. I -- think that, ahm, although Dan agreed to complete the project in a certain time frame, that he was finding the same thing I found, that it is a large, complex watershed and it was going to take considerable more field work than he had anticipated.

Q. And had you hired Mr. Carthel with respect to the first part of the project?

A. I had con -- consulted with him on the first part of the project, yes.

Q. And when did you start consulting with Mr. Carthel on the first part of the project?

A. I don't recall. But I do recall receiving invoices from him

for Billy Boy Dam failure analysis, which would be the first project.

Q. And did you pay Mr. Carthel for his invoices on the Billy Boy Dam failure analysis?

A. Yes.

Q. And how much has Mr. Carthel invoiced you for the Bill Boy Dam failure analysis?

A. I don't recall.

Q. And that's the first part of the project as I recall; right?

A. Yes.

Q. Now, the second part of the project -- and I'm referring back to Exhibit 112. Have you seen these minutes by the way?

A. I think I may have had -- I think I have a copy of this.

Q. And do you recall a Sawyer County Land and Water Conservation Committee meeting where there was a discussion about hiring NWBE to do this second part of the project?

A. I recall there being a meeting. I don't recall being at the meeting. But I -- I -- I'm -- I know I was informed that they agreed to the -- the 7700 dollar.

Q. And the 7700 dollars is what Sawyer County agreed to pay you solely for the second part of the project?

A. Correct.

Q. That's in addition to the 4,000 they agreed to before?

A. Yes.

Q. And have you been paid by Sawyer County 7700 dollars?

A. Yes.

Q. Are there more -- is there more invoicing you plan to do to Sawyer County or is that a fixed fee?

A. That's a fixed fee.

Q. And, now, did you have a contract with Mr. Carthel?

A. We had a letter of agreement. It wasn't a contract.

Q. Is that a different thing in your mind?

A. Not really.

Q. And how long had Mr. Carthel been working with you on the Billy Boy Dam failure analysis before you were hired in 2000 by the Sawyer County for the second part?

A. I don't recall.

Q. And how was it that you decided to go to Mr. Carthel with respect to the second part of the project?

A. Because he was using HEC-1 to model the upstream hydrology and I knew that -- because of conversations I had with Frank Dallam, I -- I kind of relied on Frank Dallam at the -- DNR, when I had technical questions, I would -- he would go over things with me. He -- he is the one who -- I had -- I was hired by Sawyer County to work on -- do work on the Price Dam repair project in Winter for the Lake Winter Dam, which is called the Price Dam; and Frank Dallam -- I was asked by a Mrs. Hanold, H-a-n-o-l-d, to come up with the regional flood elevation for Lake Winter. She's a property owner on Lake Winter and Level 1 had completed the dam-failure analysis and Frank said that, if --

ahm, you get the HEC-1 input data from Level 1.

Q. For the Price Dam?

A. For the Price Dam.

Q. For the Price Dam, excuse me.

A. You can, in the -- you can run the model changing some of the input parameters and just -- and you can determine the regional flood elevation, and that's what I did with coaching and training from Frank Dallam.

Q. And that was for Lake Winter?

A. For Lake Winter. And so I did come up with the regional flood elevation for Lake Winter on my own with Frank's help and he accepted that elevation for Lake Winter and so I knew, having gone through that process, that it was a fairly simple process, you know, it took me, I -- I billed for my time and I billed somewhere around 500, 550(\$). I billed Mrs. Hanold for doing that study and coming up with a RFE for Lake Winter and so I was somewhat familiar with what had to be done in excess of the -- the dam failure study which, you know, which was being completed by Dan. I knew that it wasn't -- didn't take that much additional work to have the program give us the regional flood elevations for the lakes that were in the watershed.

Q. And just back on a second for the first project. Have you ever asked Dan: Dan, what's the hold up?

A. Yes.

Q. What does he explain to you?

A. He always -- he has a big sigh and he, ah, sometimes has other work come up and like -- such as the Lake Loretta Dam failure analysis he did for Sawyer County that was a -- more of an emergency because the dam breached and that that sidetracked him and he completed that study and --

Q. When was that done?

A. It was after I hired him to help me.

Q. After 2000?

A. Yes. After -- right.

Q. Is there any other reason Dan's given you for what the hold up is to get this first piece of the project done?

A. Complexity of the job.

Q. Had Mr. Carthel ever done dam failure analysis before you hired him?

A. It was -- it is my understanding that he had, yes.

Q. Do you know any specifics of where he's done that?

A. I don't know specific projects. He worked for Cooper Engineering Company, and I -- it was my understanding in discussions with him, I was confident that he had done this type of work before.

Q. And, sitting here today, do you have that same confidence or has that been changed a little bit?

A. I am confident that he can do a good job when he completes the project.

Q. And we have no time frame for that?

A. I am not confident that he can complete a job in a timely manner.

(Documents marked for identification as Exhibit Nos. 113 and 114.)

BY MR. FURLOW:

Q. I'm going to hand you, Mrs. Harrington, Exhibits 113 and 114. As to 113, are those your handwritten notes?

A. Yes.

Q. And these are from a meeting you had with Dan Carthel?

A. Yes.

Q. And I can't quite make the date out at the top. Is that March 7, 2000?

A. Hm, that's what I would guess.

Q. Okay. And just by way of reference, if you look at Exhibit 114, the next one, is that your agreement with Mr. Carthel for his work?

A. Yes.

Q. And it appears to me -- and tell me, please, if I'm incorrect -- that your notes from your meeting with Mr. Carthel, which are Exhibit 113, came before your signed letter with Mr. Carthel --

A. Hm-hm.

Q. -- that's Exhibit 114; isn't that correct?

A. Right.

Q. Let's go to Exhibit 113 a moment. Do you recall making

these notes?

A. Yes.

Q. And was this the first meeting you had with Mr. Carthel about doing work with Sawyer County?

A. I believe so.

Q. And what was the purpose of your meeting?

A. To -- ahm, get his assistance in completing the Billy Boy Dam study.

Q. So 113 were notes at a meeting that you had with Mr. Carthel when you needed his help for the first part of the project?

A. Correct.

Q. And did anyone attend the meeting except you and Mr. Carthel?

A. No.

Q. And I'd like to just review a couple of these, if you could. If you go down, it says Squaw Bay Ridge?

A. Yes.

Q. And then it says: Try to ignore. Do you see that?

A. Yes.

Q. And what does that refer to?

A. That -- that refers to the Round Lake Narrows, as it's called, Bridge on Highway B crossing of the channel between Big Round and Little Round.

Q. Is that where the Carlson Road Dam is?

A. No.

Q. So it's a different narrows?

A. Correct.

Q. And why did you say: Try to ignore the Squaw Bay bridge?

A. Well, try to treat Little Round and Big Round as one body of water. If you possible -- you know, and it wouldn't be possible if, you know, you get a -- a rainfall event that lands on -- that rains on Big Round and then it -- it tries, of course it's going downstream flowing into Little Round and there would be a difference in elevation and then you would have to route it through that structure.

Q. And then it says, otherwise, use HEC-RAS or WidPro?

A. Yes. To route it through that structure.

Q. And what did you do, ultimately?

A. I don't know. Because Dan was -- is doing that part of the study. At that point, I wasn't sure if I would hire him directly to do it or if he would be advising me on what to do.

Q. What did you decide to do, ultimately?

A. Hire Dan to do it.

Q. To com --

A. Complete the project.

Q. And you would no longer work on the project?

A. No, I would work on the project in the way of survey support for Dan.

Q. Now, if you go down further, it says 1941, with an arrow, Lake Association, arrow, how high Round Lake?

A. Yeah.

Q. What's that in reference to?

A. I think we were discussing what we were -- what we needed to find out was high-water events and that we should try to find people who were around during that time and perhaps we can find those people through the lake association, but we wanted to get some reference on the lake itself as to where the water was during a high-water event.

Q. And did you -- yourself become involved in contacting lake residents to find out the information about high water?

A. Yes, I did try to ask around. I live -- myself, I live on Round Lake and so I -- just went through my mind who the long-time property owners were.

Q. And who were -- go ahead,?

A. And I did ask around some. But kind of dead ended a lot. Because not many people were around back then. A lot of seasonal people who came up relocated there later than that date so I was unsuccessful in finding someone who was on the lake, lived on the lake or witnessed the high-water event in 1941.

Q. The high-water event in 1941?

A. The flood event or whatever, yeah.

Q. What was the flood event in 1941?

A. I believe there were flood -- there was flooding in the area, and I am -- and I jotted down 1941. We were aware of some -- of flood events around that time frame.

Q. Was it a flood event in '41, or was the lake low?

A. I thought it was flooding. I think it was low prior to that time.

Q. Now, did you find anybody around the lake that you spoke to about this event?

A. No.

Q. Now, how long have you lived on the Lake?

A. Since, ahm, 1987 and then, of course, we were in Alaska for four years, so '90 to '94.

Q. If you go down further on Exhibit 113, there's a reference to County E may be controlling factor; do you see that?

A. Yes.

Q. And I may have misconstrued the note; but, if you could, explain to me what the may be controlling factor reference is.

A. I am not -- it looks like -- I jotted down County E, looks like there's a -- where -- I'm just guessing, but it looks like where Squaw Lake Creek crosses under E, but I can't at this time recall that there's a crossing under E of Squaw Creek. So I -- I'm not sure I can shed any light on that.

Q. Go to the next page of Exhibit 113. If you go down about almost halfway, it says consider lake area impervious; do you see that?

A. Yes.

Q. And what does that refer to?

A. Any lake, you know, if you have rainfall on the lake, it's

not -- it's like a -- it's -- I don't think I was referring to a specific lake; but, if a rainfall falls on the lake, it's basically an impervious surface or it can be treated as such because there's nowhere for it to go, the water. It just basically brings the lake level up.

Q. And, if you go further down, it says: U-D lag time sensitive. Do you see that?

A. Hm-hm.

Q. What does that refer to?

A. It's a parameter in the HEC-1 input that must define lag time for -- from the time of the storm to when peak flow occurs.

Q. And that says sensitive with an exclamation point?

A. Yeah.

Q. I was just trying to figure out what that was meaning.

A. Probably that that's an important parameter to define accurately.

Q. Now, are these notes that you were making from what Mr. Carthel was telling you?

A. Yes.

Q. So these aren't notes of what you were telling Mr. Carthel?

A. No.

Q. Because Mr. Carthel had the experience with HEC-1 and HEC-2 and you did not?

A. Correct.

Q. Now, if you go through Exhibit 114, is this the agreement

you had with Mr. Carthel?

A. Yes.

Q. And -- and there's a budget that's established in Exhibit 114 of \$11,312.50?

A. Yes.

Q. And what does this -- I'm just going to call it a contract. Are you comfortable with that?

A. Hm-hm.

Q. What does the contract, Exhibit 114, relate to? Is this just part two of the project or part one and part two?

A. Part one and part two.

Q. And I'm just trying to understand the economics. He's giving you a budget of 11,312; and, from what I can tell, the County's -- you contracted with the County for 11,700; is that right?

A. Right.

Q. Is this just a strict pass through to Mr. Carthel or how does that work?

A. Yeah, basically. That was my intent to -- to -- I didn't -- I told him what I was hired, the amount I was hired for to complete the Billy Boy Dam failure analysis and also what the County was willing to pay me for the regional flood elevations and, since he was going to produce both of those projects for me, I was going to give him that full amount just by the fact that I had already spent a lot of time on those -- on the first part.

Q. So you'd put almost two years of work into the first part and you were just going to hand that money to Carthel?

A. My -- my goal was to get it done. I wasn't going to be able to hire him for cheap. I mean -- but I did, but I didn't feel like I could pay him more than the County paid me to do the same work.

Q. And have you gotten paid by Sawyer County the 7700 for the second part of the project?

A. Yes. I didn't -- I did not intend to invoice them until I -- I was intending to invoice them as I delivered the RFE's in the amount of about 550 per lake; but I believe that at the end of the year 2000 -- and I'm not sure if it was 2000 or 2001 -- but we were near the end of a fiscal year, and Jan Eck from the Sawyer County Land and Water Conservation Department approached me or called me and told me that, ahm, I should invoice for the full amount because that's what they had budgeted for that year and -- and I argued with her because I said I hadn't completed the work, and she said that it would help out with the paperwork. They had it budgeted for this year; it would be easier for them to just pay it in that year.

Q. So Sawyer County had expected the work to be done within that year and so budgeted in that year?

A. Yes.

Q. And that year was 2000 -- 2001, excuse me?

A. It may have been 2000, I'm not sure. It may have been 2001.

I can't remember when they paid me.

Q. So, as it stands now, Sawyer County's paid you \$11,700?

A. Yes.

Q. And you agreed to pay Mr. Carthel a budget of \$11,312?

A. Yes.

Q. And no work is done or the project's not complete. How's that?

A. There is some work done, but the projects are not complete.

Q. If you were to put it on a percentage scale, what percentage of the work is done, considering both projects together?

A. Ahm, it's hard to say because when the dam-failure analysis is completed, all of the work that went into completing that project, you know, it will be done at that time. But there are no intermediate progress reports. You know, the final report is it. So I would have to say, as far as the work completed towards that dam-failure analysis, it would be a guess. I'm thinking 75 percent. And, on the RFE's, three out of the 14 lakes are completed and approved by DNR.

Q. So there are eleven lakes --

A. Three out of the fourteen.

Q. Eleven lakes to go?

A. Eleven lakes to go.

Q. And when is Round Lake going to be done?

A. That is what -- we are -- that will be the next one submitted, and it will include Round Lake, Little Round and

Osprey Lake, which is formerly Squaw Lake. And I had hoped it would be completed by now, but it's not.

Q. And have you talked to Mr. Carthel about when the regional flood-plain elevations will be done for the Round Lake area?

A. Not a specific date.

Q. Have you talked with him about a general date?

A. I do that often, and those dates come and go.

Q. How often have you asked Mr. Carthel about when he's going to finish with the RFE for the Round Lake area?

A. Well, I believe that I've been in conversations with him probably four times since the end of April, maybe four or five, I'm not sure of how many exactly.

Q. Since April 2004?

A. Yes.

Q. And what has he told you?

A. He describes to me what he is currently working on.

Q. Other projects?

A. No, on this -- this project and, actually, we worked together on June 30th, we worked taking some survey data at the channel between Little Round Lake and Osprey Lake, trying to define where this -- the location of the stream and determine if there's, ah, any hydraulic drop between, you know, if it's just a -- basically a straight, flat slope between the two or if there are any debris dams in that area and also the area upstream of Double N, basically, just some field work.

Q. When was the field work started for the Little Round Lake RFE?

A. In -- I believe in 2000.

Q. And you're still wading in streams four years later?

A. Yes.

Q. And what reasons does Mr. Carthel give you for the length of time it's taken with respect to Round Lake?

A. Because of the scrutiny, he wants to be certain that the report he delivers is fully defensible.

Q. In other words, Mr. Carthel's concerned that people will look very carefully at his report?

A. Yes.

Q. And what deadline has he given you for turning that report in?

MR. WRIGHT: I'm sorry. Which report are we referring to?

MR. FURLOW: Round Lake RFE. Thank you, Joe.

THE WITNESS: He has not given me that deadline.

BY MR. FURLOW:

Q. Have you asked him for a deadline?

A. Well, let me take that back. I asked him for a deadline in March of 2004; and he did give us a deadline, I believe, that -- of April -- sometime in April for Little Round.

Q. And so April came, and you didn't get a report. Did you ask him where the report is?

A. Yes. And he -- I met him in -- I didn't -- this was before

I asked him for -- before he gave me that dead -- well, he gave me that dead -- the deadline for all of the lakes, and I went and met him so he could hand deliver to me the first of the lakes that he was going to deliver, which was Sissabagama, Little Sissabagama and Sand Lake, and so I felt I was getting progress because he was completing some of the lakes, and -- and we -- I turned in that report to the -- DNR.

Q. What about Round Lake? He gave you an April date, and that came and went with no report?

A. And there were some other lakes I believe listed before that and then I, ahm, ran into Kris Mayberry up at the post office, and I said he was working on other lakes and Kris asked that we put Round Lake at the top of the list, and so I relayed that to Dan and I said: I know you were going to focus on a couple of the other smaller lakes, but please just devote your time to Round Lake, to getting that RFE done.

Q. When did you tell him that?

A. I had returned from my trip to out east and I believe it was around, ahm, around mid-April.

Q. And did you give Mr. Carthel a deadline in mid-April about when that Round Lake RFE needs to be completed?

A. I did not give him a date.

Q. But he promised you that he would get that Round Lake RFE completed within a particular time frame?

A. He probably told me that he would get it done in such and

such time.

Q. And do you know what time that was?

A. No.

Q. And since mid-April of 2004, have you followed up with Mr. Carthel and asked him where the Round Lake RFE is?

A. Yes.

Q. How many times?

A. Ahm -- I believe a couple of times and I've gotten to get with him, like I said, so we could -- because he would bring up where he perhaps needed more data; and then we would -- we did get together, like I said, on June 30th and spent the whole day gathering data.

Q. And what's your understanding today as to when the Round Lake RFE will be completeed?

A. I don't know.

Q. Has the County asked for a completion date for the Round Lake RFE?

A. They did. And that -- ahm, that was his response was the dates given in -- in April. That was in response to the -- to the County through me.

Q. And, since April of 2004, has the County asked for dates of when this Round Lake RFE will be completed?

A. No.

Q. And do you know what the Round Lake RFE will be used for?

A. It will be to -- You asked what it will be used for?

Q. Correct.

A. To establish the regional flood elevation from which people who have built or are building on Round Lake can determine if their building site is above that elevation.

Q. And it's for people who are building or want to build to know what the RFE is so that they can build properly?

A. Ac -- yes. And to determine whether or not they will need flood insurance.

Q. Flood insurance costs extra if you're in the flood plain right?

A. Correct.

Q. So do you believe in your mind that there's some urgency to finish the project so property owners can know the situation with respect to building and flood insurance?

A. Yes.

Q. Are you frustrated that's not done?

A. Yes.

Q. And is that frustration leveled at Mr. Carthel?

A. I believe he knows my frustration but I believe we're working together as a team to get it done so I'm -- I feel like he's feeling the frustration as am I, but I feel like he is doing his best to continue with the project and get it done.

Q. And if you go back to Exhibit 114 a moment and I notice that there's a cost estimate that Mr. Carthel provided you?

A. Hm-hm.

Q. And where is that the dam-break analysis in that cost estimate?

A. Where are you referring?

Q. I'm sorry. The last page of Exhibit 114.

A. The last page. Okay.

Q. My mistake. And I just -- as you're looking, I'll just ask you where in the budget that Mr. Carthel has provided you on Exhibit 114 is the line item for the dam-break analysis?

A. I don't see it in there.

Q. Can you explain why it's not there?

A. We have the dam-break model and I believe I felt at the time that, once he got the inflow hydrograph and hydrology into the dam completed, that we could take that information and input it into our dam-break analysis and I would rely on his expertise to assist me in completing that. I didn't want to rely fully on him -- I had the -- the model and the software and I had the downstream sections completed and entered actually into this computer model and could take the information he supplied from the HEC-1 model inflow into the Billy Boy Dam and, with his help, complete that; but I did not feel that there was a lot of time needed to complete that work. The time involvement is getting the inflow hydrology completed into the dam.

Q. Which is what Mr. Carthel was doing?

A. Yes.

Q. And there's no line item for Mr. Carthel in terms of paying

him for the dam-break analysis?

A. No.

Q. And Mr. Carthel's comfortable with that?

A. Yes. And I -- Once we got this upstream hydrology completed, it would then be back to me to get -- to make sure we had everything we needed to complete the dam-failure analysis and complete the report and, in my mind, if I needed to hire -- to pay him or someone else to assist me in actually getting the report done and out, I would do that.

Q. And have you approached the County for additional funding to complete the project?

A. No.

Q. Do you have plans to do that?

A. No.

Q. I notice in Exhibit 114 there's a time period that was agreed upon for Mr. Carthel to do his project?

A. Yes.

Q. And there was an initial report due August 8, 2000. Was that provided?

A. No.

Q. Has that ever been provided?

A. No.

Q. And there's a date for NWBE to complete initial surveys since September 2000?

A. Right.

Q. And was that completed?

A. No. Well, we completed some surveys but we are -- surveys are still ongoing. So I can't say it's complete. The initial surveys you could say probably were complete.

Q. Were they completed by September 5, 2000?

A. We were doing national surveys in 2001. So it depends on what you call initial. We had done some issue surveys in 2000?

Q. I just wanted to know if you completed that line item by the date indicated.

A. I would say no.

Q. And there's a preliminary report that Carthel Engineering was going to submit to NWBE on October 17th, 2000; has that been submitted?

A. No.

Q. Has it ever been submitted?

A. No.

Q. And there was a date for final report to be submitted by NWBE to DNR by October 31, 2000 that had never been submitted?

A. It has in part. The three regional flood elevation studies for Sissabagama, Little Sissibagama and Sand Lake have been submitted, but that was in 2004.

Q. So, in 2004, three of the eleven lakes were submitted?

A. Yes.

Q. Has there been any further schedule set up between you and Mr. Carthel to complete the work?

A. No.

Q. And are you going to consider the dam failures to upstream dams when you determine the regional flood elevations?

A. Could you repeat that?

Q. Sure. Are you going to consider the dam failures or dam failure analysis of the upstream dams when you determine the regional flood elevations for the downstream ones?

A. I may.

Q. And have you spoken with Mr. Carthel about that?

A. No.

Q. And who did you plan to hire to do that work?

A. I don't have plans at this time.

Q. Have you spoken to the County about that work?

A. No.

Q. Have you made any proposal to anybody about doing that work?

A. No.

Q. Do you think that consideration would be important to -- a determination of the RFE for the downstream lakes?

A. It may be.

Q. Okay. Why?

A. It has to do with the flood flows into the Billy Boy Dam which is under consideration.

MR. WRIGHT: Let's take a couple minutes.

(Recess.)

BY MR. FURLOW:

Q. Mrs. Harrington, you mentioned you looked at the Billy Boy Dam, structurally, with Mr. Olson. Is that right?

A. (Indicating). Yes. Yes.

Q. That's that audible rule. Have you looked at the Carlson Road Dam structurally?

A. No.

Q. Have you ever gone out to look at the Carlson Road Dam structure itself?

A. I've been there many times and I've -- it is an old wooden structure so --

Q. You've been there as part of this project?

A. Yes.

Q. And, at the times you've gone to look at the Carlson Road Dam as part of this project, you've observed the condition of the dam itself?

A. Yes.

Q. And you've done that before when you looked at the condition of the Billy Boy Dam?

A. Yes.

Q. And what observations did you make when you looked at the Carlson Road Dam structure?

A. All I can say is there -- nothing, you know, it -- it would have just been a cursory view; and nothing stood out to me as being structurally unsafe or unsound; but, like I said, I did not examine it structurally and it would take more than a visual

examination to determine the structural integrity of that dam.

Q. And do you plan to examine the structural integrity of the Carlson Road Dam in your work to -- with the County right now?

A. I may.

Q. I mean that would be an important part of the regional flood elevation, wouldn't it?

A. Yes.

Q. And, when you went to look at the Carlson Road Dam, did you notice that the dam was leaning one way or another?

A. I can't say specifically how; but -- ahm, yes.

Q. You did observe the dam was leaning off to one side?

A. Well, yes, it's not perfect -- it's not vertical, the abutments aren't; but that can happen with a -- a timber structure.

Q. Now, at some point -- wait a minute. Strike that. Well, let me go here.

At some point, were you asked to look at some surveying work done by a fellow named Mr. Rieder?

A. Yes.

Q. And is he -- is he the Birchwood surveyor?

A. Yes.

Q. And can we agree that the Sawyer County Land and Conservation Committee asked you to examine Mr. Rieder's calculations and confirm whether they are accurate?

A. I can't confirm that, specifically. I was given a copy of

Mr. Rieder's calculations, and Dan looked them over and we were asked to do a bench loop between a couple of USGS benchmarks from the Round -- At the Narrows Bridge between Little Round and Round Lake, we did a benchmark elevation loop from the NN culverts, a benchmark near the NN culverts to that Narrows bridge. We looped there and back and we also looped from -- excuse me.

I'm -- I know we looped from the Double N culverts to the Carlson Road Dam and back because there's two -- there's a USGS benchmark at each site and then we looped from Carlson Road Dam benchmark to the Narrows bridge on B and back.

Q. And that was done in the summer of 2002?

A. I believe so.

Q. And your purpose in doing those loops was to decide whether Mr. Rieder's surveying was accurate?

A. I believe it was more to make sure that our datums were tied together and that there was no difference between base elevations -- the -- that the benchmarks at each of those bridges related directly and that there were -- that there was no movement, you know, on -- in those benchmarks.

Q. Let me make sure I understand. Did you understand that Mr. Rieder had looked at the several benchmarks to try to connect them?

A. Yes.

Q. And what did you understand Mr. Rieder had done?

A. Well, he -- I know he -- I can't -- I can't recall. I guess -- ahm, he had, ah, established elevations at the NN Culverts --

Q. And you --

A. -- and at Carlson Road. And those elevations were related, and I personally was not questioning the validity of those elevations but was asked by Dan to run the benchmark loops to help him in his study.

Q. And you did run those benchmark loops?

A. Hm-hm.

Q. And you reached a conclusion from running those benchmark loops?

A. Hm-hm.

Q. And you reported those conclusions back to the Sawyer County Land and Conservation Committee in August of 2002?

A. Yes.

Q. And your conclusion was -- is that Mr. Rieder's calculations were accurate?

A. I didn't make that conclusion, I don't think.

Q. Did your calculations agree with those of Mr. Rieder?

A. Yes, I believe so. There wasn't a discrepancy between his and mine.

Q. They matched up?

A. Yeah.

Q. And that was a conclusion that you were comfortable with

after your work?

A. Yes.

Q. And just mark --

MR. FURLOW: And just mark these in sequence.

(Documents marked for identification as Exhibit Nos. 115 through 117.)

BY MR. FURLOW:

Q. Mrs. Harrington, I'm handing you what we've marked as Exhibits 115, 116 and 117; and I just want to ask you to explain what each of these items represents. Let's move to 115. Do you have that before you?

A. Yes.

Q. Is that your handwriting?

A. That's Jacob Harrington's handwriting.

Q. Is that your husband?

A. That's my son.

Q. Your son. Pardon me. And what does 115 represent?

A. It's a loop, I believe, from -- I have to look at the benchmark elevation. Looks like it's a loop from the County NN benchmark, 11-27-E to a benchmark that we set in a nail in a tree at the boat landing at Osprey Lake.

Q. And what -- how do you designate that benchmark?

A. I don't on here. They didn't. But I determined that just from the elevation that he was trying to check into.

Q. And what was the purpose for Exhibit 115? What does it tell

us?

A. This is the first -- this is the setting, the benchmark, that is taking off of a known elevation and setting an elevation on the benchmark set at the Osprey Lake boat landing in a tree.

Q. And so the known benchmark is 1350.58?

A. Yes.

Q. And that's the benchmark at County NN?

A. Yes.

Q. And the benchmark at Osprey Lake boat landing that you set was 1352.94?

A. Correct.

Q. Now, was this work done as part of your work to examine Mr. Rieder's work?

A. No.

Q. It's completely separate?

A. Yes.

Q. And what was this work done for?

A. To determine the elevation difference between the water surface at Double N, the water surface at Osprey Lake and the water surface at Carlson Road Dam.

Q. And is there a water-surface elevation at the Carlson Road Dam on Exhibit 115?

A. No. This was just to establish the benchmark from which we would take that water-surface elevation reading.

Q. Now, if you go to Exhibit 116?

A. Yes.

Q. And what does 116 represent?

A. That's going from the Little Round Lake Dam, Carlson Road Dam, and going from there to the benchmark -- the benchmark at the Carlson Road Dam, looping from that to the benchmark near the Double N culverts.

Q. And, on Exhibit 116, where is the benchmark for the Carlson Road Dam?

A. It -- it would be -- he just did an assumed elevation of 100. It's not -- The true elevation is not listed.

Q. And he then looped the assumed elevation of 100 back to which benchmark?

A. The benchmark at the NN Culverts, the USGS benchmark.

Q. And where is that represented?

A. By BM 1127-E.

Q. And can you tell the difference in elevation between the Carlson Road dam and the County NN culverts based on Exhibit 116?

A. No.

Q. So what does 116 tell us?

A. Tells us the difference between the elevations of the benchmarks at each -- at each site.

Q. And what was the difference?

A. I can just calculate it here as being 2.64 feet.

Q. And that's the difference between 97.36 and 100?

A. Correct.

Q. And was this 116 used to review Mr. Rieder's calculations?

A. I can't concern -- I can't confirm that that was the specific reason we ran this bench loop.

My understanding and my recollection is that we did this to make sure that we could correlate the water-surface elevations. We were asked to determine the elevation differences of the water surfaces at each of these sites and we were uncertain that we could rely on the benchmarks correlating the elevation to be true elevations. We wanted to correlate them together, to make sure that we got true water surface differences at each of the sites; and I don't recall that that was in any way related to Dave Rieder's work.

Q. And, putting aside Mr. Rieder's work, have you completed your work correlating the benchmarks in the Round Lake area?

A. This is work that I did with Dan. I know he's done other work with benchmarks and I know that my employee Kris Hale, along with other employees, have gone out and done specific work running bench loops from two water surfaces in the entire upper Billy Boy watershed; but I -- I don't -- ahm, and we recorded those in a field book; and I believe you have all that information.

Q. So you completed with the work correlating the benchmarks?

A. We -- we may or may not be completed with the work. We completed the work between these three structures. Ahm, we may or may not need to do further work correlating benchmarks.

Q. And have you correlated the benchmarks at the Carlson Dam to say old Kaiser's ^ sp Resort?

A. No.

Q. What about the PSC datum on the Diversion Canal No. 4?

A. We haven't run a bench loop, no.

Q. Now, if you go to Exhibit 117?

A. Yes.

Q. And what is Exhibit 117?

A. That is -- this was done by request of the County to determine the water elevation difference between a snapshot in a moment in time, water elevation differences between Little Round Lake at the Carlson Road Dam, Osprey Lake and Osprey Creek at the Double N Culverts.

Q. At what point in time was this done?

A. June 28th of -- I believe it was 2002.

Q. And what did you conclude on the different elevations?

A. I have a conclusion at the bottom that NN Culverts were 2/10ths of a foot lower than the Osprey Lake elevation, which is 1.43 feet lower than Little Round Lake -- this may be corrected at a later date. I'm not sure. I -- from what I recall on there was an error in one of my calculations, and I subsequently corrected it and sent an update to -- to the County. I'm not sure if it was this or what it was.

Q. Do you recall what the error was, by chance?

A. There was a -- an addition or subtraction error.

Q. Now -- now, when you're doing -- are you involved at all in the -- RFE work today or is that all just Dan Cartel -- Carthel?

A. Carthel.

Q. Carthel or whatever?

A. Ah, I'm just assisting him in -- in any capacity that he thinks I could help him.

Q. And do you know how the effect of beaver dams is taken into account when dealing with flood plain calculations?

A. I -- I'm not sure how they are taken into effect -- into account.

Q. Do you know if they're taken into account at all?

A. I -- I know Dan has discussed the effect of beaver dams and I believe he tries to model things conservatively; and, if a beaver dam is in place, it may be taken out; but it may be rebuilt. So if it -- you're trying to model it such that you're taking -- trying to do a worst-case scenario, I guess, with all things in -- all factors accounted for and in place so -- and I'm not sure how a beaver dam would affect the model one way or the other, but I do know that -- ahm, it has been under consideration.

Q. But you don't know whether or not Mr. Carthel is assuming that beaver dams are in place or not?

A. No.

Q. And you don't know the right way to do that one way or the other?

A. No.

Q. Mr. Carthel has not told you?

A. No.

Q. And, with respect to the operation of dams and you do the RFE, is the analysis based on gates open or closed, if you know?

A. I believe it's gates closed, but I can't say definitively.

Q. Is that something Mr. Carthel is dealing with?

A. Yes.

Q. And do you understand that Sawyer County has made a petition to the DNR to examine the water level on Round Lake?

A. Yes.

Q. And what involvement did you have in the County discussion about making that petition?

A. I was present at a meeting where it was discussed, but I don't recall that anything they decided was based on my input.

Q. What input did you provide in the meeting where Sawyer County was discussing whether to petition for a review of the lake level?

A. I don't recall saying anything.

Q. And what was the nature of the discussion, if you could describe that, please?

A. I -- from what I recall, the County was seeking the assistance of the DNR in any way that they could clarify -- ahm, the whole situation or assist in that situation.

Q. And what do you recall about why the County wanted to seek

assistance from DNR?

A. Because they regulate dam safety.

Q. The DNR?

A. Yes.

Q. And what input did you provide on whether or not a petition ought to be made to -- DNR with respect to the lake level at Round Lake?

A. I don't believe I stated an opinion or had an input that I can recall.

Q. And do you recall that at the point there was already a lawsuit filed by Mr. Hausman?

A. Yes.

Q. And what was the discussion about that lawsuit in this petition?

A. Ahm, I'm not -- I can't recall more -- I just -- the -- in general, they wanted to -- since the order was, ahm -- the responsibility of the DNR to enforce, they wanted to pursue, I believe, whether or not the DNR --

I wish I could recall specifically and state it better, but whether the DNR has an opinion about where -- what the water level was set at and if they could clarify it and if -- and -- are they going to enforce it or do they have the authority or would they change the water level, you know, and -- or, you know, just get --

Q. And there was discussion about whether having the DNR look

at this, it would delay Mr. Hausman's lawsuit?

MR. WRIGHT: Object to the form.

THE WITNESS: I don't --

MR. WRIGHT: You can go ahead and answer.

MR. FURLOW: Answer it.

THE WITNESS: I don't recall.

BY MR. FURLOW:

Q. At the meeting you were in, was a meeting with the Sawyer County Land and Water Conservation Committee?

A. Yes.

Q. And where was that meeting?

A. It was in -- I believe in the assembly room of the courthouse.

Q. And, during the discussion about this petition, who was present?

A. It must have been the Land and Water Conservation Committee members, Kris Mayberry, Jan Eck. I can't recall if Dale Olson was there. Myself.

Q. Now, at that point --

A. I -- be -- I think Matt Dregne may have been there. I think it may have been by telephone conference call, though; I can't recall.

Q. At the time of that meeting, had you been retained as an expert by the County for the litigation?

A. Ahm, I -- not formally. You know, I was -- they were

seeking my assistance since I was involved with it and they had hired me previously.

Q. Hired you to do the work before the litigation?

A. Yes.

Q. And they've not hired or agreed to pay you for litigation consulting with respect to Mr. Hausman's lawsuit?

A. No.

Q. And what did Mr. Dregne say during this meeting of the Land and Conservation Committee?

A. A lot was said, and I just -- I -- I don't think I'd be able to answer in general.

Q. In general, what was the discussion about the relationship between asking the DNR for the petition and Mr. Hausman's lawsuit?

A. Well -- how to -- ahm, yeah, what -- what options -- it was basically to explore the options to answer to the lawsuit.

Q. And one option was to ask the DNR?

A. One option was to ask the DNR.

Q. And was there a discussion about the effect that might have on Mr. Hausman's lawsuit?

A. Not that I can recall.

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

A. No.

Q. Now, I just want to go back a moment to this June through August 2002 time period when you were talking a little bit about

Dave Rieder's calculations; and I -- I'm just not clear on it. He had made a calculation on what?

A. I -- I'm just kind of picturing the -- the sketch he made which was the Double N culverts and, ahm, I'm -- I can't -- I can't even recall if it was, ahm, I think he had, ah, invert elevation of the Double N culverts versus the water level at Carlson Road Dam. So he had related -- and I can't remember if there were water surface elevations there or not, but there were specific structure elevations reported.

Q. I'm just going to show you something; and, if I've got the wrong thing, just let me know. Is this item numbered NWBE 015, is that that structure -- sketch you're thinking of?

A. Yeah -- well, right. This is one of them.

(Document marked for identification as Exhibit No. 118.)

BY MR. FURLOW:

Q. I'm going to hand you, Mrs. Harrington, Exhibit No. 118; and is that you said one of the sketches that you were provided by the County to review and try to verify if it's accurate?

A. Yes.

Q. And is -- was your report back in August of '02 to the Land and Water Conservation Committee verifying the accuracy of Exhibit 118?

A. Ahm, I don't recall reporting whether or not it was accurate.

Q. Do you recall verifying the accuracy of Exhibit 118, the

elevations based upon your loop work?

A. Ahm, I do recall doing the loop work and verifying the difference in elevation between the benchmarks that David; used and I -- I -- I can't recall comparing the difference he got in elevation with mine.

Q. Is there an exhibit you would want to look at to refresh your memory?

A. If there is an exhibit that shows the elevation at the Double N culverts, that might refresh my memory.

Q. I'm going to hand you -- and, Joe, I've only got one copy of this with my super secret handwriting on it; but we've had some minutes produced by Sawyer County, handwritten minutes; and they're numbered SC 377 through SC 380; and I'm going to hand those to you and ask you to look down at the highlighted portion and see if that assists your memory.

And, for the record, I'll just reference that I've handed Mrs. Harrington a document that's been Bates numbered on the page -- SC 379 and there's a reference that says, quote: 7, slash, 3 loop in elevations completed, period, agree with Birchwood surveyor, period. Do you see that?

A. Yes.

Q. And you might want to hand that to Mr. Wright so he can take a peak as well.

MR. FURLOW: Just let me know when you're finished, Joe.

MR. WRIGHT: Go ahead.

BY MR. FURLLOW:

Q. And does that note refresh your memory as to whether you --

A. Yes.

Q. -- verify the accuracy of Mr. Rieder's calculations?

A. Yes.

Q. And, going back to Exhibit No. 118 which is the drawing --

A. Yes.

Q. -- is Exhibit 118 part of Mr. Rieder's work that you
verified as accurate?

A. Yes.

Q. Now, I'm going to take those back and ask you, in this
August 5th, '02 meeting, which is the date those notes, was it
yourself or Mr. Carthel who reported back to the Land and Water
Conservation Committee?

A. Myself.

Q. And if you can go -- you'd taken a look before at something
known as Exhibit 115?

A. Okay.

Q. And do you see at the top right-hand corner there's a number
1350.58? And that's the number, elevation, at NN; is that right?

A. Yes.

Q. And where did the 1350.58 come from?

A. Dan.

Q. Dan just wrote that in?

A. No. I would have -- he would have researched the elevation

of that.

Q. So 1350.58 is something that Dan put into this Exhibit 115?

A. I -- I can't recall the source of that elevation, but -- it must be the -- the recorded elevation for that benchmark, ahm, based on USGS benchmark elevation documents, I guess. And I don't recall if I looked that up or if Dan did.

Q. Is it fair to say you're not sure where that number comes from?

A. Correct.

Q. Is there a USGS benchmark at NN?

A. Yes.

Q. And is that the only benchmark at NN that you're aware of?

A. Yes.

Q. So do we think the benchmark on 115 came from the USGS benchmark?

A. Yes.

Q. Now, I'm -- with respect to this meeting you were in where Sawyer County decided to petition the DNR as to water levels, do you -- have you done any work as to whether or not the water levels at Round Lake need to be changed?

A. No.

Q. And, regardless of whether you've done any work for the County on this subject, do you have an opinion based upon your property on the lake and observations about whether the lake level needs to be raised or not?

A. My opinion as to whether or not they are -- it's reasonable and they can be controlled within those limits, I personally in my property and my family have not had damage due to high water; but that doesn't mean I -- I'm not aware of other property owners who have problems with high water; but our property has riprap along the banks; and I don't have any -- we don't have any erosion from high water.

Q. And do you know of any other properties around the lake that have had erosion because of the high water?

A. I have been made aware of that through the public meeting and Mr. Hausman and --

Q. And others besides Mr. Hausman?

A. I wouldn't be able to give you specific names because it's in general.

Q. And has it been fair for me to understand that whether a piece of property has erosion around the lake is not uniform it depends upon each property?

A. Yes.

Q. And do you believe that the maximum level or the high level -- excuse me -- start over.

Do you believe that the maximum water level on Round Lake can be controlled with the existing control structures?

MR. WRIGHT: Objection, foundation, form.

THE WITNESS: No.

BY MR. FURLOW:

Q. And have you examined why that is?

A. To some extent, not fully.

Q. What examination have you done?

A. The dam -- the Carlson Dam, I observed, with all stoplogs out and with something less than -- with high rainfalls but probably something somewhat less than the 100-year event, the water level is higher than the set maximum level.

Q. And the set maximum level is 77.25?

A. From my understanding.

Q. That's what you understand from the 1941 Order?

A. Yes.

Q. And is it fair for us that the level of Round Lake has been in excess of 77.25 regularly?

MR. WRIGHT: Objection, foundation and form.

THE WITNESS: I don't know.

BY MR. FURLOW:

Q. Have you seen the water level of Round Lake in excess of 77.25 from time to time?

A. Yes.

Q. And you understand that the Carlson Road Dam is not capable of discharging water from Round Lake to reduce that lake level below the maximum of 77.25?

A. Yes.

Q. And have you examined the construction of the Carlson Road Dam?

A. Yes.

Q. Do you know whether it complies with the construction requirements of the 1941 order?

A. I don't know.

Q. And you've looked at the culverts at NN?

A. Yes.

Q. And have you examined whether or not those culverts operate as a dam?

MR. WRIGHT: Objection, foundation, form.

THE WITNESS: Yes.

BY MR. FURLOW:

Q. And what examination have you done?

A. Just visual.

Q. And what's your conclusion?

MR. WRIGHT: Objection, foundation. Go ahead and answer.

THE WITNESS: Ahm, the headwater is higher than the tailwater.

BY MR. FURLOW:

Q. And that -- in layman's term, that means that the culverts are acting like a dam?

A. Yes.

Q. And, when the culverts at NN operate like a dam, that affects the water backed up into Round Lake?

MR. WRIGHT: Objection, foundation.

By MR. FURLOW:

Q. Correct?

A. May affect.

Q. And that would in turn affect the ability of the Carlson Road Dam to pass water out of Round Lake to reduce it below the maximum level?

MR. WRIGHT: Same objection.

THE WITNESS: It may. I think it needs further study.

BY MR. FURLOW:

Q. Do you know Mr. Kafura?

A. Yes.

Q. And have you worked with him in the past?

A. Yes.

Q. Do you believe he -- well, how would you describe his competence?

MR. WRIGHT: Object to the form.

THE WITNESS: I have no -- I -- I have no opinion or -- I have nothing to base an opinion one way or the other. He's a public servant, and I have dealt with him and I have received water quality certifications from his office.

By MR. FURLOW:

Q. What about Mr. Dallam? Have you dealt with him?

A. Mr.?

Q. Dallam?

A. Yes.

Q. And do you believe Mr. Dallam is competent?

A. I have no reason to believe he's not.

Q. Do you have any reason to believe Mr. Kafura's not competent?

A. No.

Q. Now, if the water level at Round Lake is being held above the maximum elevation, 77.25, does that affect your regional flood plain analysis?

A. Yes.

Q. How does it affect it?

A. It -- the structure itself affects the regional flood-plain analysis.

Q. The Carlson Road Dam?

A. At the Carlson Road Dam.

Q. And how does the Carlson Road Dam affect the regional flood-plain analysis?

A. It's a -- constriction in the outflow of Little Round Lake.

Q. And the constriction of the Carlson Road Dam of the outflow of Little Round Lake raises the regional flood-plain elevation; correct?

MR. WRIGHT: Objection, foundation.

THE WITNESS: Yes.

BY MR. FURLOW:

Q. And, when the regional flood-plain elevation is raised, that has an effect on property around the lake; correct?

A. Yes.

Q. And that goes to questions as to whether flood insurance are

required?

A. Yes.

Q. And that cost money; right?

A. Yes.

Q. And that goes to viability of septic systems?

A. Yes.

MR. WRIGHT: Objection, foundation.

THE WITNESS: It depends on where those septic systems are in relation to the lake elevation.

BY MR. FURLOW:

Q. And, if the regional flood plain is raised around Round Lake, how could that affect septic systems?

MR. WRIGHT: Objection, foundation.

THE WITNESS: It could affect them negatively, again, if they are -- It depends on -- you'd have to look at specific cases.

BY MR. FURLOW:

Q. And, if it were effective, what would the effect be?

MR. WRIGHT: Same objection, incompetence, form.

THE WITNESS: I --

BY MR. FURLOW:

Q. Let me ask something -- let me asking something -- I -- You seem to be struggling; I don't want you to struggle.

A. You know, I'm not -- I haven't studied that so I don't know.

Q. You understand that septic systems are -- are underground?

A. Yes.

Q. And that ground wa -- and septic systems are supposed to be above ground-water level. Right?

A. Yes.

Q. And, if the water levels on Round Lake are raised above the maximum, does that affect ground-water level?

MR. WRIGHT: Objection, foundation, form and competence.

THE WITNESS: That -- the structure has been there since it was built, and I don't -- know as conditions are different from when it was built, and the septic systems have been put in probably since it was built, and so I wouldn't be able to say one way or another.

BY MR. FURLOW:

Q. And what effect does erosion around the lake have on water quality, if you know?

MR. WRIGHT: Same objections.

THE WITNESS: I don't know.

BY MR. FURLOW:

Q. Now, would I be correct to understand, from your viewpoint, that the existing Carlson Road Dam cannot prevent the water from rising above the maximum water level on Round Lake?

A. Correct.

Q. And have you looked at the inputs of water into Round Lake?

A. Somewhat.

Q. Have you identified what those inputs to Round Lake are?

A. I haven't done a complete study of that. I believe Dan has

been looking at that.

Q. And do you -- do you have a list of what the inputs are in your own mind?

A. I know that the Lake Placid Dam diversion structure, there is some input there.

Q. Hm-hm.

A. And, ahm --

Q. Have you looked, by the way, for maintenance and operation plans for the Lake Placid Dam?

A. No.

Q. Do you know whether or not Sawyer County is maintaining and operating the Lake Placid Dam properly?

A. No.

Q. Do you know the conditions under which the Lake Placid Dam is to pass water?

A. No.

Q. Now, have you been to Mr. Hausman's property to examine the damage?

A. Yes.

Q. And when was that?

A. I don't know. It was -- it was when Matt Dregne was in town. Matt Dregne and Jan Eck and myself.

Q. Went out to Mr. Hausman's property?

A. We walked out on the ice on the lake. We did not walk on his property.

Q. So you walked on the ice across the lake to observe Mr. Hausman's property?

A. We walked from a neighboring property and to look at the damage to his property.

Q. And when was that? What year?

A. I believe it was in 2003.

Q. And did you -- what did you observe?

A. I did not make notes. I observed that he's got low-lying property and that -- but it was wintertime so I observed some of the work that had been done on -- on his shoreline.

Q. And did you make any observations about the nature or scope of damage?

A. No, because the work had been done to fill and to repair that damage at that time, I believe; and so I didn't really have a sense of the full damage amount, no.

Q. And did you do any elevation work on Mr. Hausman's property when you were there?

A. No.

Q. And did you reach any conclusion one way or the other about the scope or the extent of damage?

A. No.

Q. And have you completed any modeling work to date using the HEC models?

A. I haven't personally. I've hired Dan, and he has.

Q. Mr. Carthel has completed HEC modeling?

A. Yes.

Q. And that's a form that you have access to? You have access to the HEC model?

A. To his model, yes.

Q. Is that an electronic form?

A. Yes.

Q. And is there a reason that that wasn't supplied to us in response to the subpoena?

A. I don't have it. Dan does.

Q. I've just been told we may have it.

A. Okay.

Q. Ahm, a couple of things. Let's go through a couple of exhibits here. Get that paperwork done.

(Document marked for identification as Exhibit No. 119.)

(There was a recess.)

BY MR. FURLOW:

Q. I've handed you, Mrs. Harrington, Exhibit No. 119?

A. Yeah.

Q. If you can just tell me what that is and who prepared it.

A. Pat Lancour, my employee, divided up the Round -- the Billy Boy watershed into subsections in order to -- he was -- ahm -- this was when we were doing our level best to analyze the hydrology.

Q. And I take it from your answer that despite your level best you were unable to analyze the hydrology?

A. Correct.

Q. And that's what Mr. Carthel's doing now?

A. Yes.

Q. I'm going to hand you what has been marked before as Exhibit No. 13 in Mr. Carthel's deposition and ask if you recognize those notes.

A. Yes.

Q. And whose notes are those?

A. Kris Hale, my employee, and Jeff Stellrecht. Kris Hale was working with Jeff and he took the notes.

Q. Now, I just have a question on a couple of the items here.

MR. FURLOW: Joe, do you have this one?

MR. WRIGHT: I will -- go head.

BY MR. FURLOW:

Q. If you look on the first page of Exhibit 13 -- and I'm just going to lean over the table here and point if that's all right with you -- there's a reference on the first page in the middle to 13.61 -- strike that. Start again.

There's a reference in the middle of the first page of Exhibit 13 to BML 1361.86; do you see that?

A. Yes.

Q. And does that reference to?

A. That is the documented elevation for Benchmark No. 854-B.

Q. And where was that documented from?

A. I don't know. I guess I just would have to assume that

there was a list of -- it may have been -- what we do is we'll take the USGS map, locate where the bench marks are and then go to USGS data to find out what the recorded benchmark elevation is for that benchmark.

Q. And then just write that down here?

A. Yes.

Q. And -- one moment. And were the benchmarks -- were the benchmark elevations shot using GPS?

A. No.

Q. Now, if you go further in Exhibit 13, to -- there's a page that has a -- looks like Page 23. It's a little circle and a number at the bottom right-hand corner. Are you at that page?

A. Yes.

Q. If you go to the upper right-hand side, there's a BM elevation 1370.57?

A. Yes.

Q. And what is the source of that elevation?

A. I don't know.

Q. What about the elevation below it, 13.6183? Is that the same as the one we just looked at? Well, wait a minute it's a --

A. No. It's different, yeah.

Q. My mistake. Let me ask you then. What's the source of the elevation 1361.83?

A. That is just -- there must be something documented and I'm -- as to where he got that, and I don't know -- because

usually in the far right column you put the -- the recorded elevation; and then -- and the column immediately to the left of that would be what you determine from your bench loop calculations. So it looks like this 6183 was taken from the document, but I don't know what.

A. And may have been from again a printout from the USGS list of benchmarks and their recorded elevations.

Q. Did you maintain copies of those USGS books or references?

A. I would make a copy and send it with 'em. I'm not sure I still have them.

Because it's something I could reproduce from -- I, actually, do have -- I had a set for each of the counties in the area of these benchmark -- recorded benchmark elevations from the USGS, and I have that -- and I would bring that set out, look through for the benchmarks shown on the map, and then I would make a copy for their use which probably got discarded, but I still have the source that I got these from probably.

Q. So you still have those sources then available to you to verify where these figures came from?

A. Hm-hm.

Q. And, if you go to Page 37, are you at that page on Exhibit 13?

A. Yes.

Q. If you go to the middle top part of that page -- it bears Bates No. CPAR 0311, you see there's a BML 1352.38?

A. Yes.

Q. And where does that elevation come from?

A. Looks like it comes from Page 46, and it comes from a benchmark on the Highway B project, probably, from DOT documents, because there is no USGS benchmark nearby. And this is, from what I recall, this is one of the reasons we wanted to loop from the Carlson Road benchmark to the Highway B Narrows Bridge because there was some question as to our basis for that elevation.

Q. So the 1352.38 comes from the --

A. A benchmark.

Q. -- the blue spray DOT benchmark, the wing bolt?

A. No. That's what -- an elevation was transferred to that southwest wing bolt from an ele -- from another benchmark on that job, it could have been a nail in a power pole or a tree; but there was a -- there were a mean sea level elevations used on that job so, and we had worked on that project in '96 and '97 so I had access to a benchmark that was used on that job.

Q. If you turn back a page, to Page 45 and 44, and if you go to the top middle on that page is Bates Number CAR 0315, there's a reference to a benchmark LUSGS 1362.10. Do you see that?

A. Hm-hm.

Q. And what's that reference for -- from?

A. I don't know. It looks like it's the USGS at the Double N culverts, but he calls it 1362 -- But it doesn't agree with what

we had for that. So I -- I couldn't verify that.

Q. Right. If you look back at Exhibit 115?

A. Yeah.

Q. You had a different benchmark number for County NN culverts?

A. Correct. Yeah.

Q. And your benchmark in Exhibit 115 was 1350.58 at County NN, and the benchmark in Exhibit 13 is 1361?

A. Right.

Q. My mistake. 1362.10?

A. Correct.

Q. Which one's correct?

A. I would have to say that the one -- ah, the snapshot lake elevation on exhibit --

Q. 115?

A. -- 117 -- Well, that's where it lists that elevation for that -- for 1127E, an elevation is given at 1350.58; but there is not a description of this Benchmark 1362, so I don't know what that's referring to. Sometimes he would use the elevation given for it on the USGS map because that's just given to the nearest foot, on the USGS map.

Q. And that's different than the actual measurements that were taken?

A. If that's everything to the same benchmark.

Q. And does a mistake in a benchmark elevation affect the calculation?

A. If you're taking a water-surface elevation from that and you're relating it to the whole watershed and the whole analysis, yes. But I'm not sure that that's a mistake because I don't know what benchmark it's referring to.

MR. FURLOW: Why don't you mark that one for me?

(Document marked for identification as Exhibit No. 120.)

MR. WRIGHT: Off the record.

(Recess)

BY MR. FURLOW:

Q. Mrs. Harrington, with respect to Exhibit No. 13, is that the data that Mr. Carthel is using in his hydrology and hydraulics study?

A. Yes.

Q. And you wanted to make a clarification and I'd like to give you that opportunity.

A. Since this Carthel Exhibit No. 3 was handy, I did look at the map and it does list a benchmark 1362; but it is shown on NN south of the culverts, whereas, benchmark -- benchmark used in Exhibit 115 which is -- 1127E, that is north of the culverts at NN. So I believe they are different benchmarks.

Q. Different benchmarks on different sides of the culverts?

A. Yes.

Q. Now, I'm going to hand you, Mrs. Harrington, Exhibit No. 20, which is a document that we have received from you --

MR. WRIGHT: Excuse me, guys, is this 20 or 120?

THE REPORTER: 120.

MR. FURLOW: 120, thank you. Wishful thinking.

BY MR. FURLOW:

Q. And I'd just like to know, Mrs. Harrington, what significance this order played in your work for Sawyer County.

A. It has to do with the history and background of the Billy Boy Dam.

Q. And did you use the data or information from Exhibit 120 in your work for the County?

A. Not that I can recall.

Q. This was just a historical document to review?

A. Yes.

Q. And let's go ahead and mark that.

(Document marked for identification as Exhibit No. 121.)

MR. FURLOW: Would you like to clarify something?

THE WITNESS: Okay. In looking at it, I don't know if a benchmark elevation is given but it -- was probably for future use in the dam-break study for use at the time I received it. I'm trying to look to see if there's a benchmark elevation given, but sometimes these provide elevations of the benchmarks that are on the dam structures, so -- it may have been to obtain a benchmark.

BY MR. FURLOW:

Q. But you're not sure?

A. I'm not sure.

Q. You're not sure today how it was used, if it was used?

A. Right.

Q. I'm going to hand you what's been marked as Exhibit No. 121, which is a compilation of photographs; and if you can just look through those photographs for me and I just wanted you to identify them, if you can.

A. I believe the first one is looking at the inlets ends of the NN culverts.

Q. And it might be easier and, certainly, would be quicker if you just took a moment to page through them and then I can ask you a more general question as to their identity.

A. All right. Looks like they're of the Osprey Creek, both upstream and -- Osprey Creek running from Little Round Lake to and downstream of the NN culverts.

Q. And, if you go further, there are some pictures of a dam as well?

A. I saw the dam in there. It looked like the Carlson Road Dam. And pictures of the benchmark at that dam. Upstream and downstream of that dam.

Q. So Exhibit 121 are photographs that you've taken?

A. No. I didn't take them.

Q. But they are photographs of the dam and of Osprey Creek?

A. Yes.

Q. And you've spent time with Mr. Carthel in Osprey Creek doing your work?

A. Yes.

Q. And, during that time, you and Mr. Carthel were working as a team on this water project?

A. Yes.

Q. And did you express to Mr. Carthel your view that that Carlson Road Dam could not -- was not capable of maintaining Round Lake below the maximum elevation?

A. I don't recall. If we specifically -- I -- I -- we've discussed it. Ahm --

Q. Is it fair to say that at some point in your work with Mr. Carthel you've expressed with him your view that the Carlson Road Dam cannot maintain Round Lake below 77.25?

A. Not so far and away because I consider him the expert and not myself.

Q. And what has Mr. Carthel told you if anything about whether the Carlson Road Dam can maintain Round Lake below 77.25?

A. It can't.

Q. Mr. Carthel's told you that as well?

A. Well, it's a consensus of view prob -- and I would be in agreement because the structure is -- well, the -- where it is and the -- the volume of water it can pass, it is a definite constriction and it is related to why the water level gets above that certain maximum regulated level.

Q. 77.25?

A. Correct.

Q. So you and Mr. Carthel have a consensus that the Carlson Road Dam cannot keep the Round Lake water level below 77.25?

A. That and other factors.

Q. And what are the other factors?

A. The channel downstream emptying into Osprey Lake, the lake level of Osprey Lake.

Q. The culverts operating as a dam?

A. The culverts. Further down, downstream, yes, right.

Q. And when was the last time you spoke to Mr. Carthel about his plans on finishing the flood-plain work for Round Lake?

A. Probably the first or second week in July.

Q. You haven't spoken to Mr. Carthel since his deposition?

A. No.

Q. And has Mr. Carthel given you any indication that he does not plan now to finish the flood-plain elevations?

A. No. I -- excuse me. I take that back because I was in conversation with him regarding the survey work I -- I am doing for him -- for me, finishing up more complete survey of the stream channel between Osprey Lake and Little Round Lake; and I asked him how'd it go with his deposition. And he said it's not as bad as I thought it would be compared to the first one, so I do recall that, so I must have talked to him since then.

(Document marked for identification as Exhibit No. 122.)

BY MR. FURLow:

Q. Mrs. Harrington, I'm going to hand you what we've marked as

Exhibit No. 122; and is that an exhibit -- an E-mail you wrote to Mr. Carthel?

A. Yes.

Q. And there's a reference you make to the gage elevation as it relates to the established benchmark. Do you see that at the bottom?

A. Yes.

Q. And you have a gage reading of 5.80 feet equals elevation 1345.36?

A. Yes.

Q. Is that accurate?

A. I would want to review my notes, where I came up with that.

Q. Let me just -- Go ahead. You can review your notes.

A. And I'm not sure I have them here. I would hope I gave them to you.

Q. Let me try to help you.

A. Okay.

Q. I'm going to hand you a letter that you produced -- I'll just give you a Bates Number NWBE 046, and there's some highlighting there and I'll identify this as an August 8, 1995 letter from Todd Naas to Michael Kruger ^ sp produced by you, NWBE 046-047; and there's a reference at the bottom of this letter to a gage at the Little Round Lake Dam?

A. Right.

Q. And that's the same gage you're referring to in Exhibit 122?

A. Right.

Q. And I notice that your reference in 122 shows a gage reading of 5.8 equals elevation 1345.36?

A. Yes.

Q. Do you see that?

A. Yeah.

Q. And Mr. Naas's letter has a reading of 5.5 equals 1345.50?

A. Right. So it's like almost a half foot difference.

Q. Which is correct?

A. Depending on the datum and whether or not the gage is the same, I don't know. I don't know -- ahm, we would have come off a benchmark; and it would have been checked. So -- I don't know why there would be this much of a discrepancy, but I don't know which is correct and if the conditions are the same.

Q. Well, did you understand that there was a gage placed on the Little Round Lake dam by the DNR in 1995?

A. Hm-hm.

Q. And is there a reason why you wouldn't have used that gage when you wrote you're E-mail to Mr. Carthel?

A. Right. No.

THE REPORTER: Right, no? Is that what you said?

THE WITNESS: No. Right. Right, no. Yeah, it appears that this is the -- although it's not that clear, that, yeah, gage elevation at B. Yes. And that's what this is.

BY MR. FURLOW:

Q. So Exhibit 122 is referring to the same gage as is referred in to Mr. Naas's 8-95 letter?

A. Correct.

MR. WRIGHT: Objection, foundation.

THE WITNESS: I -- well, it -- it -- I believe it's the -- the same location on the Highway B bridge. I can't verify --

BY MR. FURLOW:

Q. Could you have made --

A. Seems like it would be -- it would be my opinion that it was the same gage, but I'm not -- I -- I'm not positive of that.

Q. Could you have made an error in your E-mail that's marked as Exhibit 122?

A. Yes.

Q. And that error would affect the calculations being made?

MR. WRIGHT: Object to form. I'm not sure which calculations you mean.

THE WITNESS: Right. And I don't think we specifically based calculations on the gage height reading on that bridge. This was -- this letter is to the Conservation Department and not to Dan. I just copied Dan, and they wanted to know what the gage correlation to mean sea level is on Round Lake Dam.

Q. So which elevation?

A. I mean Round Lake bridge.

Q. Which elevations, if you know, did Mr. Carthel use in his work?

A. I don't believe Dan used this calculation in his work.

Q. And then what was the purpose of providing the E-mail to Sawyer County that's marked as Exhibit 122?

A. Because Sawyer County hired Dan for this work. And so I copied the information to him that we provided Sawyer County.

Q. Would it be improper for someone to rely on the information in Exhibit 122 in performing work?

A. I would -- ah, I would say, no, at this point until I was able to check the work again and I'm sure it was checked at the time, but I -- I don't know why there is a discrepancy.

MR. FURLOW: Let's go ahead and just mark this as Exhibit 123 now that we've talked about it.

(Document marked for identification as Exhibit No. 123.)

BY MR. FURLOW:

Q. Mrs. Harrington, I want to refer to now a meeting -- strike that. Let me start again.

Mrs. Harrington, are you aware that the Sawyer County Land and Water Conservation Committee conducted a survey on what to do about the Round Lake water levels?

A. Yes.

Q. And what participation did you have in preparing that survey?

A. None.

Q. And do you know what the options were -- Now, Mr. Carthel participated in the survey, correct?

A. I believe so.

Q. Did you receive a survey card as a homeowner?

A. Yes.

Q. And did you check an option?

A. I think so.

Q. Which option did you check?

A. Do nothing, probably.

Q. And was that the appropriate option in your mind?

A. Ahm, I think so. I'm more of a -- I guess -- I checked that because I felt that, ahm, I'm of the kind of the mindset to let nature take its course and it's -- it's beyond government's means to control this.

Q. And that was the reason you checked do nothing?

A. Hm-hm.

Q. And did you concur that that was the best option to take with Round Lake?

A. Hm-hm.

MR. WRIGHT: You need to say yes or no, please.

THE WITNESS: Yes, I'm sorry.

BY MR. FURLOW:

Q. And that's a conclusion that you have before you completed the studies being done right now for Sawyer County?

A. That was the opinion I had at the time, and it's a more of a philosophical view than a view specific to this problem at hand. And -- I -- I don't know what more I could say. I -- it's not

going to sway the work I do. The work I do is concrete work where you come up with factual information, and that's what I've been asked to do, and I've been supplying information as it's been requested.

Q. Now, you've done some work downstream at the Carlson Road Dam; right?

A. Yes.

Q. And you've looked at the structures down there?

A. I've looked at the Double N culvert.

Q. And you've looked at the Carlson Road Dam?

A. Yes.

Q. And you've been through the channel area between the two?

A. I've been through the channel area from Little Round Lake to Osprey Lake and I've talked upstream of the NN Culverts a ways, but I haven't done a complete and thorough investigation.

Q. And would you agree with me that, if improvements were made downstream from the Carlson Road Dam that in fact the lake level of Round Lake could be controlled below 77.25?

MR. WRIGHT: Object to foundation.

THE WITNESS: I haven't come to that conclusion.

BY MR. FURLOW:

Q. Have you come to either conclusion one way or the other?

A. No.

Q. And, if you were to increase the size of the culverts at Double N, that would increase the flow under those culverts;

correct?

A. Yes. It would increase the flow through the culverts and it would have an effect on the lake level of Round Lake; but I'm not sure if it would have the desired effect, ultimately.

Q. And the effect it would have on Round Lake would be to assist in lowering the water level; correct?

A. Correct.

Q. And, if you were to remove debris in the area between the Carlson Road Dam and the NN Culverts and enlarge the NN Cuverts, that would further have the effect of being able to reduce the level of Round Lake?

MR. WRIGHT: Objection to form and foundation.

THE WITNESS: It should affect the level in some way, but I'm not sure it would have the full desired effect.

BY MR. FURLOW:

Q. And full desired effect --

A. Would be to maintain -- to never have the maximum water level go above 77.25.

Q. And have you studied that one way or the other?

A. No.

Q. And, if you were to increase the size of the Carlson Road Dam, would you believe that it would have the desired effect of being able to control the water of Round Lake to a point below 77.25?

MR. WRIGHT: Same objection.

THE WITNESS: I don't know. I don't know as it would solve the problem completely.

Q. Have you studied that one way or the other?

A. No.

Q. Do you believe that there's another reason for the problem of not being able to control Round Lake below 77.25?

A. Ahm, the size of the channel -- ah, immediately downstream of Little Round Lake into Osprey Lake.

Q. That's a constricting force?

A. Right.

Q. And you can widen out the channel, couldn't you?

A. Yes.

Q. And that would make it less constricting?

A. Yes.

Q. And that's a feasible thing to do?

MR. WRIGHT: Objection, form and foundation.

THE WITNESS: I don't know if it's feasible.

BY MR. FURLOW:

Q. You've seen areas where people have widened channels out?

A. Yes, it could be done.

Q. And you could make the Carlson Road Dam larger to pass more water; that's a feasible thing to do?

A. It could be done.

MR. WRIGHT: Objection, form and foundation.

Q. And the culverts at NN could be enlarged to pass more water.

You've seen that done before, haven't you?

A. Yes, I have seen that done but --

Q. And you've seen people clean --

MR. WRIGHT: Whoa, whoa, I don't think she's done with her answer.

THE WITNESS: But taking everything together, I think a complete study would need to be done as to the overall effect not just on Round Lake but on Osprey Lake and the downstream property owners of Double N culverts. So major engineering could be done; and, yes, it would affect the level of Round Lake.

BY MR. FURLOW:

Q. So can we agree, at least, that it is technically feasible to bring Round Lake to a level lower than 77.25. It's just a question of what you want to do?

A. Well, what do you mean by technically feasible because it could -- it could be a huge amount of money to achieve that objective and it could have far reaching implications.

Q. And is that any part of the study that you're conducting now?

A. No.

Q. Is it any part of the study Mr. Carthel's doing now?

A. He was asked by Sawyer County to assist them with looking at the options. And that was separate from both agreements. I -- you know, for Dan to assist me with the Billy Boy Dam failure analysis and the regional flood elevation study, and neither of

those involve looking into the feasibility of complying with the 1941 order.

Q. And that was something Mr. Carthel was hired to do by the County separate from the work he's doing with you?

A. Yes.

Q. And you believe that Mr. Carthel's work on that resulted in the survey?

A. Yes.

Q. And do you know if Mr. Carthel's work is completed with respect to that project?

A. I don't know.

Q. And have you spoken to Mr. Carthel about the reasons he was hired by Sawyer County with respect to that survey?

A. I just recall him telling me the reasons were to develop the alternatives -- or -- and analyze the alternatives ranging from doing nothing to what could be done that would affect the water level of Round Lake.

Q. He was to look at the causes and solutions to the high water problem?

A. Yes.

Q. And let me just finish this real quick. Why don't you mark that one?

(Document marked for identification as Exhibit No. 124.)

BY MR. FURLOW:

Q. Just to clean something up, Mrs. Harrington, that's

Exhibit 124 I've provided you and that's your memo to Dale Olson correcting the error in the computations that you had made?

A. Hm-hm.

Q. And does that correct the error to the computations we looked at?

A. Those spot -- lake level elevations.

Q. And if you can pull out Exhibit 117, please?

A. Yes.

Q. Does Exhibit 124 correct the errors in Exhibit 117?

A. Yes.

Q. And what has Mr. Carthel been paid by the County to do his other project that you've referenced?

A. I don't know.

Q. Has he told you?

A. No.

Q. Are you aware of whether the ordinary high-water mark on Round Lake has changed over time?

A. No, I'm not aware.

Q. I'm going to take two minutes, and we'll get this done.

(There was a recess.)

* * * * *

CROSS-EXAMINATION

BY MR. WRIGHT:

Q. Mrs. Harrington, I just had a few follow-up questions to what Mr. Furlow asked you.

Your current company, North Wisconsin-Based Engineers, NWBE, who are the owners of NWBE?

A. Myself only.

Q. Now, I have a few other questions related to the timing of the production of the work that Mr. Carthel's been doing for the County.

Has it come to your attention that there have been allegations that the County may have told Mr. Carthel or you not to produce the work that's been contracted for?

A. Yes.

Q. How has that come to your attention?

A. Ahm, it's kind of hard because I lost my daughter in the past year and a half; and I ran into John Hirschfeld ^ sp at the co-op shopping center about two months after she died; and he said to me, ahm, I know this is a hard time for you and I can't -- of course, I'm paraphrasing; but he said I'm telling the Hausman attorneys to go easy on you because I know everything -- you know, you haven't been a part in this, it's been -- as far as the holding this up. It's just -- it's been Dan and someone else and I'm not going to name names who's been directing you to not produce this report; and I -- at the time, I thought, I have no idea what you're talking about; but it did -- it did indicate to me that he thought that there was someone holding up the process.

Q. And has anyone held up the process from the County?

A. No.

Q. Has the County or anyone employed by the County ever told you not to produce any of the data that you've been asked to produce?

A. Never.

Q. Has anyone as far as you know ever told Mr. Carthel not to produce or complete the work that he's contracted to do?

A. No, and I know he would have told me if there had been any -- I mean all -- they usually deal through me; when Dale Olson or Jan Eck or the Land and Water Conservation Committee wants an update, they call me and I call Dan. And they don't deal directly with Dan, and I think he would have told me otherwise and -- to my knowledge, I -- I'm -- Dan thinks it's -- he can't believe that that would be -- that they are thinking that, and I cannot -- because it -- it is not based on reality.

Q. When you had that conversation with Mr. Hirschfeld at the co-op, did you tell him that no one had told you not to produce the report?

A. I didn't fully grasp what he was saying until afterwards.

Q. And Mr. Furlow asked you some questions and you gave him some answers related to which RFE's would be produced for which lakes, and you had mentioned that you ran into Mr. Mayberry, the County Clerk, at the post office. Do you remember that testimony?

A. Yes.

Q. And Mr. Mayberry told you to put Round Lake at the top of

the list of those that should be studied?

A. Yes.

Q. Did you have an understanding as to why Mr. Mayberry wanted Round Lake at the top of the list?

A. To -- everyone wants to get this done. I believe is the County just wants to see results especially in light of this lawsuit, they want to get this done and over with. They want to see a finished report.

Q. And, again, just to be specific to Mr. Mayberry, has he as far as you know ever told you or Mr. Carthel not to do the work that you've entered into a contract to do?

A. No.

Q. Have you ever talked to Mr. Hausman about the allegation that someone may have told you or Mr. Carthel not to produce the work?

A. No.

Q. Have you ever talked to Mr. Hausman's attorneys outside this deposition?

A. No.

Q. And -- strike that. That's all I have for you. Thank you very much.

MR. FURLOW: Just a couple small items.

BY MR. FURLOW:

Q. If Mr. Carthel is four years behind in getting the work done, why don't you replace him?

A. I feel he is competent in doing the work. If I were to replace him, I would probably have to pay a lot more and I feel I'm obligated, since I was hired by the County to do the work, I am obligated to produce the results without additional compensation. I haven't discussed this with the County, but I agreed to do a job for a certain amount of money, and at the time I hired Mr. Carthel I was hoping to -- at least compensate him the amount that was due me for the two projects, talking about the RFE's versus Bill Boy Dam failure analysis; and it's just been hopeful that I would not be out any additional more money because if I were to hire another firm I know that I could get it done -- I know I could get the project done. I guess I don't know positively because another engineer coming in may face the same obstacles, but I do know for a fact it would cost me more money and I've already spent a lot of money. But that's not the only issue. I mean, it's not the only issue because I hired Dan knowing that it would -- all the money I get for the work and time I've put into it would go to him. And -- and it has -- I -- it has crossed my mind and I -- and if I was -- ah, you know, if I -- if I had a legal, binding contract and a threat of -- ah, you know, my license being pulled or something, you know, I -- I would have hired him, you know, four years ago, you know, someone who could get this done; but the County's been lenient but they've been pressuring but yet they haven't threatened any action. So I'm just hopeful that Dan will come through. And

I've had indications from his completion of the Little Sissabagama and Sissabagama and Sand Lake study that he's willing to complete it. He wants to complete it. I have -- I've received some -- a couple of three final reports and I -- and it's been a nightmare for me. I'd like nothing better than for it to be completed and, if I had a hundred thousand to spend, just extra money lying around, I would hire someone to get it done because I think it would take probably on that order.

Q. So we're still waiting for the 11 reports then?

A. Yes.

Q. And you said that, you had understood that the County wanted to get this done, particularly, because of the lawsuit?

A. Yes.

Q. Why is there a relationship between the two?

A. I don't think there is, actually.

Q. Mr. Mayberry told you there was?

A. No.

MR. WRIGHT: Objection.

THE WITNESS: No, I don't recall him saying that. It was my -- implication.

BY MR. FURLOW:

Q. How did you get the -- I'm sorry.

A. Just because, yeah, it was an implication.

Q. So you got the implication from Mr. Mayberry that they wanted Mr. Carthel to get the job done particularly because of

the lawsuit?

MR. WRIGHT: Objection, form.

THE WITNESS: Ahm, they tend to go together because they both involve Round Lake and the issue always comes up as to why these studies aren't complete.

BY MR. FURLOW:

Q. And, when it comes up, there's discussion about how the studies might affect the lawsuit; right?

MR. WRIGHT: Object to the form.

THE WITNESS: But, a -- I also get calls from realtors on a regular basis, from a friend on Grindstone Lake where -- from realtors having -- trying to list properties on Couderay and there's pressure on all sides wanting to get this study done; and, ahm, all I can say is he wanted me to put -- prioritize Round Lake. It was -- it was -- it's -- it's one of the next ones to be done anyway, but -- I -- I'm not confident as to why he asked me that, to prioritize Round Lake.

MR. FURLOW: Nothing else.

MR. WRIGHT: Thank you very much.

MR. FURLOW: Thank you. You have the right to read this and sign this and make corrections, if you wish, and they're typically -- I mean, Joe can give you his view, but they're typically related more to stenographic corrections as opposed to substantive corrections; but, you know, Joe can talk to you.

MR. WRIGHT: Spellings and the like and that sort of thing and,

you know.

THE WITNESS: Okay.

MR. FURLOW: But you're welcome to do that, if you wish.

THE WITNESS: Okay.

MR. WRIGHT: Give you a moment to review it because there were a lot of questions asked, so.

THE WITNESS: Okay.

MR. WRIGHT: You might want to do that. She'll mail it to you.

THE WITNESS: Yes.

MR. FURLOW: So she'll reserve on that.

MR. WRIGHT: And you have thirty days to return the errata sheet, it's called, where you make any corrections, send it back to the court reporter.

THE WITNESS: Okay. I would like that.

(The proceedings concluded at 1:07 p.m.)