

Today's date is Wednesday July 7, 2004

APPEARANCES ARE: Lauren Azar, James Hausman, Hillary Schwab and Joe Wright.

(Witness sworn.)

BY MS. AZAR:

Q. Mr. Naas, first of all, would you give your name for the record?

A. It's Todd Naas.

Q. And for whom do you work?

A. Wisconsin Department of Natural Resources.

Q. Before we get into any substantive questions, I want to give you a few instructions for the deposition today. If you don't understand a question I ask, please stop me and ask me to clarify ^ ck . Don't guess when answering a question unless I specifically ask you to guess. Ensure all answers are verbal so that the court reporter can capture them, and let's try not to speak on top of one another because she's going to have difficulty understanding us as well. Do you understand those directions?

A. Sure.

Q. In this case, there's been some very specific nomenclature; and I want to go through that with you, too, so you understand what I'm saying, ^ ck things we're talking about the same thing. I'm pointing to what's been marked as Exhibit No. 1. Pardon me. And -- right.

Well, actually, let's start with Exhibit No. 45. The highlighted area right there we've been referring to as the Lake Placid Dam which is the water control structure contained in Diversion Canal No. 4.

A. (Indicating).

Q. Okay. The Tiger Cat Dam is the -- I believe located right there, and it's on the north fork of the Chief River. The Little Round Lake Dam is actually marked and designated on Exhibit No. 1. There is a channel between Little Round Lake and Osprey Lake and, if I recall, Osprey Lake has also been called Squaw Lake in the past so we can use those terms interchangeably. The channel between Little Round Lake and Osprey Lake we've been referring to as the North Channel; as you can see, it's marked there on Exhibit 1 and there's also a channel from Osprey Lake down to the culverts at NN, and that's marked with a yellow highlighter here and we've been calling that Osprey Creek or Squaw Creek. Do you understand that?

A. Yes.

Q. What is your current position with the Wisconsin Department of Natural Resources?

A. I'm a wildlife biologist for Ashfield and Bayfield Counties.

Q. And how long have you been the wildlife biologist there?

A. This will be my fourth year.

Q. So -- and you started that in the year 2000?

A. Yes.

Q. And, prior to 2000, what was your position at --

A. Prior to 2000, I was the Lake Superior Basin real estate specialist.

Q. Lake Superior Basin real estate specialist. Okay. And was that -- that was in -- basin specific?

A. Yes.

Q. And for how long were you in that position?

A. Since 1997, I believe.

Q. 1997 through sometime in 2000?

A. Yes.

Q. You were there prior to 1997. What position did you hold?

A. I was the area water management specialist in Park Falls.

Q. And what -- what counties did you have, were you responsible for in that position?

A. I was responsible for Price, Taylor, Rusk and Sawyer counties.

Q. And how long were you in that position?

A. Since 1992. I believe.

Q. And, prior to 1992, what were you doing?

A. I was the assistant area water management specialist in Bruel ^ sp.

Q. And what counties were you responsible for then?

A. Would have been Douglas, Bayfield, Ashland and Iron.

Q. Douglas, Bayfield --

A. Ashland and Iron.

Q. -- Ashland and Iron. And how long were you in that position?

A. I was hired in 1990. I'm pretty sure.

Q. And what did you do prior to 1990?

A. I worked all around the country in various natural resources jobs.

Q. What's your education?

A. I have a bachelor of science degree obtained from the University of Wisconsin, Stevens Point, in 1987.

Q. What was your major?

A. Wildlife manager.

Q. When you were an assistant water management specialist and that's the WMS designation. Correct?

A. Yes.

Q. And that was between 1990 and 1997; isn't that correct?

A. 1992. 1990, and 1992. Was --

Q. Assistant?

A. Right.

Q. How did the responsibilities differ between assistant WMS and WMS proper?

A. I didn't have the actual permitting authority that I did as the -- as the area water management specialist.

Q. And, when you were the WMS, were you responsible for monitoring lake levels?

A. Responsible, no. Occasionally, upon a complaint about water

levels, I would investigate that.

Q. Okay. Why don't you describe for me what your responsibilities were as the water management specialist from 1992 to '97?

A. Basically, I was responsible for implementing the navigable water statutes Chapter 30 and the dam statutes Chapter 31 and also providing assistance to County zoning authorities in their shoreland and wetland flood plains zoning.

Q. We deposed Mr. Frank Dallam this morning, who indicated that he was the flood plain engineer, I think, until about 1996 and then he became the water reg and zoning engineer in 1996; and I was trying to understand the interplay between the water management specialists and his position because Mr. Dallam indicated that he was responsible for technical guidance for the rules under Chapter 31, which is the dam statute. Could you describe for me the interplay between the water management specialists and the water reg and zoning engineer?

A. Usually, we were the -- of course, the -- the WMS's were the first line of contact regarding permitting, regarding complaints, regarding basically any issue; and then, if we needed -- if, after reviewing the situation, we needed some assistance, engineering assistance, we would request that from the appropriate engineers.

Q. Okay. I can tell that first line of contact must be in job descriptions because that's what Mr. Dallam kept coming back to.

That's why I smiled when you said that.

Okay. Did you talk to anybody in preparation for this deposition?

A. I talked with Mrs. Schwab.

Q. Anybody else?

A. No. I had e-mail contact with Mike Cane ^ sp.

Q. Anybody else?

A. I talked to the water management specialist, Dave Kafura here in Ashland --

Q. Hm-hm.

A. -- or sorry, Hayward, mainly, just inquiring -- I was told.

A message was left for me by Ms. Schwab that I had this deposition today and I had no information regarding it so I contacted Dave to find out if he knew what he think regarding.

Q. And my guess is he did?

A. No.

Q. He didn't?

A. No, he didn't know anything.

Q. He didn't know what the deposition was about?

A. He knew what the deposition was about. But he didn't know anything about my schedule.

Q. So did you have a subsequent discussion with Mr. Kafura?

A. I think he briefly mentioned to me what the situation involved, but that was about it.

Q. And did you review any documents in preparation?

A. No, I didn't.

Q. Except for the ones that I just gave to you which --

A. Correct.

Q. Let's just identify it. It's Exhibits 31, 59, 50 -- no that one I don't know if you reviewed yet.

MR. WRIGHT: I'm sorry; the numbers, could you say them again?

MS. AZAR: 31, 59, 50 --

MR. HAUSMAN: It should be sixty.

MS. AZAR: Have you reviewed sixty?

THE WITNESS: No, I have not.

BY MS. AZAR:

Q. Have you ever been deposed before?

A. No.

Q. Have you ever testified before?

A. Yes.

Q. In what capacity?

A. Numerous trials.

Q. Relating to department responsibilities?

A. Yes.

Q. Were they contested case hearings or actual trials?

A. Both.

Q. And did any of them involve lake levels?

A. No. I don't believe so.

Q. Did any of them involve dams?

A. Ah, I don't know. I can't recall.

Q. Are you being paid by anybody to attend this deposition?

A. No.

MS. SCHWAB: Will Todd get that trial check?

MS. AZAR: He should, yes, that whopping 16 dollars or whatever.

THE WITNESS: I believe I received that this morning.

MS. AZAR: Have a shake on us.

THE WITNESS: They go right back to the DNR.

BY MS. AZAR:

Q. Okay. You've had an opportunity to read Exhibit 50, which is the -- what we had been calling the 1941 Order; and it relates to Little Round Lake dam; correct?

A. Correct.

Q. In your capacity as water management specialist at the DNR in Park Falls, would it have been part of your responsibilities to read this order?

A. Sure, yes.

Q. And would you also have been required to determine whether Sawyer County was in compliance with this order?

A. Yes.

Q. Let's turn -- did you -- when you were water management specialist, did you and Mr. Dallam have any discussions that you recall about Sawyer County's compliance with this order?

A. I don't recall ever discussing Round Lake levels for this dam with Frank Dallam.

Q. Do you recall having any discussions with Mr. Dallam about

either the Lake Placid Dam --

A. No.

Q. -- or the Tiger Cat Dam?

A. No.

Q. During your tenure in the Park Falls office, who was your primary contact in Sawyer County?

A. Are you asking in terms of this dam or --

Q. In terms of the water levels on Round Lake.

A. Okay.

Q. And, yeah, the --

A. That would be Mike Krueger. I believe he was the forestry -- County forester at that time.

Q. Was Mr. Krueger responsible for the operation and maintenance of the dam at that point?

A. As I understood. Yes.

Q. Did you have any other primary contacts with the County?

A. I recall attending a County board meeting at one time and discussing with -- discussing this issue with County Board supervisors.

Q. And that was the full County board?

A. Yeah.

Q. Let's turn to what's been marked as Exhibit 31. And Exhibit 31 is a letter -- Would you please identify Exhibit 31?

A. Exhibit 31 is a letter that I wrote to Shirley Suhsen, the chairman of the Sawyer County Land Conservation Committee,

regarding a meeting which was held apparently on August 25th with -- between myself, my supervisor and several people from the Round Lake and Tiger Cat Flowage area.

Q. And so you prepared this document in your ordinary course of business?

A. Yes.

Q. And is this an accurate copy of the letter that you prepared?

A. As I recall it, yes.

Q. I'd like to refer you to Paragraph 1; and you're referencing an August 17th, 1995 County Board of Supervisors' meeting. Is that the meeting that you were just referring to a moment ago?

A. I believe so.

Q. I'm sorry. That you attended?

A. I believe so, yes.

Q. And at that board meeting, this letter states that the County Board asked you to investigate the recent complaints of low water levels on the Tiger Cat Flowage; correct?

A. According to this, yes.

Q. Did they also in that meeting discuss the high water levels on Round Lake?

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

THE WITNESS: I don't recall.

BY MS. AZAR:

Q. I'd like to point you to your second paragraph in this

letter. You discuss the high water levels on Round Lake?

A. Okay.

Q. And the last sentence there says that the purpose of this letter is to report the results of your investigation into both the low water levels on the Tiger Cat Flowage as well as the high levels on Round Lake; correct?

A. Correct.

Q. And this letter -- you had conducted a field -- field inspection on August 25th, 1995. Correct?

A. Correct.

Q. On the day of that inspection all of the dams that you inspected were being properly operated; correct?

A. According to this letter, yes.

Q. Nevertheless, you concluded that Sawyer County had to change the day-to-day operations of the dams that you inspected. Correct?

MR. WRIGHT: Objection to form.

THE WITNESS: According to this letter, yes.

BY MS. AZAR:

Q. And I'm now looking on Page 1, Paragraph 6. You stated that based on your knowledge of past operations of the dams, as well as your discussions with Mr. Krueger and lake residents, that you arrived at the conclusion that Sawyer County needed to change some of its operation and maintenance practices; correct?

A. Correct.

Q. Do you recall what you were referring to when you mentioned the knowledge of past operations in that paragraph?

A. No, I don't. However, the letter seems to indicate that there was some water stains in several locations that could show that water had been at higher elevations in the past.

Q. And those are higher elevations than specified in the 1941 Order, which is Exhibit 50?

MR. WRIGHT: Objection, form and foundation.

THE WITNESS: I assume so.

BY MS. AZAR:

Q. Why don't we just look at the -- point you to Page 10 of Exhibit 50. Whoops. That's going to be Page 11, Quarter Point 3.

Q. In Paragraph 3 of your letter, Exhibit 31, you specify that -- I don't know if there's a different reference but you do specify it was 0.6 feet higher than the authorized maximum. Correct?

A. Correct.

Q. And, if you look on the last page of that letter, you specified your authorized maximums? Correct?

A. I don't see where I indicated the authorized maximum.

Q. Whoops. There should be this page.

A. On that Page -- no, I don't have that on this.

Q. Rot row. What's your number at the bottom of that sheet?

I'm sorry; let me just grab this one. Ah, this is an incomplete

exhibit?

A. Yes, that's correct. I do specify those elevations.

Q. On the bottom of Page 1 to the top of Page 2, you have some bold-faced text that says water levels must be maintained within the authorized range required by the water level orders issued by both water bodies. Do you see that?

A. Yeah.

Q. Do you recall why you bolded that text?

A. Do I recall why? No.

Q. Do you recall if you had concerns whether Sawyer County understood that there were designated water levels for Round Lake?

MR. WRIGHT: Objection, form, foundation.

THE WITNESS: I don't recall. However, I would have those concerns, yes.

BY MS. AZAR:

Q. And why would you have those concerns?

A. As I do with any -- as I did with any dam, to make sure that they were aware that water levels needed to be maintained within those minimums and maximums.

Q. On Paragraph 1 on Page 2, you discuss the water levels on the Tiger Cat Flowage. And you specify that the maximum level, which was -- is designated at 91.34 feet, is the maximum amount that the dam could safely handle; do you see that?

A. Yes.

Q. Do you recall having any discussions with Sawyer County about this issue?

A. No. I do not recall that.

Q. If Sawyer County has not rebuilt the Tiger Cat Dam and continues to hold the water level in the Tiger Cat Flowage above the designated maximum of 91.34 feet, is Sawyer County's operation of the Tiger Cat Dam unsafe?

MR. WRIGHT: Objection, form and foundation.

MS. AZAR: You can go ahead and answer.

MR. WRIGHT: Incompetence.

THE WITNESS: I would assume so. It's more of an engineering issue than I was capable of being able to respond to.

BY MS. AZAR:

Q. So, when you put the statement in here, when water levels were last established for the flowage in 1984, it was determined that 91.34 feet was the maximum level the dam could handle safely, you were relying on somebody else's analysis of what safe operations were?

A. Or some information that I had previously reviewed.

Q. Okay. Now, in Paragraph -- the first -- second full paragraph on Page 2, you're talking about the ground water discharge into the Round Lake basin from the Tiger Cat Flowage; do you see that?

A. Yeah.

Q. Is the -- is Round Lake in a different watershed than the

Tiger Cat Flowage?

A. I'd have to look at some topographic maps to tell you that.

Q. Do you want to look at whatever that exhibit is? What's the number down there?

MS. SCHWAB: 45.

THE WITNESS: Exhibit 45. It appears it is in a different subwatershed but -- it depends on how narrowly you define watershed.

BY MS. AZAR:

Q. Okay. Now, according to your second paragraph here on Page 2, the Tiger Cat Flowage is forcing discharge of ground water into the Round Lake watershed or some watershed; correct?

A. That was an assumption, yes.

Q. And that the higher the elevation of the Tiger Cat Flowage the greater the ground water discharge; correct?

A. Correct.

Q. And the implication in this letter is that operating the Tiger Cat Dam so that the level of the Tiger Cat Flowage is higher than the maximum unnecessarily diverts water into the Round Lake watershed. Correct?

A. Correct.

Q. And that would be in violation of the Lake Placid order. Correct?

A. Well --

Q. It might be one that I thought I gave you which -- It's

Exhibit 51.

A. I'm sorry. Could you repeat your question, please?

Q. Yes. I was asking whether the unnecessary diversions from the Tiger Cat Flowage into Round Lake -- Well, that's not going to make sense. So let me back up and I'll ask you a different question.

A. Okay.

Q. I'm going to be looking at the last page of Exhibit 51, and it states that it's issuing a permit for the diversion of water from the North Fork of the Chief River to Round Lake, quote, for the purpose of restoring Round Lake to its normal elevation and maintaining the water level at normal, end quote; correct?

A. Correct.

Q. So a permit was issued for the purposes of restoring Round Lake to its normal elevation; correct?

A. Correct.

Q. And, therefore, if Round Lake was already at its normal elevation, there would be no permit for the diversion; correct?

MR. WRIGHT: Object to the form, foundation.

MS. AZAR: Let me ask it a different way. I didn't state that very well.

BY MS. AZAR:

Q. This permit does not empower Sawyer County to divert water to Round Lake when Round Lake's water level is already at the normal water level?

A. That's correct.

MR. WRIGHT: Objection, foundation.

MS. AZAR: That's correct?

THE WITNESS: (Indicating.)

BY MS. AZAR:

Q. Therefore, if the water elevations at Round Lake, as described in your Exhibit 59 -- no. Sorry. Not 59. -- Exhibit 31, were already higher than the maximum, water should not have been diverted from the Tiger Cat Flowage into Round Lake. Correct?

A. Correct.

Q. And, if there was a diversion from the Tiger Cat Flowage into Round Lake at that time it was in violation of this permit which is Exhibit 51. Correct?

MR. WRIGHT: Objection, foundation.

THE WITNESS: Pardon me.

MS. AZAR: Sure, take your time.

THE WITNESS: Yes. As written, the purpose of this is for restoring Round Lake to its normal elevation and maintaining the water level at normal. It's therefore a diversion to non -- to bring water levels to the normal -- or beyond normal water levels is an improper operation of the -- of the diversion.

BY MS. AZAR:

Q. I'm now looking at Paragraphs 4 and 5 on Page 2 of Exhibit 31. You start these paragraphs off by stating: The

water levels on Round Lake have been maintained consistently higher than the authorized maximum level. Do you see that?

A. Yes.

Q. You then perceive these two paragraphs to discuss the ordinary high watermark on the Round Lakes. The operation of the Little Round -- Little Round Dam was affecting the ordinary high watermark on Round Lake, wasn't it?

MR. WRIGHT: Object to form, foundation.

THE WITNESS: Yes.

BY MS. AZAR:

Q. What is the import of the ordinary high watermark for riparians.

A. The ordinary high watermark is the point -- jogging my memory here -- is the point at which the public has rights to -- the public has rights to navigate when the water is at -- in the waterway up to the ordinary high watermark if the water is at that point.

Q. So, if you're upland of ordinary high watermark, you're on private property; correct?

A. Correct.

Q. If a dam is operated such that the water level stays at or below the designated maximum water level -- so I'm presuming that there's a legally designated maximum water level, where would you expect to find the high watermark?

MR. WRIGHT: Objection, foundation, form.

THE WITNESS: Generally, I'm going to form that two ways.

MS. AZAR: Okay.

THE WITNESS: In most cases, you would find the wa -- the ordinary high watermark higher than the maximum.

MS. AZAR: Okay.

THE WITNESS: Because of varying fluctuations.

BY MS. AZAR:

Q. Because of various fluctuations?

A. Because of fluctuations and the design of the dam may have water going over the dam higher than -- than the stoplogs or the gates or whatever is used, which would create an ordinary high watermark higher than that dam or higher than the maximum -- possibly, create an ordinary high watermark higher than the -- ideally you could -- you want the ordinary high watermark to be at the maximum or be lower.

Q. And right now you're talking about the ordinary high watermark on the dam structure itself; correct?

A. No.

Q. You're not?

A. No.

Q. You're talking about at a time ordinary high watermark that will occur around the lake?

A. Correct.

Q. If the dam is operated so that the -- let me -- strike that. When a minimum and a maximum level is designated for a lake, what

does that mean?

MS. SCHWAB: I just wanted to interject: I thought he was going to explain something two ways and I thought he didn't finish his response.

MS. AZAR: Okay. You did --

THE WITNESS: Yeah, actually, I did try to. Depending on the dynamics of the waterway, you can have an ordinary high watermark higher than a maximum authorized level. Water -- you know, a maximum authorized level can be changed over time, also, which could show the ordinary higher watermark as being consistently higher. And my second explanation would be, ideally, you would want to have it located between the maximum and the minimum on authorized levels.

Q. And, if a dam is separated so the designated maximum water level is exceeded on a regular basis where would you expect to find the ordinary high watermark?

MR. WRIGHT: Objection, foundation and form.

THE WITNESS: Higher than the authorized maximum level.

BY MS. AZAR:

Q. In paragraph 5 of Page 2, you talk about the expectations of the public. You state that if people are used to excessive water levels, they will question why the water is low during periods when the level is actually within the authorized range; do you see that?

A. Yeah.

Q. So the public may not know what the authorized or designated lake level is; correct?

A. Correct.

Q. And public expectations and desires are often driven by past practice rather than what the legally designated lake level is; correct?

A. Correct.

Q. Even if that past practice was improper. Correct?

A. Correct.

Q. Now, you give two different sets of recommendations in your report. The first has to do with the Tiger Cat Flowage; and that's on Page 2, Paragraph 3. You stated daily monitoring is the only way to maintain a consistent level when you're working with a stoplog control dam. Do you see that?

A. Yes.

Q. You recommend that Sawyer County allow residents that live on the Tiger Cat Flowage to call in with the monitoring results of the Lake level; correct?

A. Correct.

Q. You're referencing a stoplog control dam here. Since the Carlson Road Dam also has stoplogs -- I'm sorry. Since the Little Round Lake Dam also has stoplog -- also has a stoplog control dam, would this recommendation also apply to the Little Round Lake Dam?

A. Ah, that would be consistent with any stoplog dam, yes.

Q. Okay. And, indeed, if you look on Page 3 at the top, you recommend that the County monitoring the Round Lake -- Round Lake -- Lake's water level on a more regular schedule; correct?

A. Yes.

Q. You also recommended to the County that they allow citizens to help them in that monitoring; correct?

A. Yes.

Q. And you applauded the County for giving citizens permission to remove debris from the dam. You recommended that the County also prioritize the monitoring of its dams; correct?

A. Correct.

Q. Now, this letter was written on September 5th, 1995. What sort of response did you get from the County after you sent out this letter?

A. I do not recall a direct response. However, I do recall at least for a short period of time that the dams -- we did not receive complaints for a short period of time, at least.

Q. And when you say a short period of time, do you have a recollection as to how long?

A. Through a season I would say.

Q. And then did the complaints return?

A. I -- if I'm only -- I'm only guessing; but, if I recall, it was a low water.

Q. Okay. So you had continued in this position until 1997. Do

you recall whether or not there were any additional complaints between the 1995 and 1997 of high water on Round Lake?

A. I don't recall, but I don't believe so because I -- because I remember this not being an issue in the future.

Q. Okay.

A. I thought -- I thought the issue was solved.

Q. Do you still believe that?

A. I have no idea.

MR. WRIGHT: Saved me a foundation objection.

BY MS. AZAR:

Q. MR. Naas, I'd like you to turn to what's been marked as Exhibit 59. Can you identify this document for me?

A. It's a letter I wrote to Mike Krueger, the Sawyer County forestry administrator regarding complaints I received in the spring and summer of 1995 regarding water levels on Round Lake.

Q. And did you prepare this letter in your ordinary course of business?

A. Yes.

Q. And is this an accurate copy of the letter that you prepared?

A. I believe so, yes.

Q. In Paragraph 2, you indicated that on each occasion of your inspection of Round Lake, the level is higher than the maximum authorized level; correct?

A. Yes.

Q. And then, going to Paragraph 3, you indicated on one trip there was just a trickle going through the Round Lake Dam. There were eight inches of water going over the Lake Placid Dam and only three inches of water over the Tiger Cat Dam; correct?

A. The eight inches of water was going over the Tiger Cat Dam.

Q. It was going over the --

A. Yes, it was going over the Tiger Cat conversion canal dam, which would also be the Lake Placid Dam, correct.

Q. And do you note in this letter that, quote, unnecessary water was being diverted from the Tiger Cat Flowage to Round Lake in that situation; correct?

A. Correct.

Q. And that would be in violation of the permit that we have marked as Exhibit 51. Correct?

A. It is not consistent with the -- those requirements, that's correct. I do indicate that there was a possibility of somebody tampering with the diversion canal dam.

Q. And was tampering with the conversion canal dam a common occurrence through the County back then?

A. I don't know. It was -- it was a possibility as there were no locking systems to prevent that.

Q. Okay. On paragraph 4 -- whoops. Hold on a second. That's not the right paragraph.

Paragraph 5. You stated that exceeding the authorized levels can result in loss of shoreline and ultimately poorer water quality

and degradation of aquatic populations. Do you see that.

A. Yeah.

Q. Was indeed the higher -- the water levels that exceeded the maximum on Round Lake resulting in a loss of shoreline and ultimately poorer water quality and degradation of aquatic water population?

A. I do not know. It could have been -- it could have been that the Shoreline was at that point for some period of time. I don't know if it was resulting in additional losses.

Q. There is -- was there at the time shoreline erosion occurring?

A. Sure.

Q. And, when shoreline erosion occurs, does that cause sedimentation to move into the Lake?

A. Yes.

Q. And can that sedimentation move downstream?

A. Yes.

Q. And would you actually expect some of the -- some of the sedimentation to move downstream?

A. Depends on the -- depends on the coarseness of the soil that's eroding. Sandy soils I wouldn't anticipate. A clay soil, something of that nature, would suspend over time and probably run downstream, yeah.

Q. Do you recall that Sawyer County dredged the northern channel in 1969? Did you like fold this up?

MR. WRIGHT: How old was he in 1969?

THE WITNESS: I was five year old.

MS. AZAR: Do you recall that?

BY MS. AZAR:

Q. The northern channel is this right here.

A. I don't recall that, no.

Q. I'm going to make a representation to you that the northern channel was dredged or at least a portion of it was dredged in 1969?

A. Okay.

Q. Okay. And it appears -- I'm also going to make a representation to you now that the northern channel has filled with sediment. Could the sediment found -- currently found in the northern channel have been caused by the shoreline erosion in Round Lake?

MR. WRIGHT: Objection, foundation and form.

THE WITNESS: I would not know.

BY MS. AZAR:

Q. Can you pull up what's been marked as Exhibit 60.

Would you please identify a document that's been marked as Exhibit 60?

A. This is a memo I sent to John Hirschfeld, who was a resident on Round Lake at the time who was very concerned about water levels so I sent him a copy of a staff gage which would indicate -- which he could use to indicate by looking at a staff

gage on Round Lake Dam where the water levels -- the authorized normal and authorized maximum levels would be.

Q. And did you prepare this document in your ordinary course of business?

A. Yes.

Q. And is this an accurate copy of the document that you prepared?

A. I believe so, yes.

Q. On Page 2 of the document, it says that the gage was actually set by John Coke, C o-k-e. Who is John Coke?

A. John Coke was a water regulations engineer out of Madison.

Q. And it indicates that you checked -- that you -- that you confirmed that the gage was set at the proper elevation.

Correct?

A. Correct.

MS. AZAR: I think that's probably all I have. Do you have anything else.

MR. HAUSMAN: Not one question.

MS. AZAR: Okay. I just have a couple more. Famous last words, right?

BY MS. AZAR:

Q. Besides the two letters here that have been marked as Exhibit 59 and --

MR. WRIGHT: 31.

MS. AZAR: Thank you. .

BY MS. AZAR:

Q. --31, do you recall sending any other letters to Sawyer County with regards to the Lake levels on Round Lake or their operation and maintenance of the Little Round Lake Dam, the Lake Placid Dam or the Tiger Cat Dam?

THE WITNESS: I may have, but I don't recall.

MS. AZAR: Okay. That's all the questions I have.

* * * * *

EXAMINATION

BY MR. WRIGHT:

Q. MR. Naas, my name is Joe Wright; and I represent Sawyer County and I have a few questions; and the only Exhibits I need you to have in front of you are 31 and 59, if you take those in your hand.

What was the last day, to best of your memory when you were responsible for any aspect of the water control structures in Sawyer County for the DNR?

A. Would be the -- would have been the -- the last day of my position in Park Falls in 1997.

Q. Do you remember what time in 1997 you left that position?

A. Should have been in the summer.

Q. And you started on what date in that position?

A. In 1992, I believe.

Q. So for about five years you had some responsibility related to the water control structure in Sawyer County. Is that true?

A. As much as a water management specialist has, yeah.

Q. And, in your role as a water management specialist, with some oversight of Sawyer County, was there ever a time during those five years when anyone from Sawyer County refused to follow any advice that you gave to the County?

A. No. I don't believe so.

Q. At the time when you were a water management specialist with the DNR, did you find the County personnel with whom you dealt to be cooperative when you were dealing with them on water management issues?

A. For the most part, yes.

Q. Were there any problems with cooperation from your perspective that related in anyway to the water levels on Round Lake during those five years?

A. No.

Q. I'd ask you to take a look, if you would, at Exhibit 59. That's your August 8 letter the Mr. Kruger; do you have that?

A. Yes.

Q. In the second paragraph of the first page, you noted that you'd been in the area on several occasions and looked at water levels in various locations; true?

A. Yeah.

Q. Do you know when those visits were?

A. No, I don't.

Q. Did you maintain any records from those visits?

A. Possibly, but I don't recall.

Q. Did you provide any records for any of those visits to anyone from Sawyer County at any time?

A. Probably not.

Q. When you observed the water levels on Round Lake -- strike that.

Let me backup. Were these visits that you're referring to in the second paragraph visits that took place in 1995?

THE WITNESS: I don't know. .

BY MR. WRIGHT:

Q. During those visits, the highest you saw the water at any point in time was .20 feet above what you considered to be the authorized maximum level. Is that true?

A. According to this, yeah.

Q. And your view the authorized maximum level was 77.25 feet. Is that right?

A. Correct.

Q. And that compares to a minimum in your view of 77.00 feet. Correct?

A. Appears to normal of 77. --

Q. So the difference between the normal and the maximum in your view was three inches; is that correct?

A. A -- .25 or 25/100ths of a foot.

Q. And we can agree a quarter of a foot is three inches; right?

A. I'd have to check.

Q. Well, okay. Maybe -- well, no I'm not going to make that comment. If --

A. Yes, it is.

Q. Okay. There we go. So .20 feet is about 2.4 inches then, right, not quite two and a half inches?

A. Correct.

Q. On the highest you ever saw the water on the visits that you took in 1995 or earlier, was no more than 2.4 inches above what you believed was the authorized maximum?

A. According to this, correct.

Q. And you don't have any records with you today or that you know of anywhere that document any observations you made after August 8th, 1995 for the water levels on Round Lake. True?

A. I have nothing with me. There could be some documentation; I'm not aware of it.

Q. And, if you ever had such documentation, you don't think you ever provided that to the County, did you?

A. Probably not.

Q. Let me ask you to take a look in that same exhibit at the 5th paragraph and the last two sentences where it says, quote, in addition exceed the maximum-authorized level is a taking of private property. If an individual filed suit against the County, the county would be liable, period, unquote. Do you see that?

A. Yeah.

Q. You don't have a law degree, do you?

A. No, I don't.

Q. Did any DNR lawyer review this letter before it was sent?

A. No.

Q. Did any supervisor of you review this letter before it was sent?

A. Possibly, but likely not.

Q. Do you consider yourself qualified to offer an opinion to a county or anyone else as to what would constitute a taking under Wisconsin law?

A. No. Only as --

Q. Okay.

A. -- under assumption.

Q. Just a minute. I want to go back in my notes here and see if I have anything else.

Mrs. Azar asked you some questions about engineering issues, and I wanted to understand the level of involvement you had as a water management specialist in engineering issues.

When it came to engineering issues regarding dam safety or dam operation, did you consider that to be an area of expertise that you possessed or did you defer to the dam safety engineers?

A. It depends on the complexity of the dam. Dam safety was referred to dam safety engineers. But the day-to-day operations of dams, depending on the complexity, could be handled either at my level or through water regulation engineers.

Q. And, with respect to the Round Lake Dam, did you consider it within your expertise to determine how operation of that dam would affect water levels on the entire Round Lake system?

A. The entire Round Lake system, no.

MR. WRIGHT: That's all the questions I have for you. Thanks.

MS. AZAR: I have a few follow-ups.

* * * * *

EXAMINATION

BY MS. AZAR:

Q. Mr. Wright just asked you whether or not Sawyer County had followed your directions and were cooperative with you; correct?

A. Correct.

Q. And you indicated that they were. Were you referring to Mr. Kruger, K-r-u-g-e-r?

A. Yes.

Q. Were you referring to anybody else at Sawyer County?

A. No.

Q. Mr. Wright also asked about the normal and maximum designated levels of -- on Round Lake, and I believe you got those levels referred to on your last page of Exhibit 31.

Correct?

A. Yes.

Q. And, after you did some quick math, you confirmed the difference between the maximum and the normal authorized level was three inches; correct?

A. Correct.

Q. Now, there is nothing that prohibits Sawyer County from operating the Round Lake Dam such that the water level on Round Lake drops below 77.00 feet. Correct?

MR. WRIGHT: Objection, form.

THE WITNESS: That's correct.

BY MS. AZAR:

Q. There is no minimum designated water level set by the 1941 Order, is there?

A. No.

Q. So, if somebody made a representation that Sawyer County was forced to operate the Round Lake Dam within a three-inch variation, they would be misinterpreting the 1941 Order, in your opinion. Correct?

A. Yes.

Q. Mr. Wright also asked you about your conveyance of information to Sawyer County; and I'm looking up at Exhibit 59, for instance; and, in the first paragraph, you talk about numerous complainants voicing concern over the rapid loss of shoreline of their property because of the higher water. Correct?

A. Correct.

Q. It sounds like from that paragraph that, that you were receiving numerous complaints; correct?

A. Yeah.

Q. And when you received numerous complaints, did you call Mr. Kruger and convey to him the public's concern about the water levels on Round Lake?

MR. WRIGHT: Object to the form. Public.

THE WITNESS: I don't know. Immediately, I don't know.

BY MS. AZAR:

Q. Do you recall how often you had contact with Mr. Kruger?

A. No, I don't. Although, it was not frequent.

MS. AZAR: Anything else?

MR. HAUSMAN: No.

MS. AZAR: I think that's it from us.

MR. WRIGHT: Nothing for me.

MS. SCHWAB: We'd like to read and sign.

MS. AZAR: Great. Todd, thank you very much.

(The deposition concluded at 4:10 p.m.)