

STATE OF WISCONSIN            CIRCUIT COURT            SAWYER COUNTY

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JAMES HAUSMAN,

Plaintiff,

vs.

Case No. 03-CV-167

SAWYER COUNTY,

Defendant.

= = = = =

Deposition of:

JEFFREY LEE

= = = = =

Date: Tuesday, January 18, 2005

Time: 1:30 o'clock p.m.

Reported by GREGORY GASSEN

3 127 Copy of spreadsheet prepared by Dean 46  
Skallman with attachment

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DEPOSITION of JEFFREY LEE,

11 a witness in the above-entitled action, taken at the  
12 instance of the defendant, under the provisions of  
13 Chapter 804 of the Wisconsin Statutes, pursuant to  
14 notice, before GREGORY GASSEN, a Notary Public in and for  
15 the State of Wisconsin, at the offices of Stafford  
16 Rosenbaum LLP, Attorneys at Law, Three South Pinckney  
17 Street, in the City of Madison, County of Dane, and State  
18 of Wisconsin, on January 18, 2005, commencing at  
19 1:30 o'clock p.m.

20

A P P E A R A N C E S

21

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

22

23

JOSEPH P. WRIGHT,  
STAFFORD ROSENBAUM LLP, Attorneys at Law,  
Three South Pinckney, Madison, Wisconsin,  
appearing on behalf of the defendant.

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A P P E A R A N C E S (Continued)

2

ALSO PRESENT: JAMES HAUSMAN  
NANCY JOHNSON DENT

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JEFFREY LEE,

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

EXAMINATION

BY MR. WRIGHT:

Q What is your full name, sir.

A Jeffrey Lee.

Q Where do you live?

A Minneapolis, Minnesota.

Q Where do you work?

A Barr Engineering Company.

Q What is your position at Barr Engineering?

A I'm a senior ecological planner and a limnologist.

Q And you presumably have reviewed the resume that was  
submitted on your behalf as part of the Barr  
Engineering reports in this case?

A Yes, I have.

Q And is it accurate as of today?

A Yes, it is accurate.

Q And is there anything that needs to be added or

3

1 deleted in order to make it fully complete?

2 A I think it's reasonably accurate.

3 Q Okay. Are you a professional engineer?

4 A No.

5 Q Have you ever sat for the exam?

6 A No.

7 Q Okay. Tell me generally what your area of  
8 responsibility is at Barr, not just for this project  
9 but overall what you do.

10 A I do water resource management work, I do natural  
11 resource inventories, park planning, ecological  
12 restoration and some lake's biology work.

13 Q And I understand before joining Barr in 2002 you  
14 worked for a municipality?

15 A Yes, I worked for the Minneapolis Park and Recreation  
16 Board.

17 Q And in that role did you have responsibility for any  
18 aspects of water resource management?

19 A Yes, I did.

20 Q What was your area of responsibility?

21 A I was responsible for water quality management within  
22 the City of Minneapolis, lake restoration primarily.

23 Q And how many years did you do that?

24 A I worked for the Minneapolis park board for 12 years.

25 Q And during that time or prior to that for that matter,

4

1 did you ever work on a project similar to the Round  
2 Lake project that you worked on for Barr?

3 A Yes, I worked on other water quality projects similar.

4 Q Okay. Have you ever worked on a project where you  
5 were analyzing the amount of soil that entered a lake  
6 due to erosion?

7 A Yes, I did.

8 Q What projects were those?

9 A The largest one was the Minneapolis Chain of Lakes  
10 project.

11 Q What did that involve?

12 A That was an eight-year, \$12 million dollar restoration  
13 project for the Minneapolis Chain of Lakes.

14 Q Which lakes would that be?

15 A Lake Harriet, Lake Calhoun, Lake of the Isles, Cedar  
16 Lake and Brownie Lake.

17 Q What was your role in that project?

18 A I was the project manager for that project.

19 Q And so for the city did you oversee outside  
20 consultants on that project?

21 A Yes, I did.

22 Q Did you yourself perform any of the analysis of  
23 erosion and its effect on the lakes or did the outside  
24 consultants do that?

25 A I looked at the water quality aspects of erosion.

5

1 Q Tell me what that means.

2 A Typically, the engineering staff, whether consultant  
3 or city, would look at how much soil loss there was,  
4 and then I would use that in our water quality  
5 modeling and monitoring efforts to determine the  
6 impact on water quality.

7 Q So in that instance with respect to the Minneapolis  
8 Chain of Lakes project, you were not responsible for

9 determining how much soil was entering the lakes, that  
10 was done by the outside consultants?

11 A That was done by city staff or outside consultants,  
12 yes.

13 Q And then your task in that project was to, well, tell  
14 me -- let me back up. As project manager you had  
15 overall responsibility for the project, is that  
16 correct?

17 A That's correct.

18 Q And so as project manager, did you get involved in the  
19 actual analysis of what effect on water quality there  
20 would be from soils entering due to erosion?

21 A Yes, I did.

22 Q And what level of responsibility or involvement did  
23 you have with respect to that issue?

24 A The responsibility was in a couple areas, helping  
25 quantify shoreline erosion areas, and calculating the

6

1 amount of phosphorus that would be put into the lake  
2 due to the soil loss from erosion.

3 Q Okay. Any other projects similar to the Round Lake  
4 project in either the water quality aspect or the  
5 amount of soil erosion aspect that you've been  
6 involved in?

7 A Yes, I have been in a number.

8 Q Have you been involved in any since you've been with  
9 Barr Engineering?

10 A You mean with regard to soil erosion or just lake  
11 quality?

12 Q Well, let's stick to soil erosion first.

13 A One project since then.

14 Q What project was that?

15 A Other than Round Lake, Lake Susan.

16 Q And what was your role in the Lake Susan project?

17 A At Lake Susan I worked with a group of engineers and  
18 designers to prepare plans for shoreline protection.

19 Q And did you also as a part of that work determine, for  
20 example, how much soil was being eroded into that  
21 particular lake?

22 A In the case of Lake Susan, we quantified the shoreline  
23 loss, but we did not take it to the step of what was  
24 the actual cubic feet or cubic yards of loss.

25 Q Any other projects since you've been with Barr

7

1 Engineering where you were involved in soil erosion  
2 analysis?

3 A None that come to mind right now.

4 Q Any other projects since you've been with Barr  
5 Engineering where you were involved in water quality  
6 issues arising out of erosion?

7 A There was one project that kind of transitioned my job  
8 change, yes.

9 Q Explain what you mean by transitioned your job change.

10 A While I was still at the Park and Recreation Board we  
11 were working on Powderhorn Lake, and Barr Engineering

12 was my consultant on that project, and the project was  
13 finished while I was at Barr Engineering, it was a  
14 multi-year project.

15 Q Okay. Do you have any publications listed in your  
16 resume that you feel are related to or provide support  
17 for the opinions you've expressed in your parts of the  
18 Barr Engineering report in this case?

19 A Pretty much all of the publications related to the  
20 Chain of Lakes project, any that might be related to  
21 my work in the City of Waseca as well.

22 Q You haven't published anything with respect to the  
23 Round Lake case other than the report that we've  
24 marked here as an exhibit, have you?

25 A No.

8

1 Q When did you first become involved in this project,  
2 meaning the Round Lake project?

3 A It would have been the latter part of May, 2003, Nancy  
4 Johnson Dent asked me if I would travel with her to  
5 Hayward to take a look at Round Lake.

6 Q Did you bring your wife or significant other with you?

7 A No, I came by myself.

8 Q Did you visit more than once?

9 A No, I was only at Round Lake that one trip.

10 Q Okay. Had you by chance ever been there before?

11 A Not on Round Lake specifically, no.

12 Q You'd been in the Hayward area generally maybe?



13 A Yes.

14 Q Okay. When you visited in May, 2003, was that with  
15 Ms. Dent and Mr. Solseng, were all three of you there?

16 A No.

17 Q Just yourself and Ms. Dent?

18 A Yes.

19 Q Okay. Tell me what you understood before you got  
20 there about what your part of the project was going to  
21 involve.

22 A My understanding before we left on the trip was that  
23 we were going to go to Round Lake, take a look at  
24 water quality, on my part take a look at water quality  
25 and lake ecosystem issues related to some shoreline

9

1 erosion problems.

2 Q And what did you understand the goal of your work to  
3 be?

4 A As I understood my goal was to help provide an  
5 assessment of impacts on lake water quality and lake  
6 ecosystem.

7 Q Before you went to Round Lake on that trip in May,  
8 2003, did you review any data about the lake or about  
9 Mr. Hausman's situation?

10 A As I recollect, before I went on that trip all I  
11 really looked at was a USGS topographic map and some  
12 aerial photography.

13 Q Before you arrived at Round Lake with Ms. Dent, did  
14 you have any discussions with Mr. Hausman before you

15 got there?

16 A No.

17 Q Did you have any discussions with anyone outside Barr  
18 Engineering before you got to Mr. Hausman's property?

19 A About my trip?

20 Q Yes, about the trip or about the issues that you were  
21 going to study there.

22 A No, no.

23 Q When you got to Mr. Hausman's property, what did you  
24 observe about his property relevant to your work?

25 A That it was on the shoreline of the lake, and there

10

1 was some shoreline repair work under way at the time.

2 Q What work was under way when you got there?

3 A A contractor was installing sheet piling.

4 Q So the wall, the seawall, for lack of a better term,  
5 was being erected by the time you got there?

6 A Correct.

7 Q Any other repair work being done that you observed,  
8 for example, the tension cracks?

9 A There was no other repair work that I saw at the time.

10 Q When you visited in May, 2003, how long did you stay?

11 A Actually, we were there, I believe it was the first  
12 weekend of June, and we were there Saturday, arrived  
13 Saturday morning and came home Sunday, I left Sunday  
14 shortly after noon.

15 Q When you arrived that Saturday morning in June, what

16 did you do first?

17 A Met Nancy and her husband and we drove out to  
18 Mr. Hausman's property, took a look at the lake from  
19 his shoreline.

20 Q What did you observe relevant to your work about the  
21 shoreline at Mr. Hausman's property on that visit?

22 A The things I observed relevant to my part of the  
23 project were that he had lakefront property.

24 Q What was the condition of the property with respect to  
25 any erosion or other damage?

11

1 A At that time it was difficult to really, for me to  
2 tell what the damage was because the sheet pile was  
3 being installed.

4 Q Did you see any signs of erosion?

5 A Yeah, there were signs of erosion.

6 Q What did you see?

7 A The shoreline had been moved back from what appeared  
8 to be the existing shoreline location.

9 Q What makes you say that?

10 A In some locations the shoreline adjacent to where they  
11 were working on the sheet pile appeared to be  
12 staggered in different locations back from the water's  
13 edge.

14 Q Did you visit any other properties that Saturday, the  
15 first day that you were there?

16 A Actually, a large part of Saturday was consumed with a  
17 canoe trip down through Osprey Lake.

18 Q Was that you and Ms. Dent?

19 A Correct.

20 Q And you were here for her testimony this morning,

21 correct?

22 A Yes, I was.

23 Q And you heard her describe what she saw going down

24 Osprey Creek that day, true?

25 A Correct, I did, yes.

12

1 Q Do you have any recollection that's different from

2 hers about what you observed on that canoe trip down

3 Osprey Creek or to add to what she said?

4 A I think what she said about what she saw I also saw.

5 There were some other things that I observed,

6 primarily related to vegetation.

7 Q What did you see related to vegetation?

8 A It appeared that the water level was higher than it

9 may normally have been.

10 Q What makes you say that?

11 A The water level was such that, the water level was up

12 into that transition zone that normally occurs between

13 wetland and upland vegetation.

14 Q So the water wasn't confined to just the wetland areas

15 as you traveled through the, for lack of a better

16 phrase, the channel down Osprey Creek?

17 A Correct, it seem somewhat higher there.

18 Q What else did you observe about that area on your

19 canoe trip?

20 A In Osprey Lake itself I believe there was either a  
21 peninsula or a large island, it was very noticeable  
22 there that the water level was above what the  
23 vegetation had normally been growing with so to speak.

24 Q Did you and Ms. Dent discuss at all why the water  
25 level would have been higher at that point in the

13

1 year?

2 A In very general terms.

3 Q Tell me about that.

4 A I think in general terms that the lake level was up  
5 and had been up somewhat.

6 Q Okay. Anything else that you observed on your canoe  
7 trip?

8 A Many of the same things Ms. Dent mentioned. I think  
9 evidence of beaver activity, I think some of the  
10 vegetation that she talked about may have been due to  
11 beaver activity.

12 Q What do you mean by that?

13 A Fresh cuttings of vegetation, small trees.

14 Q Beaver pull-downs, that sort of thing?

15 A Yes, yes.

16 Q Anything else relevant to your work on this project  
17 that you observed during your canoe trip down Osprey  
18 Creek?

19 A No, I don't think so.

20 Q What else did you do that first day as part of your

21 work?

22 A Also on that first day I helped Ms. Dent take some  
23 flow readings, flow measurements at some of the  
24 outlets. We went and looked at a dam structure.  
25 Mostly I was helping take sample readings, holding

14

1 equipment, those types of things.

2 Q On that Saturday, did you take any measurements  
3 yourself or do any other testing related to water  
4 quality or visibility in the water?

5 A No, nothing other than visual observations of the  
6 lake.

7 Q What did your visual observations of Round Lake that  
8 day tell you about the water quality, if anything?

9 A Round Lake was a fairly clear water lake. I didn't do  
10 any actual measurements.

11 Q Any other work that you did that Saturday?

12 A We did a boat trip, but it's not in my memory clear  
13 whether that was Saturday afternoon or Sunday morning.

14 Q That's the boat trip Ms. Dent described during her  
15 testimony?

16 A That's correct.

17 Q Were you in a little fishing boat with an outboard or  
18 something or were you in a bigger boat?

19 A We were in a little, I think it was maybe a 12-foot  
20 Lund.

21 Q Pretty big lake for a little boat.

22 A Yes.

23 Q What area of the lake did you cover on that boat trip,  
24 whether it was Saturday or Sunday?

25 A We traveled pretty much the entire shoreline all

15

1 except for a bay on the east side, I believe, and then  
2 stopped and took some additional inflow measurements  
3 on the north shore.

4 Q How long did this boat trip last?

5 A In the neighborhood of an hour or two.

6 Q How big of a motor did you have on that Lund?

7 A Actually, I think it was a 25 horse.

8 Q And how far were you on average from the shoreline  
9 when you traveled?

10 A When we traveled we were at times 50 to 100 feet maybe  
11 away.

12 Q Did you take any photos on this trip?

13 A We did take some photos, yes.

14 Q Tell me generally what you observed about the Round  
15 Lake shoreline during that trip.

16 A There was some areas of very obvious shoreline  
17 erosion, and a large amount of shoreline development,  
18 cabins, houses, those types of things.

19 Q I know you said you couldn't remember whether that  
20 boat trip was on Saturday or Sunday, but regardless of  
21 which day it was, what other work did you do that  
22 weekend besides the trip down Osprey Creek in a canoe,  
23 the observations at Mr. Hausman's property and the

24 boat trip?

25 A Also attended a lake association meeting, which I

16

1 think would have been Saturday afternoon, which would

2 probably have made the boat trip on Sunday.

3 Q Okay. Who else that you knew personally was at the

4 lake association meeting?

5 A Nancy Johnson Dent was there, Mr. Hausman and his

6 wife, Carol.

7 Q Anyone else?

8 A No one that I knew before the meeting.

9 Q Did you meet Mr. Carthel at that meeting?

10 A Yes, I did.

11 Q Do you remember any comments that Mr. Carthel made

12 during the meeting?

13 A Nothing specific.

14 Q Do you remember any comments he made to either you or

15 Ms. Dent after the meeting?

16 A He and I spoke after the meeting primarily about my

17 tenure at the Park Board.

18 Q Did you talk with him at all about the water levels on

19 Round Lake or Mr. Hausman's property?

20 A Nothing specifically related to lake levels.

21 Q Do you remember any comments that Mr. Hausman made at

22 the home owners association meeting?

23 A What I do remember is that Mr. Hausman talked for a

24 short time about the lake levels and generally what



25 was going to be done about them.

17

1 Q And do you remember any discussion from any of the  
2 other owners during that meeting?

3 A There was a lot of anecdotal information thrown out  
4 during that meeting by residents of the lake.

5 Q Do you remember any specifics?

6 A Nothing I could contribute specifically to any one  
7 person.

8 Q Do you remember anything even generally that anyone  
9 said about what the county was or was not doing that  
10 was creating or failing to abate a problem with lake  
11 levels?

12 A No.

13 Q Other than attending the lake association meeting and  
14 the other items of work we've already discussed, what  
15 else did you do that weekend as a part of your work on  
16 this project?

17 A That pretty much, I think we pretty much covered  
18 everything I did that weekend.

19 Q Did you take any water samples from Round Lake?

20 A No, I did not.

21 Q Did you take any samples from the bottom of the lake,  
22 the sediment at the bottom of the lake?

23 A No.

24 Q Did you take any samples from the shoreline at any  
25 point around Round Lake or along Osprey Creek?

18

1 A No.

2 Q Did you visually inspect the bottom of the Little  
3 Round Lake dam and the area around the dam?

4 A I was there with Ms. Dent when we took readings.

5 Q But I assume your focus then was on taking the  
6 readings?

7 A Correct.

8 Q Did you make any observations about either the water  
9 quality at or near the dam or about any sediment  
10 buildup in or near the dam?

11 A Again, any water quality observations were just  
12 visual. The water looked fairly clear.

13 Q Have you or anyone else at Barr Engineering at any  
14 time taken water samples from Round Lake as a part of  
15 this project?

16 A No.

17 Q Have you or anyone else from Barr Engineering at any  
18 time taken samples from Round Lake whether it be the  
19 soils or the water to determine phosphorous levels?

20 A Someone did take soil samples that were analyzed for  
21 phosphorous.

22 Q But there was never any analysis of the water to  
23 determine what level of phosphorous was in the water,  
24 true?

25 A Correct.

1 Q Did you yourself for purposes of your work in this  
2 case make any measurements at all as a part of your  
3 work?

4 A No.

5 Q The work that you did was simply to observe the  
6 shoreline while traveling in this Lund boat and  
7 whatever you may have observed while on the shore at  
8 Mr. Hausman's property, true?

9 A During the weekend that I was there, yes.

10 Q Well, what other work did you do that involved any  
11 analysis of Round Lake or its shoreline besides that  
12 weekend visit?

13 A I took a look at the water quality data that was  
14 provided to Barr Engineering by Dan Tyrolt from the  
15 Tribe.

16 Q And other than the data you may have gotten from  
17 Mr. Tyrolt, did you get data from anywhere else?

18 A I had one fairly hold, I believe 1966 DNR report that  
19 was also available.

20 Q Other than Mr. Hausman and the other folks at Barr  
21 Engineering, did you discuss water quality at Round  
22 Lake with anyone else?

23 A Other than people at Barr Engineering?

24 Q Right.

25 A With Dan Tyrolt we had a couple, well, we one phone

1 conversation.

2 Q When was that?

3 A That would have been the Summer of 2003, maybe July.

4 Q What did he tell you about water quality at Round  
5 Lake?

6 A He told me a couple of things, one, that it appeared  
7 that Round Lake had very good water quality. The  
8 other was that they had done a report, and that they  
9 were also in the process of doing a sediment study.

10 Q Did you ever obtain a copy of the report?

11 A I obtained a copy of the Tribe's water quality report.

12 Q Do you remember when that dates from?

13 A It was only five year's worth of data. I believe it  
14 was the late nineties, I'd have to look up exact  
15 dates.

16 Q You said that Mr. Tyrolt told you that the Tribe was  
17 in the process of a sediment study. Did you ever  
18 obtain any results of that sediment study?

19 A I've never seen that report.

20 Q Did you have any follow-up with Mr. Tyrolt after the  
21 one phone conversation in the Summer of 2003?

22 A The only times we spoke were during the Summer. We  
23 may have had a couple of voice mails in there about  
24 sending me the report or when it might be delivered to  
25 me.

1 Q What else do you recall Mr. Tyrolt telling you, if  
2 anything, about water quality on Round Lake?

3 A He directed me to a couple of sections in the report,

4 things like nutrient budgets and data compilation,  
5 those types of things.

6 Q Did you ever discuss with him his views of soil that  
7 might be entering the lake through erosion?

8 A In our phone conversation he made a kind of offhanded  
9 remark that he thought the sedimentation study would  
10 give some results on what the sedimentation rates  
11 were.

12 Q But you never learned what those results were?

13 A No, I never received that report.

14 Q Did you ever ask him for it after that?

15 A I believe I left him a voice mail at some point later  
16 in the Summer, and I may have received a voice mail  
17 back that the Wisconsin DNR was still working on it.

18 Q Since you and he exchanged voice mails I guess about  
19 18 months ago in the Summer of 2003, have you done  
20 anything else in an attempt to obtain the sediment  
21 study?

22 A No.

23 Q Have you had any further discussions with anyone  
24 outside of Barr Engineering or Mr. Hausman since the  
25 end of the Summer of 2003 about water quality in Round

22

1 Lake?

2 A No.

3 Q Did you ever at any time speak with anyone from Sawyer  
4 County about water quality in Round Lake?

5 A Can you define Sawyer County?

6 Q Fair question. I don't mean any resident of Sawyer  
7 County, I represent the county. I guess I should ask  
8 it as, have you ever spoken with anyone in county  
9 government about water quality in Round Lake?

10 A The answer to that is no.

11 Q Have you ever spoken with anyone from the Wisconsin  
12 DNR at any time about water quality in Round Lake?

13 A I made an attempt to contact someone at DNR Fisheries,  
14 and my recollection is that my calls did not get  
15 returned.

16 Q And those were calls you made in 2003?

17 A Correct.

18 Q What other investigation did you do in 2003 in  
19 connection with the report that you helped to author  
20 here?

21 A Primarily, I took a look at the existing water quality  
22 data, took a look at the soil loss calculations that  
23 were prepared, and used the phosphorous analysis for  
24 the soils to extrapolate out phosphorous additions to  
25 the lake, and then related that to the nutrient budget

23

1 that Dan had prepared, Dan Tyrolt.

2 Q Anything else you did in 2003?

3 A No.

4 Q Did you do any investigative work in 2004 at all?

5 A I did some continuation of those tasks I had started  
6 in 2003.

7 Q In other words, you finished doing the calculations  
8 that you put in your report?

9 A Correct.

10 Q But that isn't investigation, is it?

11 A No.

12 Q You didn't do any investigation in 2004 as a part of  
13 your water quality analysis of Round Lake, true?

14 A Correct.

15 Q And we're only a little ways into 2005, but you  
16 haven't done any further investigation this year  
17 either, correct?

18 A No, nothing other than those same tasks.

19 Q Okay. Throughout 2004 did you talk to anybody outside  
20 Barr Engineering or Mr. Hausman about the water  
21 quality work that you were doing with respect to Round  
22 Lake?

23 A I may have had some general conversations with other  
24 water quality people, but nothing specific.

25 Q Just essentially to tell them what kind of work you

1 were doing, is that what you mean?

2 A That kind of work, or if anybody had any idea about  
3 water quality trends in central Wisconsin.

4 Q Did you learn anything from those inquiries?

5 A No.

6 Q And you didn't visit Sawyer County during 2004 as a  
7 part of your work on this project, did you?

8 A No, I didn't.

9 Q If you'd take a look at Exhibit 125, Page 14, do you  
10 have that in front of you?

11 A Yes, I do.

12 Q And there's a section here in this report under No. 2  
13 entitled Impacts on the Lake's Ecosystem, do you see  
14 that?

15 A No. 2, yes.

16 Q And there are two paragraphs underneath that, correct?

17 A Correct.

18 Q Are those the only two paragraphs in this exhibit that  
19 you authored?

20 A To the best of my knowledge, those are the two, yes.

21 Q What's the basis for your statement that Round Lake  
22 has extremely good water quality?

23 A I took a look at the report that Dan Tyrolt had sent  
24 me, I looked at the phosphorous, chlorophyll and  
25 Secchi disk readings that were in that report,

25

1 S-e-c-c-h-i.

2 Q So that information came from Mr. Tyrolt, true?

3 A Correct.

4 Q Did you do anything on your own to verify the  
5 information that Mr. Tyrolt provided to you?

6 A I did an Internet search of the USEPA's database and  
7 was not able to find any additional information.

8 Q So the EPA didn't have any information as far as you  
9 could tell about Round Lake, Wisconsin?



10 A The information that they had for Round Lake was the  
11 same information I had.

12 Q There's a statement in the next sentence that, "the  
13 shoreline losses around the lake during the 2002 high  
14 water levels were estimated to average about one-half  
15 cubic foot of loss per foot of shoreline," do you see  
16 that?

17 A Yes.

18 Q What's the basis for that statement?

19 A That was based upon looking at the, so to speak,  
20 retrenchment back of the shoreline.

21 Q The retrenchment where?

22 A In the zone of erosion around the lake itself.

23 Q Well, did anyone take any measurements of the  
24 retrenchment anywhere other than at Mr. Hausman's  
25 property?

26

1 A Nothing other than visual observation.

2 Q And that visual observation was done by you from a  
3 boat, right?

4 A From a boat and when I was on shoreline.

5 Q And you were on shoreline at Mr. Hausman's property,  
6 two adjacent properties and at the inflows at the  
7 north end of the lake, true?

8 A That's correct.

9 Q And so there are four spots on the lake where you set  
10 foot as a part of your observations, right?

11 A I believe that would be correct.

12 Q Okay. Any other basis for the statement that  
13 shoreline losses were estimated to average about  
14 one-half cubic foot of loss per foot of shoreline?  
15 A Nothing other than taking that estimate and trying to  
16 create a volume calculation from it.  
17 Q Taking which estimate?  
18 A The visual loss of shoreline from the erosion.  
19 Q And how did you decide that the erosion you observed  
20 in June, 2003 arose from the 2002 high water levels as  
21 opposed to some other cause?  
22 A That was based upon what was related to me by  
23 Mr. Hausman and others.  
24 Q Well, what others besides Mr. Hausman?  
25 A Ms. Dent, Mr. Solseng.

27

1 Q And you understand that neither of them was present on  
2 Round Lake in 2002, correct?  
3 A Correct.  
4 Q So the sole source of the information about what  
5 caused the erosion in 2002 was Mr. Hausman, is that  
6 true, as far as you know?  
7 A As far as I would know, I think that might be correct.  
8 Q Okay. And when you were traveling in the boat or  
9 walking on the lakeshore, you attributed all of the  
10 erosion that you saw to the high water levels in 2002,  
11 true?  
12 A I don't think that's a fair assessment of that.

13 Q Well, can you quantify for me what percentage of the  
14 erosion that you saw that you attributed to the 2002  
15 event and what percentage you attributed to some other  
16 cause?

17 A While in the field I did not make an attempt to  
18 quantify that over multiple events.

19 Q Well, did you make an attempt to -- strike that.  
20 Aside from the 2002 high water levels that are  
21 referred to in your report, what other cause of  
22 erosion, if any, did you identify during your  
23 observations of Round Lake in 2003?

24 A What other causes?

25 Q Yes.

28

1 A There was some evidence of ice heave in an area on the  
2 northeast shoreline.

3 Q What other causes?

4 A Most of the erosion that I saw during my trip there  
5 were related to what appeared to be toe failure.

6 Q And that's the mechanism of failure that Mr. Solseng  
7 says caused the failures at Mr. Hausman's property?

8 A I did not look very closely at that. If that's what's  
9 in the report, I believe Mr. Solseng.

10 Q Well, the toe failure that you observed around the  
11 lake, is it fair to say that that represented the  
12 majority of the erosion that you saw around the lake  
13 in your opinion?

14 A I would say it was a good portion of it and in some

15 cases the largest portion of it.

16 Q Well, I'm asking about the lake as a whole. Was it  
17 the largest portion of the lake as a whole, of the  
18 erosion on the lake as a whole?

19 A I'm trying to do some shoreline math in my head here,  
20 so I would say in the areas where the erosion was most  
21 severe, probably a third of the lake, it was very  
22 obvious toe failure was the problem.

23 Q Okay. So let me understand this. With respect to  
24 that the toe failure area which you've now told me was  
25 about a third of the lake, do you attribute all of

29

1 that toe failure to the 2002 high water levels?

2 A I guess it wasn't totally. It wasn't my  
3 responsibility to determine exactly what caused that  
4 toe failure.

5 Q Well, I'm asking you what you assumed for purposes of  
6 this statement in the report, that the shoreline  
7 losses around the lake during the 2002 high water  
8 levels were estimated to average about one-half cubic  
9 foot of loss per foot of shoreline, whose statement is  
10 that, yours or someone else's?

11 A That was my statement.

12 Q Okay. And what I'm trying to understand is whether in  
13 making that statement you assumed that any toe failure  
14 you observed was the result of the 2002 high water  
15 levels?

16 THE WITNESS: Can you repeat that  
17 question, read that back?

18 (Reporter reads back last question)

19 A I'd assumed that the shoreline loss was due to the  
20 2002.

21 Q So that means that you assumed that all of the toe  
22 failure, since it's part of the shoreline loss, was  
23 caused by the 2002 high water levels?

24 A It wasn't really my responsibility in this report to  
25 determine what caused the erosion.

30

1 Q Sir, I'm not asking what your responsibility was. I'm  
2 asking what assumptions you made in making this  
3 statement. And it sounds to me, tell me if I'm wrong,  
4 but it sounds to me like for purposes of this  
5 statement you assumed that all shoreline losses you  
6 observed were the result of the 2002 high water  
7 levels.

8 A Uh-huh.

9 Q Is that true?

10 A I think that could be correct.

11 Q Okay. So every bit of erosion and shoreline loss that  
12 you observed in 2003 you attributed to the 2002 high  
13 water levels, true?

14 A Not every piece of erosion I saw was attributed to  
15 that.

16 Q But every bit of shoreline loss was.

17 MS. AZAR: Object as to form.

18 Q Let me ask it again.

19 A Okay.

20 Q I want to understand what your opinion is in this case  
21 as an expert. You're telling me that your expert  
22 opinion is based on an assumption that all shoreline  
23 losses you observed on Round Lake in 2003 were caused  
24 by the 2002 high water levels.

25 A Based on what I wrote, that would be what I assumed,

31

1 yes.

2 Q Okay. So all the way around the lake, every bit of  
3 land that you observed or believed from your  
4 observations to have been a shoreline loss you  
5 attributed to the 2002 high water levels, true?

6 A I don't think that's a correct phrasing of that.

7 Q Well, tell me then how you differentiated among  
8 different causes in reaching your conclusion about how  
9 many tons of soil went into the lake during the Spring  
10 of 2002.

11 A The soil loss calculation was based on what was  
12 apparent for loss due to shoreline erosion.

13 Q Regardless of the cause?

14 A Correct.

15 Q And you took that amount of shoreline erosion and  
16 based on what you had been told, concluded that the  
17 shoreline losses around the lake during the 2002 high  
18 water levels necessarily included all of the shoreline

19 losses that you observed a year later in 2003?  
20 A As I wrote this statement, yes, that's correct.  
21 Q Okay. Now, if we assume that every shoreline loss  
22 that you observed was attributed to the 2002 high  
23 water levels, you're saying then that on average for  
24 every foot of shoreline Round Lake lost one-half cubic  
25 foot of soil?

32

1 A Correct.  
2 Q Did you do anything to weigh one-half cubic foot of  
3 soil of Round Lake shoreline? Do you have any  
4 estimate of the mass of one cubic foot?  
5 A No, I wasn't asked to do that.  
6 Q Well, but you converted a volume into a mass, didn't  
7 you?  
8 A Yes, that number was given to me by the soils people.  
9 Q At Barr?  
10 A Correct.  
11 Q Okay. Who was that?  
12 A It came through Phil, one of the soils people gave me  
13 a number.  
14 Q Now, so we've established at this point at least your  
15 assumption was that every single foot of Round Lake  
16 shoreline lost a half cubic foot of soil in the Spring  
17 of 2002, right?  
18 A No.  
19 Q Okay. Tell me why I'm wrong.  
20 A Some places lost much more, some places lost less.

21 This was considered to be an average loss.

22 Q All right, fair enough. On average we lost a half a  
23 cubic foot of soil every foot all the way around Round  
24 Lake.

25 A On average, correct.

33

1 Q And you, based on the soil numbers that were given to  
2 you by Mr. Solseng, concluded that we had  
3 approximately six million pounds of soil enter Round  
4 Lake in the Spring of 2002.

5 A Correct.

6 Q What's the volume of six million pounds or 3,215 tons  
7 of soil?

8 A Somewhere in the range of 1.3 to 1.6 tons per cubic  
9 yard generally. That's an offhanded rule.

10 Q So about 2,000 cubic yards roughly of soil went into  
11 Round Lake?

12 A I'd have to do the math.

13 Q I'm ballparking it, too, but somewhere around there?

14 A Yes, that sounds reasonable.

15 Q Okay. Now, you go on to say, "The high water levels  
16 during 2002 and 2003 caused significant shoreline  
17 erosion around Round Lake," do you see that, the next  
18 paragraph?

19 A Correct.

20 Q And you say that "was estimated to more than double  
21 the incoming phosphorous loads"?



22 A That's correct.

23 Q What's the basis for the statement that it doubled the  
24 incoming phosphorous loads?

25 A The soil loss that we attributed to the erosion has a

34

1 mass. Soils from the lakeshore were sent in for  
2 phosphorous analysis, and it's simply a math equation,  
3 how many pounds of soil versus how many milligrams of  
4 phosphorous per unit of soil mass.

5 Q Well, what's the basis for saying it was a doubling?

6 A That doubling is based upon the nutrient budget that  
7 was prepared by Dan Tyrolt in his report.

8 Q What do you mean by nutrient budget?

9 A A nutrient budget is very similar to your home budget  
10 except we're looking at in this case phosphorous,  
11 which is a nutrient for lakes, how much phosphorous  
12 comes into a lake over the course of the year.

13 Q And what was the date on the nutrient budget that gave  
14 you a phosphorous figure from which you determined  
15 that there was a doubling?

16 A My recollection was in Dan Tyrolt's 2001 report, I  
17 think it was 2001, my recollection is that report did  
18 not have a date on it.

19 Q Now, what's the basis for your statement that this  
20 increase in phosphorous load decreased the clarity of  
21 the water?

22 A That statement doesn't say that it did decrease, it  
23 says, I guess I would read it as can decrease.

24 Q That's not what you wrote. You wrote "decreasing the  
25 clarity of the water."

35

1 A There's two issues with sediment. One is actually  
2 sediment itself can cloud the water, and the other is  
3 the phosphorous is a nutrient. If you put more  
4 phosphorous in a lake you end up with more algae.

5 Q Fine, but you did nothing to check the clarity of the  
6 water in either 2003 or 2004, true?

7 A Correct.

8 Q So you have no basis for any statement that the water  
9 clarity has in fact decreased since any measurements  
10 Mr. Tyrolt may have done some years before, true?

11 A True, there is no data.

12 Q So if we don't know whether the water in fact is less  
13 clear, you can't say that there's been an accelerated  
14 decrease in water quality either, can you?

15 A Without data I can't say that.

16 Q But you did anyway.

17 A I think the limnological research and the body of  
18 knowledge is out there that shows if you increase the  
19 phosphorous load to a lake, you will increase the  
20 chlorophyll content and decrease the clarity.

21 Q That may be the theory, but you did nothing to confirm  
22 in fact that that happened with this lake, true?

23 A That is not a theory, it is a proven principle of lake  
24 science.

25 Q Whether we call it a theory or a principle, you did

36

1 nothing to confirm that that happened in Round Lake?

2 A We did not do any modeling or monitoring, no.

3 Q Okay. And so there's no basis for a statement that  
4 any decrease in water clarity will continue, true?

5 A I as a limnologist would say there is a basis,  
6 increase phosphorous to a lake you decrease the  
7 clarity of a lake.

8 Q You're operating on the assumption that there was in  
9 fact an increase in phosphorous in Round Lake from the  
10 time that Mr. Tyrolt measured it until the time that  
11 you observed the lake in 2003, correct?

12 THE WITNESS: Can I hear that  
13 again?

14 (Reporter reads back last question)

15 A There's no measurements for phosphorous in that time  
16 period.

17 Q I understand that, sir, I'm asking you what you  
18 assume, not what we know. We know there were no  
19 measurements. But the point is, you assumed based on  
20 your principles, and if your principles are correct,  
21 then one would have to assume that there was an  
22 increase in phosphorous in the lake between the time  
23 that Mr. Tyrolt made his measurements and the time you  
24 were there in 2003, true?

25 A True.

37

1 Q Okay. And so one would assume that there would have  
2 been a decrease in water clarity over that time  
3 according to your principles?

4 A Correct.

5 Q And you've now authored a report that says, in fact,  
6 that there was an accelerated decrease in water  
7 clarity that would continue unless the shoreline  
8 slopes are stabilized, true?

9 A Correct.

10 Q And my question is, why when you were there in person  
11 in 2003 did you do nothing to verify the principles  
12 that were guiding your conclusions in this report?

13 A I was not asked to do any water quality testing or  
14 take any samples for laboratory analysis.

15 Q And you didn't think it was necessary to opine on the  
16 water quality of that lake to do any test whatsoever,  
17 is that true?

18 A That's correct.

19 Q In your report that's Appendix D to Exhibit 125, do  
20 you have that in front of you?

21 A Yes, I do.

22 Q On the second page of Appendix D you make the  
23 statement, "If all of the phosphorous present in the  
24 soil were to enter the lake as available phosphorous,  
25 this could double the lake phosphorous

1 concentrations," do you see that?

2 A Correct, yes, I do.

3 Q Do you have any estimate of what amount of the soil  
4 you say entered the lake entered the lake as available  
5 phosphorous?

6 A No.

7 Q Would a test of the water have told you what the  
8 available phosphorous level was in the lake in 2003?

9 A This is the available phosphorous in the soil that I'm  
10 speaking about here.

11 Q Would a test of -- let me ask it a different way,  
12 because I'm not the scientist, you are. You say, "If  
13 all of the phosphorous present in the soil were to  
14 enter the lake as available phosphorous," let me start  
15 with this, what do you mean by the phrase available  
16 phosphorous?

17 A Available phosphorous is phosphorous that is readily  
18 available to algae for uptake, basically soluble  
19 phosphorous.

20 Q Okay. And is there a way to measure the amount of  
21 soluble or available phosphorous in a lake?

22 A Yes, it's very possible.

23 Q Okay. But you didn't do that?

24 A No, we didn't.

25 Q Okay. Did you make any estimate of the likelihood

1 that all of the total phosphorous content would be  
2 dissolved and incorporated into the water's available

3 phosphorous?

4 A No.

5 Q Do you have any data either from Round Lake or from  
6 literature to support the idea that a given percentage  
7 of the phosphorous, total phosphorous content would be  
8 dissolved and incorporated into the water as available  
9 phosphorous?

10 A There is a body of literature out there that can give  
11 you indications of how much of the phosphorous in the  
12 soil would be available.

13 Q Did you look at any of that body of data to determine  
14 what the phosphorous load or available phosphorous  
15 load into Round Lake might be?

16 A No.

17 Q Did you do any analysis to determine what the  
18 phosphorous load would be were Round Lake held at the  
19 state ordered maximum that Barr Engineering believes  
20 is 76.75?

21 A I was not asked to do any modeling for that.

22 Q So I take it you didn't?

23 A No.

24 Q Okay. Could you take a quick look, please, at  
25 Exhibit 126. Did you have anything at all to do with

40

1 Exhibit 126?

2 A I had no role to play in Exhibit 126's preparation.

3 MR. WRIGHT: That's all the

4 questions I have for you, thank you.

5 MS. AZAR: Can we take a break?

6 MR. WRIGHT: Not to talk to the  
7 witness.

8 MS. AZAR: You can ask him exactly  
9 what we talked about.

10 MR. WRIGHT: Oh, I will, but I  
11 think that's inappropriate.

12 MS. AZAR: Well, you can ask. Can  
13 we take a break, please?

14 (A short recess is taken)

15 EXAMINATION

16 BY MS. AZAR:

17 Q All right. I think we're ready to go back to the  
18 record. Mr. Lee, do you have any clarifications to  
19 the answers that you gave to Mr. Wright earlier?

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

22 A Yes, I do. I have a couple that I think I would like  
23 to take a moment to highlight. One issue that we  
24 talked about quite a bit was the --

25 MR. WRIGHT: Excuse me for

41

1 interrupting, but can you tell me what you're  
2 looking at?

3 THE WITNESS: Sure, Page 14,  
4 Section 2 of Exhibit 125.

5 MR. WRIGHT: Okay.

6 A The second paragraph of the section I wrote, I think  
7 one of the -- we talked about decreasing the clarity  
8 of the water. One of the issues I had was that I  
9 think that should have probably been written  
10 differently, because we do know that doubling incoming  
11 phosphorous loads can decrease the clarity of the  
12 water, and I think that that's a well-accepted  
13 principle of lake management.

14 Q And I just want to stop you there before you go on.  
15 So I understand it, how would you specifically change  
16 the language here?

17 A Starting with, "which was estimated to more than  
18 double the incoming phosphorous loads," could decrease  
19 or can decrease the clarity of water, of lake water.

20 Q Okay. Any other clarifications that you would like to  
21 make to your testimony that you just provided?

22 A I think maybe two items. One is, we talked about  
23 nutrient budgets and available phosphorous, and  
24 typically, lake nutrient budgets are done on total  
25 phosphorous. And the assessment that I did based on

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1 existing data was based on total phosphorous.  
2 Available phosphorous would give you a much better  
3 idea, but total phosphorous to a lake is still an  
4 important issue for water clarity and water quality.

5 I think one of the important things I see is that  
6 I was asked to look at water quality, but I was not



7 asked to monitor or model the lake itself. And those  
8 are readily doable, but that wasn't part of the scope  
9 of work on this project from my piece of it.

10 Q So Mr. Wright asked you a number of questions having  
11 to do with taking of samples or conducting empirical  
12 studies, were you hired to do that?

13 A No, I was hired to go up and take a look at the lake  
14 and make some predictions about what the impact would  
15 be on lake water quality due to shoreline erosion.

16 Q And if we asked you to conduct empirical studies,  
17 could Barr Engineering do that?

18 A Yes, we could, we do it all the time.

19 Q Mr. Wright also asked you whether or not you took any  
20 water quality samples of the lake water, do you recall  
21 that?

22 A Correct, yes, I do.

23 Q If you had taken one water quality sample of the lake  
24 water, would you have been able to render any  
25 conclusions concerning phosphorous loading or water

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1 quality from that one sample?

2 MR. WRIGHT: Objection, form and  
3 foundation.

4 A Taking one water quality sample would not have given  
5 us any indication of water clarity, water quality  
6 degradation. In fact, that was one reason that I did  
7 not use the 1966 DNR data is because there was one  
8 phosphorous reading for that entire year, for the

9 entire year.

10 Q Anything else there?

11 A I think it's important, one of the reasons that I used

12 Dan Tyrolt's data was because it was good data over a

13 five-year period, taking multiple samples over the

14 course of a summer versus taking a sample. It's kind

15 of the principle, no data is better than bad data.

16 And in the case of a lake, one water quality sample

17 does not give you an indication of what's occurring.

18 Q Mr. Wright also asked you a series of questions

19 concerning your calculation of the one-half cubic foot

20 loss per foot of shoreline that is referenced on

21 Page 14 of Exhibit 125, do you remember that series of

22 questions?

23 A Yes.

24 Q Who was involved in the calculation of the half cubic

25 foot of loss per foot of shoreline value?

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1 A That number or that quantity, arriving at that

2 quantity was part of a discussion that I and

3 Mr. Solseng had and some of the soils people worked

4 on. It also is expounded upon a little bit more in

5 Appendix D, the last paragraph, the first page there,

6 you know, a reconnaissance-level estimate of shoreline

7 soil losses over the 26 miles of shoreline, you know,

8 indicates an average, however it could be higher.

9 Some of that was, the reason that it could be

10 higher is because there were some rather catastrophic  
11 locations which would have given us much higher  
12 quantities.

13 Q And was any modeling done to derive the value of zero  
14 point -- I'm sorry, the one-half cubic foot of loss  
15 per foot of shoreline?

16 MR. WRIGHT: Objection, foundation.

17 A No, there was no modeling. That was an attempt to  
18 come up with a conservative estimate of shoreline  
19 loss. It was mostly done in a spreadsheet format, if  
20 I remember correctly.

21 Q And who prepared that spreadsheet?

22 A If I remember correctly, it was Dean Skallman.

23 Q And what were the values of that spreadsheet based on?

24 A Without looking at the actual spreadsheet, the  
25 phosphorous concentration I know was based upon soil

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1 tests that were taken from soils collected at Round  
2 Lake, and I believe there were some estimations of  
3 soil weight based upon soil particle size analysis  
4 that was completed.

5 MS. AZAR: Can we go off the record  
6 for a minute?

7 (Discussion off the record)

8 (Exhibit 127 is marked for identification)

9 Q Mr. Lee, I'd like you to take a look at what's been  
10 marked as Exhibit 127, can you identify that document?

11 A It says spreadsheet that Dean Skallman prepared,

12 looking at soil loss.

13 Q And did that document play any role in the calculation  
14 of the one-half cubic foot of loss per foot of  
15 shoreline value?

16 MR. WRIGHT: Objection, foundation.

17 A This spreadsheet, which actually was shown to me in  
18 the preparation of this report, was the basis of the  
19 one-half cubic foot loss of shoreline.

20 Q Can you explain to me how the values in that  
21 spreadsheet were used to calculate the one-half cubic  
22 foot of loss per foot of shoreline?

23 MR. WRIGHT: Objection, foundation.

24 A I could speculate on it but I can't explain it to  
25 you. I didn't do this work. I was given this number

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1 at the bottom of total cubic yards of soil loss.

2 Q So you were given the value of the one-half cubic foot  
3 of loss per foot of shoreline by Mr. Skallman?

4 A Correct.

5 Q Do you understand how Mr. Skallman calculated that  
6 value?

7 MR. WRIGHT: Same objection.

8 A I could make some interpretations on how he did it,  
9 which is based on landform and erosion potential, and  
10 looking at the potential erosion impact due to the  
11 wave action.

12 Q So you just gave us three different factors there, one

13 was land form, the other was erosion potential?

14 A Correct.

15 Q And the third was what?

16 A Well, I called it wave potential, it's actually fetch,  
17 length across the lake which determines height of  
18 waves.

19 Q And so those were the three factors that were used in  
20 determining the zero -- I'm sorry, the one-half cubic  
21 foot of loss per foot of shoreline value?

22 A Generally so, yes, along with distance.

23 MR. WRIGHT: Belated objection,  
24 foundation. He said that isn't his work.

25 Q And when you say landform as one of the conditions

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1 that was used in determining that value, please define  
2 for me what landform means.

3 MR. WRIGHT: Objection, foundation.

4 A Landform would be the type of shoreline, does it have  
5 a beach, does it not have a beach, is it a steep  
6 bluff, is it a gradual shoreline, those types of  
7 things.

8 Q Do you know where Mr. Skallman got the data concerning  
9 landform that appears on the first page of  
10 Exhibit 127?

11 A Not specifically. I guess if I look at the document  
12 it appears that it was based upon the topography, USGS  
13 topo for Round Lake.

14 MR. WRIGHT: Objection, foundation,

15           move to strike.

16 Q And as far as the erosion potential, do you have any  
17 knowledge as to what Mr. Skallman used to determine  
18 the erosion potential that was used on Exhibit 127?

19 A No, no.

20 Q And with regards to wave potential, do you have any  
21 information as to how Mr. Skallman determined what the  
22 wave potential was in preparing Exhibit 127?

23 A Not specifically how he did it. It's a standard  
24 methodology.

25 Q In Mr. Wright's questioning of you concerning the

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1 calculation of the value, the one-half cubic foot of  
2 loss per foot of shoreline, you indicated that that  
3 calculation included an assumption that all of the  
4 shoreline erosion that you witnessed in 2003 was due  
5 to the high water level in 2002, do you remember that?

6 A Yes, I do.

7 Q Looking at Exhibit 127, please show to me where on  
8 that exhibit there's any data reflecting the visual  
9 observations that you had in 2003 concerning the  
10 amount of shoreline erosion.

11                           MR. WRIGHT: Objection, foundation.

12 A There is nothing here.

13 Q Please explain why you testified earlier that the  
14 calculation of one-half cubic foot of loss per foot of  
15 shoreline included the assumption that all of the

16 shoreline erosion that you saw in 2003 was a result of  
17 the high water in 2002.

18 A My answer to that question was based solely upon what  
19 was written in the report.

20 MR. WRIGHT: And you're referring  
21 to Exhibit 127?

22 THE WITNESS: No, 125.

23 MR. WRIGHT: Oh, I thought you were  
24 pointing to 127, I'm sorry.

25 A Which I think I tried to explain this a little bit in

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1 the previous questions, that what was observed in 2002  
2 may or may not have been due totally to what  
3 happened -- or in 2003 what was observed I think could  
4 have been due to the 2002 high water.

5 Q Could it also have been due to other factors?

6 MR. WRIGHT: Objection to the form  
7 and foundation.

8 Q Let me restate that. Could the shoreline erosion that  
9 you witnessed in 2003 been due to other factors  
10 besides the high water in 2002?

11 A Based on what I saw on the lake, some of this erosion  
12 was high enough up that it wasn't due to lower lake  
13 levels. So one would just -- based on what was  
14 visible, that would be the only premise I could base  
15 that on.

16 Q You testified just a moment ago to one of the  
17 questions I asked that there were three factors used

18 in the calculation of the one-half cubic foot of loss  
19 per foot of shoreline that's referenced on Page 14 of  
20 Exhibit 125, specifically you mentioned landform,  
21 erosion potential and wave potential, do you recall  
22 that?

23 MR. WRIGHT: I object to the  
24 question as mischaracterizing his testimony. He  
25 said that that's not his work and he's speculating

50

1 about what was done. Go ahead and answer the  
2 question, sir.

3 A Yes, I did say those three were on there.

4 Q I'd like you to explain with specificity how the  
5 calculation of one-half cubic foot of loss per  
6 shoreline was conducted?

7 MR. WRIGHT: Objection, foundation.

8 A I can't, based upon what I know and did on this  
9 project, I can't explain that for you.

10 Q So someone else actually calculated the one-half cubic  
11 foot of loss per foot of shoreline, correct?

12 A Correct.

13 Q And that was who?

14 A According to the initials on 127 it was Dean Skallman.

15 Q And so your visual observations from your trip to  
16 Round Lake in, I believe you stated June of 2003, were  
17 not used in the calculation of the amount of soil that  
18 entered the lake during the Spring of 2002 as



19 discussed on Page 14 of Exhibit 125?

20 A That would be correct.

21 Q One moment, please.

22 (Short pause)

23 Q Mr. Lee, I'd like to turn your attention to Page D-1  
24 in Exhibit 125, the last sentence on that page states  
25 as follows, "An estimated average shoreline loss of

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1 one-half cubic foot of soil per foot of shoreline  
2 would result in the input of nearly 6,400 cubic yards  
3 or 3,215 tons of soil into the lake," do you see that?

4 A Yes, I do.

5 Q Did Mr. Skallman conduct those calculations?

6 A I believe he did, yes.

7 Q Did you have a role in those calculations?

8 A Not in, I did not have a role in the actual  
9 calculations themselves.

10 MS. AZAR: No further questions.

11 REEXAMINATION

12 BY MR. WRIGHT:

13 Q A couple of follow-ups for you, Mr. Lee. Do you know  
14 who prepared the second and third pages of  
15 Exhibit 127?

16 A Not without looking at them specifically.

17 Q Well, take a look and tell me if you can tell whether  
18 it was Mr. Skallman or somebody else at Barr?

19 (Witness examines document)

20 A This map was prepared by people in our GIS department.

21 Q And that's the second page of Exhibit 127?

22 A The second page and it appears that the third page as  
23 well.

24 Q Okay. Now, do you know whose handwriting appears on  
25 the front of Exhibit 127?

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1 A That appears to be Dean Skallman's.

2 Q Okay. Mr. Skallman wrote, "Round Lake erosion  
3 potential," correct?

4 A Correct.

5 Q Does it say anywhere on Exhibit 127 that 6,400 cubic  
6 yards of soil actually went into Round Lake at any  
7 point in time?

8 A No, it does not.

9 Q Do you know whether this in fact is Mr. Skallman's  
10 estimate of the erosion potential as opposed to the  
11 actual erosion that may have occurred as a result of  
12 any event or series of events?

13 A It was the number that Mr. Skallman prepared that  
14 identified erosion potential from which we developed,  
15 which the half a cubic foot per foot of shoreline was  
16 used in the report for the estimate of phosphorous  
17 loading.

18 Q And in the report you estimate that that amount of  
19 soil actually entered Round Lake, correct?

20 A I believe --

21 Q Let me direct you to Page 14, in the first paragraph

22 in Section 2 that you authored you wrote, "The  
23 shoreline losses around the lake during the 2002 high  
24 water levels were estimated to average about one-half  
25 cubic foot of loss per foot of shoreline," do you see

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1 that?

2 A Yes.

3 Q So you took the numbers that Mr. Skallman gave you and  
4 interpreted them as an estimate of what actually  
5 happened during the 2002 high water level event?

6 A That's correct.

7 Q Okay. Did you have any discussion with Mr. Skallman  
8 at any time about whether he meant to imply a  
9 potential event or the results of the actual event in  
10 2002?

11 A Mr. Skallman and I had a discussion when he finished  
12 his estimate as to what the potential loss was due to  
13 the shoreline erosion that we saw at the lake.

14 Q Did you understand him to mean that this loss in fact  
15 occurred or that it was a hypothetical loss based on a  
16 set of conditions?

17 A My understanding of those results were that they were  
18 the potential soil loss in these locations, and that  
19 those numbers could be used to estimate the actual  
20 soil loss to the lake.

21 Q And so you took those numbers and used them as an  
22 estimate of the actual loss?

23 A I think my text says would result in the input of,

24 it's stated that, "Even at this level, the shoreline  
25 loss would result in the input of nearly 3,215 tons,"

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1 so at a loss of a half a cubic foot per foot of  
2 shoreline, we would see 3,200 tons of soil into the  
3 lake.

4 Q Correct, but what you said before that is the  
5 shoreline losses "were estimated to average about  
6 one-half cubic foot of loss per foot of shoreline."

7 A Correct.

8 Q And so what you did is you took Mr. Skallman's figure  
9 of one-half cubic foot of loss and interpreted that as  
10 an estimate of the actual losses, true?

11 A Yes.

12 Q Now, I want you to turn to Page D-1 of Exhibit 125.

13 Ms. Azar read you the last sentence of the last  
14 paragraph on Page D-1. I want to direct your  
15 attention to the sentence two sentences previous to  
16 that where it says, "A reconnaissance-level estimate  
17 of shoreline soil losses," do you see that?

18 A Yes.

19 Q What does a reconnaissance-level estimate mean?

20 A Walking the shoreline, taking a look at visually what  
21 is happening.

22 Q Or taking a look at it from a boat, right?

23 A Both of those.

24 Q And when you wrote the reconnaissance-level estimate

25 language there, you were referring, were you not, to

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1 the boat trip and visit that you and Ms. Dent  
2 participated in in June of 2003, true?

3 A I think this also included Mr. Solseng's observations  
4 in May of 2003.

5 Q Okay. Did Mr. Skallman ever visit Round Lake for this  
6 project as far as you know?

7 A No.

8 Q He did not?

9 A No, he did not.

10 Q So the only people who performed a  
11 reconnaissance-level estimate of shoreline losses were  
12 you, Mr. Solseng and Ms. Dent?

13 A That's correct.

14 Q And you wrote here that that reconnaissance-level  
15 estimate indicated an average of about one-half cubic  
16 foot of loss per foot of shoreline, true?

17 A That was our estimate, yes.

18 Q Did you include Mr. Skallman's work in the list of  
19 sources that you consulted as a part of your work in  
20 this case?

21 A No, he was staff working on the project.

22 MR. WRIGHT: That's all I have,  
23 thanks.

24 MS. AZAR: No further questions.

25 (3:24 p.m.)

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1 STATE OF WISCONSIN )  
 )ss.  
2 COUNTY OF DANE )

3 I, GREGORY GASSEN, a Notary Public in and for the  
4 State of Wisconsin, do hereby certify that the above  
5 deposition was taken before me at the offices of Stafford  
6 Rosenbaum LLP, Attorneys at Law, Three South Pinckney  
7 Street, in the City of Madison, County of Dane and in  
8 said State, on January 18, 2005, commencing at  
9 1:30 o'clock p.m.; that it was taken at the request of  
10 the defendant, upon verbal interrogatories; that it was  
11 taken in shorthand by me, a competent court reporter and  
12 disinterested person, approved by all parties in  
13 interest, and thereafter reduced to writing by me using  
14 computer-aided transcription; that said deposition is a  
15 true record of the deponent's testimony; that said  
16 deposition is to be used in the above-entitled action now  
17 pending in Circuit Court; that the appearances were as  
18 shown on Pages 2 and 3 of the deposition; that reading  
19 and signing was not requested; that the said JEFFREY LEE,  
20 before examination, was sworn by me to testify the truth,  
21 the whole truth, and nothing but the truth relative to  
22 said cause.

23 Dated January 25, 2005.

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Notary Public, State of Wisconsin

