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JAMES HAUSMAN v. SAWYER COUNTY
DEPOSITION OF MIKE KRUGER
TAKEN MAY 25, 2005

P R O C E E D I N G S

MIKE KRUGER,

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

* * * * *

EXAMINATION

BY MS. AZAR:

Q. Mr. Kruger, I'm Lauren Azar; I'm the attorney for Mr. Hausman. How are you?

A. Fine.

Q. Apologize for the delay today. I'd like to hand you what's been marked as Exhibit 155. It's the notice of deposition that was given to Sawyer County and I call your attention, if I can; I'm going to switch the pages here. You've been designated on behalf of Sawyer County to answer certain questions and I'd like to go through the questions you've been designated to answer. It's Paragraph 1(c) regarding the operation and maintenance of the Carlson Road Dam from January 1st, 1999 to the present; 1(d) concerning the operation and maintenance of the Lake Placid Dam

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2 from January 1st, 1990 ^ ck (sic) to the present; and 1(e),

3 operation and maintenance of the Tiger Cat Dam from January 1st,

4 1999, to the present.

5 Do you understand that your answers today are made on behalf of

6 Sawyer County?

7 A. Yes.

8 Q. And do you understand that your answers will bind Sawyer

9 County?

10 A. Yes.

11 Q. How did you prepare for this deposition?

12 A. I guess I read the -- ahm, I don't know what you call the --

13 Mr. Hausman's -- from Jan Eck, I got a -- I guess a copy of the

14 petition from Mr. Hausman, whatever it was.

15 Q. The lawsuit?

16 A. I guess, yeah, the lawsuit.

17 Q. What else did you review?

18 A. A letter from Dave Kafura to me and a letter to Shirley

19 Suhsen.

20 MR. DREGNE: Mike, you mean Todd Naas?

21 THE WITNESS: It could have been Todd Naas, yeah.

22 BY MS. AZAR:

23 Q. What else did you review?

24 A. Nothing.

25 Q. All right. Before we go any further, I sort of jumped into

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the middle of things. I want to give you some deposition rules for how we're going to conduct ourselves today. If you can give audible answers, you've been very good so far; I just want to make sure you keep doing that. It helps the court reporter. Also, if we can keep from talking over one another, that also helps her. If you don't understand any of my questions, stop me and ask me to rephrase them; and, similarly, if you would like to correct any answers that you give, stop me and give corrections to your answers. I want to make sure you're comfortable with all the answers you give today. Do you understand those directions?

A. Yes.

Q. What municipality do you live in?

A. Township of Hayward.

Q. And what's your date of birth?

A. 6-30-49.

Q. Have you testified before?

A. Yes.

Q. Where?

A. Sawyer County Court regarding a timber case.

Q. Who were the parties in that case?

A. Two -- a logger and a landowner.

Q. Any -- have you testified in any other cases?

A. Not that I can remember.

Q. Have you ever been arrested?

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A. No.

Q. All right. And what is your education, Mr. Kruger?

A. I have a BS from the University of Wisconsin, Stevens Point.

Q. In what?

A. Natural resources.

Q. And what has been your employment history?

A. All of it, or some of it or what?

Q. Ahm, why don't you do it in reverse chronologic order; and, once we get far enough, I'll just say stop; how's that?

A. I worked for Sawyer County for 31 years.

Q. Well, that's easy. In what capacities?

A. As forest administrator for all but the first nine months.

Q. That's good. That's all I need to know. How long were you responsible for the operation and maintenance of the dams?

A. Approximately ten years.

Q. And what time period was that?

A. I believe from about '85 through '95.

Q. And was that until Mr. Olson was hired?

A. Correct.

MS. AZAR: Mark that, please.

(Document marked for identification as Exhibit No. 174.)

BY MS. AZAR:

Q. Mr. Kruger, you've just been handed something that's been marked as Exhibit 174. Can you identify that document?

2 A. Looks like some of my records.
3 Q. And what are these records of?
4 A. Ahm, levels that I recorded.
5 Q. Do you know a year you prepared this document?
6 A. I wouldn't have, but I saw on the second page it says 1996
7 on that one. No, I don't know what these other ones, if they're
8 all the same year or not; I can't tell you.
9 Q. And, when you recorded -- strike that. You were responsible
10 for operating and maintaining all of Sawyer County's dams from
11 approximately 1985 through 1995, correct?
12 A. Correct.
13 Q. And what was your normal procedure in operating and
14 maintaining the Lake Placid Dam? How often would you inspect
15 that dam?
16 A. Very seldom and, unless someone called and said there was a
17 problem, it may not have got it once per year, as a guess, right
18 now.
19 Q. So, if you didn't receive any complaints, you would inspect
20 it approximately once per year?
21 A. (Indicating).
22 Q. And if you received --
23 THE REPORTER: I'm sorry.
24 MS. AZAR: Can you, audibly?
25 THE WITNESS: Oh, did I -- did I say yes? Oh, I'm sorry.

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2 (Discussion off the record.)

3 (The pending question was read as follows:

4 "So, if you didn't receive any complaints, you would
5 inspect it approximately once per year?")

6 THE WITNESS: Yes.

7 BY MS. AZAR:

8 Q. And, if you received a complaint, what would you do?

9 A. I would go out to inspect it to see if there was a problem.

10 Q. And, when you went out to inspect it, whether it was as a
11 result of the complaint or whether it was, let's call it your
12 annual inspection, would you make a record of that inspection?

13 A. Not necessarily, no.

14 Q. And so the notes that we're looking at on Exhibit 174, would
15 it be unusual for you to take these kind of notes for the Lake
16 Placid Dam?

17 A. Yes, I don't believe there is a gage at the Lake Placid Dam.

18 Q. And what sort of maintenance activities did you conduct at
19 the Lake Placid Dam?

20 A. None.

21 Q. None. Did water ever over top the Lake Placid Dam during
22 your ten years of operation?

23 A. I don't remember seeing water going over the Lake Placid
24 Dam.

25 Q. And did the water ever go through the boards at the Lake

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2 Placid Dam?

3 A. There was some water going between the boards of Lake Placid

4 Dam.

5 Q. And what would Sawyer County do when you discovered that
6 there was water going through the boards at the Lake Placid Dam?

7 A. Nothing. All dams normally leak some water between the
8 boards.

9 Q. Did you ever replace the boards at the Lake Placid Dam?

10 A. I don't remember doing it, but I was told there was some
11 boards replaced during my time, I think by Jan; and -- I do not
12 remember doing it.

13 Q. As far as -- let's now jump to the Round Lake Dam. What was
14 your normal procedure as far as inspecting the Round Lake Dam?

15 A. That was probably an on call, where there were a couple of
16 lakeshore owners on Little Round that watched the water level and
17 would call the office that it's high, it's low, there's a --
18 there's a dam in place there. Beaver had put a dam in place;
19 something needs to be opened up. We'd go check it.

20 Q. So you'd -- it was complaint driven. When the property
21 owners would call you, you would go out and inspect the dam?

22 A. Yes, yah.

23 Q. Did you have any sort of regular inspection regime?

24 A. No.

25 Q. And, as far as measuring the water levels on Round Lake, was

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2 there any protocol on how often the water levels were measured?

3 A. No.

4 Q. I'd like to turn your attention now to Exhibit 174 which is

5 some notes about operation of the Round Lake Dam as well as some
6 of the lake levels that you took during some year. In relation
7 to the Round Lake Dam, was it common for you to record your
8 inspection results or operational results of the Round Lake Dam?

9 A. There is -- there was some recording made, but it -- there
10 was no formal file to put them in. I'm guessing this -- because
11 there's so many in one year, there was a number of complaints so
12 we started watching, writing down what we -- what we saw.

13 Q. Okay. And I -- I'm looking at the notation at the bottom
14 there, it says: Round Lake, normal 5.25 and max 5.50. What does
15 that mean?

16 A. Those are the gage readings that we were to use to determine
17 if the water level was high or low.

18 Q. And how did you -- how were you informed that the normal was
19 5.25 and the max was 5.50?

20 A. A letter from the DNR. Water quality specialist, I believe,
21 is who.

22 Q. And was that the letters that you were just talking about
23 that you reviewed?

24 A. No, I think there was -- there's earlier -- earlier orders.

25 Q. Okay. But the -- you learned this from some correspondence

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2 from the DNR that Sawyer County was supposed to operate the Round
3 Lake Dam at a normal of 5.25 and a max of 5.50, correct?
4 A. Correct.
5 Q. And do you remember what the correspondence looked like from

6 the DNR? Was it the 1941 Order or was it something after that?
7 A. I do not remember.
8 Q. During your ten years of operating the Round Lake Dam, how
9 often was high water a problem on Little Round Lake?
10 A. I do not remember.
11 Q. I'm going to show you what's been marked as Exhibit 111. Do
12 you recognize that document?
13 A. I do not. I can't say I've ever seen this document. I may
14 have, but this -- this particular document I do not recognize,
15 no.
16 Q. I'd like you to take a look at what's been marked as Exhibit
17 158. I can tell you that this is Dale Olson's dam log. It's the
18 log on which he records the dam levels. Did you have any similar
19 document during your tenure of being responsible for the dams?
20 A. No.
21 Q. Now --
22 A. That's what mine looked like.
23 Q. You were also responsible for the Tiger Cat Dam, right?
24 A. Yes.
25 Q. And what was your inspection and operation and maintenance

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2 protocol for the Tiger Cat Dam?
3 A. On call.
4 Q. So it was complaint driven as well?
5 A. Yes.
6 Q. How often did you add or remove boards from the Tiger Cat

7 Dam?

8 A. That was done more often, I would say, than Round.

9 Q. Several times a year? Give me a benchmark.

10 A. Two to four times where you would -- you would have to take

11 logs out because it was too high. Tiger Cat would drop fairly

12 fast so you would have to go back, put boards in again and then

13 lock them in place.

14 Q. And, on an average, how often did that happen in a year?

15 A. There was once or twice a year that we would have high water

16 that you'd have to pull a log.

17 Q. And let's jump back to the Little Round Lake Dam because I

18 don't think I asked you that question. How often did you add or

19 remove logs from the little Round Lake Dam?

20 A. Once -- there would be less -- once -- one or two times per

21 year.

22 Q. I'm going to hand you what's been marked as Exhibit 67, and

23 this is a letter from the WDNR dated February 22nd, 1990, to

24 Sawyer County; and it's about the operation of some of its dams.

25 And I'm going to let you look at this in a moment, but what I

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2 want to point you to is we'll be talking about the section on the

3 Lake Placid Dam. Let me know when you've finished reading that.

4 A. The Placid part?

5 Q. Yeah.

6 A. I've read it.

7 Q. The document that's been marked as Exhibit 67 asks whether

8 or not the County has improved the means to operate the Lake
9 Placid Dam; is that correct?

10 A. Yes.

11 Q. Do you remember what the County's response to this letter
12 was?

13 A. No.

14 Q. Do you recall what the issue was, the DNR had concerning the
15 County's operation of the dams, what -- strike that.

16 Do you know what the DNR's concerns were over the County's
17 operation of the Lake Placid Dam?

18 A. No.

19 Q. I'm going to hand you what's been marked as Exhibit 68.
20 This is Sawyer County's response dated March 21st, 1990. Call
21 your attention to the Lake Placid Dam section. This is a letter
22 prepared by you, Mr. Kruger; is that correct?

23 A. Yes.

24 Q. And, under the Lake Placid Dam, No. 3, it says: No changes
25 have been made to improve the operation of the gate on this dam;

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2 the County feels that no change is needed.

3 Do you recall as to why Sawyer County answered the DNR's inquiry
4 with the statement that the County feels that no change is
5 needed?

6 A. The dam is a very small dam, virtually, not ever pulling,
7 changing boards, and I felt there was no need for a mechanical
8 lift on it or anything.

9 Q. And is -- are you suspecting today that that's what the DNR
10 was recommending was some sort of mechanical lift?

11 A. I don't know.

12 Q. I'd like to hand you what's been marked as Exhibit No. 46.
13 This is a September 27th, 1993 letter from the WDNR to Sawyer
14 County Zoning Administrator; and I'd like to call your attention
15 to the Lake Placid diversion structure discussion on pages 1 to
16 2, if you could read those. Mr. Kruger, this Exhibit No. 46
17 states as follows: Quote, the diversion structure -- it's
18 talking about the Lake Placid diversion structure -- dam that
19 connects Lake Placid to Big Round Lake was originally intended to
20 be used only as a means to maintain a minimal elevation in Big
21 Round Lake, period. The site visit indicated two to four inches
22 off water flowing over the stoplights, period. Again, there's
23 not a operational procedure for adjusting the stoplights, period.
24 Consideration should be given to limiting the range of adjustment
25 of the structure, period. This would include limiting the number

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2 of stoplights that can be removed and cutting off unnecessary
3 channel iron, period.
4 Did the County do any of the items recommended by the DNR in this
5 letter?
6 A. As far as giving this information needed?
7 Q. Ahm, as far as consideration should be given to limiting the
8 range of adjustment of the structure? Limiting the number of
9 stoplights that can be removed and cutting off the unnecessary

10 channel iron?

11 A. I believe there was a lock installed on the hold-down
12 port -- There is a hold-down type of a structure that keeps the
13 logs in place so you can't lift them out. I believe that was
14 finally locked up so people could not take boards out on their
15 own.

16 Q. And, prior to 1993, the structure was not locked?

17 A. I would say it was not locked.

18 Q. And so, after 1993, you believe Sawyer County did change
19 it's operational procedures and started locking the Lake Placid
20 Dam structure?

21 A. Yes.

22 Q. Now, I'd like to hand you what's been marked as Exhibits 31
23 and 59. The letter 31 -- I'm sorry, Exhibit 31 is a September
24 5th, 1995 letter from Todd Naas to Shirley Suhsen and 51 --
25 pardon me. 59 is an August 8th, 1995 letter from Todd Naas to

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2 yourself.

3 Are these the two letters that you reviewed in preparation for
4 this deposition?

5 A. Yes.

6 Q. I'm assuming that you received the August 8th, 1995 letter
7 as a function of your employment with Sawyer County, correct?

8 A. Yes.

9 Q. And do you recall whether or not you also received a copy of
10 the September 5th, 1995 letter as a function of your employment

11 with Sawyer County?

12 A. No. I don't.

13 Q. Do you recall ever seeing a September 5th, 1995 letter
14 before yesterday, before you prepared for this deposition?

15 A. I do not remember seeing it.

16 Q. Then let's just focus on Exhibit 59 which is the letter that
17 Mr. Naas sent to you. Do you recall receiving this back in
18 August 8th, 1995?

19 A. No.

20 Q. Do you recall what Sawyer County's response was to this
21 letter back in 1995?

22 A. No, I don't.

23 Q. Do you recall speaking to anybody in the Land and Water
24 Conservation Committee with regards to this letter back in 1995?

25 A. Ahm, no. I would not have spoke to the Land and Water

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2 Conservation Committee. If I spoke to anybody, it would have
3 been the forestry committee because that's who I would deal with.
4 They are the same committee, same committee members; but I do not
5 go to the Land and Water Conversation Committee when they meet.
6 So, if I spoke to anybody, it would have been the Forestry
7 Committee.

8 Q. Then I want to understand who, whenever you were responsible
9 for the operation and maintenance of the dams, which Sawyer
10 County committee was overseeing the operation and maintenance of
11 the dams?

12 A. The forestry committee.
13 Q. Thank you. And when did that switch over to the Land and
14 Water Conservation Committee?
15 A. When they hired a land and water conservationist.
16 Q. Got you. Then do you remember speaking with anybody in the
17 Forestry Committee with regards to this August 8th, 1995 letter?
18 A. I do not remember, no. If it's in the minutes, it may be in
19 our minutes but I do not remember ever talking to them about it.
20 Q. Do you have any recollection of the events that led to this
21 letter, the issuance of the letter to Sawyer County?
22 A. I remember being out where we met at the B -- the bridge on
23 Highway B, we met at -- by Tiger Cat. I don't think we went to
24 the dam. We may have went to the Placid Dam. I don't know if it
25 was in response to this letter. I'm guessing it probably --

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2 MR. DREGNE: Just slow down.
3 THE WITNESS: -- was.
4 BY MS. AZAR:
5 Q. And that was a meeting with DNR?
6 A. There were a number of people there, which I think this list
7 on the back of Shirley Suhsen's letter lists the people that were
8 at that particular meeting. That's 8-25 so this is later than
9 this. So I was at this meeting, but I don't remember a meeting
10 before the August 8th letter then. I was at this other one.
11 Q. Do you remember that meeting on August 25th, 1995?
12 A. Parts of it.

13 Q. What do you remember?

14 A. I remember meeting with a guy by the name of Ted Terza ^ sp
15 who said there was a second channel coming out of Tiger Cat
16 heading toward Round Lake. Some of the people walked in the
17 woods to look. I did not. There was no other channel.

18 Q. Where did he say the channel was located?

19 A. North of Tiger Cat Road.

20 Q. I'm showing you what's been marked as Exhibit No. 1. Could
21 you point to where Tiger Cat Road is?

22 A. That's Tiger Cat Road. Tiger Cat Road, which is over here;
23 and he thought the -- the diversion was somewhere up in this
24 area.

25 Q. Okay. You know, I'm actually going to have you go ahead and

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2 mark where Mr. Terza ^ sp thought there was a diversion. I'm
3 going to hand you a green highlighter. If you can just mark that
4 on the map; and, if it appears it's going off the map, you can
5 just put an arrow in the general direction of where it was; and
6 would you mind just taking your pen and initialing the green
7 arrow that you just put on and date it?

8 What else happened during that meeting on August 25th, 1995?

9 A. Discussions of water levels.

10 Q. And, at that point in time, were the water levels too high?

11 A. I don't remember.

12 Q. Do you remember what the discussions about the water levels
13 were?

14 A. No.

15 Q. It was ten years ago, wasn't it?

16 MS. AZAR: Off the record.

17 (Discussion off the record.)

18 BY MS. AZAR:

19 Q. Okay. Back on the record. We had established that you were

20 the forest administrator and, as such, from 1985 to 1995, you

21 were the Sawyer County employee that was responsible for the

22 maintenance, inspection and operation of the Tiger Cat Dam,

23 correct?

24 A. Correct.

25 Q. And, also, for the Lake Placid Dam, correct?

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2 A. Correct.

3 Q. And Carlson Road Dam, correct?

4 A. Correct.

5 Q. We have, in today's deposition, walked through your

6 operation, maintenance and inspection protocols for each one of

7 those control structures, correct?

8 A. Correct.

9 Q. And were those protocols written down anywhere?

10 A. No.

11 Q. So did Sawyer County have any written policies with regards

12 to the operation and maintenance -- or operation, maintenance --

13 what's that last word? Excuse me.

14 THE REPORTER: Inspection.

15 MS. AZAR: Thank you.

16 BY MS. AZAR:

17 Q. -- and inspection of it's dams?

18 A. I have no written directions.

19 Q. Who was responsible for developing the policies on behalf of
20 Sawyer County for the operation and maintenance and inspection of
21 its dams?

22 A. I don't know.

23 Q. And you, as the forestry administrator, was responsible for
24 implementing whatever those policies were, correct?

25 A. There were no policies.

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2 Q. Given that there were no policies that were provided to you
3 as forest administrator, how did you know when to add or remove
4 boards from, for instance, the Round Lake Dam?

5 A. If the water was over the maximum level, you took the boards
6 out. They stayed out till it was down at least within the range,
7 and either you put some or, if it fell to the minimum, you put
8 all boards back in.

9 Q. So that's how you operated the Little Round Lake Dam?

10 A. Correct.

11 Q. And is that the same -- the same guidelines that you used
12 for the operation of the Tiger Cat Dam?

13 A. No, because Tiger Cat you would only take out one or two
14 till the water -- until the water fell to either within the range
15 or down close to the minimum allowable and then you put the

16 boards back.

17 Q. Okay. So but the Tiger Cat Dam, it sounds like it was a
18 much more sensitive dam so you would only remove one or two
19 boards, correct?

20 A. There's a lot more water going over Tiger Cat with one board
21 removed than taking which -- all boards were only both boards in
22 the Little Round. There's one big one and one little one on top;
23 there's that much board total.

24 Q. And let the record reflect that you just --

25 A. Approximately, sixteen inches.

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2 MR. DREGNE: On which structure?

3 THE WITNESS: On the Little Round Dam. Tiger Cat has boards
4 about eight feet in total height.

5 BY MS. AZAR:

6 Q. So, as far -- when you say all boards on the Little Round
7 Lake Dam, you're talking about two boards totaling sixteen to
8 eighteen inches?

9 A. Possibly sixteen inches.

10 Q. Okay. Let's take a minute. I think I might be done.
11 (Discussion off the record.)

12 BY MS. AZAR:

13 Q. The last time that you were responsible for adding and
14 removing boards from the Tiger Cat Dam, I believe, was in 1995.
15 Physically, can you describe to us how you add boards to the
16 Tiger Cat Dam?

17 A. You slide the board out onto the concrete dam and you take a
18 pair of ice tongs and drop it down in the slot.
19 Q. And removing boards from the Tiger Cat Dam?
20 A. You hook a pair of skidding tongs like you would pick up a
21 pulp stick to that board and that tongs are hooked to the winch
22 on the truck and you pull the board out of there -- tip it up and
23 pull it out.
24 Q. And you tip it up from the ends or --
25 A. One end up.

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2 Q. -- one end up and then pull it out.
3 MS. AZAR: Anything else?
4 ALSO PRESENT: I just wondered how that worked.
5 MR. DREGNE: You could have done that off the record.
6 (The deposition concluded at 5:04 p.m.)
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