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SC Court of Appeals

1 STATE OF SOUTH CAROLINA IN THE FAMILY COURT
2 COUNTY OF AIKEN CASE NO.2018CP0202797
3
4 ELROY D. FISCHER ET AL
5 Plaintiff,
6 -vs- TRANSCRIPT OF RECORD
7 SC DEPARTMENT OF TRANSPORTATION
8 Defendant.
9
10 September 21, 2023
11 Aiken, SC
12 BEFORE:
13 The Honorable Courtney Clyburn-Pope, Judge.
14
15 APPEARANCES:
16 Tucker S. Player
17 Attorney for Plaintiff
18
19 Clarke W. McCants, III
20 Attorney for Defendant
21
22 Emily H. Walker, CVR
23 Court Reporter
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1 Elroy D. Fischer Jr. et al versus South
2 Carolina DOT. Day 2. September 21, 2023.

3 THE COURT: Good morning, gentlemen.

4 MR. PLAYER: Good morning, Your Honor.

5 MR. MCCANTS: Good morning, Your Honor.

6 THE COURT: Are you all ready to proceed?

7 MR. PLAYER: Yes, ma'am.

8 MR. MCCANTS: Yes, ma'am.

9 THE COURT: Let me pull my notes up and I will be
10 ready as well. Okay, Mr. Player, you want to call your
11 next witness?

12 MR. PLAYER: Yes, ma'am. We call David Simono to
13 the stand.

14 CLERK: Please put your left hand on the Bible and
15 raise your right hand. Do you solemnly swear the
16 testimony you should give the Court in this case shall
17 be the truth, the whole truth, and nothing but the
18 truth, so help you God?

19 THE WITNESS: I do.

20 CLERK: Please take a seat in the witness stand
21 and state your full name for the Court.

22 THE WITNESS: My name's David William Simono.

23 DAVID WILLIAM SIMONO, being first duly sworn,
24 was examined and testified as follows:
25

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1 DIRECT EXAMINATION

2 BY MR. PLAYER

3 Q. David, where are you from?

4 A. Originally born in Arkansas, grew up mostly in
5 Columbia, SC.

6 Q. And what brought you to Columbia?

7 A. My father moving for work.

8 Q. What year was that? Do you recall?

9 A. Let's see, fourth grade, so I would have been
10 about 10, about '61.

11 Q. Okay. So you have been here a while?

12 A. Yes.

13 Q. Where did you go to school?

14 A. Columbia High School for high school and Clemson
15 University for my bachelor's degree.

16 Q. And what was your major for your bachelor's at
17 Clemson?

18 A. Civil engineering.

19 Q. Okay. Any postgraduate work?

20 A. I did some preliminary work towards my master's,
21 but I didn't, didn't finish it.

22 Q. Okay. But once you got your degree from Clemson,
23 did you go out and get any type of professional
24 licenses?

25 A. Yes. I -- while I was still at Clemson I took the

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1 initial exam, which you have to take for the
2 engineering and training, which is the pre-license
3 for the PE, the Professional Engineering License.
4 And I passed that. And then after four years of
5 work, which is work that is creditable and the
6 NCEES board decides that, then you can take the
7 principal and practice exam. Which I took while I
8 was in Louisiana and passed that and have been a
9 registered professional engineer since then.

10 Q. Okay. Any other licenses or specializations that
11 you have obtained officially over the years?

12 A. There is a requirement in Georgia to have an
13 erosion control certification, and I obtained that
14 and keep that current.

15 Q. Okay. And erosion control, is it, is there --
16 kind of describe that, a little bit of the
17 language. What is that specialization or what is
18 that?

19 A. It's for the design of structures and/or practices
20 that will protect the downstream property owners
21 from erosion caused either during construction or
22 during some other activity that would disturb the
23 earth above it, including things like silt fence,
24 ditches, riprap, check dams, and sediment basins.

25 Q. Okay. Once you got licensed what was your --

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1 where was your first job as an engineer?

2 A. I was still working for Exxon Corporation in
3 Louisiana when I first got licensed. I did some
4 small jobs there that were truly
5 engineering-related jobs, but -- to my career
6 field. Then when I left there, I came to Aiken
7 County as the Aiken County engineer and worked
8 here for several years. Then became a, became the
9 county engineer for Richmond County, Georgia.
10 Worked there for about five years. Then I went
11 into private practice.

12 And in my private practice I worked for
13 Southern Partners for 14 years. And then after I
14 left them, I went to work for Cranston Engineering
15 Group for 10 years. And retired from there about
16 seven years ago.

17 Q. Okay. And what did you do primarily for Southern
18 Partners?

19 A. I designed subdivisions, some roadways, we didn't
20 do a lot of roads, stormwater piping, sanitary
21 sewer, water, potable water for drinking water,
22 and site plans for shopping centers, service
23 stations, small commercial sites.

24 Q. Did you do any hydraulic analysis for when you
25 were with Southern Partners?

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1 A. Yes. On every project you have to do some level
2 depending on, usually depending on the government.
3 You have to do enough to be able to determine how
4 your project will work. And then beyond that
5 for -- to meet government requirements. The
6 government may require that you do something that
7 would be more than what, what you might consider
8 necessary. But you do, you do the additional work
9 to make sure that you meet the qualifications of
10 what they request of you.

11 Q. Okay. And was it more of the same when you went
12 to Cranston?

13 A. Yes.

14 Q. And during your time at Cranston, you actually did
15 work that was related to the 520 project.

16 A. Indirectly, yes.

17 Q. Okay. And we'll come back to that. What have you
18 been doing since you retired seven years ago?

19 A. I have done a few small jobs for people to help
20 out. I actually went and helped out at the
21 company. And then this court case is the only
22 other thing that I've pursued.

23 Q. Okay.

24 MR. PLAYER: At this time, Your Honor, I would
25 offer Mr. Simono as an expert in civil engineering,

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1 hydraulic studies, and stormwater design plans.

2 THE COURT: All right. Mr. McCants, do you have
3 any questions that you wish to ask?

4 MR. MCCANTS: No, ma'am. No objection.

5 THE COURT: All right. Very good. So we will
6 qualify him as an expert.

7 MR. PLAYER: Thank you, Your Honor.

8 BY MR. PLAYER

9 Q. My favorite question, why are you here?

10 A. I was hired to determine the stormwater runoff
11 situation that existed at the property of the
12 plaintiffs to see if I -- if and what I saw and
13 how it should, how it could have been done. How
14 it did happen.

15 Q. Okay. So what was the first thing you did with
16 regards to developing your analysis on the
17 property?

18 A. I went out on the site with you and Billy Franke
19 and looked at the property, walking up from the
20 bottom side, up through the drainage pattern that
21 the water basically follows that comes from
22 Georgia DOT. And then got up to the site where it
23 spills onto the property. And then walked up
24 inside the sediment basin to where the pipes come
25 in, observing that the items there including the

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1 riprap that was at the outfall of their pipes and
2 the way the basin was configured.

3 Q. Okay. Would you -- anything significant about
4 your observations on that first field trip?

5 A. The, the first thing was, was the vegetation
6 adjacent to the, what has become a very deep ditch
7 at least up near its initial point where it comes
8 on to the property. And the soil had washed out
9 of the root significantly, and it appears to have
10 happened in a rather short period of time. And
11 then I noticed that the water coming -- where the
12 water came. I was not there while it was flowing
13 but where the water came it didn't seem to be any
14 protection downstream of that breach through the
15 sediment basin wall.

16 Q. Okay.

17 MR. MCCANTS: This is (inaudible)?

18 MR. PLAYER: Yes. It's 1964.

19 MR. MCCANTS: Gotcha.

20 BY MR. PLAYER

21 Q. Where did we start that walk? Do you recall?

22 A. We started on Ascauga Lake Road. At the edge of
23 their property there's a, there was a nice little
24 place -- I shouldn't say nice. It was a little
25 difficult to pull off. But you pulled off to the

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1 side and we parked our vehicles and walked up from
2 the very bottom.

3 Q. So we walked the line of the 520 property, not any
4 of the adjacent ones, correct?

5 A. That's correct.

6 Q. Okay. How -- and you say we walked it. How did
7 you know where to walk?

8 A. Well, you could follow, the drainage pattern is
9 very obvious from both sediment deposits and
10 eroded areas. So as you, as you walk up you can
11 see where that is. And we just stayed in that
12 route. And of course, I was in your company and
13 Billy Franke's, so both of you are very familiar
14 with the property, knew where we were headed. And
15 so it was easy to get there by following that.

16 Q. Okay. So the site visit, what documents did you
17 review in forming your analysis about the
18 property?

19 A. I reviewed the -- what information was provided to
20 me on the site, the sediment basin plan. There
21 were sub-hydraulic, hydrologic, hydraulic studies,
22 and I reviewed those. And I looked at the basin
23 as I delineated it because what I was provided
24 didn't have an exact delineation.

25 The numbers, however, were very similar, the

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1 numbers that I got and the numbers that they had
2 used for the total drainage basin was over
3 200 acres. And it's very similar between their
4 number and my number. I didn't see a great
5 disparity there.

6 Q. And just to make sure that I understand, not the
7 drainage basin, the drainage field, right? Or is
8 that, is that the same term?

9 A. This is the drainage basin. The drainage basin is
10 the entire area that drains to the point that
11 we're talking about.

12 Q. So not just that little outlet between where it
13 falls on my client's property and the 520 outfall,
14 that's not -- what -- is that a basin?

15 A. That's a sediment basin.

16 Q. Sediment, okay. I'm sorry.

17 A. And the basin, the drainage basin is the entire
18 area where the water drains and this drainage
19 basin comes from, as was pointed out in some
20 testimony last, or yesterday, it comes from
21 Walmart all the way down through there. It comes
22 down from the terminal. It comes partway up into
23 the interchange and back. And then there is a
24 breakpoint, probably close to the edge of their
25 property that goes both ways. Part of it comes

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1 toward them and part of it goes on down I-20.

2 Q. Okay. I'm trying to get that picture out. Here
3 we are. Exhibit 2, Plaintiff's Exhibit 2. This
4 was introduced yesterday when Mr. Franke
5 previously testified that's what he found when he
6 walked the pipes. Does that comport with what you
7 saw and what you got from --

8 A. Yes --

9 Q. -- your analysis.

10 A. This would be, this would be a representation of
11 the drainage path which would include ditches and
12 pipes. It doesn't include everything as far as
13 the area, but it does include the primary flow
14 pattern that you would, that the water would have
15 followed.

16 Q. Okay. And I'm trying to get it pulled up so I can
17 point some stuff out. It's not going to work.

18 THE COURT: Is it an exhibit that I have?

19 MR. PLAYER: Yes. Yes, Your Honor.

20 THE COURT: All right. What number?

21 MR. PLAYER: Number 2. Plaintiff's Number 2.

22 It's got yellow arrows on it.

23 BY MR. PLAYER

24 Q. I don't think Clarke's going to need to watch it.

25 I think we know this area well enough. The

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1 building with what appears to be the cylindric
2 silos on the property, do you know what that is?

3 A. Yes, the terminal. The Charter Terminal.

4 Q. The oil folks?

5 A. Yeah. Oil and gas from the, from the pipeline
6 goes there and then is distributed out from there.

7 Q. And then next to it is -- do you know what that
8 is?

9 A. I believe that's a trucking company.

10 Q. Okay. And then we get to where the arrows form
11 kind of a 90-degrees angle around a building. Do
12 you know what that is?

13 A. Yes. I designed the site for that. That was
14 Kauffman Tire at the time. I think they have
15 since changed names.

16 Q. Okay. But the flow of stormwater from across
17 I-20, do you agree with this pipe structure to
18 where all of these pipes eventually lead to the
19 520 outfall?

20 A. Yes.

21 Q. Okay. And the question that I tried to do
22 yesterday without an expert is, if there's an oil
23 spill here, where is it going?

24 A. It's going to go down along the ditch to the pipes
25 and through the pipes over to the plaintiff's

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1 property.

2 Q. Now that wasn't changed from the natural flow of
3 water -- now, wait a minute. Because when they
4 had the spill in the '80s or the '90s, the water
5 went there -- went to my client's property then,
6 correct?

7 A. That's correct.

8 Q. I want to kind of discuss what you do and what
9 your responsibility is when you design a roadway,
10 and when you design and implement stormwater
11 control. What, what is post-development flow and
12 pre-development flow and why do we care?

13 A. Well, there are several, several things involved
14 in that. First of all pre-development flow is a
15 calculation of the stormwater runoff amount,
16 volume, capacity, and rate of flow. So there are
17 several things you have to calculate. All those
18 interplay with one another. That is in place when
19 you don't -- haven't touched the property yet, so
20 it's before development. That's the term
21 pre-development. Before you develop the road,
22 before you develop the project.

23 Q. Raw land, trees, wilderness, correct?

24 A. Yes. And you determine the flow and it is based
25 on land use. There are some very precise things

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1 when you are using much smaller properties. You
2 use broader things when you use properties as
3 large as this. And the Corps of Engineers has
4 some specific things that are there.

5 There's models called the TR-20 and TR-55.
6 The HEC-1, HEC-2, you know. Since those days
7 HEC-HMS, HEC-RAS. Those are all computer programs
8 that tell you what the -- how to put these numbers
9 together.

10 And then you -- so you calculate those flows
11 and that's the pre-developed. The pre-developed
12 matters because in all jurisdictions now, it has
13 been for quite a while, there are requirements
14 that you control your stormwater flow so that the
15 flow you release after you are through with your
16 project is no greater than the flow rate that you
17 had when your -- before your project was built.

18 So the pre-developed flow governs how much
19 you can let go at a time in the post. It is not
20 purely a quantity because you -- in order to hold
21 the quantity you would have to make it evaporate,
22 pump it into holes in the ground, something else.
23 So it's not evaporation. It's a rate of flow.
24 It's the Q that you see in calculations a lot of
25 times. Capital Q , and that is the flow in cubic

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1 feet per second.

2 Q. Right. So you can still send the same amount of
3 water, but if you send it faster you're still
4 violating one of your duties, correct?

5 A. That's correct. The post-development is
6 determined by what happens once you put down your
7 pavement, once you have put down your building or
8 your roadway or whatever you are building, once
9 those things are established, then that plan that
10 you have created for that is the basis for
11 calculating your post-developed flow.

12 Q. Okay. Now you said that the drainage basin is
13 200, I think the number is 220, 220 acres go to
14 this single outflow of two pipes, the 54 and the
15 28 that is at the bottom here on Plaintiff's
16 Exhibit 1, correct?

17 A. Yes. That's right at the edge of the roadway.

18 Q. Okay. Before there was any development on the
19 site --

20 THE COURT: Mr. Player.

21 MR. MCCANTS: (inaudible).

22 MR. PLAYER: Oh, okay.

23 THE COURT: Hold on, Mr. Player.

24 MR. MCCANTS: Rats.

25 THE COURT: I don't want to mess up the courtroom

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1 (inaudible).

2 MR. PLAYER: Rodney has me in the basement as
3 usual.

4 THE COURT: Can you hear now? All right. We'll
5 proceed.

6 THE WITNESS: Your Honor, that was an interesting
7 face.

8 MR. PLAYER: We're just talking about
9 Judge People's order.

10 THE COURT: We still have some other guidance on
11 that.

12 MR. PLAYER: That's the look he would give you
13 just before he ripped you up. Like you (inaudible)
14 little boy?

15 THE COURT: I think I will practice that one.

16 MR. PLAYER: It was very effective. My favorite
17 part is when he said, Madam Court Reporter, you don't
18 have to type this. I want to talk to the jury.

19 THE COURT: No. I'm not going to do that. All
20 right. Proceed with your question, Mr. Player.

21 MR. PLAYER: Yes, ma'am.

22 BY MR. PLAYER

23 Q. All right. Before development, before any of 520
24 came out there, that 220 acres was draining to
25 that spot.

Simono - Direct by Mr. Player

1 A. Yes.

2 Q. That's the low point, right?

3 A. Yes.

4 Q. And physics says it's going to -- gravity is going
5 to move it to the lowest point.

6 A. Yes.

7 Q. How did it flow to that point before development?

8 A. The flow -- well, all of the developments have
9 impacted it.

10 Q. Sure.

11 A. The flow upstream where Walmart is today and their
12 detention behind them, there's property adjacent
13 to that. It's what's known as a Carolina Bay.
14 It's an area that holds water all the time. When
15 I was the county engineer we specifically
16 prohibited them from doing anything to it, but
17 immediately adjacent to where they did Walmart
18 they raised, so they added water to come that way.
19 So before some of the water was just flowing over
20 land instead of flowing through pipes or ditches.
21 So it would have been flowing at a slower rate.

22 Q. But, I guess, back when it was natural in the
23 pre-development, did it spread out or was it in a
24 channel?

25 A. What generally happens in the flow of water is it

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1 flows in a broad sense. And when I say that I
2 mean truly broad. It flows out in a low pattern
3 across grass, whatever it's flowing on. It will,
4 given enough velocity or enough time or enough
5 slope, it will begin to channelize. Which is why
6 if you look at any maps, including the one that he
7 had for any geologic maps, they do show areas
8 where the water has created a channel. And that
9 channel is where the water is going to end up
10 with. So it will eventually flow in channels.

11 However, when you pipe it you speed the water
12 up because the pipe has a much lower resistance to
13 the friction. Grass can have a Manning's of .25,
14 .5, and a pipe will have .015.

15 Q. And you said Manning's. We were at lunch talking
16 about Manning's coefficients. I'm not sure the
17 judge understands. What is the Manning's
18 coefficient and how does it play into your
19 analysis?

20 A. A Manning's coefficient is a friction number that
21 let's you determine -- so if you were rubbing
22 across the top of this with your hand, it's very
23 smooth so it will rub easily. If you put a piece
24 of sandpaper over here it would have more
25 resistance. That's the difference in Manning's

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1 number. The Manning's coefficient is used to
2 determine how easily water will flow through it.

3 In almost all calculations, in all pipe
4 calculations use, predominantly, use Manning's.
5 It's one of the big coefficients that are used for
6 the pipe calculations. So when you're designing a
7 pipe system, you design it to determine that.

8 One of the big sale's pitch by a lot of the
9 pipe companies is we can offer you a smoother
10 pipe. We can get your water there faster. Thus
11 the smooth-lined plastic pipes have come out and
12 they do indeed offer that extra velocity. So if
13 you're trying to clear out water quicker, they
14 have a lower Manning's even than concrete.

15 Q. Okay. And just to make that connection, the lower
16 the Manning coefficient the faster the water
17 moves?

18 A. Yes.

19 Q. Okay. Another thing about pre-development flows
20 going over a pervious surface as opposed to the
21 impervious surface of a pipe. How does that
22 affect the flow of water?

23 A. Water that's, water that's going on impervious
24 areas, and it depends on the impervious area, if
25 it's well-developed grass, it's much slower. If

Simono - Direct by Mr. Player

1 it's just dirt, it's a little bit slower. If it's
2 packed dirt, it's not too much slower. But the
3 paved surfaces, asphalt, concrete pipes all allow
4 the water to travel at a much faster rate. And it
5 will more quickly channelize because it will, it
6 will get to the other point quicker.

7 Q. If it's put in a pipe, isn't that channelizing the
8 water itself?

9 A. Yes. Once it's in the pipe there's no more
10 channelizing that needs to be done.

11 Q. Okay. And my question is more towards absorption.
12 When that water, for the last however many years
13 Clarke wants to go back, when it was flowing over
14 the natural surface it didn't all stay there,
15 right? Some of it was absorbed into the ground.

16 A. That's correct.

17 Q. And when you put it in an impervious surface like
18 a concrete pipe there's no absorption, correct?

19 A. There's almost, no.

20 Q. Okay.

21 A. The pipe is, the pipe itself would soak a little
22 bit up. You can wet concrete and see that happen.
23 But after a very short term, like it would seem to
24 be almost instantly, it will then not carry any
25 more and it will flow and go right across it.

Simono - Direct by Mr. Player

1 Q. So by putting it in the pipes you're raising the
2 rate that's its -- that it reaches the terminal
3 point, and you're also adding to it because it
4 can't absorb as you go to the pipe?

5 A. Yes. You allow more water to get there quicker,
6 and so the velocity goes up and the amount of
7 water would increase because you don't have any of
8 that infiltration or evaporation available.

9 Q. Okay. And when you were doing your background
10 research of the documents, did you ever notice any
11 plans from DOT that put anything other than riprap
12 on 520 to slow down the water?

13 A. There was, there was a sediment basin at the
14 outlet fall, which included riprap as would be in
15 most projects when you have an outfall for a
16 roadway project or an outfall for your project.
17 If you are designing an individual site, you put
18 in something to control sediment during
19 construction. And generally speaking those are by
20 their nature designed to be taken out after the
21 project is constructed and stabilized.

22 Q. Okay. And when you went out there and when you go
23 to the outfall, I think, and just -- did it appear
24 that something had been done to try and stop or
25 limit, reduce the flow of water?

Simono - Direct by Mr. Player

- 1 A. There, there was a -- the sediment basin remnants
2 were still there. There was a wall partially
3 around. There was riprap from the outlet pipes
4 down to the outfall onto their property. But
5 there was a, a breach or a specific design to
6 allow water to go through at that point. And so
7 what would happen as a result is the water would
8 collect in that sediment basin and be directed to
9 that single point which would accelerate the
10 release at that point.
- 11 Q. All right. So what was your ultimate opinion with
12 regards to the impact of 520 and whether or not
13 DOT has put in sufficient measures to stop the
14 damage caused by the water -- the 220 acres that
15 were directed there to the pipes?
- 16 A. When I finished looking at the numbers and then
17 observing what was out there, it appeared that
18 there was something missing to slow down the water
19 at the actual outlet. There was a, there was
20 sufficient erosion control with the riprap from
21 the pipe outlet to the property line. But from
22 the property line on it appeared that whatever was
23 there, if it had been built, it fell down. If it
24 was never built and it was intended to be that
25 way, then it was designed to have an opening that

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1 would allow water through, and that water would
2 then go directly down onto the plaintiff's
3 property and allow it to erode.

4 Q. And I think the regs talk about any drainage
5 outfall should be a free flow. What does that
6 mean?

7 A. The idea behind free flow is to do exactly what
8 they did when they came out of their pipe, to be
9 able to flow freely across the land without
10 disturbing it. And I did calculations to
11 determine, you know, what the flows would be
12 coming out of those pipes, and those calculations
13 are actually used to size the riprap. And based
14 on what I could see, the riprap that was inside
15 the sediment basin from their pipe to the edge of
16 the property was properly designed and was
17 functioning as it should.

18 Q. But the water was going too fast (inaudible). Is
19 that accurate?

20 A. Yeah. What happened at the edge of the property
21 was the water then accumulates back and was forced
22 through a single location and caused the erosion.

23 Q. Okay. Let's -- I know you have seen these videos.
24 This is the outfall. And to me, this might not be
25 the best picture. When, when this water flows

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1 from the outfall of 520, is it -- would you
2 consider this to be channeled or brief free flow
3 that allows this to spread out?

4 A. It is channelized to a certain extent because it
5 does have riprap immediately adjacent to it that
6 is keeping it, keeping it in. The, the problem
7 with it is, it's all going to a single point at
8 the discharge and so it's -- at that point it's
9 not controlled.

10 Q. Okay. And that's kind of my question. Is, you
11 see and we'll play it again, what I'm looking at,
12 and so Clarke can see, you have this, this channel
13 coming down the center and then you have what
14 appears to be kind of calm water sitting over to
15 the side. Is that what typically happens when you
16 allow the water to spread out from a discharge?

17 A. Generally you would like it to spread out more
18 than that, but in their case they did have to send
19 it to a single point. So they had to find some
20 way to control it at a single point downstream of
21 that.

22 Q. Okay. And if this water was allowed to continue
23 to spread out and then have a sheet-fall over the
24 Franke property -- I know there are more owners,
25 but that's what I call it. Would you have the

Simono - Direct by Mr. Player

1 problem -- well, let me ask you this. Is that
2 ever supposed to happen when -- we'll come back to
3 it. This is at the outfall. You see how the
4 water is calm here and then turns into a rapid.

5 A. Well, what you're getting is, as they're showing
6 right there, that's the edges of what would be the
7 sediment basin. And then in the middle there is a
8 gap that is narrow, and that's why the water
9 accelerates and it's going downhill as well. So
10 it has -- doesn't have anything stopping it from
11 increasing velocity.

12 Q. Should there ever be that type of flow from one
13 property to another if it was designed properly?

14 A. It should not be that kind of flow without
15 control.

16 Q. Okay. And there's no control there now.

17 A. No.

18 Q. Okay. Have you ever seen, other than the riprap
19 and the sediment basin, have you ever seen any
20 plans from DOT that put any controls for that type
21 of speed from water?

22 A. No.

23 Q. Did you do any calculations with regards to the
24 speed of the water coming out of the pipes?

25 A. Yes.

Simono - Direct by Mr. Player

1 Q. I'm going to ask you to identify those.

2 A. Yes, that's what these, these calculations show.

3 Q. And when you did those calculations you came up
4 with a cubic feet per second number, correct?

5 A. When I, when I came up with these what I was
6 gaining was the velocity of the water coming out,
7 and the flow capability of the pipes. So those,
8 both numbers are important.

9 Q. Okay. But you do have a CFS number.

10 A. Yes.

11 Q. What is the significance of that CFS number with
12 regards to when science says erosion begins?

13 A. Well, usually the number is actually on the
14 velocity, not on the CFS.

15 Q. Okay.

16 A. Erosion, in South Carolina, generally speaking, it
17 doesn't take but four or five feet per second to
18 cause erosion because we have a lot of sandy soil
19 over here. Sandy soil is more easily eroded. And
20 this shows that we had -- this particular
21 calculation was one for the 52-inch or 54-inch
22 pipe flowing at 52, which is the optimum flow for
23 that, and it's flowing at 13 feet per second.

24 Q. So that was definitely washing away land.

25 A. Yes. And that's why they have riprap downstream

Simono - Direct by Mr. Player

1 from their pipe.

2 Q. And that's not even the biggest number that you
3 came up with. Isn't there one that's 18 feet per
4 second, 18 cubic feet per second? I think that's
5 the 54 at max. Sorry.

6 A. That's okay. No, it's on the 24-inch pipe that we
7 got an 18 feet per second velocity. And the
8 reason for that is when you put a lot of water
9 through a smaller diameter pipe, you usually get a
10 higher velocity.

11 Q. Okay. I want to talk about -- we just talked
12 about you never saw any design with any controls.
13 I want you to explain to the Court what happened
14 to Kauffman. Kauffman was expanding their
15 building? What caused you to do the work for
16 Kauffman?

17 A. Kauffman built a tire warehouse and as part of
18 their process to build the warehouse we had to
19 design the site. The site included the stormwater
20 runoff, the piping system, how they were going to
21 park their trucks, the drainage for their truck
22 areas, et cetera. And we, so we designed that, I
23 designed that as the engineer, and finished my
24 design. I had sufficient space and capacity to
25 take care of the soil erosion requirements, the

Simono - Direct by Mr. Player

1 sediment control required by DHEC, but I didn't
2 have enough room to easily do control for the
3 stormwater volume required by the city and the
4 county. And so --

5 Q. Was there an existing detention measure on the
6 property before Kauffman built the warehouse?

7 A. There was a, was a sediment basin or detention
8 pond behind Kauffman Tire, behind where the
9 property is and where they developed. And we
10 would be basically cutting that off and sending
11 all their water to our little sediment basin.

12 Q. Okay. So you just had a sediment basin but there
13 was an area at the front of the property to
14 collect water, correct?

15 A. Yes.

16 Q. And since Kauffman was disturbing the land and
17 adding more impervious surfaces you were going to
18 increase your water footprint, correct?

19 A. That's correct.

20 Q. What did DOT say? Did they say you had to expand
21 your detention pond?

22 A. We went to DOT to ask for them to incorporate our
23 water into their plan, and they said that was fine
24 with them. And so we didn't proceed with any
25 further design for that.

Simono - Direct by Mr. Player

1 Q. So even when you were increasing the water from
2 your property, DOT said just send it to us, you
3 don't need a detention pond?

4 A. That's correct.

5 Q. Are you aware in your review of the plans whether
6 they replaced that detention pond or not?

7 A. No.

8 Q. I want to show you a video that I've shown you
9 before, and I want you to explain what you see to
10 the judge. The water flowing into what looks like
11 a hole and not coming out, where does it appear
12 that water is going?

13 A. It goes into the ground and it will surface later
14 on I am sure. It is one of the reasons that some
15 of the laws have been written so that stormwater
16 flow has to be -- has to include underground flow
17 because you have issues like this where it has
18 eroded enough to create an underground area for it
19 to flow into.

20 Q. And what is that called when water flows
21 underground unseen on the surface?

22 A. I don't know that I've ever given it a name. I'm
23 sure it has one.

24 Q. What's happening to the dirt underground when the
25 water is flowing through it?

Simono - Direct by Mr. Player

1 A. It gets softer and more susceptible to collapse.

2 Q. Collapse. And what is that called? We're talking
3 ordinary -- when the soil is eroded underneath the
4 surface and collapses, what is that called? A
5 sinkhole?

6 A. Well, it's like a sinkhole. Sinkholes have a lot
7 of different causes.

8 Q. Okay.

9 A. Sometimes sinkholes are actually caused by natural
10 geologic features that at some point, as you know,
11 South Carolina does have some geologic instability
12 and sometimes that is what causes sinkholes. Ones
13 could appear suddenly out of nowhere. But, yes it
14 would, it would also cause that.

15 Q. In your engineering expertise is it advisable to
16 build any type of structure for human habitation
17 where there is possible channeling underground
18 water where it's eroding the soil?

19 A. If you can identify it, it would not be advisable.

20 Q. Okay. What would it take to identify that type of
21 channeling over 35 acres. Is it cheap?

22 A. No. It would require -- first of all, you would
23 have a topographic survey to determine what the
24 ground surface was like. Then you would have to
25 go in with probes and probably some drilling.

Simono - Direct by Mr. Player

1 There are some local companies that do drilling
2 for testing purposes to determine what is
3 happening. Since you would see this particular
4 area you would go downstream a bit to see if you
5 could identify where the water went. It's quite
6 obvious that it's going somewhere, but it would
7 not be necessarily as obvious as to where it's
8 going to come out.

9 Q. Okay.

10 MR. PLAYER: And I'll put this in as Exhibit 11
11 just as a collective exhibit. No objection, Clarke on
12 the -- just the plat calculations that I showed you?

13 MR. MCCANTS: Oh. No objection.

14 THE COURT: All right. This is Plaintiff's 11.

15 (Exhibit entered into evidence.)

16 BY MR. PLAYER

17 MR. PLAYER: I know it's dangerous but can I have
18 Exhibits Number 3-10? Thank you.

19 BY MR. PLAYER

20 Q. This has been entered as Plaintiff's Exhibit
21 Number 3. And you recognize the area in that
22 picture?

23 A. Yeah. That's one of the areas along that drainage
24 pattern that had eroded from the outfall of DOT
25 onto the property down.

Simono - Direct by Mr. Player

1 Q. Okay. And this is, again, Plaintiff's Exhibit 3,
2 Your Honor. Now the trees, the trees in this area
3 tell you anything about -- and I think you
4 mentioned that from your opinion the erosion had
5 occurred in the last five years or so?

6 A. Yes.

7 Q. What did the trees tell you?

8 A. And I would have to correct that. Probably in the
9 last seven years since when I first thought about
10 that, that was two years ago, so.

11 Q. Right.

12 A. So it would be the last seven years or so.

13 Q. Okay.

14 A. When you look at it you can see that there, that
15 there are root structures of what would have been
16 established trees that have since had their roots
17 exposed due to erosion.

18 Q. Is that proper from an engineering design
19 standpoint?

20 A. No. It's not what you want to have downstream of
21 your project.

22 Q. And the -- what's the word, the technical word for
23 water scraping or damaging the soil?

24 A. Scour.

25 Q. Scour. And as a professional designing the

Simono - Direct by Mr. Player

1 stormwater system it's your responsibility -- what
2 is your responsibility with scouring? Can you
3 elect to allow it to happen?

4 A. There's a lot of different uses of scour. Scour
5 at a bridge abutment, for instance, is actually
6 designed for and planned. And you plan how to
7 control it to where it is acceptable. When you're
8 doing a channel you don't want any scour in the
9 channel, and to stop that in past projects I have
10 put riprap walls on the channel to control it so
11 that the water stays inside the channel. And I
12 have done other things to reduce the flow going to
13 my channel.

14 Q. Okay. And you said you don't want the scour to
15 occur in a channel. Why is that?

16 A. Well, it does several things. The scour is in and
17 of itself a detriment of removing soil as the soil
18 erosion people it's wrested that W-R-E-S-T-E-D,
19 its wrested from the bank. And it, it's basically
20 violence to the soil that causes soil to be lost
21 and carried downstream.

22 Q. And what does that do to the channel?

23 A. It widens the channel and deepens the channel.

24 Q. So it's exponentially causing more damage because
25 more soil is not there for resistance, correct?

Simono - Cross by Mr. McCants

1 A. Yes.

2 Q. Okay.

3 MR. PLAYER: I know I'm leading, Clarke. Just
4 trying to be brief.

5 BY MR. PLAYER

6 Q. More pictures. Number 4, my favorite tree. This
7 one right here. It looks like the root structure
8 of that tree has been pretty extensively eroded.

9 A. Yes.

10 Q. But it's still alive.

11 A. Yes.

12 Q. Is there -- in your opinion is there any way that
13 that amount of erosion has been occurring for a
14 hundred years?

15 A. No. That -- this tree would have -- had it been
16 that long would have already long since fallen
17 over.

18 Q. Okay. And did you see evidence of, of live trees
19 that are fallen over like the one in Exhibit 5,
20 along the pathway that you walked?

21 A. Yes.

22 Q. And this pathway that you walked that leads
23 directly to the bottom of the outfall, correct?

24 A. That's correct.

25 Q. Okay. With regards to your observations of the

Simono - Cross by Mr. McCants

1 damage in the immediate area of the outfall, a
2 collection of these pictures that you have seen
3 before, it, what, what is causing this erosion?
4 Is there any debate where the water is coming
5 from?

6 A. No. This water is definitely the water that is
7 coming through the DOT piping system, ditch and
8 piping system. There, where it had flowed down to
9 their pipes and then being directed to the
10 plaintiff's property.

11 Q. And not necessarily too much volume, but it's
12 definitely too much speed.

13 A. Yes, the velocity is too much.

14 MR. PLAYER: I think that's all I have, Your
15 Honor.

16 THE COURT: Cross.

17 CROSS EXAMINATION

18 BY MR. MCCANTS

19 Q. Good morning, Mr. Simono.

20 A. Good morning.

21 Q. You do not disagree with the evidence and
22 testimony in this case which, I believe,
23 establishes that for a long, long time -- I can't
24 quantify, but there's been what they call a
25 blue-line stream traversing North, Northeast --

Simono - Cross by Mr. McCants

1 A. No, sir.

2 Q. -- into the Plaintiff's property?

3 A. It's not a blue-line stream. It's an intermittent
4 stream. There's a difference.

5 Q. Okay. Explain to the Court the difference.

6 A. Yes. An intermittent stream only carries water on
7 rainfall occasions or thereafter because of
8 groundwater weepage. So once that's over, it
9 quits carrying water. And a stream is one defined
10 by either the Corps of Engineers or the EPD or
11 DHEC in South Carolina as to one that is, in their
12 determination, navigable. But -- so those flow on
13 a constant basis or have a source of water to flow
14 on a constant basis.

15 Q. How would you characterize, or how would you
16 describe by name, the historical with imagery maps
17 and topography, topo map, that showed a blue line?

18 A. It's not a blue line. Is a blue dashed line with
19 dots in blue.

20 Q. Solid or dotted, how would you characterize that?

21 A. The solid ones are streams. The ones with the
22 dots are intermittent streams.

23 Q. Intermittent.

24 A. Yes.

25 Q. But can we not generically call them blue-line

Simono - Cross by Mr. McCants

1 intermittent and regular streams?

2 A. You can call them intermittent streams, you can
3 call them streams, if they are. But you can't use
4 those terms interchangeably. They are separate.
5 And they are separate on purpose. That is, that's
6 the way that the government looks at them in order
7 to determine regulation, what's applied and what's
8 not applied.

9 Q. All right. But you don't dispute that old maps
10 and topo maps depict what shows a blue line on it?

11 A. The maps that I had showed the blue dotted line,
12 which is an intermittent stream.

13 Q. Okay.

14 MR. MCCANTS: One second, Your Honor?

15 THE COURT: Certainly.

16 BY MR. MCCANTS

17 Q. When you first visited the property, we'll clear
18 up the nomenclature of a blue dotted or otherwise
19 stream on the maps, I think, through my witnesses
20 but --

21 A. Okay.

22 Q. When did you first set foot on this property
23 again, David?

24 A. Hmm. Four years ago.

25 Q. And when you did so, you basically walked the

Simono - Cross by Mr. McCants

1 entire property down to Ascauga Lake Road, is that
2 fair?

3 A. No. We started at Ascauga Lake Road and walked
4 up.

5 Q. Fair enough.

6 A. Yeah.

7 Q. Either way you walked up to the I-20 area?

8 A. That's correct, yes.

9 Q. And was that on the first visit?

10 A. Yes.

11 Q. What did you observe with regards to the interior
12 of the property at that point in time?

13 A. It was wooded, had a lot of sediment out on the --
14 around the edge of the flow pattern. And what has
15 become a ditch area that's actually of concern
16 where the water is flowing, it had some existing
17 roads that had been started or partially done.
18 They were never paved.

19 Q. We'll talk about that a little bit later.

20 A. But it has those and it had trees, and as was
21 shown in the pictures it had trees that had had
22 their root systems eroded, and had trees that were
23 away from there that were just regular trees
24 growing in the woods.

25 Q. And have you looked at, have you reviewed

Simono - Cross by Mr. McCants

1 historical imagery of this area by way of Google
2 Earth or otherwise?

3 A. I went back and looked some. I didn't study it to
4 see what all was there. I don't -- I remember
5 doing it but that's all I can tell you. I didn't,
6 I didn't look for any, because I didn't see any
7 great detail.

8 Q. Any picture, any imagery within the ten years
9 prior to the construction of the Palmetto Parkway?

10 A. Not that I remember.

11 Q. All right. Do you use Google Earth as part of
12 your practice?

13 A. I do.

14 Q. Very handy tool?

15 A. It is. It is indeed. Unfortunately they are not,
16 they are not good resolution photos oftentimes, so
17 it's not as nice as you would like for it to be.

18 Q. Well, these satellites have improved since
19 Sputnik, don't you agree?

20 A. I agree.

21 Q. And what you're telling the Court is some of the
22 old USDA, United States Department of Agriculture,
23 imagery which were done to observe crop formation
24 and whatnot, is kind of hard to look at, correct?

25 A. Yeah. And even some of Google Earth's stuff is --

Simono - Cross by Mr. McCants

1 I've looked at it and the new stuff, man, it's
2 crisp. You can see all sorts of things. People
3 love to show the errors it shows. So it's lots of
4 fun to look at. The older stuff is not --

5 Q. It's a remarkable program, isn't it?

6 A. It is.

7 Q. Using the eyes in the skies.

8 A. Yes.

9 Q. But we all know a picture is worth many words.
10 It's also subject -- pictures are also subject to
11 alteration, Photoshopping and whatnot. But have
12 you ever had any concerns about looking at images
13 taken from above and wonder whether or not you're
14 really seeing what was actually received and they
15 had been altered in some regards?

16 A. No, not altered, but there are things that you see
17 that aren't really there. There's a very famous
18 one. It shows a jetliner flying through a house.
19 And it's not a jetliner flying through a house.
20 It's the timing of the photo, and the way it hit
21 and the jet flew and they made it look like it.
22 So it wasn't Photoshopped. It was actually a
23 picture from the satellite. It just -- and when
24 you look at it carefully you can see it's not
25 doing that. But that's what it appears on first

Simono - Cross by Mr. McCants

1 look.

2 Q. Well, there is no dimension from that height, so.
3 Well, that's interesting. I haven't seen a
4 photograph yet capturing a plane flying above
5 earth and not being able to tell where the plane
6 is in relation to the earth. But my question --
7 Google Earth is very reliable in your opinion?

8 A. Yes.

9 Q. All right. You haven't stumbled any on --
10 stumbled upon any images that you think were not
11 reliable?

12 A. No.

13 Q. You have been in the courtroom with us, I think,
14 during most if not the entire trial. And you have
15 seen some of the images that we have introduced
16 into evidence, at least from the standpoint of my
17 client. And one series of photographs that I do
18 want to talk to you about are these. That is
19 Exhibits 6, 7 and 8. You were in the courtroom
20 and you heard us talking about these?

21 A. I did.

22 Q. And at some point during the trial, have you
23 gotten up and looked at them closely?

24 A. No.

25 Q. All right. What I can tell you, Mr. Steward

Simono - Cross by Mr. McCants

1 Saunders is here. He's the individual who
2 originally appraised the property for the DOT as
3 part of the condemnation action in 2006. He was
4 out there in 2005 and took these pictures. I want
5 you to assume that's true for purposes of our
6 discussion.

7 A. I have no doubt about that. That's fine.

8 Q. All right. And what I believe are these
9 photographs -- these are photographs of the
10 interior of the plaintiff's property --

11 A. Okay.

12 Q. -- involved in this case. And in particular
13 number 6, what do you perceive that to show?

14 A. I'll be real honest. It looks like there may be
15 some water flowing through something. It's quite
16 grown-up. I couldn't tell you much more than
17 that.

18 Q. Do you remember seeing this area of the property
19 when you first walked it?

20 A. Do I remember that piece of property?

21 Q. That area.

22 A. I'm sorry. I can't, I can't relate well enough to
23 tell you that I know where that is.

24 Q. Did you yourself take any photographs of the
25 interior of the property when you visited?

Simono - Cross by Mr. McCants

1 A. I did.

2 Q. All right. And I think (inaudible), but you don't
3 remember this specific area?

4 A. No, I don't.

5 Q. All right. And what I can also offer to you is
6 that this image on the board, that's the actual
7 exhibit we had retrieved from Mr. Saunders'
8 appraisal, his written appraisal that he prepared.

9 MR. MCCANTS: I don't know if I've marked this
10 yet. Have I Madam Court Reporter? The appraisal --

11 MR. PLAYER: Can I look at it?

12 MR. MCCANTS: Hmm?

13 MR. PLAYER: I think so.

14 (inaudible crosstalk)

15 THE COURT: I don't believe --

16 MR. MCCANTS: I don't think that's marked yet. I
17 would like to go ahead and do that, Your Honor.

18 THE COURT: No objection?

19 MR. PLAYER: No, ma'am.

20 MR. MCCANTS: And we're at what --

21 COURT REPORTER: Number 9.

22 MR. MCCANTS: Number 9. Okay, I'm going to give
23 you this one to mark. Judge, I've got a copy of it for
24 you. And, of course, I provided it to Mr. Player. I'm
25 pleased to give you another one. Judge, I'm looking.

Simono - Cross by Mr. McCants

1 We had several copies, if you can bear with me.

2 THE COURT: Certainly.

3 MR. MCCANTS: I'm looking for one in color. Here
4 it is. Let's do this one.

5 (Exhibit entered into evidence.)

6 THE COURT: If you all need to stand up and
7 stretch. If you've got back issues like me go ahead
8 and stand up and stretch. Or is it just me?

9 MR. MCCANTS: That's me. I get up and move
10 around. Okay. Judge, are you ready for us to proceed?

11 THE COURT: Yes. Yes.

12 BY MR. MCCANTS

13 Q. All right. Mr. Simono, let me show you what has
14 been marked as Exhibit Number 9. I will tell you
15 that that is a full copy of Mr. Saunders --
16 Steward Saunders' appraisal. If you look down in
17 the lower right-hand corner you see his name. Are
18 you with me?

19 A. Yes.

20 Q. All right. And if you thumb through that what you
21 will see are several photographs which are
22 characterized as the interior of the property with
23 which we are dealing today. And you have one with
24 color in it.

25 MR. MCCANTS: Judge, I'm going to give you a copy

Simono - Cross by Mr. McCants

1 which doesn't have color in it. But Mr. Simono has one
2 in case you need to see that. All right.

3 BY MR. MCCANTS

4 Q. Okay, you with me so far?

5 A. Yes.

6 Q. You see that photograph -- if I may --

7 THE COURT: Where are you, Mr. McCants?

8 MR. MCCANTS: Excuse me. This is Page 6.

9 BY MR. MCCANTS

10 Q. Two photographs on that page, both marked -- one
11 is marked interior view, and the one below it is
12 marked drainage ditch. Do you see that?

13 A. I do.

14 Q. All right. Would you agree with me that that --
15 what's in that exhibit that I just gave to you,
16 the full appraisal, is a clearer picture of
17 Number 6?

18 A. Appears to be the same to me. Yes.

19 Q. All right. What do you see, then, in the
20 photograph that's identical to Number 6 in
21 Mr. Saunders' actual written appraisal that you're
22 holding in your hand?

23 A. Again, it looks like a ditch. I can't define much
24 about it, but it does look like a ditch. It's
25 grown up pretty well around the edges.

Simono - Cross by Mr. McCants

1 Q. You got any thoughts about how that ditch, as you
2 call it, was created?

3 A. I'm sure it was created by the flow of water.
4 Most ditches are.

5 Q. All right. Did you hear the other witnesses in
6 this case really unable to tell me what it was and
7 how it came about?

8 A. I did and what they said are good bases. They had
9 nothing to compare it to. I couldn't tell you
10 exactly what it -- I wouldn't try and venture what
11 it's shape or size was other than what you can
12 see. So there's no scale. But yes, it appears to
13 be a ditch.

14 Q. It appears to be a pretty big ditch. You agree?

15 A. I'm sorry. I really can't say that. One side of
16 it looks higher than the other side of it. I
17 can't tell you.

18 Q. You talked about scouring. Is that the term you
19 used?

20 A. Yes.

21 Q. Will you spell that for us?

22 A. S-C-O-U-R.

23 Q. Is it like the scouring pad that you use --

24 A. It is similar in nature, yes.

25 Q. And water scours dirt, sand, sediment, clay.

Simono - Cross by Mr. McCants

1 Water has been known to move so fast it moves
2 rocks, according to the evidence in this case.

3 A. That's correct.

4 Q. Don't you think that picture right there on that
5 Page 6 of that appraisal shows serious evidence of
6 the scouring of the land?

7 A. I would say it shows a ditch. There's not a lot
8 of extra sediment around. The ditch sides are
9 actually -- if this is a ditch as we are
10 portraying it, the ditch sides seem to be
11 straight. So the scour does not seem to be the
12 issue here. I mean, it obviously was created --

13 Q. I don't mean to interrupt you. That's the term --
14 I wasn't using that term. I want to use terms
15 like creating a riverbed.

16 A. There's no, there's no indication that this
17 created a riverbed.

18 Q. Does it look like a dry riverbed to you?

19 A. No. It looks like a drainage ditch.

20 Q. And draining what?

21 A. Stormwater.

22 Q. And again these were taken in 2005.

23 A. Okay.

24 Q. That's evidence of a serious flow of water, David.
25 Wouldn't you agree with me?

Simono - Cross by Mr. McCants

1 A. It's over time there was a lot of water that did
2 flow through there.

3 Q. A lot of water. That's your testimony. A lot of
4 water --

5 A. Yes. Over time. That's correct.

6 Q. And you understand that's at least two or
7 three years before South Carolina Department of
8 Transportation touched the upper part of that
9 property for purposes of what they did.

10 A. Okay.

11 Q. Well, what does that -- be honest. What does that
12 show you? What degree of water flowed through
13 this property or streamed through this property
14 over the years?

15 A. It showed that in this location, wherever this is,
16 there was water that flowed through it.

17 Q. All right. I will finish this if you will offer
18 to the Judge what you believe to be the degree of
19 severity of the water flowing through that area to
20 create that image that you see on Page 6.

21 A. Oh. It would not have to be very severe. It
22 would just have to be large over time.

23 Q. All right. Moderate to severe water?

24 A. Probably moderate.

25 Q. What you see on the screen in those videos is --

Simono - Cross by Mr. McCants

1 how would you characterize that water?

2 A. That's severe.

3 Q. All right. Is there a possibility that severe
4 water flowed through that property - a severe
5 amount of water flowed through that property to
6 create that ditch, depression, channel, however
7 you want to characterize it? I want to call it a
8 riverbed. Will you agree with me that's evidence
9 of severe and high water flow?

10 A. I think I already answered that. No, it's not
11 severe.

12 Q. Okay. You don't think --

13 A. It's moderate.

14 Q. Okay. All right. Just go ahead and set that
15 down.

16 A. Okay.

17 Q. We'll look at it in a second. You have as part of
18 your professional practice in here, you have
19 actually been very involved with the design of
20 residential and commercial development, is that
21 correct?

22 A. I have.

23 Q. And can you give us an idea of how many
24 developments you have worked on or assisted with
25 over the years, possibly?

Simono - Cross by Mr. McCants

1 A. I probably, in an average year, might do 20. And
2 I have been doing this, as a design engineer, for
3 25 years, so 2,500 site plans or subdivisions.

4 Q. Many?

5 A. Many.

6 Q. And obviously you know what's required to develop
7 the property to meet the demands and any
8 regulatory requirements for stormwater, correct?

9 A. Oh, yes.

10 Q. And the judge is familiar, I'm sure, with that
11 term, but what is our technical and legal
12 definition of stormwater?

13 A. Stormwater is runoff caused by a rain event that
14 leaves the area, and it doesn't have to leave the
15 property, so it -- but it can flow on the property
16 or it can flow across the property. The
17 stormwater is the result of a rain event running
18 off the property.

19 Q. Rain from above falls onto a property. And you
20 have got to manage it and control it if you're
21 going to develop residential communities or
22 commercial ventures, is that correct?

23 A. That's correct.

24 Q. And to the point where this is a science. I think
25 we all agree with that. To the point where the

Simono - Cross by Mr. McCants

1 government has to oversee what you do to ensure
2 that it's being done properly. Most importantly
3 to help protect people, their property, real or
4 personal, correct?

5 A. That is reasonably correct. The government
6 doesn't necessarily have to, but they have chosen
7 to.

8 Q. Well, you -- we won't get into good or bad
9 government. That's a good rule isn't it?

10 A. Overall it's a very good rule and most of the
11 rules and requirements are good and beneficial.

12 Q. And historically governments have gotten to get
13 involved with stormwater management and control
14 because of commercial growth and residential
15 growth where the people are doing things to the
16 land to create situations where the land is no
17 longer pervious, so to speak. They create
18 impervious areas of land where water doesn't sink
19 into the land. It's going somewhere, correct?

20 A. That's correct.

21 Q. All right. Did you -- you heard about Chadwick,
22 as it's called?

23 A. I have.

24 Q. Have you take a moment to look at the Chadwick
25 development plan that we have?

Simono - Cross by Mr. McCants

1 A. Other than just seeing it across the room after
2 you put it up there.

3 Q. All right. Of interest when I was looking at it a
4 second ago, tell me what -- you were employed or
5 associated with Cranston Engineering for a long
6 time?

7 A. Yes. Ten years.

8 Q. Ten years. And I don't know if you've seen, but
9 there's a note on here, and of course you want to
10 look at it. It's kind of blurred and there's some
11 handwriting that says boundary and topographic
12 survey by William Mackey. We all know Mr. Mackey.

13 A. Yes, sir.

14 Q. A surveyor?

15 A. Yes, sir.

16 Q. And it -- additional information by Cranston
17 Robertson and Whitehurst.

18 A. Right.

19 Q. Who's that group?

20 A. That's Cranston Engineering today.

21 Q. The group you worked with?

22 A. Yes. They actually changed their name just before
23 I went to work for them.

24 Q. Yeah. So you worked with Cranston, Robertson and
25 Whitehurst?

Simono - Cross by Mr. McCants

1 A. Again, I worked for Cranston Engineering, which is
2 what they changed their name to from Cranston,
3 Robertson and Whitehurst.

4 Q. All right.

5 A. They had another name prior to that which was
6 Baldwin, Cranston.

7 Q. Well, you having worked with Cranston, as I call
8 it, for many years and did the work that you
9 described over so long a period of time, to me
10 that tells me that if Cranston was involved with
11 the development plan of Chadwick, they knew what
12 they were doing.

13 A. Well, first of all, what you just read does not
14 imply that Cranston had anything to do with the
15 development plan, but rather some of the survey
16 work. They supplied additional survey work.

17 Q. Well, they were involved to some degree then with
18 the development of Chadwick. Do you agree?

19 A. Again, not with the development of Chadwick. They
20 had to do with the information that was used for
21 the development of Chadwick.

22 Q. Well, that's getting involved with it to some
23 degree, wouldn't you think?

24 A. They may not even have any idea that the term
25 Chadwick was ever used because they didn't do

Simono - Cross by Mr. McCants

1 that. And I think you said Dudley Engineering was
2 the one that designed it.

3 Q. I can't read this fancy handwriting. It looks
4 like maybe CC Dudley and Associates?

5 A. Yeah. That's probably Ed Dudley, was the
6 engineer's name.

7 Q. Are they a pretty good group?

8 A. They were so-so.

9 Q. So-so. Well --

10 A. That does not mean they did not do a good job on
11 that project. I wouldn't say one way or the other
12 on the project. But they were always one of the
13 ones that I had to watch more closely.

14 Q. All right. And you had to watch more closely
15 because they overdid it or underdid (sic) it?

16 A. Underdid.

17 Q. Underdid it?

18 A. Yes.

19 Q. So there's a chance this plan that we've got in
20 evidence in this case was underdone by Dudley? Is
21 that what you're saying?

22 A. I'm saying that I did have difficulty with him
23 underdoing things on projects.

24 Q. And they could have done more, is what you're
25 saying? If they didn't do enough, underdid it.

Simono - Cross by Mr. McCants

1 And I'm making up that word. And you were
2 concerned with them -- are you saying they should
3 have done more?

4 A. No. By the time it would have been approved it
5 would have been reviewed, and what was underdone
6 or overdone would have been addressed. So if that
7 plan was approved and that was what they were
8 constructing, then somebody would have reviewed it
9 in the County Engineer's office or in the City
10 Engineer, depending on whether it was in the city
11 of North Augusta -- the city of North Augusta has
12 blurring lines through there, so.

13 Q. Let's go ahead and talk about that for a second.
14 Do you understand the property involved in this
15 case is within the municipality of North Augusta,
16 South Carolina?

17 A. Right.

18 Q. It is in the city?

19 A. Yes.

20 Q. And certainly in Aiken County?

21 A. Yes.

22 Q. What were the requirements -- because you have
23 been involved a good bit in development, what were
24 the requirements of the city of North Augusta's
25 planning department with regard to plans for

Simono - Cross by Mr. McCants

1 developments back in the mid-80s?

2 A. I don't really know. And the reason I say that is
3 because that was when I was still in government,
4 and not their government because their rules were
5 different. Every time I dealt with them -- when I
6 would send somebody over there to review or to
7 work with them, we had to relearn their stuff
8 because they did things differently.

9 Q. How about Aiken County? What was the county's
10 requirements in the 1980s, if you can remember?

11 A. Aiken County required that you design the
12 stormwater flow to handle -- the pipe system to
13 handle the 25-year storm, the detention to handle
14 the 50-year storm. Had to have, if available,
15 water and sewer. If not then the lots had to be
16 sized for septic tanks and wells. And they had
17 roadway widths. The roadway width was 31 feet
18 back to back, curb and gutter. You could avoid
19 curb and gutter and go just ditches, but then you
20 had to make it wide enough so the South Carolina
21 DOT could eventually accept it because that was
22 always their goal, was wanting DOT to take over
23 those roads. South Carolina is one of the few
24 states that does that. A lot of states do not.

25 Q. Well, just to bring us current there is even more

Simono - Cross by Mr. McCants

1 and more pushback on that these days, correct?

2 A. Yes.

3 Q. It's hard to find cities and counties which will
4 accept roads within developments, correct?

5 A. It's getting harder to do.

6 Q. Why is that?

7 A. Because there's a great liability and cost that
8 cities and counties don't want to accept. And for
9 the same reason the state doesn't want to accept
10 them either.

11 Q. Sure. The City of Aiken doesn't accept roads
12 anymore because they don't have the equipment to
13 maintain them, correct? That's part of the --

14 A. I have heard that that is one of their problems.

15 Q. All right. They couldn't move an ice storm for
16 example. We went through that and that's
17 apparent, don't you think?

18 A. I didn't pay as much attention to the ice storm
19 over here as I did over there where I was.

20 Q. All right. Explain this for the record, and to
21 some degree maybe Judge Pope's benefit, and her
22 law clerk's benefit. What is the situation where
23 you have properties in a city but it's in a
24 county, and the regulations kind of overlap each
25 other? What -- how does a developer handle that?

Simono - Cross by Mr. McCants

- 1 A. The regulations that rule are the city's unless
2 it -- it goes in a hierarchy. The federal
3 government always has rules that override
4 everybody else. State governments have ones that
5 override all the ones below them. Rarely does the
6 county have rules that override the city. The
7 city can write their own rules and there's
8 usually, usually no conflict. The city -- the
9 county may never see the plan if it's inside the
10 city.
- 11 Q. What you are suggesting also is the city
12 regulations may require more than the county?
- 13 A. In often cases that is true.
- 14 Q. All right. We will agree that these plans of
15 Chadwick were never stamped as approved by any
16 governmental entity. I don't think that's an
17 issue so much. But if you have looked at -- and
18 I'm going to show you a couple of things in just a
19 second, you can see that there were revisions to
20 these plans over time. Revisions -- you know, the
21 first date it's very difficult to pick up, but it
22 looks like the date of the plans, the original
23 date was April 1, 1985, and then there were
24 revisions in '85 '86 and '86, again. That's not
25 unusual, is it?

Simono - Cross by Mr. McCants

1 A. Not at all.

2 Q. And why, in your mind, would they be revising
3 these plans over time?

4 A. There are a lot of reasons. The primary reason
5 usually is a difference of opinion with the
6 regulatory officials.

7 Q. That shows some governmental interaction in your
8 mind, correct?

9 A. Yes.

10 Q. Because these are expensive to produce,
11 development plans. Do you agree?

12 A. In one sense, yes. In another sense, no. They --
13 in the overall scheme of a project the plans are
14 actually a very minor cost. But they are a cost
15 nonetheless.

16 Q. Let's look at the plans a little bit together.
17 Let's do it.

18 MR. MCCANTS: May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MR. MCCANTS

21 Q. I'll give you this and just orient yourself a
22 little bit while I go get some notes. You don't
23 need to pay attention to any highlighting. I
24 don't want to emphasize any highlighting.
25 Everything on this Exhibit Number 2 is important,

Simono - Cross by Mr. McCants

1 okay? Have you had a chance to look at those
2 plans?

3 A. Sure.

4 Q. All right. The first question I've got is -- I
5 don't want to argue over what is characterized in
6 the (inaudible) maps with regard to intermittent
7 streambed, blue-line, or otherwise. But whatever
8 depiction on these maps indicating a blue-line
9 stream or whatnot flowing down through this
10 property, do you agree that this highlighted
11 portion of this map, which is described up at the
12 top as an easement from I-20 and then a drainage
13 and utility easement, follows that line on the
14 historical imagery?

15 A. Yes, it appears that is the way it would flow, and
16 based on the contours here, that looks like the
17 right.

18 Q. So the developer, and whomever the developer hired
19 to be -- produce these plans and meet stormwater
20 requirements, noted that there was some evidence
21 or some indication that water had flowed naturally
22 across this property for years. Is that fair?

23 A. Oh, yes.

24 Q. So what the person drafting these plans had to do
25 is account for that water or --

Simono - Cross by Mr. McCants

1 MR. PLAYER: Your Honor, this is all speculation.
2 We don't even know what person drafted it. We have no
3 idea what was in his mind or why he drafted anything.

4 THE COURT: Mr. McCants.

5 MR. MCCANTS: Your Honor, Mr. Simono has testified
6 that he has been involved extensively with planning
7 developments, residential and commercial over the
8 years. I'll lay a better foundation. He's testified
9 these are reliable plans and I'm simply asking for his
10 interpretation of the plans, and what was envisioned in
11 order to prepare the plans.

12 THE COURT: I'll allow that questioning.

13 MR. MCCANTS: All right. What was my question?

14 THE WITNESS: How would I know? I just remember
15 you asking about this drainage pattern.

16 THE COURT: Yes. The question was whether or not
17 the drafter took into account that there was a natural
18 flow of water.

19 BY MR. MCCANTS

20 Q. The judge said it better than I. What is your
21 answer to that question?

22 A. Yes. That does appear to be the area where that
23 water has come through.

24 Q. And that's born out in the simple fact that that's
25 kind of an odd line across this property. It was

Simono - Cross by Mr. McCants

1 meant to follow something. Would you agree?

2 A. Yes, the contours show that.

3 Q. All right. That's where water has been flowing
4 for years and years, correct? During certain rain
5 events, as you call it.

6 A. Yes.

7 Q. Certain stormwater events.

8 A. Yes.

9 Q. All right, now. These plans indicate that as part
10 of accounting for the drainage of water, which had
11 been flowing across this property for years, one
12 plan was to use 72-inch reinforced concrete
13 piping. Do you agree with that?

14 A. There is a note that that was to be used on here.

15 Q. And we talked many times about D-13 that's
16 highlighted here, and then D-13, the note over
17 here talks about reinforced concrete pipes, is
18 that correct?

19 A. Yes.

20 Q. And you heard the discussion yesterday about
21 whether or not there were enough pipes and whatnot
22 to account for this entire drainage easement of
23 this area of flow, and nobody could really give me
24 an exact number of the pipes that are left on this
25 property. But track with me a second. First,

Simono - Cross by Mr. McCants

1 that line, that yellow line on that plan doesn't
2 indicate where those pipes are actually going to
3 go. Is that correct? Does that make sense?

4 A. I know what you're saying, but that's -- the pipes
5 are shown on the plan that I see, that yellow line
6 does not show any pipe being -- carrying that
7 water from there all the way down here.

8 Q. Where the big pipes are supposed to go on that
9 yellow line. That's what you're saying, correct?

10 A. Yes. That yellow line up here from the proposed
11 road back shows no pipe in it at all.

12 Q. Let me float this to you now. Whoever invested in
13 those large concrete pipes purchased them to place
14 them at strategic points along that drainage area,
15 and the rest of the yellow line would remain an
16 open drainage area. Is that a reasonable
17 interpretation of the plan of action by the
18 developer?

19 A. Regardless of what pipes the developer did plan to
20 specifically have, pipes installed at locations,
21 I'm assuming based on the plan that he had, if
22 this was the plan that he had.

23 Q. Yes, sir. I don't see roads crossing that yellow
24 line. Do you?

25 A. Well, yes and no. They don't cross it from the

Simono - Cross by Mr. McCants

1 road here back up. You stopped the yellow line
2 before it crossed the road and the drainage
3 pattern continues.

4 Q. Fair enough. And I'm happy to highlight that. I
5 look forward to it. We can do that.

6 A. Yeah.

7 Q. Well, put yourself in the shoes of the developer.
8 Pretend like you, based on your experience and
9 whatnot, where would you place the pipes?

10 A. Under the road.

11 Q. All right. And in particular, show Judge Pope and
12 opposing counsel where the pipes would need to be
13 installed under a road.

14 A. Right where that (inaudible) is coming that
15 direction. I think that's where the pipes would
16 be.

17 Q. All right. You referred, if I can tell you that,
18 at the bottom of Cedric Court as it runs into
19 Chadwick Drive. Is that correct?

20 A. No. There's actually three pipes there. It's the
21 one that crosses Chadwick upstream of Cedric
22 Court.

23 Q. All right. And I can't -- I haven't counted them
24 on the photographs but, so you think there would
25 be two big pipes down in that area, correct? At

Simono - Cross by Mr. McCants

1 least?

2 A. The number of pipes, I'm sorry I can't tell you
3 how many pipes it's going to be.

4 Q. Well, I'm just asking what you would do.

5 A. Well, I would put it on underneath the road to
6 make sure my road didn't wash away.

7 Q. Yeah. People have got to cross the drainage area,
8 the drainage ditch also, correct?

9 A. No. They wouldn't have to cross any drainage
10 ditch. They would drive across the roads. The
11 roads have got a pipe in it.

12 Q. The pipe is underneath it though.

13 A. Yeah.

14 Q. Yeah.

15 A. So they're not crossing the ditch. They're
16 crossing the pipe.

17 Q. Well, yes. And I'm just maybe being too liberal
18 with my words, but I view that whole line as a
19 drainage area.

20 A. It is a drainage area but it's not a -- there's
21 no, there's no ditch once they put the pipe in.
22 The ditch goes away.

23 Q. Ditch ends and becomes a pipe?

24 A. That's correct.

25 Q. But upstream from that pipe remains a ditch,

Simono - Cross by Mr. McCants

1 correct?

2 A. That's correct.

3 Q. And it's reasonable, I think, based on what you
4 said, to believe that while the placement of these
5 huge 72-inch pipes would be done in this area
6 where Cedric Court meets Chadwick, the rest of
7 that blue line would be an open drainage ditch, is
8 that correct?

9 A. Yes, it would, it would remain an open ditch.

10 Q. Would you put riprap or rocks in that ditch as a
11 developer or person helping to design the
12 development? Would you do that?

13 A. I would have to, to have observed it to see what
14 flows were there and what, what was, what the
15 channel looked like now. Riprap channels were not
16 as big back in the '80s as they are now.

17 Q. How would you protect the water flow then through
18 a ditch -- just out of curiosity. Help me and
19 help the judge. And I'll come back here so she
20 can hear you. I see Judge Pope maybe turning
21 around to make sure you hear. What did people do
22 before riprap became popular?

23 A. Oh, no. It's not that it was not popular.

24 Riprap, when you try to riprap properly you have
25 to extend it far enough to cover everything. If

Simono - Cross by Mr. McCants

1 you line a ditch with it, it becomes very
2 expensive. You did -- instead of lining you would
3 go in and put intermittent -- they're called ditch
4 checks, in place throughout the length of the
5 ditch settings. And there are actually prescribed
6 ways in which to do that. And you would put
7 riprap check dams, as they would be called, up
8 through the channel.

9 Q. I feel confident that Judge Pope and the Court
10 knows what riprap is, but for the record would
11 you, please --

12 A. Yes.

13 Q. -- describe it generally?

14 A. Riprap is a stone and its size varies. In Georgia
15 DOT they only have two sizes. They have really,
16 really big and they have -- and the really big
17 used in rivers. And the smaller is used in sites
18 like this. And it is usually stones that are less
19 than one cubic foot, so they are roughly the size
20 of a basketball or smaller. They are angular so
21 that they adhere to one another -- not really
22 adhere. They interlock with one another and
23 prevent the water from washing it away.

24 If you ever want to establish a ditch check
25 properly, it needs to be bedded. The bedding can

Simono - Cross by Mr. McCants

1 be smaller stone. Some people like to use the
2 fabrics that are now popular to put riprap on to
3 keep it from washing below. I personally like to
4 put fabric then put the smaller stone and the
5 riprap on top.

6 And what you're doing by doing that is you're
7 building something strong enough to hold back the
8 flow that would let the -- that would actually
9 wash those away. And so you would put the check
10 dams in, and then there's prescribed ways in which
11 to put them in. This actually flattens out at the
12 bottom so you wouldn't put in, any in the flatter
13 area. You would go up where it's got steeper
14 walls.

15 Q. And in fact, the reason riprap is a certain size
16 is because workers have to be able to handle those
17 rocks once they are dumped out of a truck,
18 correct?

19 A. Yes and no. There, there's a process called
20 stone-dumped riprap and there's hand-placed
21 riprap. Stone-dumped is basically just a big
22 excavator grabs a stone, takes it over and drops
23 it in place. It doesn't have a lot of shape to
24 it. They might put some upper shape on it. It's
25 supposed to have a little low spot in the middle

Simono - Cross by Mr. McCants

1 of the dam. That doesn't always happen. And when
2 it doesn't it usually washes around the edges and
3 causes a problem.

4 Q. And basically riprap is used to assist with the
5 control of water.

6 A. It's primarily, actually, the control of the
7 stormwater sediment. So it's intention is to slow
8 the flow so the sediment falls out above it and
9 doesn't get continued to carry out down the
10 property.

11 Q. I'll rephrase. The water and the effects of water
12 eroding or channeling or scouring land, fair?

13 A. That is correct.

14 Q. All right. Take a second, and I haven't seen
15 this. Do you see any indication that the person
16 planning Chadwick is intending to place the riprap
17 in whatever is going to be the open drainage
18 ditch, or whatever, when this plan was to be
19 completed? Any evidence of that?

20 A. Nothing shows on the plan. In the channel itself
21 there's water, where the water dumps out of the
22 24-inch pipe onto the channel area, there is
23 riprap specified. Down inside the sediment basin
24 there is riprap specified. That seems to be the
25 only places I see riprap specified.

Simono - Cross by Mr. McCants

1 Q. Interesting. So you do see evidence that the
2 planner here intended to use riprap to some
3 degree.

4 A. Yes.

5 Q. All right. Let's go back to your testimony and
6 looking at that. You think this plan was
7 underdone, if I can use that term, by the planner,
8 drafter, engineers? In other words, was it enough
9 in your opinion and based on your experience,
10 based on engineering principles, was more needed
11 in that ditch?

12 A. The evidence that apparently was available at the
13 time to anybody who reviewed this or he who
14 created it, was that the ditch, the channel was
15 stable enough without adding riprap.

16 Q. And, of course, as we all know that's, that's,
17 that's planning for here and now. Nobody really
18 knows what could happen in the future.

19 A. That's correct.

20 Q. We could have tremendous rain events like we've
21 had in the last five or ten years which have come
22 through here.

23 A. Actually, we had a much worse one in 1990. That
24 was probably the biggest storm that's been through
25 here in a long, long, long, long, long time.

Simono - Cross by Mr. McCants

1 Q. Which one was that?

2 A. It was when two different storms converged over
3 the area at the same time.

4 Q. The perfect storm?

5 A. It was -- yes.

6 Q. Didn't we have another one in 2000?

7 A. We did, but it wasn't as bad.

8 Q. The one that tore up Columbia, South Carolina.

9 A. Now Columbia had worse than us. It depends on
10 where you're talking about. I'm talking about the
11 CSRA. Our area.

12 Q. I gotcha.

13 A. I walked roads in 1990 because I was the County
14 Engineer, and I was responsible for a big, old dam
15 that was right next to somebody's house, so.

16 Q. Well, and as history just proves, there's no way
17 to accurately predict what's going to fall from
18 the sky eventually. We can calculate and
19 speculate and try to predict, but we don't know,
20 correct?

21 A. That's correct. We have to, we have to do it
22 based on what information we have seen and
23 observed in the past.

24 Q. That's why we have a hundred-year plan and if it
25 rains in the thousand-year plan, rains and things

Simono - Cross by Mr. McCants

1 like that, correct?

2 A. Well, I don't know anybody that plans anything in
3 the thousand years, but we have the 100-year, the
4 50-year, the 25-year, the 10-year, the 5-year and
5 the 2-year.

6 Q. I'm still waking up. I think I saw a
7 thousand-year plan or something. That's not
8 realistic.

9 A. No.

10 Q. What's the highest they go, a hundred?

11 A. A hundred. They do, in the calculation of storm
12 fall, there actually are 500-year storms, but you
13 rarely hear about them. The one in 1990 was
14 between a hundred and a five-hundred year storm.
15 So it was a very rare storm. That does not mean
16 that it only happens every hundred years. It
17 means that the probability of it happening is .01.
18 And that then turned into numbers is 100-year, so.

19 Q. Gotcha. But planners need to account for those
20 possibilities or predictabilities --

21 A. That's correct.

22 Q. Mr. Simono, look down at the bottom at Note 13. I
23 was listening to your testimony on CSF. That's
24 cubic feet per second, is that correct?

25 A. That's correct.

Simono - Cross by Mr. McCants

1 Q. You may have already done this but explain what
2 cubic feet per second means with regard to
3 planning and dealing with water.

4 A. The -- CFS, the cubic feet per second is a measure
5 of flow rate. Not flow as in total volume. But
6 flow rate, which includes both the volume and the
7 velocity. And it's used in erosion control
8 measures as is the velocity. It's used in sizing
9 detention ponds. It's used in sizing pipes. It's
10 used in sizing riprap. It's used in almost
11 anything that has to do with stormwater flow.

12 Q. And it shows how fast water is moving, correct?

13 A. No.

14 Q. To some degree --

15 A. Yes. It does involve that component, but it's a
16 volume rate of flow, not a velocity. Velocity is
17 feet per second. That's how fast it flows. You
18 have to differentiate because the rules
19 differentiate.

20 Q. You heard I was a failed engineer. What does
21 hundred 180 CFS mean with regard to Note 13?

22 A. It means that in the 100-year storm there was
23 going to be a really big flow to get down to that
24 point.

25 Q. 180 CFS to me as a lay person seems like a lot.

Simono - Cross by Mr. McCants

1 A. It is a lot.

2 Q. And it's -- it's planning for a big 100-year rain?

3 A. It says there that it's for the 100-year flows.

4 Q. All right.

5 A. So.

6 Q. The 100-year flows, it's talking about the
7 100-year rain.

8 A. Yes.

9 Q. So whatever the plan was doing for Chadwick was
10 making sure that that long drainage ditch was
11 prepared to handle a 100-year rain event, which
12 could produce 180 CFS coming through that
13 property. Is that fair?

14 A. No. It was for the pipes specifically. It was
15 not for the channel. It doesn't seem to be any,
16 any addressing the channel in this plan.

17 Q. So that large of a CFS, is that why that plan
18 suggested we needed a 72-inch reinforced concrete
19 pipe at some point along the way?

20 A. There's actually two reasons that I can see. One
21 is the fact that he had extremely flat -- he has
22 it .5 percent. You don't run storm pipe at
23 .5 percent generally speaking. That's more like
24 you would run sewer pipes. So it's really, really
25 flat.

Simono - Cross by Mr. McCants

1 Q. Break that down for me.

2 A. Well, 1 percent is 1 foot in 100 feet, or 1 inch
3 in 100 inches. So that's one percent. This is
4 half of that. And the reason he's laying it very
5 flat is probably, again speculating, I don't know.
6 But he may not have had cover. So, but you have
7 got a very flat pipe with a very large potential
8 flow, and generally speaking the 25-year storms,
9 the only storm we design for in subdivisions. So
10 he designed for the 100. I don't know where that
11 came from, but since that is a handwritten note
12 and one of Mr. Dudley's ways of modifying his
13 plans was with handwritten notes when he got a
14 revision request from somebody. He would
15 handwrite the revisions. Because it was very hard
16 to do this.

17 Q. Sir?

18 A. It's very hard to redo a whole plan --

19 Q. Sure. Yes.

20 A. -- and today's plotters, your guy sitting at your
21 table over there, he's done this before. You can
22 plot these out like this now and they --

23 Q. Computer?

24 A. -- they print out. Yeah, very quickly.

25 Q. This ain't hand drawn.

Simono - Cross by Mr. McCants

1 A. Both. Actually it was partially hand drawn and
2 partially plotted, probably. He -- but all this
3 stuff, all these notes out here and he cut these
4 in probably. He would actually run that off a
5 xerox machine.

6 Q. Point that out to Judge Pope if you would.

7 A. This part down here that looks like typewritten.
8 You could actually type it, put it on a sticky,
9 peel it off and stick it on the plan. And that
10 saves them time. He's got a border that is
11 probably pre-plotted that he uses on his paper.
12 And then probably, or possibly the layout of the
13 subdivision itself might have been done and then
14 all the rest of the stuff is hand noted and/or
15 hand drawn. And that looks like it would even be
16 the contours the way they are laying out, but that
17 would be hard to say.

18 Q. All right. Very good. Now I'm going to try to
19 move forward. I remember you said you have got an
20 appointment.

21 A. Yes.

22 Q. So I'm going to try to keep moving forward. I do
23 have a couple of other questions. There was an
24 account for a temporary and then a permanent
25 sediment pond down in this area. Is that correct?

Simono - Cross by Mr. McCants

1 A. Yes.

2 Q. There were plans for an emergency spillway?

3 A. Yes.

4 Q. Would that have been on the permanent pond
5 sediment plan?

6 A. It could have been on both. Depends -- nowadays
7 you have to do it for both. It didn't always have
8 to be done. Primarily, its purpose there was to
9 keep from washing the dam away.

10 Q. In an emergency?

11 A. Yes. In a large storm.

12 Q. Like a 100-year rain?

13 A. Yes.

14 Q. Which is a plan you have to account for, the
15 chances of that happening, correct?

16 A. In the, in the detention/retention -- and this is
17 probably detention, in those type of ponds you do
18 have to account for the 100-year. Yes.

19 Q. Can you spend 20 seconds and explain to
20 Judge Pope, unless she knows, the difference
21 between a detention and a retention pond.

22 A. In the --

23 Q. I always have to get my notes and look at them.

24 A. -- yeah. Detention is more its name. It detains
25 the water and doesn't hold it back -- it doesn't

Simono - Cross by Mr. McCants

1 hold it, just holds it back. Retention is its
2 name. It retains water. So if you see an amenity
3 in your subdivision, and its got a nice pond out
4 there but you got a pipe that's sticking up above
5 it, it's meant to do both, but it would be
6 referred to as a retention pond. And then it
7 would candle the stormwater above the water level.

8 Q. Both of which are to control and manage stormwater
9 and slow it down before it takes its next step
10 going wherever it's going to go?

11 A. That's correct.

12 Q. And you see a lot of, you see a lot of retention
13 ponds and maybe some -- excuse me. A lot of
14 detention ponds that are dry.

15 A. Yes.

16 Q. But we see even some retention ponds that are dry.
17 The city of Aiken has a huge one, for example,
18 behind the Sports Academy facility.

19 A. Mm-hmm.

20 Q. Are you familiar with that one?

21 A. I can't say that I am. Sports Academy wasn't here
22 when I was here, so.

23 Q. Well, it was a source of some litigation.

24 A. Yeah.

25 Q. But it's a pond in that area of Aiken.

Simono - Cross by Mr. McCants

1 A. I mean they have got some what are called Carolina
2 Bays, the high wet-weather ponds that hold water.
3 Nothing can happen --

4 Q. Well, those are natural wetlands.

5 A. No. Well, sometimes they are wetlands. They are
6 not always wetlands.

7 Q. It's God's management of water.

8 A. They are not always wetlands but, yes, it's a way
9 to control the water that the Lord left behind
10 when, whatever he decided to do with it.

11 Q. The main thing I want to point out, this Exhibit
12 Number 2 -- I appreciate your comments that you
13 made -- differently, may have done more, but this
14 is a very comprehensive plan which approves a
15 great deal of stormwater management, correct?

16 A. It has a good bit of storm management on it.

17 Q. And that's because of this natural bed where water
18 has been flowing, to some degree intermittently or
19 otherwise, for hundreds, maybe even thousands of
20 years.

21 A. Definitely for a long time.

22 Q. Can you -- Mr. Simono, how much did these 72-inch
23 reinforced pipes cost back in the 1980s? Can
24 you give the judge any idea?

25 A. The rule of thumb used when we priced pipes like

Simono - Cross by Mr. McCants

1 this that were large and we were doing a cost
2 estimate for a client for construction was, twice
3 the diameter in the dollar per foot. So a 72-inch
4 would be \$144 a foot. Those are probably
5 eight-foot sections and so it's less than \$1,400,
6 but somewhere in that area.

7 Q. Apiece?

8 A. Yes.

9 Q. Did they have a brass or even a PVC device of that
10 size back in the day?

11 A. They don't even have PVC in that size now. They
12 have some other plastics but I don't believe there
13 was any plastic in that, in that time that might
14 have been -- they probably were actually metal
15 pipes of that size.

16 Q. That was my next question, whether or not it was
17 steel pipes.

18 A. Yeah. Galvanized steel pipes would, would have
19 come in 72, 84, 96, some really large sizes.
20 Because they were used, in fact, there's one by
21 Hounds Lake right now that goes underneath the
22 bypass and it's a cart path. And it's made from a
23 very large metal pipe.

24 Q. Much more expensive than concrete.

25 A. No. It's the other way around.

Simono - Cross by Mr. McCants

1 Q. Oh, really?

2 A. Yeah.

3 Q. Shows how much I know. How much -- why didn't
4 they use steel or --

5 A. Probably because the city, county, whoever was
6 reviewing it at the time, you said it was the
7 city, wouldn't let them. We, we never, when I was
8 the reviewer I never let people use metal pipe
9 under the road.

10 Q. You mean a stainless steel pipe of that size is
11 cheaper --

12 A. It's not stainless steel - galvanized. Stainless
13 steel is extremely expensive.

14 Q. All right. So a stainless steel pipe would cost
15 more?

16 A. Oh, unbelievable. Yeah. If they wanted to
17 volunteer stainless I might have let them do that.

18 Q. All right. But these railed steel pipe is less
19 than concrete?

20 A. Yes.

21 Q. Expense-wise. And I get into that because of your
22 testimony about the friction going through pipes
23 and whatnot, correct?

24 A. Correct.

25 Q. And in other words, a steel pipe is this much,

Simono - Cross by Mr. McCants

1 concrete pipe is this much, and stainless even
2 more, correct?

3 A. Yeah. I don't know of anybody that does stainless
4 drainage pipe.

5 Q. Well, whoever was planning would not let them go
6 on the cheap, so to speak. They had to purchase
7 reinforced concrete pipes. Is that a fair
8 assumption?

9 A. Based on what I did. That's what we did and I
10 would assume that that is what they went with.

11 Q. Thank you. You don't disagree the 72-inch
12 reinforced concrete pipe is a big pipe to carry a
13 lot of water?

14 A. No. It definitely is.

15 Q. And you can actually put smaller diameter piping
16 underneath roadbeds, correct?

17 A. You can under certain circumstances, sure.

18 Q. All right. How about where --

19 A. Because there is some on that project.

20 Q. -- Chadwick cross Cedric, in that area where pipe,
21 pipes were to be installed somebody required that
22 they be 72 inches as opposed to smaller.

23 A. Yeah. Obviously that calculation on the side
24 shows that he calculated for a 100-year storm at a
25 very flat slope of half a percent.

Simono - Cross by Mr. McCants

- 1 Q. All right. I listened to your testimony and
2 Mr. Nance took your deposition. Let me walk
3 through a couple of things. You are of the
4 opinion that DOT's engineer's calculations of
5 water flow, amount, velocity, and everything were
6 actually correct with regard to developing the
7 stormwater plan for the parkway. Do you agreement
8 with that?
- 9 A. The calculations that I was able to review that
10 they did were reasonably the same as mine. And so
11 I, I would determine, I determined from that that
12 they were reasonably correct.
- 13 Q. And as part of your investigation you focused on
14 the outfall, as it's being called, on the Chadwick
15 Development side of I-20, correct?
- 16 A. I focused on the point at which it leaves DOT and
17 enters the property. So that is just downstream.
18 So that's on that same yellow line that you're
19 talking about.
- 20 Q. That's right here.
- 21 A. Well, no because they took 25 acres away.
- 22 Q. Excuse me. In that area.
- 23 A. Yes.
- 24 Q. All right.
- 25 MR. MCCANTS: And, Judge, I hope you understand

Simono - Cross by Mr. McCants

1 what I'm doing here. This is preconstruction of the
2 Palmetto Parkway. We're conceding we acquired 25 acres
3 in this area.

4 BY MR. MCCANTS

5 Q. But you examined the outfall here where the
6 development met the property after it had been
7 acquired.

8 A. That's correct.

9 Q. And walked up to the outfall actually on the
10 Parkway or shortly below, shortly below it.

11 A. That's correct.

12 Q. All right. Mr. Simono, did you ever inspect the
13 drainage area across the Palmetto Parkway and
14 follow up the drainage pattern?

15 A. I did not walk any further. I relied on the DOT
16 plans that were provided to me.

17 Q. In other words, did not walk up in the Mathis Lake
18 area. Is that fair?

19 A. That's fair.

20 Q. Are you -- You are aware that there was a system
21 installed above the Parkway on the other side from
22 Chadwick, the development, in 2013? Are you aware
23 of that?

24 A. I have become aware of that. I did not know that
25 at the time I was doing the calculations.

Simono - Cross by Mr. McCants

1 Q. All right. I'm not picking on you but don't you
2 really need to analyze, inspect that device that
3 was installed in 2013 for purposes of formulating
4 opinions in this case?

5 A. I used the information that was supplied to me.
6 As I understood, it came from South Carolina DOT.
7 I had no reason to suspect they would leave
8 anything out. So I calculated based on that
9 information.

10 Q. All right. Well, try following my question now.
11 In order for you to provide a reliable opinion to
12 Judge Pope in this case, don't you really need to
13 examine and look at that equipment that was
14 installed on the other side of the Parkway?

15 A. If I needed to depend on the volume of the flow,
16 yes. My contention is it's the velocity of the
17 flow that's causing the problem. And that was not
18 impacted.

19 Q. Well, a riser was installed across the Parkway.
20 You are aware of that now?

21 A. Yeah, and the water rises up over it and goes
22 through that -- flows out.

23 Q. Just like this riser that was installed -- to be
24 installed in Chadwick, correct?

25 A. Similarly, yeah, I'm sure.

Simono - Cross by Mr. McCants

1 Q. All right. You did not take that into
2 consideration as part of formulating any opinion
3 in this case?

4 A. I did not.

5 Q. That's true?

6 A. That's true.

7 Q. All right.

8 (WHEREUPON counsel conferred about exhibits.)

9 BY MR. MCCANTS

10 Q. Okay. All right. Mr. Simono, if you would look
11 at Mr. Tucker's Exhibit Number 2. It's drawn and
12 shows a lot of things. This is a busy exhibit,
13 you agree?

14 A. Sure.

15 Q. All right. You know, here's the Parkway, here's
16 I-20 going towards Augusta or whatnot. Here's the
17 old Charter Terminal facility you talked about,
18 and there's been discussion of a Walmart up here.

19 A. Yes.

20 Q. Or other commercial development?

21 A. Yes.

22 Q. Which has created impervious --

23 A. Surfaces, yes.

24 Q. -- is that fair?

25 A. Yes.

Simono - Redirect by Mr. Player

1 Q. Once it's impervious water doesn't absorb. It has
2 to go somewhere.

3 A. That's correct.

4 Q. All this -- there's no question Charter Terminal
5 was here at the time of the construction of the
6 Parkway. Do you know if that Walmart was there?

7 A. Yes.

8 Q. It was there at the time of the construction of
9 the Parkway?

10 A. Yes.

11 Q. Are you sure about that?

12 A. I'm pretty sure.

13 Q. All right. Is there any other development that
14 has occurred after construction of the Parkway
15 that would cause you any concern towards the
16 amount of water directed towards I-20? That would
17 be north of I-20. How far up did you go, for
18 example? I didn't mean to interrupt the question
19 but --

20 A. I mean, I looked up at, looked up the drainage
21 basin based on the contours to see how far it
22 would go. It goes up above the Walmart area. The
23 road is actually a divide, so Highway 25 flows --
24 splits the flow across it. So the stuff to the
25 west of I-20 or West of 25, does not enter into

Simono - Redirect by Mr. Player

1 it. It stays out of the way. Most of the rest of
2 that stuff was already developed.

3 Q. All right. So your testimony is there was no
4 significant development north, west or east of
5 I-20 that would create impervious areas that would
6 create more water for DOT to deal with?

7 A. Right.

8 MR. MCCANTS: Fair. Thank you, Mr. Simono. I
9 appreciate your patience with me this morning.

10 THE WITNESS: Thank you, sir.

11 THE COURT: Redirect.

12 MR. PLAYER: Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. PLAYER

15 Q. Does anything on this affect your analysis?

16 A. No.

17 Q. Does it have anything to do with what we are here
18 about?

19 A. Not that I can see.

20 Q. Okay. I want -- I don't see it. Maybe you can
21 point to me. I think I heard you say that the
22 yellow line came from a 28-inch pipe. Is that
23 right? Said there was a -- I thought I heard you
24 say -- there was a reference to a 28-inch pipe
25 that was the origination of this flow or?

Simono - Redirect by Mr. Player

1 A. No. There are pipes down below that are not part
2 of the large pipe that are smaller, and there's a
3 24-inch pipe that drains into it --

4 Q. Okay.

5 A. -- from the existing -- from the proposed road.
6 And another one up here that drains into it from
7 the proposed road. And these drain into the
8 drainage basin.

9 Q. Okay. Down here on the famous D-13, let's keep
10 going. What does the second line say? Drain area
11 --

12 A. Drains an area of 82 acres.

13 Q. So we're actually dealing with two and a half
14 times what this drawing was for.

15 A. Yes.

16 Q. Okay. Is that an indication that they increased
17 the flow between the time (inaudible) the
18 development and they built the interstate?

19 A. It indicates that at that time that was the basin
20 he saw. And the one we saw after their
21 development of the project was larger.

22 Q. And I will make this clarification so that the
23 judge will understand. You are not complaining
24 about the amount of water, correct?

25 A. That's correct.

Simono - Redirect by Mr. Player

1 Q. It's the speed?

2 A. Yes, the velocity.

3 Q. What happens if DOT had used 72-inch pipes? It
4 would have slowed the water down, right?

5 A. It actually would have allowed more flow, would
6 have been a broader flow so it would probably have
7 gone slower.

8 Q. And would not have damaged my clients' property in
9 the same way, correct?

10 MR. MCCANTS: Objection, Your Honor. That's
11 really speculation.

12 BY MR. PLAYER

13 Q. Okay. So what's the difference? We have --

14 THE COURT: What's your response, Mr Player?

15 MR. PLAYER: I'll withdraw the question.

16 THE COURT: All right.

17 BY MR. PLAYER

18 Q. What's the difference between the flow we have now
19 and what you just described that would come out of
20 a 72-inch pipe? Would it be faster or slower?

21 A. A 72-inch pipe, the flow would be slower because
22 it would have had a broader base.

23 Q. Would that do anything to alleviate the problem of
24 what you discuss as that break in the wall where
25 everything happens?

Simono - Redirect by Mr. Player

1 A. It might have reduced it, but it would not have
2 repaired it or fixed it.

3 Q. Okay. Is there -- in your experience and work in
4 engineering, these 72-inch pipes, they have to be
5 huge because they're going to support load and
6 cargo that's going on the road, correct?

7 A. The thickness of the pipe is there because of the
8 road load -- the load that's over it. They
9 usually use H20 loading, which is heavy loads
10 based on trucks.

11 (inaudible crosstalk).

12 A. That doesn't deal with the diameter.

13 Q. Okay. Number 6. Do you have any idea where that
14 is?

15 A. I do not.

16 Q. Is it possible from looking at it from, I guess
17 the slope of what he calls the gully wall, could
18 that have been cut by a machine?

19 MR. MCCANTS: Your Honor, I'm going to object.
20 He's testified he doesn't know where that is. He is --
21 anything there absent a foundation is speculation from
22 an engineering standpoint.

23 MR. PLAYER: Your Honor, his entire testimony with
24 Mr. Simono was could water have cut that. And I'm
25 asking in the alternative could a machine cut that.

Simono - Redirect by Mr. Player

1 THE WITNESS: Yes.

2 THE COURT: I'll allow --

3 THE WITNESS: I'm sorry.

4 THE COURT: -- the question. Overruled.

5 MR. PLAYER: Thank you.

6 THE WITNESS: My apologies.

7 THE COURT: That's okay.

8 THE WITNESS: Yes. A machine could have cut that.

9 BY MR. PLAYER

10 Q. And I guess my more fundamental question is, the
11 erosion that's shown here, is it the same kind of
12 erosion that you personally witnessed when you
13 walked to the outfall at 520?

14 A. No.

15 Q. Does this look like new or old erosion to you?

16 A. It looks like it's been done over time. So it was
17 not brand-new. It was some time before he took
18 those photos.

19 Q. And the erosion that you witnessed when you walked
20 the, where they are dumping the 220-acres of
21 water, was that -- how was that different erosion
22 from what this picture seems to indicate?

23 A. The severity is greater and it was basically
24 currently -- the small flow that was there when I
25 was there was currently causing some erosion and

Simono - Redirect by Mr. Player

1 had obviously, very recently caused erosion.

2 Q. And under fundamental engineering design
3 principles, are you allowed to increase the volume
4 or the rate of flow to a neighboring property?

5 A. You are not allowed to increase the rate of flow.

6 Q. Okay. And once again, well, let me ask you this.
7 This is actually a picture. Number 10. Look at
8 the fence line.

9 (Whereupon an exhibit was marked.)

10 A. Yes, the fence is --

11 Q. In your experience when you put a fence up does it
12 touch the ground physically?

13 A. -- or close to it, yes.

14 Q. Where is the ground that that fence was touching?

15 A. It's significantly below. Based on the size of
16 this riprap it looks like it's 3 or 4 feet below.

17 Q. What does that indicate to you as an expert?

18 A. That something moved from the time the fence was
19 built to the time this photograph was taken.

20 Q. Is it possible that water moved it?

21 A. Water could have easily washed underneath and
22 allowed things to settle underneath it, yes.

23 Q. And that would be the improper erosion and
24 scouring that we have been talking about, correct?

25 A. Yes.

Simono - Redirect by Mr. Player

1 Q. Okay.

2 MR. PLAYER: And Your Honor, just kind of a
3 protocol thing, I need to give you a zip drive with all
4 of the videos. I think Clarke and I have talked about
5 them. Everything I have shown is going to be on a zip
6 drive.

7 THE COURT: All right.

8 MR. PLAYER: If I can just introduce that. It
9 will be number --

10 THE COURT: Any objections to that?

11 MR. PLAYER: -- 12?

12 MR. MCCANTS: No objection.

13 THE COURT: All right.

14 (Exhibit entered into evidence.)

15 MR. PLAYER: I've just got to, I have got to -- I
16 have a disk at the moment with other crap. So I'm
17 going to take all the other crap off so you just get
18 the disk and you'll get (inaudible).

19 THE COURT: All right. Very good.

20 MR. MCCANTS: Legal term.

21 MR. PLAYER: I know legal term, crap. I'm really
22 good at that.

23 THE COURT: I do general sessions, as well.

24 MR. PLAYER: Thank you, David.

25 THE COURT: All right. Recross?

Simono - Recross by Mr. McCants

1 RE-CROSS EXAMINATION

2 BY MR. MCCANTS

3 Q. So to recap Mr. Player's redirect, you don't have
4 any problems with the amount of water that is
5 flowing through this system above the Parkway
6 coming through a pipe in the Parkway and onto the
7 plaintiff's property. You don't have a problem
8 with the volume of water, is that correct?

9 A. That's correct.

10 Q. You, you are concerned about the speed.

11 A. That is correct, the velocity.

12 Q. I thought velocity had another component besides
13 just how fast it travels? Is that --

14 A. No. Velocity is speed. Velocity is speed.

15 Q. I'm reaching back into my physics. And whoever --
16 well the folks we know who did it. Mr. Dudley and
17 whomever developed Chadwick accounted for volume
18 and velocity through the use of 72-inch pipes. Is
19 that fair?

20 A. They accounted for the volume flow, volume rate of
21 flow. Not the velocity itself but the volume rate
22 of flow.

23 Q. Well, you just testified --

24 A. Which is the cubic feet per second.

25 Q. -- the larger the pipe, the less velocity,

Simono - Recross by Mr. McCants

1 correct?

2 A. Well, that's a whole different thing. Yes, that's
3 true, too.

4 Q. All right. So the larger the pipe, that would
5 slow the water?

6 A. Yes.

7 Q. And that's what the Chadwick developers were
8 looking at, correct?

9 A. I mean, I can't say what they were looking at, but
10 I can say what appears to have happened on the
11 plan. They did indeed put in a large pipe because
12 they were planning for a 100-year storm. They put
13 it on a very flat slope so it had to be a large
14 pipe to carry that water.

15 Q. Yeah. I'm not pitting you against them. I'm
16 asking from your experience in developing
17 properties and trying to include -- look at that
18 plan. Do you --

19 A. That's why I answered that additional answer.
20 That is correct.

21 Q. So you agree with me? That they were using
22 72-inch pipes to account for flow -- amount of
23 flow and velocity?

24 A. I agree that that is what they would have done,
25 yes.

Simono - Recross by Mr. McCants

1 Q. Looking at a lot of water, correct?

2 A. Looking at a lot of water.

3 Q. And I heard Tucker, Mr. Player, talk to you about
4 whether or not that -- the condition depicted by
5 Exhibit Number 6, whatever we're going to call it,
6 roadway, riverbed, intermittent or constant
7 stream, he suggests it's a possibility that it was
8 man-made. Do you remember that?

9 A. I do.

10 Q. Is this is man-made? It's not erosion is it?

11 A. No.

12 Q. And you testified --

13 A. But you can erode man-made things.

14 Q. I agree with that. But at the same -- well, you
15 used the word when we were talking about it is
16 erosion.

17 A. Yes, there appears there is erosion there.

18 Q. And in his lead -- directing your testimony
19 earlier this morning there wasn't any suggestion
20 this was man-made. It was erosion, correct?

21 A. I agree, yes.

22 MR. MCCANTS: Tucker.

23 MR. PLAYER: I deserve it.

24 MR. MCCANTS: Nice try. That's all I have. Thank
25 you, Your Honor.

Simono - Re-Redirect by Mr. Player

1 THE COURT: Any re-redirect?

2 MR. PLAYER: Your Honor, just one clarification.

3 THE COURT: All right.

4 RE-REDIRECT EXAMINATION

5 BY MR. PLAYER

6 Q. Does DOT design their systems for a 100-year
7 storm? What do the records say? I can show them
8 to you.

9 A. My understanding is you have to be able to
10 accommodate the 50-year storm and not overtop the
11 roadway in a 100-year storm.

12 Q. I think you're off. I think it's 25.

13 A. Okay.

14 Q. But my question is, the design that you reviewed
15 for DOT, would it be sufficient to handle a
16 100-year storm?

17 A. Not that I could see, no.

18 MR. PLAYER: Okay. Thank you. No further
19 questions.

20 MR. MCCANTS: No, ma'am.

21 THE COURT: All right. Thank you. This witness
22 may be excused. Watch your step, sir.

23 SPEAKER7: Thank you, Your Honor.

24 THE COURT: Yes, sir. All right. Mr. Player, you
25 have one more witness, or is this is your final

Simono - Re-Redirect by Mr. Player

1 witness?

2 MR. PLAYER: Yes, Your Honor. Once I put the
3 videos in the plaintiff rests.

4 THE COURT: All right. All right. Any, any
5 motions that you wish for me to hear --

6 MR. PLAYER: Motions?

7 THE COURT: -- at this time? Yes, sir. Do you
8 have any motions?

9 MR. MCCANTS: I'm sorry. I was turned around.
10 Did you ask for motions?

11 THE COURT: Yes, I'm sorry. Mr. McCants,
12 Mr. Player has told us that after he submits his last
13 piece of evidence that he'll rest. He's got no more
14 witnesses.

15 MR. MCCANTS: If it's the video (inaudible).

16 MR. PLAYER: I've got to clean out the disk, I
17 mean, if I could --

18 THE COURT: Yes, he needs to clean it up some and
19 then he'll --

20 MR. PLAYER: I mean I can move to introduce it at
21 this point. If no objection is in then we'll rest and
22 then I'll make sure it's in the format you need it
23 after lunch.

24 THE COURT: All right.

25 MR. PLAYER: Does that work?

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1 MR. MCCANTS: Yes.

2 THE COURT: All right, very good. So that -- does
3 that work? Any objection?

4 MR. MCCANTS: No objection. And, in fact, my plan
5 is to move when you allow me to for directed verdict.

6 THE COURT: Certainly. Do you, do you anticipate
7 that will be a lengthy motion? Can we do --

8 MR. MCCANTS: You know me, Judge.

9 THE COURT: All right. Can we handle that now?

10 MR. MCCANTS: I could do it in 10 minutes, sure.

11 THE COURT: I'm not rushing you. We can, we can
12 handle it after lunch.

13 MR. MCCANTS: It's not going to be terribly
14 lengthy, but I do want to make a record, obviously --

15 THE COURT: Yes.

16 MR. MCCANTS: -- and explain to you. Are you
17 prepared for that?

18 THE COURT: I am. Let's do that now.

19 MR. MCCANTS: All right.

20 And I want to emphasize, Judge, that I treat any
21 motion in any case seriously. But I recognize that
22 sometimes we just have to make motions for the record.
23 But I want to emphasize these are not perfunctory
24 motions I'm making in this case. I believe very
25 strongly in them and I think the evidence so far shows

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1 there's a basis to grant them. So that's why I'm
2 moving. And I'm going to do them in this particular
3 order.

4 The two causes of actions as Mr. Player has
5 explained to you in this case are for an inverse
6 condemnation, a taking, and also an injunction. And
7 Judge, I will be probably open to the notion that there
8 are questions of fact with regard to whether or not
9 there has been a taking in this particular case. That
10 even though I believe strongly as a matter of law, and
11 this kind of bleeds into my motion as to release that I
12 pled as part of this case. But the -- I think the
13 evidence is only capable of one interpretation in that
14 these landowners, these plaintiffs in this particular
15 case were well aware of what I'll just call water
16 issues with regard to the Chadwick Development many,
17 many moons ago. And knew what they were dealing with,
18 and knew they had to plan this development to respond
19 to serious water issues that had been evident for
20 years.

21 Now what's interesting about that is probably the
22 best historical witness on that as you, of course, is
23 Mr. Leroy Fischer who testified. He's really the only,
24 I don't know if he's the only surviving, but the only
25 living representative of the original landowners that

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1 were involved in the condemnation in 2006. If you
2 recall Mr. Franke's father was, and there were others,
3 Mr. Badger's father with the lumber company were
4 involved, but those gentlemen have not testified as
5 part of this case. So I think the Court should look to
6 Mr. Fischer's testimony.

7 And the other -- the evidence just shows that
8 there has not been an aggressive or affirmative act by
9 the Department of Transportation since they finished
10 the Palmetto Parkway to serve as a taking. You can't
11 take what's already been taken. This, this, the
12 condition of this property has been such that it is
13 today for apparently hundreds of years. It's certainly
14 been in the same condition prior to any touching of the
15 property, any construction undertaken by the DOT in the
16 mid-2000s. So that's my position as a matter of law.
17 There has not been a taking in this case.

18 But I respect the Court in terms of, well, maybe
19 there is a question in that regard so we should proceed
20 to the defense case. The mitigation issue is also a
21 defense to the allegation of an inverse condemnation.
22 And it relates to that and also relates to the issue of
23 damages, which is not in front of you today, even
24 though we talk about damages which have occurred on
25 this property for years and years.

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1 And you've heard the testimony. Since DOT
2 acquired the 25 acres, paid for that, there has been no
3 effort by the plaintiffs in this case to mitigate their
4 damages. Which, again, I think goes to the cause of
5 action for inverse condemnation as well as damages,
6 which we don't believe we should get to in this
7 particular case. I think this case should end here.

8 Now I saved for the Court a real basis, I think,
9 for directed verdict in this case. And it relates to
10 our defense, the claims that the original landowners
11 had, as part of the condemnation, were fully released
12 when they accepted \$504,560 for the 25 acres at the top
13 of their development. And undertook as part of the
14 acceptance of that money to release in writing any
15 claims they had for DOT to date, or any claims they may
16 have in the future with regard to the construction of
17 this portion of the interstate, the Palmetto Parkway.

18 Now I'm an officer of the court. And I've been
19 told by my client, DOT, that you're also a lawyer for
20 all the taxpayers in this state. And I have to treat
21 them fairly, and I would do that anyway. And the
22 reason I make that announcement to you is, is I don't
23 know if anybody has noticed but the release language
24 that Mr. Fischer on that release he signed is different
25 than the release language that Mr. Badger's father

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1 signed. And you have got the exhibit and I'll go ahead
2 and point it out to you. I don't think it makes a
3 material difference for purposes of my argument, but I
4 want to be fair to the landowners, and obviously, be
5 honest to this Court and tell them that language is
6 different.

7 If you look at the release that Mr. Fischer
8 signed, it talks about in exchange for \$504,560 he is
9 releasing DOT from any and all claims, demands,
10 damages, actions, causes of action, and suits at law or
11 in equity of whatever kind and nature arisen, arising,
12 or to arise from or because of any matter relating to
13 the construction of the Palmetto Parkway, Bobby Jones
14 Expressway, I-520 in Aiken County, South Carolina.

15 Now because I think the testimony has shown
16 through Plaintiff's case, we had a number of different
17 landowners and interests passed down, and it's obvious
18 it was complicated to settle the condemnation case.
19 There were a lot of plates in there with regard to
20 that. And eventually Howard Lumber's interest in the
21 land, and you have heard testimony about how they got
22 their interest. If you look at the release signed by
23 Mr. Badger, again Will Badger's father, which -- and I
24 should have known these dates, I understand, Judge.
25 It's this document dated 11 June 2007. If you look at

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1 Page 3 of the releasing language. In Paragraph 1 it
2 talks about condemnees Howard Lumber Company and
3 Lighting Galleries Incorporated, hereby release and
4 discharge the State of South Carolina and its agencies,
5 departments, institutions, boards, and commissions and
6 officials, agents, employees thereof or successors
7 thereto and particularly the South Carolina Department
8 of Transportation, from any and every right and all
9 manner of action or actions, causes of action, claims
10 and demands of any kind which they now have or at any
11 time claim, arising from or because of any matter
12 relating to this condemnation action.

13 I agree that that's a little bit different than
14 the language in Mr. Fischer's release. I don't think
15 it makes a difference. I think these folks -- we
16 didn't have Mr. Badger here today. I understand that's
17 the man who signed the release, but I do believe this
18 honestly, that Mr. Fischer, again, is the best witness
19 from a historical and other standpoint to tell the
20 Court what was done by those original landowners as
21 part of the condemnation case with regard to settling
22 that case.

23 And they released it. And I made a point of
24 making sure that I had testimony. And I believe
25 Mr. Fischer is a very honest man, with very -- a great

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1 deal of integrity. I would never challenge his honesty
2 in that respect. But he told you that he was familiar
3 with the condition of the interior of his property at
4 the time he signed that release.

5 We can talk about whether or not Exhibit Number 6
6 is a man-made roadbed or the product of natural water
7 flow through there, but regardless, it showed interior
8 water problems that Mr. Fischer was aware of. And he
9 accepted that \$172,000 plus change as part of that
10 condemnation case in settlement of all the claims and
11 the condition in future claims he knew existed on his
12 property.

13 And we can only use his testimony, I believe, and
14 transport it to the rest of the landowners with regard
15 to their knowledge and intent with regard to accepting
16 over a half million dollars to end any claim they had
17 against DOT.

18 So I am asking for a directed verdict in this case
19 based upon the release, and based upon the documents
20 and testimony that was introduced at the trial of the
21 case and through the testimony of individuals. And I
22 would be happy to answer any questions you may have,
23 but that's our position with regard to a directed
24 verdict.

25 THE COURT: All right. Thank you, Mr. McCants.

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1 No questions at this time from the Court. Mr. Player,
2 would you like to respond?

3 MR. PLAYER: Yes, Your Honor. I'll be brief.
4 Positive aggressive act -- what Clarke wants you to
5 take is, well, they knew then that they were getting
6 water. Yeah, from 82 acres. The testimony is they are
7 getting 220 acres worth of water now. Moreover, this
8 entire plan would create a large amount of new water
9 that they had to deal with. So this has never been
10 implemented. It's never been approved. There is no
11 easement of record. This demonstrates, which they have
12 all freely admitted from the stand, they knew water was
13 going through there.

14 But what DOT did, the positive aggressive action
15 was to take and I, I don't know if Billy testified to
16 it, I think he did. Before they built 520 there was a
17 28-inch pipe that carried the water from the other side
18 of the interstate. They now have a 54 and a 28. The
19 engineer, David, says the volume didn't change. I
20 disagree with him, and you will understand that when I
21 cross their expert. But he said the velocity is what's
22 causing the damage.

23 The original complaint and I'll, I will freely
24 admit that I, you know, I threw everything in there. I
25 said volume, I say they are destroying the land, they

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1 cut it in half. All of the evidence of the previous
2 conditions with the erosion coming from a different
3 direction, I don't think we can claim that. But what
4 we saw in those videos they don't have an answer for.
5 And they're not -- that can't happen. Nobody can use
6 property when that much water is flowing at a specific
7 point. There is a way to fix it, and that's really all
8 we want.

9 Mitigation is a defense. But it's a scaling
10 defense. It is to lower the amount that you -- the
11 rule is you are required to mitigate, and if you don't,
12 it doesn't mean you don't get anything. It means
13 whatever you could have recovered through reasonable
14 mitigation efforts, you don't get to recover from the
15 other defendant. My question, and we've got evidence
16 in there that they couldn't develop it because of the
17 underwater -- the underground water.

18 If it's -- if there is water flowing underneath
19 the property, and it is destabilizing the soil, you
20 can't build on it. But more importantly, my clients
21 saw the problem as they are sending us too much water
22 at this one point. The only way to fix it is to block
23 it. They don't have room. They don't have extra
24 property. I mean, they could have gone out there and
25 built a detention pond for, for DOT but, you know, the

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1 one thing about this is, this is DOT's water.

2 If this is an easement to DOT, this is DOT's
3 water. There is a natural path, but they are already
4 admitting in the '80s that that path, the water in that
5 path belongs to DOT. What this shows you is that just
6 82 acres of water needed a retention pond. There is no
7 retention pond for 220 acres that are run through
8 concrete pipes across the interstate and pointed at my
9 clients' property like a sniper rifle. There is
10 nothing there.

11 Now I know they're going to bring up the riser.
12 Make sure you understand what Clarke said. The riser
13 was installed in 2013. And it wasn't part of the
14 plans. So all of this testimony -- and what they are
15 going to put up is, well, it's always been going there.
16 That damage came from water. There were three years
17 from the completion of 520 and the installation of that
18 54-inch and 28-inch pipe where there was nothing,
19 nothing. So what you see in the videos, which were all
20 taken after 2013, and is not what it was like between
21 2010 and 2013. It was worse. And that can't happen.

22 Mitigation, I'm going to hear it -- if we get to a
23 jury all of that comes in on it. All of the knowledge
24 of other erosion on the property, how much acreage is
25 affected, how much -- that's all damages issue. The

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1 only issue before the Court is did DOT take an act that
2 caused any part of their property to be taken. We've
3 given you pictures, videos, and lots of testimony of
4 trees that have just been taken out right where this
5 water is being dumped. So if they took a single tree,
6 it's a taking. The issue is for a jury to decide how
7 much it's worth.

8 But the injunction is the water is too fast for us
9 to use it for anything. We want the water stopped.
10 Then we can develop it. And then the damages at that
11 point may change. I don't know, but if what they are
12 doing violates the regs, which I will demonstrate
13 through their expert, they don't have a leg to stand
14 on. They are not following their own rules, and that's
15 what we'll show in their side of the case. But right
16 now the testimony is the only expert says the water is
17 too fast. He's not objecting to the volume, but it's
18 the speed at which it's released which violates the
19 standards and takes the value from my property, takes
20 the value of my clients that they have in the property.
21 But Number 2 -- and I forgot what I was going to say.

22 It's taking, it is literally taking their land
23 through the erosion, through the erosion of the soil
24 and knocking down trees. If all we could prove was
25 that they sent too much water and it took down one

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1 tree, I get to a jury. I mean it's that simple. This
2 is a very narrow particular legal issue for the Court
3 to decide, whether or not they took an aggressive act
4 that caused some diminution of value or use of the
5 property. And I think all you really need to do is
6 look at those videos, because you can't do anything
7 when that much water is flowing that fast.

8 The release, it's a legal issue. I don't believe
9 that you can waive future claims when you have no idea
10 what's going to happen. Under, I mean, the only thing
11 that was within the jurisdiction of the Court at the
12 time that agreement was made was the property that they
13 condemned. That's the way it works. They condemn the
14 owners and the property. Everything that we're dealing
15 with now was not within the jurisdiction of the Court.
16 So I don't know how they can waive something in a case
17 when it wasn't even within the purview of the Court.

18 But think about what Clarke is saying, okay? If
19 that was affected and DOT just decided to start dumping
20 all of their waste on my clients' land, we can't do
21 anything because we've waived it. Had no idea it was
22 ever going to happen, but we waived every claim forever
23 and ever against DOT, resulting from the construction
24 of 520. 520 construction had not even begun. The
25 plans weren't done when this happened. So how can they

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1 waive when they have no idea what the future holds, or
2 what DOT is going to do unless it is confined to the
3 property that was within the jurisdiction of the Court
4 when the releases were signed?

5 And I disagree with Clarke. I appreciate him. I
6 love him because I didn't catch it, but that Badger
7 release does not release future claims. Mr. Elroy's
8 does appear to say that, but the Badger claim is claims
9 made and when they were made. It doesn't say future
10 claims, so there is no way that that release is going
11 to (inaudible) Howard Lumber.

12 So I don't think the release works. It is a legal
13 issue that's out there, but I just don't think, you
14 know, the fundamental elements of a contract are a
15 meeting of the minds. There's no way that Keith
16 Badcock or any of my clients or their predecessors
17 signed that release with the intent to allow DOT to
18 flood them with water on the property they still owned.
19 That's, that's just not rational. They wouldn't have
20 done that.

21 So I think the DV should be denied. We should
22 move forward and hear Defense's case, and then I'll be
23 back up here to argue it again when that's done. Thank
24 you.

25 THE COURT: Any response -- thank you Mr. Player.

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1 Any response, Mr. McCants?

2 MR. MCCANTS: Yes, ma'am.

3 THE COURT: All right.

4 MR. MCCANTS: Just only on the issue of the
5 release and its effect in this context that Mr. Player
6 presented to you, that executes under that release
7 allowed an unfettered right to the state and the DOT to
8 do anything to these land -- nice landowners in the
9 future. If you read that releasing language it is a
10 release of claims with respect to the Parkway and the
11 construction of the Parkway. Very tight, very limited,
12 but it does apply to future claims on it's face, Your
13 Honor. And I disagree with Tucker in that regard. And
14 I, I feel very strong on behalf of my client that they
15 acted in good faith in the payment of this amount of
16 money for that 25 acres that these landowners did
17 release any claims to date, or in the future, related
18 to the construction of the Parkway.

19 THE COURT: Very good. Thank you, sir. All
20 right, gentlemen, I'm going to take that motion for
21 directed verdict under advisement over the lunch break.
22 And so it's 12:10 now. We will come back here at about
23 1:25 or so.

24 MR. MCCANTS: Oh, make it like 1:30.

25 THE COURT: I know. I was just thinking I could

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1 use that extra five minutes. We'll do that. We'll
2 come back at 1:30.

3 MR. MCCANTS: Yes, ma'am.

4 THE COURT: And so, if it is necessary -- I'll
5 make my ruling then. If it is necessary, you have how
6 many witnesses?

7 MR. MCCANTS: I'm going to call Mr. Saunders, the
8 appraiser in 2005. That shouldn't be terribly long.
9 We're not getting into values.

10 THE COURT: Sure.

11 MR. MCCANTS: Only into his photographs and what
12 he observed. Mr. Robert Giddens is here from DOT. He
13 is the chief right-of-way, or head of the right-of-way
14 department for the department. He is here to talk a
15 little bit about the condemnation process. I'm not
16 sure if I'm going to call Mr. Usry --

17 THE COURT: Okay.

18 MR. MCCANTS: -- who's been sitting with me. He's
19 the construction type engineer. And finally I have
20 Mr. Krishjen Auld, my engineer, to testify. If I had
21 to tell you I think Mr. Auld will probably take more
22 time than the other witnesses --

23 THE COURT: Okay.

24 MR. MCCANTS: -- but I'm going to move forward
25 deliberately in an effort to try and conclude this

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1 matter today if we can.

2 THE COURT: Okay. We'll see.

3 MR. MCCANTS: If possible.

4 THE COURT: Yes, sir. We'll certainly see if
5 that's possible. If not it's available to us tomorrow.

6 MR. MCCANTS: Thank you, Judge.

7 THE COURT: But my staff is going to be real
8 upset, (inaudible).

9 MR. MCCANTS: What then, what course should I
10 take? I don't want to upset -- should I try to end it
11 or end tomorrow?

12 THE COURT: I don't, I won't be upset. You know
13 our tradition here in Aiken is the doors are usually
14 locked on Fridays.

15 MR. PLAYER: That's not just Aiken. That's true
16 much across --

17 THE COURT: Well, we'll see -- we will not let
18 that hinder us from finishing and doing, doing a
19 thorough job. So we will come back at 1:30 and, and
20 get that started, and we'll see how the rest of the day
21 goes. All right?

22 MR. MCCANTS: Thank you, Your Honor.

23 THE COURT: Court is adjourned.

24 (WHEREUPON, the Court took a recess.)

25 THE COURT: All right, gentlemen. I have made a

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1 decision on the directed verdict. Mr. McCants, with
2 regards to your motion, I have denied that motion for
3 directed verdict. So the defense will at this time
4 present their case.

5 MR. MCCANTS: Yes, ma'am. We are ready to
6 proceed.

7 THE COURT: Yes. All right.

8 MR. MCCANTS: Steward Saunders to the stand.

9 CLERK: Place your left hand on the Bible and
10 raise your right hand. Do you solemnly swear the
11 testimony which you give to the Court in this case
12 shall be the truth, the whole truth, and nothing but
13 the truth, so help you God?

14 THE WITNESS: I do.

15 CLERK: Please take a seat in the witness stand
16 and state your full name for the Court.

17 THE WITNESS: It's Steward McPherson Saunders.

18 THE COURT: All right. Mr. McCants.

19 MR. MCCANTS: Thank you.

20 (Whereupon an off-the-record discussion was held
21 with the clerk.)

22 STEWARD SAUNDERS, being first duly sworn, was
23 examined and testified as follows:

24

25

Saunders - Direct by Mr. McCants

1 DIRECT EXAMINATION

2 BY MR. MCCANTS

3 Q. State your full name for us please, sir.

4 A. Steward McPherson Saunders.

5 Q. Mr. Saunders, where do you live?

6 A. Mount Pleasant, South Carolina.

7 Q. How are you employed?

8 A. I'm a real estate appraiser.

9 Q. How long have you been a real estate appraiser?

10 A. For about 32 years.

11 Q. You were performing that position, that job, your
12 profession back in 2005, is that correct?

13 A. Yes, sir.

14 Q. And at that point in time you completed an
15 appraisal of the property that we are here in
16 court discussing, is that correct?

17 A. Yes, sir.

18 Q. All right. I'm not asking you to be qualified as
19 an expert in appraisal of properties as part of
20 this case, but I do want you to tell the judge a
21 little about what you do when it comes to
22 appraising real property, with a focus on
23 appraising property for the South Carolina
24 Department of Transportation back then and even
25 today, unless it hasn't changed. And I'm sure it

Saunders - Direct by Mr. McCants

1 has to some degree. Let's just talk about it in
2 general, okay, what you do to get to the
3 completion of an appraisal report.

4 A. Well, we, we get a first sheet -- right-of-way
5 agent contact sheet from DOT providing the contact
6 information for the property owners. So the first
7 thing that we do is -- or at least I do, is make
8 contact with the property owners and arrange a
9 date of inspection. And see if they want to be
10 present. And if they do make, make plans to, to
11 meet up with them. And then from there it's, it's
12 getting -- identifying the property, getting the
13 public information like deeds, zoning, utility
14 information, and at that point meeting with the
15 property owners and walking the subject property.
16 I always make a point to talk with the owners
17 about the history of the property, what their
18 intentions are presently. And, and then from
19 there I go into the, the actual valuation part of
20 the appraisal.

21 Q. Did you, as part of your contact with the
22 landowners in conjunction with this acquisition by
23 DOT, did you actually meet with any of them?

24 A. Yes.

25 Q. Who did you actually meet with? Do you recall?

Saunders - Direct by Mr. McCants

1 A. Yeah. I -- Mr. Conley, Mr. Leaver -- can I look
2 at my report?

3 Q. Absolutely. It's in evidence.

4 A. So, yeah. I met with, with Mr. Conley and
5 Mr. Leaver, Mr. Dozier, and Mr. Franke at the, at
6 the lobby of the hotel. That, that were -- they
7 made a point, I guess, to be there to meet me to
8 go to the property. Mr. Fischer was the other
9 partner. Mr. Fischer was out of town but he
10 called me after I had done the inspection, and he
11 said that was fine. I didn't need to go back out
12 and meet with him.

13 Q. That's Mr. Leroy Fischer who's been in court with
14 us, correct?

15 A. Yeah, yeah.

16 Q. Mr. Franke you're referencing, is that Mr. Bill
17 Franke's father, the father of the gentleman here
18 today?

19 A. Yes.

20 Q. All right. And I know it's been a while. You
21 probably can't remember all faces in that regard.
22 And everything you know is really in your report
23 with the exception of what you observed walking
24 the property, correct?

25 A. That's right.

Saunders - Direct by Mr. McCants

1 Q. Okay. Now, as part of the completion of your
2 appraisal process you actually traveled from Mount
3 Pleasant to the property where it is located near
4 North Augusta and walked it, correct?

5 A. That's right.

6 Q. What year was that?

7 A. That was 2005.

8 Q. Can you point to the month when you went there by
9 chance?

10 A. Yeah, it was July.

11 Q. Pretty warm?

12 A. Yes.

13 Q. All right. And I trust after you walked the
14 property, looked at whatever other information you
15 needed to look at, you prepared the appraisal
16 report. Is that correct?

17 A. That's correct.

18 Q. Is that the one you're holding in your hand?

19 A. Yes.

20 Q. Let's just identify it for the record. This one
21 is in evidence and it's Exhibit Number 9. All
22 right, sir. You with me?

23 A. Yes.

24 Q. What I want to do, then, is look at some of the
25 photographs in Exhibit 9 that you included as far

Saunders - Direct by Mr. McCants

1 as the appraisal report.

2 A. Yes, sir.

3 Q. And that -- kind of jumping around a little bit,
4 after you do the appraisal report you send it to
5 DOT, and they use it for purposes of calculating
6 the value of the property for purposes of
7 tendering it to the Court in the condemnation
8 action, is that correct?

9 A. Yes.

10 Q. All right. You, you have done this how many times
11 you reckon over 32 years, if you know?

12 A. Yeah, I think the thousands.

13 Q. Thousands, all right. You handle a lot of them.
14 Do the photographs and --

15 MR. MCCANTS: Your Honor, do you have one with the
16 color photographs preserved?

17 THE COURT: Mine is black and white.

18 MR. MCCANTS: All right. I know Number 9 has the
19 Court exhibits for your benefit, has color.

20 THE COURT: Yes.

21 MR. MCCANTS: If that will help you at some point.

22 BY MR. MCCANTS

23 Q. I want you to look at Page 6, Mr. Saunders, if you
24 would. And I want to ask this question very
25 generally. All the photographs that are in your

Saunders - Direct by Mr. McCants

1 report of the interior of this property, were they
2 all taken at the time you walked the property and
3 went through it in 2005, July of 2005?

4 A. Yes.

5 Q. So those photographs accurately portray, with you
6 using a camera, accurately portray the image that
7 you intended to preserve, is that correct?

8 A. Yes.

9 Q. All right. Now, let's, let's look at Page 6 for a
10 moment, if we can.

11 A. Okay.

12 Q. And as you know, you have been here. We have
13 blown up for purposes of the exhibit this Exhibit
14 Number 6. Looking at your appraisal report and
15 the photographs that you have in your report as
16 well as this Exhibit Number 6, does that kind of
17 refresh your memory with regard to what you
18 observed in July of 2005 out on this property?

19 A. Yes.

20 Q. What does, what does that photograph Number 6 on
21 Page 6 of your appraisal report depict?

22 A. Well, it's a drainage ditch.

23 Q. All right. And did the picture itself describe
24 that in your mind? Is that what you were
25 attempting to capture with your camera?

Saunders - Direct by Mr. McCants

1 A. Yes.

2 Q. How deep was this ditch, Mr. Saunders?

3 A. Well, it would be taller than me if I was standing
4 at the bottom of it.

5 Q. And when you say taller than you --

6 A. Higher.

7 Q. -- in particular -- if I can come around. The pen
8 is caught on the end. Hold that up. It would be
9 taller than you at a point where you were standing
10 where?

11 A. About where your thumb is.

12 Q. All right. And that's right in that area, general
13 area there?

14 A. Yes.

15 Q. Is that Georgia red clay over there? Do you
16 remember?

17 A. It's red clay. I guess it's, yeah.

18 Q. But if you were down in the bottom of that ditch,
19 that gully, that Georgia red clay edge would be
20 taller than you.

21 A. Yes.

22 Q. And how tall are you?

23 A. I'm 5'11".

24 Q. So it's at least 5'11" deep, correct?

25 A. Yes.

Saunders - Direct by Mr. McCants

1 Q. And it -- can you give the Court any estimate how
2 further high up is it past your 5'11" body?

3 A. No.

4 Q. All right. Is it more than a foot? Can you tell
5 us at all?

6 A. I don't know.

7 Q. But it's definitely -- you would be looking up if
8 you were there.

9 A. It would be taller than me.

10 Q. All right. Then look at Number 4. That again is
11 a picture you captured, and it's accurately
12 reflected in the photograph on Page 6?

13 A. Yes.

14 Q. And then there are several other photographs in
15 your report. I'm particularly interested on Page
16 8 (inaudible). That photograph was taken by you
17 on Page 8, Number 8?

18 A. Yes.

19 Q. And to the left of that the trees are bent into
20 the ground, is that correct?

21 A. Yes.

22 Q. You captured that image also?

23 A. Yes.

24 Q. And what was the purpose of taking these
25 photographs, Mr. Saunders?

Saunders - Cross by Mr. Player

1 A. Well, it's to show the, to show the interior of
2 the property and the physical condition.

3 Q. And you believe you fairly captured that as part
4 of the appraisal process you undertook in this
5 case?

6 A. Yes.

7 MR. MCCANTS: Thank you, Mr. Saunders. That's all
8 the questions I have at this time.

9 THE COURT: Cross-examine.

10 CROSS EXAMINATION

11 BY MR. PLAYER

12 Q. Afternoon, Mr. Saunders.

13 A. Hello.

14 MR. PLAYER: I promise I don't bite, Madison. I
15 had lunch so you are safe.

16 BY MR. PLAYER

17 Q. Can you tell me where on the property any of those
18 pictures were taken?

19 A. Yes. They, they were taken throughout the
20 property.

21 Q. But I mean, like, specifically Number 8 or
22 Number 6. Do you know where on the property that
23 was taken? I'm holding it up for you if that
24 helps.

25 A. Bear with me a second, please.

Saunders - Cross by Mr. Player

1 Q. Certainly.

2 A. Yes. So, so that Number 6 is, is my photograph 4.
3 So it says the rear of the property.

4 Q. Do you have a drawing that shows that in that
5 report?

6 A. Yeah.

7 Q. Where is that?

8 A. It's on Page 11.

9 Q. Okay. So the numbers on the property schedule on
10 Page 11 show where the pictures were taken?

11 A. Approximately.

12 Q. Okay. Now I want to ask you, do you know what
13 property was actually condemned?

14 A. Yes, sir.

15 Q. Okay. So is Number 6 in the area that was
16 actually taken by DOT and condemned?

17 A. My number 4 was, yes.

18 Q. Okay. But not Number 6?

19 A. You, you -- which one are you saying is Number 6?

20 Q. The number, right here.

21 A. Yes. Number 6 was in the acquisition.

22 Q. Okay. So that's not part of the property that
23 we're talking about today, is it?

24 A. It, it was, that is what they purchased.

25 Q. Sure.

Saunders - Redirect by Mr. McCants

1 A. Right.

2 Q. DOT.

3 A. Yes, sir.

4 Q. Okay. One more question.

5 A. Yes, sir.

6 Q. Maybe not. It's not there. I'm fairly certain
7 you are going to say you never saw this, but my
8 question is, did you ever see anything like that?

9 A. No.

10 Q. If you did would you have put it in your report?

11 A. Yes.

12 MR. PLAYER: No further questions.

13 MR. MCCANTS: Are you ready?

14 THE COURT: Yes.

15 REDIRECT EXAMINATION

16 BY MR. MCCANTS

17 Q. Number 4. Point to -- I meant to bring this up.
18 Point to Judge Pope where Number 4 was taken and
19 used in your map, if you would Mr. Saunders.
20 Yeah, Number 4. Show her where it was.

21 (witness indicating)

22 Q. Is it fair to say, Mr. Saunders, that's up -- and
23 you are pointing to Exhibit Number 2. That's up
24 in this area, this area that we've been talking
25 about, this drainage easement and whatnot. Is

Saunders - Redirect by Mr. McCants

1 that fair?

2 A. Yes.

3 Q. All right. Okay. Thank you.

4 MR. MCCANTS: That's all the questions I have.

5 THE COURT: All right. This witness may now be
6 excused. Please watch your step, sir. Investigator,
7 are you here for General Sessions? They actually moved
8 it to the other courtroom. I just didn't want you to
9 miss your --

10 UNKNOWN MALE: I appreciate that.

11 THE COURT: All right. Yes, sir. You're welcome
12 to come back if you want to. All right. Defense will
13 call its next witness, please.

14 MR. MCCANTS: Robert Giddens, please, Your Honor.

15 CLERK: Place your left hand on the Bible and
16 raise your right hand. Do you solemnly swear the
17 testimony you shall give the Court in this case will be
18 the truth, the whole truth, and nothing but the truth,
19 so help you God?

20 THE WITNESS: Yes, ma'am.

21 CLERK: Please have a seat on the stand and state
22 your full name for the Court.

23 THE WITNESS: Robert Vernon Giddens,
24 G-I-D-D-E-N-S.

25 COURT REPORTER: G-I-D-D-E-N-S?

1 THE WITNESS: Yes, ma'am.

2 ROBERT GIDDENS, being first duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MCCANTS

6 Q. Mr. Giddens, you go by Robbie, is that correct?

7 A. Yes, sir.

8 Q. Where do you live?

9 A. I live in Manning, South Carolina.

10 Q. You are employed by the South Carolina Department
11 of Transportation?

12 A. Yes, sir, since 2010.

13 Q. What is your job title there?

14 A. Today I am the assistant director for acquisitions
15 and right-of-way and relocations.

16 Q. And within that division, is there a separate
17 right-of-way division?

18 A. Yes. I manage four regional right-of-way offices
19 with 49 employees. And inside that we handle
20 condemnation cases.

21 Q. All right. That was going to be my question. You
22 are now supervising 49 right-of-way agents, is
23 that correct?

24 A. Yes, sir.

25 Q. Tell Judge Pope, generally, and I want to

Giddens - Direct by Mr. McCants

1 understand this. You just said you started
2 working for DOT in 2010?

3 A. Yes, sir.

4 Q. You would not have been involved in the
5 acquisition of land from these plaintiffs'
6 property with the Palmetto Parkway in 2005 and 6,
7 is that correct?

8 A. Yes, correct.

9 Q. But you are familiar with that process --

10 A. Yes.

11 Q. -- and what's happened. And you have looked at
12 the documents pertaining to that, correct?

13 A. Yes, sir.

14 Q. I want to walk through for Judge Pope, not going
15 to spend all afternoon doing it, but we're going
16 to talk about the state's process of exercising
17 eminent domain for purposes of acquiring property
18 for public use, okay?

19 A. Okay.

20 Q. What is the beginning of that process?

21 A. Let me -- most of our projects are split with
22 federal highway, federal-aided projects and we
23 follow the Uniform Act requirements of 1970.
24 We -- and we follow -- we have a manual that is
25 produced under the Uniform Act, under the federal

Giddens - Direct by Mr. McCants

1 guidelines that lay out the process that we follow
2 for the acquisition process. And the relocation
3 process, and it's federal law and states. The
4 South Carolina manual is updated every five years
5 as federal law requires. The process that we
6 start with is we have agents in the field that do
7 title work, inspect the property with the
8 landowner --

9 Q. When you say title work, it speaks for itself but
10 you are looking at the history of ownership --

11 A. Yes.

12 Q. -- of the tract of the property?

13 A. Yes. We look at the 40-year title history of the
14 property to make sure we are talking to the owners
15 of the property. The acquisition process starts
16 after the title opinion, so we make sure that we
17 are talking to the owners and that we can ask the
18 owners what we found at public record to make sure
19 they are the owners during the inspection process.
20 And then we start with the explanation of the
21 project. And typically it is staked, which is
22 surveyed based on the new right-of-way and the
23 present right-of-way so we can walk them through
24 and the landowners understand the area of
25 acquisition.

Giddens - Direct by Mr. McCants

1 Q. All right. Now you weren't involved, again, with
2 this particular acquisition project but, but have
3 you by chance had a chance to look at the
4 right-of-way agent sheet for this case?

5 A. Yes, I have.

6 Q. All right. Explain to her what the right-of-way
7 agent sheet is.

8 A. The right-of-way sheet is a two-part sheet. We
9 use it to start the appraisal process and we also
10 use it to document any communications with the
11 landowner and any title opinions with the
12 landowner. And it's mortgages, leases, everything
13 is documented because everything we do we follow
14 the Uniform Act, which is -- and they have a
15 federal requirement of audit. And they can audit
16 at any time. So that document is used as
17 communication between us and the landowner, which
18 is admitted into court if we have to go into
19 condemnation.

20 Q. And once we get to the appraisal point, as
21 Mr. Saunders just testified to, an effort is made
22 to resolve cases with the landowners, is that
23 correct?

24 A. Correct.

25 Q. But if you are unable to do that, that is settle

Giddens - Direct by Mr. McCants

1 the issue, what happens then?

2 A. Then we will go to trial, if it's not settled
3 during mediation.

4 Q. When you say, well, when you say go to trial,
5 before then you have to file papers with the
6 Court, Summons and Complaint --

7 A. Yes.

8 Q. -- by which you set forth the details of the
9 condemnation process, correct?

10 A. Yes, we call it Eminent Domain Procedures Act of
11 South Carolina.

12 Q. And that's a state code also.

13 A. Yes.

14 Q. And that requires what with regard to a tender of
15 money into court?

16 A. To tender payment to the clerk of court as part of
17 the condemnation process. And then the landowner
18 has a 30-day challenge period to challenge the
19 acquisition of the condemnation.

20 Q. Let's, let's pause there.

21 A. Okay.

22 Q. You talk about the challenge -- not too long but
23 what you're saying is it's a civil action filed
24 and served that means it starts --

25 A. Yes.

Giddens - Direct by Mr. McCants

1 Q. It's commenced and you have given them under the
2 act 30 days for the landowners to do what?

3 A. To challenge the acquisition of the condemnation.

4 Q. Do you understand that a separate lawsuit has to
5 be filed to challenge?

6 A. Yes.

7 Q. And the vast majority of condemnation cases that
8 are filed do not face, produce a challenge action,
9 is that fair?

10 A. Yes.

11 Q. How many have you been involved with, do you know?

12 A. Three in the last 13 years.

13 Q. I've had one. It was with the bowling alley on
14 Whiskey Road, but we resolved that. But that's an
15 opportunity for landowners to contest whether or
16 not the state is acquiring the property for a
17 valid public use, is that correct?

18 A. Correct.

19 Q. And if they don't, you proceed on with the
20 condemnation process, is that correct?

21 A. Yes.

22 Q. You mentioned you mediate and settle or go to
23 court. Just walk us through, again, that process.

24 A. Yes, we -- even at that time, Aiken County, we
25 followed a mediation. So every -- we hire a

Giddens - Direct by Mr. McCants

1 mediator between the parties. They would do
2 depositions before mediation and then we would
3 have mediation to try to settle the case prior to
4 going to court.

5 Q. How much money was tendered or placed with the
6 court at the time that the condemnation action was
7 filed with respect to these landowners?

8 A. I'm not sure. I don't --

9 Q. If I showed it to you --

10 A. -- yes, it --

11 Q. -- would that refresh your memory? This is the
12 wrong piece of paper. I got it. Before I get
13 there I've got to back up a little bit. Do you
14 remember there was some timber cut off that
15 property?

16 A. Yes.

17 Q. And you looked at some documents?

18 A. Yes.

19 Q. And there's been some testimony after we filed the
20 condemnation case we cut the timber. Based upon
21 your review of the historical documents, is that
22 the case?

23 A. I don't recall the exact --

24 Q. After. After we filed --

25 A. -- yes. I don't recall the exact condemnation

Giddens - Direct by Mr. McCants

1 file date but you would have that. But the note
2 that I did read to the landowner, the timber was
3 still the landowners' and gave them permission to
4 harvest that timber.

5 Q. -- before the condemnation case was actually
6 filed?

7 A. Yes. It says in the letter before a title of real
8 estate transferred to the department.

9 Q. To the best of your knowledge it was harvested
10 before any action was filed and certainly before
11 any construction began up there?

12 A. All I can look at is the intent of the letters
13 that were done in '06.

14 Q. What letters are you talking about?

15 A. Oscar Rector, the prior director.

16 Q. How long was Oscar Rector the director over there
17 in that department?

18 A. Oscar was at that department almost 30 years.

19 Q. He's still around.

20 A. Yes, sir. He still is.

21 Q. Is he still working at all?

22 A. Yes, sir. He's said he's retired five times, but
23 he still works.

24 Q. Oscar is a great guy, isn't he? All right. You
25 are going to have to hold this sideways,

Giddens - Direct by Mr. McCants

1 Mr. Giddens, but that's the amended notice -- and
2 I think which we discussed earlier. Do you see
3 the amount tendered into the court?

4 A. Yes. \$378,570.

5 Q. All right. Now you mentioned mediation,
6 discovery, settlement. How much of -- well, this
7 matter was obviously settled. We talked about
8 that. But what amount was the case ultimately
9 settled for?

10 A. I don't remember the exact. It was 500 and
11 something.

12 Q. That release, the first release at the top.

13 A. \$504,560.

14 Q. All right. Now if the state is going to pay that
15 amount of money, or any amount of money to a
16 landowner in a condemnation case, what do they ask
17 from the landowner in return?

18 A. To any future claims or any claims against the
19 department.

20 Q. As a result of what?

21 A. Of the settlement.

22 Q. Of the --

23 A. Just compensation.

24 Q. For the acquisition --

25 A. For the acquisition or any damages or to the

Giddens - Direct by Mr. McCants

1 remainder.

2 Q. Now that's what I wanted you to talk about. The
3 remainder. Can you explain that concept to
4 Judge Pope? You talked about damages to the
5 remainder.

6 A. The state law, which is -- the appraiser follows
7 to determine his valuation process, the state law
8 says that it's the value of the acquisition, less
9 benefits or damages to the remainder of the
10 property, when it is a partial acquisition of the
11 property. This property wasn't a total
12 acquisition. So the appraiser determining just
13 compensation or fair market value, has to look at
14 did the acquisition or the construction cause any
15 damages to the remainder of the property. At
16 which time just compensation would be paid,
17 valued.

18 Q. And the remainder refers to the remainder of the
19 landowners' property, not in the area of
20 acquisition, is that correct?

21 A. Correct.

22 Q. All right. And it implies, I think you said but
23 can you read the language in that first release?
24 Just, not all of it, Mr. Giddens. Just that
25 highlighted portion that the judge, I'm sure, has

Giddens - Direct by Mr. McCants

1 looked at because that was one of the bases for
2 our motion.

3 A. From any and all claims, demands, damages,
4 actions, cause of action, and suits at law or in
5 equity or whatsoever kind or nature arisen,
6 arising, or to arise from or because of any matter
7 relating to the construction of the Palmetto
8 Parkway, Bobby Jones Expressway, I-520 in Aiken
9 County, South Carolina.

10 Q. And you heard my argument on our motion for
11 directed verdict. You will agree that the
12 language in the release as to Howard Lumber and
13 the Lighting Gallery is a little bit different,
14 agree?

15 A. Yes, sir.

16 Q. But that language there, and I believe we believe
17 that the subsequent release was all-encompassing,
18 too. You interpret that to mean all claims which
19 have arisen or will arise during the construction
20 of the parkway, is that correct?

21 MR. PLAYER: Objection, Your Honor. He's either
22 calling for a legal conclusion or specialized knowledge
23 that would require him to be qualified as an expert.
24 So I don't think he can interpret what language means
25 in a legal document.

Giddens - Direct by Mr. McCants

1 MR. MCCANTS: I will rephrase, if I may.

2 THE COURT: All right.

3 BY MR. MCCANTS

4 Q. Just from your lay standpoint as one of the
5 assistant directors for right-of-way, what is
6 y'all's intent when you resolve a case?

7 A. That we would also resolve any future claims
8 against the department.

9 Q. Now these landowners were represented by an
10 attorney during this mid-2000 period, is that
11 correct?

12 A. Yes, sir.

13 Q. Who was that attorney?

14 A. Keith Badcock.

15 Q. Do you know Mr. Badcock?

16 A. Very well.

17 Q. All lawyers are good lawyers, we trust. One,
18 lawyer, Number 1 is a good lawyer, but lawyer
19 Number 10 is the best lawyer you have ever dealt
20 with. In the law of eminent domain, where would
21 you place Mr. Keith Badcock?

22 A. I'd give him a 9.95.

23 Q. All right. I thought you may say 12 or something
24 like that. He knows what he's doing, doesn't he?

25 A. Yes.

Giddens - Cross by Mr. Player

1 Q. All right. He understands the concept of
2 remainders and damages and things like that,
3 doesn't he?

4 A. Yes.

5 Q. And you continue to work with Mr. Badcock today?

6 A. Yes. We have active cases today.

7 Q. All right. He zealously represents people,
8 doesn't he?

9 A. Yes.

10 MR. MCCANTS: All right. Those are all the
11 questions I have. Thank you, Mr. Giddens. Mr. Player
12 may have some questions for you.

13 THE COURT: Cross.

14 CROSS EXAMINATION

15 BY MR. PLAYER

16 Q. Afternoon, Mr. Giddens. You talked about this
17 remainder issue with the property. You said
18 appraisers are supposed to determine in terms of
19 the value paid for what's condemned, correct?

20 A. And any damages or benefits to the remainder.

21 Q. Right. And you said but --

22 A. I'm sorry.

23 Q. It's okay. How would they know what damage could
24 possibly occur to the remainder of the land?
25 Construction hadn't even begun.

Giddens - Cross by Mr. Player

1 A. That is an appraiser opinion based on the highest
2 and best use test from the acquisition.

3 Q. Right. So his analysis is taking 25 acres from
4 the 65, is going to diminish the value of the
5 remaining 45, correct?

6 A. Yes. That was the appraiser's analysis.

7 Q. How can appraisers analyze what construction is
8 going to happen in five years and how much water
9 DOT is going to dump on the remainder in
10 five years? How can they know what they are
11 waiving if it hasn't even been drawn up in plans
12 yet?

13 A. They do get engineering studies done for hydrology
14 during the environmental process.

15 Q. Okay. Well, I can assure you that didn't happen
16 in 2005.

17 A. Well.

18 Q. Because those plans were done in 2009. So, and
19 they haven't been presented, so I'm just wondering
20 how -- well, he's gone now. But he provided no
21 testimony that he considered all of this water
22 being dumped from DOT in the future. My question
23 is, how do you waive something when there's no way
24 to know what they are waiving? All right. Your
25 lay opinion and that was kind of enough leading.

Giddens - Cross by Mr. Player

1 A. Yes.

2 Q. I can lead you though.

3 A. I know.

4 Q. Let me ask your interpretation of the release.

5 DOT goes out there, they get the release for the
6 remainder and while they are building 520 they
7 have a chemical spill that goes on my clients'
8 property from one of their trucks. That's arising
9 out of construction, right?

10 A. I mean, that would be considered a third-party
11 issue. Would that be a contractor responsibility?
12 I mean, I don't know, your question is a
13 third-party incident.

14 Q. Okay. So it's DOT.

15 A. Okay.

16 Q. DOT, for some reason, sends a truck out there with
17 chemicals to help with the construction and it
18 spills on my clients' property. Is it --

19 A. Yes, they would have to clean that up based on
20 DHEC regulations.

21 Q. Okay, but not -- if they have been released, why
22 do they have to do anything?

23 A. I don't know if that is considered the same
24 release as a property right, in my opinion.

25 Q. What do you mean?

Giddens - Cross by Mr. Player

1 A. Property right from the acquisition is what we are
2 talking about, not a chemical spill. I mean that
3 would be the same thing if a semitruck was driving
4 down the road and DOT or the landowner had any
5 responsibility into it and it spilled onto the
6 property. Somebody is going to have to clean it
7 up.

8 Q. Sure. But I want to go back to what you just said
9 about property rights as opposed to a positive,
10 affirmative act sometime in the future that causes
11 damage to the remainder.

12 A. Well, we're talking about the property right of
13 the acquisition.

14 Q. Okay. So what property rights were granted to DOT
15 through the acquisition with regards to the water
16 that they sent to the property that they don't
17 own?

18 A. The settlement of just compensation, which
19 included any damages to the remainder of the
20 property.

21 Q. Correct. So there weren't any damages then
22 because what did the damage hadn't been built. So
23 that's my question is, how do you waive that? How
24 can you waive something that doesn't exist?

25 A. I'm not sure.

Giddens - Redirect by Mr. McCants

1 MR. PLAYER: Thank you. No further questions.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. MCCANTS

5 Q. Mr. Giddens, you have heard the testimony
6 regarding the condition of the interior of the
7 property, correct?

8 A. Yes, sir.

9 Q. You have heard Mr. Saunders talk about what he
10 did.

11 A. Yes, sir.

12 Q. And certainly all argument is that there has been
13 significant water flowing through that property
14 for years. You understand that?

15 A. Correct.

16 Q. And from the standpoint of the DOT, is the DOT
17 asking for a release with regard to what the
18 landowners should know about the condition of the
19 property and the remainder? Should know about the
20 remainder of the property?

21 A. Yes.

22 Q. And any damages?

23 A. Yes.

24 Q. Either then or in the future?

25 A. Yes.

Usry - Direct by Mr. McCants

1 MR. MCCANTS: All right. That's all I've got,
2 Your Honor.

3 MR. PLAYER: I'm just glad Clarke never leads a
4 witness.

5 THE COURT: Right.

6 MR. MCCANTS: I'll get you out of here today,
7 Tucker.

8 MR. PLAYER: I appreciate it. That's why I didn't
9 object.

10 THE COURT: All right. This witness can be
11 excused. Please watch your step, sir.

12 MR. MCCANTS: All right. We're moving along, Your
13 Honor, but can I have just a break to talk to my next
14 witness? It may not be necessary in light of
15 Mr. Giddens' testimony and that may help things.

16 THE COURT: Certainly. We'll stand down for
17 ten minutes.

18 (WHEREUPON, the Court took a recess.)

19 THE COURT: Mr. McCants.

20 MR. MCCANTS: Thank you, Your Honor. I call
21 Robert Usry to the stand, please. (inaudible) that's
22 your birth certificate name?

23 THE WITNESS: That is my birth certificate.

24 MR. MCCANTS: Oh, I'm sorry.

25 CLERK: Do you solemnly swear that the testimony

Usry - Direct by Mr. McCants

1 you shall give the Court in this case shall be the
2 truth, the whole truth, and nothing but the truth, so
3 help you God?

4 THE WITNESS: I do.

5 CLERK: Please take a seat in the witness stand
6 and state your full name for the Court.

7 THE WITNESS: Bobby Mathew Usry. Mathew with one
8 t.

9 COURT REPORTER: And spell your last name, please.

10 THE WITNESS: U-S-R-Y.

11 BOBBY MATHEW USRY, being first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MCCANTS

15 Q. Mr. Usry, how are you employed?

16 A. How am I employed?

17 Q. Yes, sir.

18 A. By the South Carolina Department of
19 Transportation.

20 Q. What is your job title?

21 A. Now my job title is resident construction engineer
22 for Aiken County.

23 Q. You are basically in charge of developing
24 construction activities in Aiken County for SC
25 DOT, is that correct?

Usry - Direct by Mr. McCants

1 A. Correct. For the project administration and
2 project management of new construction projects
3 here in Aiken County.

4 Q. For example, you were responsible for overseeing
5 the bypass construction that we are familiar with
6 right now?

7 A. Yes. I may not want to admit that right now, but
8 yes.

9 Q. While you are under oath I want to ask when it is
10 going to be completed.

11 A. I will -- I plead the fifth.

12 THE COURT: We all want to know.

13 THE WITNESS: Not soon enough for me, I can
14 promise you that.

15 MR. MCCANTS: I'll be honest with you. I didn't
16 expect that would elicit that much reaction. There's
17 no newspaper folks in here either.

18 BY MR. MCCANTS

19 Q. All right. You were not responsible for
20 overseeing the construction and engineering
21 aspects of the Palmetto Parkway, is that correct?

22 A. That is correct.

23 Q. But you did become involved in the issues at some
24 point in time, is that correct?

25 A. Yes, sir. That's correct.

Usry - Direct by Mr. McCants

1 Q. You went out there and observed the project area
2 at some point in time, is that correct?

3 A. Yes, sir.

4 Q. And when was that?

5 A. I mean, it's back a while, but I would say around
6 the 2010 timeframe because the construction of
7 I-20 had completed. I was in maintenance at that
8 time, so it would have had to have been around the
9 2010 timeframe.

10 Q. All right. And that's because certain water
11 issues were being presented by people in that
12 area?

13 A. Yeah. Typically once a project is constructed
14 with DOT, at some point in time, the department
15 will accept maintenance of that construction
16 project from the contractor. And then if anything
17 comes up at that point in time, that becomes the
18 responsibility of the department. And usually
19 that falls under the maintenance group, and I was
20 in maintenance at that time.

21 Q. Okay. I should have asked you. What is your
22 educational background? How did you become an
23 engineer?

24 A. Educational background, graduated high school,
25 went to Clemson University, graduated from there

Usry - Direct by Mr. McCants

1 in 1999, passed the EIT --

2 Q. Woah, woah, slowdown.

3 A. Oh, sorry.

4 Q. What was your degree in?

5 A. Civil engineering.

6 Q. Civil engineer?

7 A. Yes, sir.

8 Q. All right. And from that point, what did you do?

9 A. From that point -- work-related?

10 Q. Let's talk about your credentials.

11 A. Okay. I passed the EIT while I was in school at
12 Clemson. And then --

13 Q. What does that mean?

14 A. The engineering training. It's the very
15 similar -- well, it's the same thing that David
16 Simono spoke about this morning. It's the
17 pretest, kind of, to your professional
18 engineering?

19 Q. The PE --

20 A. Your PE.

21 Q. -- you call it.

22 A. Yeah.

23 Q. And you're a PE?

24 A. Yes, sir.

25 Q. When did you obtain your professional engineering?

Usry - Direct by Mr. McCants

1 A. 2003.

2 Q. All right. And the reason I ask, if you're
3 generally familiar with construction techniques
4 and engineering from a civil standpoint?

5 A. Yes, sir.

6 Q. Road construction?

7 A. Yes, sir.

8 Q. Things of that nature?

9 A. Yes, sir.

10 Q. Hydrology?

11 A. Yes, sir.

12 Q. All right. So you went out there on behalf of DOT
13 to look at issues that were being presented to the
14 department as to water, is that correct?

15 A. Correct.

16 Q. All right. And did you walk the property that's
17 involved in this case?

18 A. I did walk the property.

19 Q. You remember doing that.

20 A. Yes, I do.

21 Q. And that's part of doing the job of a civil
22 engineer. You have to have boots, don't you?

23 A. Yeah. Yeah.

24 Q. You get out in the woods?

25 A. Yes, sir.

Usry - Direct by Mr. McCants

1 Q. All right. And you hunt and everything, don't
2 you?

3 A. I do not hunt.

4 Q. You have walked in the woods a lot, though.

5 A. I have walked in the woods.

6 Q. And just, you know, to give a perspective here,
7 when you walked you saw these pipes out there on
8 this property, didn't you?

9 A. I did see those pipes.

10 Q. And you walked enough down in that area to observe
11 the physical layout of the property, is that
12 correct?

13 A. Yes, sir.

14 Q. Now when you did, Mr. Usry, walk, you actually
15 walked in the area of acquisition as we call it,
16 which is the section of this property up and
17 abutting I-20, is that correct?

18 A. Abutting I-520 is where I accessed it.

19 Q. Sorry about that. That would -- yeah, and the old
20 Chadwick Development labels it I-20. We could
21 easily today bring a (inaudible) and put I-520 on
22 here, couldn't we?

23 A. I-520 kind of runs somewhat perpendicular at that
24 point.

25 Q. This has got a compass derivation here. You see

Usry - Direct by Mr. McCants

1 that, north? So really, you know, for purposes of

2 --

3 A. Correct. That's correct.

4 Q. So that, that means 520 was doing this, correct,

5 basically? How would you characterize its

6 proximity to --

7 A. Can I come down and look at it?

8 Q. Yeah. Sure.

9 A. 520, ultimately, would be --

10 Q. That's what I was trying to show.

11 A. -- this neck of the woods.

12 Q. Yeah. It's, it's going to be doing a leafing

13 type, and then it connects down here to I-20.

14 A. Correct.

15 Q. All right. And my question --

16 A. Because I-520 comes perpendicular to -- this is

17 labeled Ascauga Lake Road.

18 Q. Wait a minute. You are blocking the judge's view.

19 A. I'm sorry. I know that 520, there's a bridge

20 going over 520 on Ascuaga Lake Road so it kind of

21 comes up here, bends, and then turns into I-20.

22 Q. Very -- and she's got some aerial maps which --

23 A. Okay.

24 Q. -- have the actual roadway. Stand right there

25 just a second, though.

Usry - Direct by Mr. McCants

1 A. Stand right where?

2 Q. Right next to this podium.

3 A. Okay.

4 Q. Don't want you to block Mr. Player's view. Did
5 you -- when you went out there as you described,
6 did you walk in this area of the property?

7 A. I mean, of course, that predates 520. I can tell
8 you that I pulled off the road on 520 where the
9 outfall that enters that property, that's where I
10 parked and accessed our right-of-way and then
11 slipped in, walked through the property.

12 Q. And that would have been what area of the
13 property? Point that out at least with regards to
14 the Chadwick development.

15 A. Best of my knowledge that would have been up in
16 this area.

17 MR. PLAYER: Y'all just -- can I point something
18 out?

19 MR. MCCANTS: What's that?

20 MR. PLAYER: That's the full property. Okay, If
21 we go back --

22 MR. MCCANTS: I understand.

23 MR. PLAYER: Number 1, y'all keep pointing at
24 stuff. That's what was shaved off. So 520 would be
25 like here.

Usry - Direct by Mr. McCants

1 THE WITNESS: Okay.

2 MR. PLAYER: That's where.

3 THE WITNESS: I mean, that's what I meant by this
4 is, this is a dated map.

5 BY MR. MCCANTS

6 Q. Well, hold on just a second. Come on in. He's
7 right. I mean, this is an outdated map because
8 DOT acquired a great deal of this property.

9 A. Correct.

10 Q. But you walked down through the area of
11 acquisition, obviously, because you had to access
12 the property somehow.

13 A. Well, the area of acquisition when I walked out
14 had already been constructed with I-520 features.

15 Q. All right. Then let's put it this way, you did
16 walk on then, onto property still owned by the
17 landowners, correct?

18 A. Yes, I did.

19 Q. Because you saw the pipes?

20 A. Yes.

21 Q. Down in this area?

22 A. Correct.

23 Q. And while we are at it, I think you told me while
24 you were there you actually saw the DHEC
25 monitoring wells that were still out there --

Usry - Direct by Mr. McCants

1 A. Well, I don't know how many were out there but I
2 did see at least one.

3 Q. And you know what they look like?

4 A. Yes.

5 Q. And you saw them?

6 A. Yes.

7 Q. So you are familiar with the property?

8 A. Yes.

9 Q. What did you observe with regard to any
10 characteristics of the property? That's what I
11 want to ask you about. And talk to Judge Pope
12 because she's the factfinder here. Describe to
13 her what you saw and where.

14 A. You mean like up here?

15 Q. Well, go down here.

16 A. Okay.

17 Q. Just walk down the map, I think, is the best way
18 to do it.

19 A. Well, I mean, like I said, without this thing --
20 without 520 actually being shown it's -- obviously
21 this predates 520. I entered -- if 520 is in here
22 in this relative area, I entered the property from
23 our right-of-way here, which is the outfall that
24 has been discussed in here, which was the 54-inch
25 and the 24-inch outfall. Which is currently --

Usry - Direct by Mr. McCants

1 and there has been video shown currently where
2 large rock, riprap is placed. And I actually
3 hopped up under -- the fence was -- there was a
4 little gap between the fence and the riprap.

5 Q. All right. Pause there.

6 A. Yep.

7 Q. Is this the fence we -- that they were talking
8 about earlier?

9 A. I couldn't see clearly, but I would believe so,
10 yes.

11 Q. To the best of your knowledge.

12 A. Best of my knowledge, yes.

13 Q. Describe to Judge Pope the condition of that
14 fence. I think that that's something --

15 A. Well, it was, it was, again, there was, there was
16 riprap that was formed right there. Obviously,
17 you could tell at some point in time there was
18 remnants of a spillway. The fence was in front of
19 me, but the fence was not attached to the ground.
20 Because that's, that's where I went under.

21 Q. You crawled underneath the fence?

22 A. I went under, yes.

23 Q. Is this a typical cyclone fence?

24 A. Yes.

25 Q. A wire crisscross?

Usry - Direct by Mr. McCants

1 A. Yes.

2 Q. All right. It's important, again this is 2010-ish
3 area?

4 A. Yes.

5 Q. And based upon your research and understanding,
6 when was the ribbon-cutting for the Palmetto
7 Parkway?

8 A. The ribbon cutting, I believe, was right after
9 construction in 2009 timeframe, I think.

10 Q. All right. And so construction between 2006-ish
11 and 2009 would have been undertaken to improve or
12 create the Palmetto Parkway. Is that fair?

13 A. Yeah. I think that's fair.

14 Q. All right. So tell me again what you observed.
15 Tell the judge what you observed.

16 A. What I observed in relation to going in under that
17 outfall, once I migrated my way down it was, I
18 mean essentially, a ravine at that point, drainage
19 ditch where water has gone for a long time,
20 obviously.

21 Q. Okay. You can't just throw that out. What do you
22 base that conclusion on, Mr. Usry? That it's a
23 ravine and it's been there a long time. What do
24 you base that conclusion on?

25 A. Well, the depth of the ravine. It didn't just

Usry - Direct by Mr. McCants

1 happen overnight.

2 Q. Use your -- put your civil engineering hat on,
3 your construction hat on. Does that happen
4 overnight?

5 A. No. No. Absolutely not.

6 Q. You have been in the woods. You have seen
7 erosion. Did it look like a recent erosion to
8 you?

9 A. Not to that extent, no.

10 Q. Well, describe the ravine. A ravine --

11 A. Well, it was well over my head. It was I would --
12 I don't want to say a measurment because I can't
13 honestly say.

14 Q. How tall are you?

15 A. I'm six foot.

16 Q. You're six foot. Could you reach the top of the
17 ravine if you raised your hand?

18 A. In the very first part, no. Now as you, as you
19 went down this channel, it kind of, it tapers off,
20 then it becomes kind of more broader. And
21 water -- you can tell water -- water is defined
22 right here at the end of our right-of-way and at
23 the beginning of this property. And then it's
24 channelized, and then it kind of spreads out and
25 --

Usry - Direct by Mr. McCants

1 Q. A delta type thing?

2 A. Yeah. And then it, I mean, there's a point in
3 time, the best I can remember, it comes back
4 together in a kind of a defined little channel
5 which is much smaller than the one I'm referring
6 to up in this area.

7 Q. All right. An obvious question may be, you know,
8 in 2023 you don't have any photographs of this
9 available to you, do you?

10 A. I do not.

11 Q. All right. Because you really didn't think it was
12 going to go this far, did you?

13 A. I was -- no. I mean, I was just going to look at
14 the property based on several complaints that we
15 had received from, mainly, folks on Ascauga Lake
16 Road.

17 Q. Down below Chadwick, correct?

18 A. Oh, yeah. This was closer to this Sobo Lake area.

19 Q. That's why you were out there because --

20 A. Absolutely.

21 Q. -- there was really nothing to deal with, with
22 regard to this issue yet, is that fair?

23 A. Yeah, that's fair. I mean, I had no idea this was
24 going to be an issue.

25 Q. Okay. All right.

Usry - Cross by Mr. Player

1 MR. MCCANTS: That's all I have, Your Honor. I'm
2 going to take this down because Mr. Player probably
3 wants to talk to you.

4 THE COURT: Cross.

5 MR. PLAYER: Yes, Your Honor.

6 CROSS EXAMINATION

7 BY MR. PLAYER

8 Q. Good afternoon, Bobby.

9 A. Good afternoon.

10 Q. We've done this before, right?

11 A. Yes, sir.

12 Q. Can you show me where Ascauga Lake Road is on the
13 map?

14 A. I usually give it a fork and come back. That
15 should be Sudlow, so this would be Ascuaga.

16 Q. Okay. And this is without 520. This is just exit
17 5.

18 A. That's correct.

19 Q. All right. So where is 520 at this point?

20 MR. MCCANTS: Guys, I think the judge may --

21 MR. PLAYER: Oh, yes. I'm sorry.

22 THE WITNESS: All right. I pointed out
23 originally, this should be Sudlow Lake Road.

24 THE COURT: Correct.

25 THE WITNESS: Right here. The fork of Sudlow and

Usry - Cross by Mr. Player

1 Ascauga are right here. So this map is actually from
2 1964. Obviously well before 520. Do you need to see
3 this as well, Mr. Player?

4 MR. PLAYER: No.

5 THE WITNESS: I -- 520 should be kind of in --
6 coming up through here in this fashion.

7 MR. PLAYER: Okay.

8 THE WITNESS: Where Mathis Lake should be
9 (inaudible).

10 BY MR. PLAYER

11 Q. Okay. And you did not walk this property prior to
12 the four years of construction by DOT between 2006
13 and 2009, correct? You didn't know what it was
14 like --

15 A. No, sir. No, sir.

16 Q. If you could, hold that back up.

17 A. Sure.

18 Q. Show the judge -- let's talk about the meeting at
19 Hanson's house.

20 A. Okay.

21 Q. Tell the judge what (inaudible).

22 A. That meeting, and I do not recall the specific
23 date we had that. That was a meeting that was, I
24 guess, coordinated efforts through local
25 delegation members, local legislators and some

Usry - Cross by Mr. Player

1 other parties within DOT, along with property
2 owners, that best I can remember that fronted
3 along Ascauga Lake Road and right at the corner
4 where Ascauga Lake Road and Sudlow Lake Road meet.
5 So you had SC DOT officials, you had local
6 legislative delegation members and property
7 owners, homeowners, and I was there as well.

8 Q. And if we go off the record for a second, just
9 want to put something out there. We discussed
10 this before we put him up there. I do not think
11 your father was at this meeting but he was at a
12 subsequent one. But I don't think that's -- I'm
13 not bringing it up. I just wanted to make sure --

14 A. Yeah.

15 THE COURT: Well, let me put it on the record
16 (inaudible). Tell me.

17 (inaudible cross talk).

18 THE WITNESS: Honestly, I do not --

19 MR. PLAYER: All he did was show up to represent
20 his concern. That is all he did.

21 THE COURT: There was no discussion about --

22 MR. PLAYER: No, no, no. I doubt he has any idea.

23 THE WITNESS: And I do not think he was at the
24 meeting I was at to begin with.

25 MR. PLAYER: I don't think he was at the initial

Usry - Cross by Mr. Player

1 meeting in 2000.

2 THE WITNESS: I think it was Shane Massey and --

3 BY MR. PLAYER

4 Q. You said Brandon Smith earlier?

5 A. Roland Smith, I'm thinking, but I --

6 Q. Okay.

7 A. -- I wouldn't swear to it.

8 Q. Okay. All right. Show the judge on the map --
9 actually (inaudible).

10 MR. MCCANTS: I was going to have Mr. Auld show.

11 MR. PLAYER: I was going to show where the 520
12 outfall is, and then where Hanson Burke and --

13 THE WITNESS: I can, I can point to it.

14 MR. PLAYER: Well, I just wanted it to be, you
15 know --

16 MR. MCCANTS: Well, if you can accurately. You
17 have got to remember that is --

18 THE COURT: I have got Post-its.

19 THE WITNESS: I can do Post-its.

20 MR. MCCANTS: Oh, that will work.

21 THE WITNESS: That will work.

22 MR. MCCANTS: What did you want him to mark?

23 MR. PLAYER: Where the 520 outfall is we are
24 talking about, and where Burke, Hanson and Sykes lived.
25 The ones that were making complaints about water.

Usry - Cross by Mr. Player

1 THE WITNESS: Now this is a map from 1964. So
2 these are general, best I can do, locations.

3 BY MR. PLAYER

4 Q. Never mind. I think it's too narrow of an area
5 for those things to even point.

6 A. Yeah, do the arrows. That works. Let's move this
7 one a little bit. Again, these are general,
8 general locations.

9 Q. Mm-hmm.

10 A. I think this was Mr. Hanson on this side. Isn't
11 that what you said?

12 Q. Mm-hmm.

13 A. You said Mr. Burke, all right.

14 Q. And then Mr. Sykes would be right at the v.

15 A. Yeah.

16 Q. Okay.

17 A. Best I can remember this is how it was laid out.
18 Want the judge to see it?

19 Q. Sure. So the other folks other than Mr. Fischer,
20 they were from a long ways away from the outfall
21 weren't they?

22 A. I don't know the exact distance, but they were --
23 their properties are fronting Ascauga Lake Road.

24 Q. Okay.

25 A. Not along the interstate.

Usry - Cross by Mr. Player

1 Q. Correct.

2 A. I mean, I don't, I don't know the exact distance.

3 Q. Sure. I'm just saying is it, you know, is it fair
4 to say they were about -- I mean, Jim Nance said
5 2,500 about 17 times, 2,500 feet from the outfall.
6 Would you agree to that?

7 MR. MCCANTS: Well, Your Honor, I have got to
8 enter and propose an objection to relevance. He's,
9 he's trying to make a reference to other claims and
10 other cases and whatnot. And this case is very
11 confined to the pleadings and the evidence in this
12 courtroom. Which is the, I mean, if it goes to
13 watching the same videos we showed in that file, that's
14 fine, but another trial another claim, this is not in
15 front of you.

16 THE COURT: Yes, sir. I don't think that the
17 trial has a particular relevance to this one. But the
18 relevance of him pointing out this outfall is, is for
19 what, Mr. Player?

20 MR. PLAYER: It's to show you that no complaints
21 were made until 2010 when they finished 520. And it
22 wasn't just my people complaining, it was people as far
23 as 2,500 feet away down Ascauga Lake Road. And they
24 were all complaining about getting too much water from
25 520.

Usry - Cross by Mr. Player

1 MR. MCCANTS: Those people need to be here to talk
2 about that.

3 THE COURT: Okay. Well, let's, let's move on from
4 this point. Let's move on from this.

5 MR. PLAYER: Okay.

6 BY MR. PLAYER

7 Q. Are you aware -- what happened as a result of that
8 meeting?

9 A. I can't say that anything definitive happened
10 because as a result of that meeting, to be honest
11 with you.

12 Q. Well, let me ask -- and you were a maintenance
13 engineer for Aiken County when that was going on,
14 correct?

15 A. That's correct.

16 Q. And do you --

17 A. Well, yes, at that time I was, yes.

18 Q. -- do you recall sending emails to Columbia saying
19 these people are getting a lot of water?

20 A. I believe I coordinated with officials in
21 Columbia, yes.

22 Q. Okay. And they just told you, well, that's not
23 what the math says, right?

24 A. Not what?

25 Q. That's not what the math says.

Usry - Cross by Mr. Player

1 A. The map?

2 Q. Math.

3 A. Math. It was my understanding and, I mean, I can,
4 I can only assume, based on my education and work
5 experience and career, that there was engineering
6 design completed for the project. So I, you know,
7 I -- I didn't do it. I didn't design it. I
8 didn't see the design. I didn't review it. I
9 didn't approve it. But based on my conversations
10 with the folks that were involved with the
11 projects, that everything had checked out.

12 Q. Okay. And you have seen this before, right?

13 A. I don't know if I have or not. I don't recall.
14 May have.

15 Q. Okay.

16 A. I just don't remember it.

17 Q. Do you deny that that's at the outfall of 520?

18 A. That appears to be at the outfall of 520.

19 Q. You think that's okay?

20 A. I think you would have to let me know when that
21 was, and I would have to look at the rainfall data
22 for that. I mean, I can tell you for -- without a
23 shadow of a doubt I know of two very heavy
24 rainfall events that occurred in the 2013
25 timeframe that, I mean, good luck at stopping

Usry - Cross by Mr. Player

1 that. I don't, I don't know how you would stop
2 that type of water.

3 Q. Okay.

4 A. Well in, well in excess of a 50-year storm that
5 would have occurred.

6 Q. Okay.

7 A. So, I mean, to answer your question, is that a lot
8 of water? I mean it's pretty visible that there's
9 a good bit of water there, but I don't know what
10 that's in relation to. I don't know what kind of
11 storm event that is. So I don't have an opinion
12 of it, to be honest with you.

13 Q. Well, it was established and conceded to that this
14 is May 15, 2014, and we had less than three inches
15 of rainfall.

16 MR. MCCANTS: I don't know if that's been
17 stipulated to, Your Honor.

18 MR. PLAYER: That was res judicata (inaudible).

19 MR. MCCANTS: Say what now?

20 MR. PLAYER: That is res judicata --

21 MR. MCCANTS: Woah, woah, no. No, sir. These are
22 different parties.

23 MR. PLAYER: Not the substance. You can't use
24 it -- this is a fact. It's not -- this has had no
25 relation to my client. This is their outfall. This is

Usry - Cross by Mr. Player

1 DOT (inaudible).

2 THE COURT: This is where we are discussing the
3 three inches directly about rainfall?

4 MR. MCCANTS: We are, I think, discussing -- he
5 said I don't know what kind of rainfall was at the time
6 that video was taken. Mr. Player's offered a date to
7 him and said we stipulated that. I don't think we have
8 stipulated that. I have stipulated to use the videos
9 that have been taken since construction of the project
10 took place. But I didn't stipulate --

11 THE COURT: All right, but is it stipulated as to
12 the date of the events?

13 MR. PLAYER: The name of the video is 5/15/14.

14 MR. MCCANTS: Well --

15 MR. PLAYER: And I can bring Jamie Burke up here
16 tomorrow.

17 MR. MCCANTS: No. I don't want to have to go
18 through all that. And I'm not going to disagree, but
19 don't ask him to quote what the rainfall data was on
20 that date.

21 MR. PLAYER: No. He just said he didn't know, and
22 I was saying that that -- if this is less than
23 three inches of rain, is that proper.

24 MR. MCCANTS: I guess that's the problem.

25 THE WITNESS: I mean that's --

Usry - Cross by Mr. Player

1 THE COURT: No, hold on.

2 MR. MCCANTS: His statement that it was less than
3 three inches. Okay. Oh, I'm sorry. We'll slow down.

4 MR. PLAYER: Well, then I'm giving him a question
5 in a hypothetical.

6 MR. MCCANTS: Okay.

7 MR. PLAYER: If this was less than 3 inches.

8 THE COURT: All right. So we'll -- you good? All
9 right. So we will continue with your line of
10 questioning.

11 MR. PLAYER: Okay.

12 THE COURT: Mr. Player.

13 BY MR. PLAYER

14 Q. If this is a less than two-year rainfall, is that
15 okay? And I'll give you (inaudible).

16 A. That's not a, that's not a two-year rain event in
17 my opinion. I don't have data sitting in front of
18 me to tell me what that is. But I've got enough
19 experience to know that that's probably not a
20 two-year rainfall event, and to tell me there's
21 three inches of rain, that doesn't really dictate
22 what type of storm it is just to tell me that.
23 Three inches of rain in 20 minutes is a lot
24 different than three inches of rain over a 24-hour
25 period.

Usry - Cross by Mr. Player

1 THE COURT: I have a question. When you say two
2 year -- I've heard.

3 THE WITNESS: Well, his question to me was if that
4 was a two, is that okay.

5 THE COURT: Okay.

6 THE WITNESS: That was his question to me.

7 THE COURT: Right.

8 THE WITNESS: And my response was I don't have
9 rainfall data sitting in front of me to tell me exactly
10 what event that was. But I can tell you that I doubt
11 very seriously that's a two-year rainfall event.

12 THE COURT: Okay. Very good. I just wanted
13 clarification of that. I misheard something.

14 MR. PLAYER: Which wasn't an answer to my
15 question.

16 THE COURT: All right. Ask him your question.

17 THE WITNESS: Which what?

18 BY MR. PLAYER

19 Q. My question is, assume this is less than a
20 two-year rain event, is that okay?

21 A. Assume that this -- why would I assume this?

22 Q. Because that's part of my question.

23 A. I mean, I don't even know how to answer that,
24 Mr. Player.

25 Q. Well --

Usry - Cross by Mr. Player

1 A. Assume --

2 MR. PLAYER: Well, I showed this video five years
3 ago in trial --

4 MR. MCCANTS: Oh, ho. Here we go, again. Okay.

5 MR. PLAYER: This is a prior inconsistent
6 statement. If I need to go get the transcript from the
7 trial I will. We don't get to redo -- they have
8 brought no witness that they brought in that trial for
9 this trial. You know why? Because they can't testify.

10 THE COURT: So this was used in a prior trial, is
11 that what you're saying?

12 MR. PLAYER: Yes. This was an exhibit to the
13 trial in which people 2,000 feet away --

14 (inaudible crosstalk).

15 THE COURT: All right. Mr. McCants, you have an
16 objection based on what?

17 MR. MCCANTS: We are trying a civil action which
18 has a number here in this courtroom that is framed by
19 pleadings. It is completely different from that other
20 case, in my opinion. And I understand Mr. Player's
21 desire to pick up that case and place it in this
22 courtroom for you to consider all the facts and
23 evidence, but the fact of the matter is it's irrelevant
24 to his clients' causes of action in this case. Period.

25 THE COURT: And you are trying to use prior

Usry - Cross by Mr. Player

1 inconsistent statements, use under the guise of prior
2 inconsistent statements, Mr. Player?

3 MR. PLAYER: Yes, Your Honor, because this is
4 different from what I -- what happened five years ago.
5 There was no objection to the amount of rainfall.

6 MR. MCCANTS: Where's the statement, though, is my
7 point. He's testifying as to what that other statement
8 is, Judge. And we don't have those statements in front
9 of us.

10 MR. PLAYER: All right. Okay, then we're going to
11 be here tomorrow.

12 THE COURT: All right. Well, Mr. Player, why
13 don't you rephrase your question and see if we can --
14 why don't you rephrase your question for me.

15 BY MR. PLAYER

16 Q. You don't remember seeing this video five years
17 ago?

18 A. I don't recall it, specifically. I remember
19 seeing a video.

20 Q. Okay.

21 A. And I know you made reference earlier to you
22 falling in this one, and I remember a reference
23 being made to you falling in the one we saw that
24 day, so maybe this is it. I don't know.

25 Q. Okay. And do you have a single shred of evidence

Usry - Cross by Mr. Player

1 that says and indicates to you in any way that
2 this is a more than two-year rainfall event?

3 A. I do not have that evidence.

4 Q. So I'm asking you to assume it's a less than
5 two-year rain event. Is that proper flow for a
6 two-year rain event to a neighbor's property?

7 MR. MCCANTS: Your Honor, he may be struggling and
8 I'm --

9 THE WITNESS: I have a very --

10 MR. MCCANTS: -- but I'm not sure what he's
11 talking about when he talks about a two-year rain event
12 in terms of volume, in terms of how long, for example.
13 Maybe I could ask Mr. Player to define what a two-year
14 rain event is. Maybe that will help. I, I just, I'm
15 watching Mr. Usry, and he's really struggling to answer
16 this question.

17 MR. PLAYER: Your Honor, DOT has regulations,
18 okay.

19 BY MR. PLAYER

20 Q. Do you agree DOT has regulations?

21 A. Regarding?

22 Q. Rain events and what you have to control?

23 A. I agree that there are design criteria and design
24 requirements that are abided by to the best of my
25 knowledge.

Usry - Cross by Mr. Player

1 Q. What are those requirements with regards to rain
2 events? What do you have to protect up to?

3 A. I, I'm not familiar because I'm not in design.
4 I've done design before, but I do not do that --

5 Q. Okay.

6 A. -- with the department.

7 Q. So can you explain to the judge what the
8 difference between a two-year rain event, a
9 five-year rain event, and a ten-year rain event?

10 A. A two-year rain event -- the difference is, is
11 those are the frequencies and the probabilities
12 that those rainfall events may occur. That
13 doesn't mean necessarily that when you say a
14 five-year rainfall event that you're only going to
15 see that event every five years. That just means
16 there's, you know, a probability that of
17 five percent, basically, that you will see that.

18 Q. Okay, do you know what has to be controlled for in
19 a design?

20 A. Specifically for DOT?

21 Q. In terms of what type of rain events have to be --

22 A. I just said I don't know that off the top of my
23 head. I do not know that.

24 Q. -- okay.

25 A. I'm not responsible for that.

Usry - Cross by Mr. Player

1 Q. But you are a -- I mean you are trying to deny
2 that it's a two-year rain event, right?

3 A. Here's the thing --

4 MR. MCCANTS: Objection.

5 THE COURT: What's the basis of your objection?

6 MR. MCCANTS: Respectfully, he's, he's
7 mischaracterizing his testimony and is also trying to
8 mischaracterize what's going on in his head. He's
9 saying he's trying to deny something. I don't think he
10 is trying to deny anything. He's struggling with the
11 question.

12 THE COURT: All right. We'll let him answer the
13 question.

14 THE WITNESS: Here's the thing. You're trying to
15 get me to say something is what you're trying to do.
16 And I'm not going to say that because I don't feel like
17 there's enough facts in front of me. I don't have the
18 specific information to tell you, and there is no sense
19 in me sitting here going I assume that this is a
20 two-year storm. Either it is or it isn't. If it's
21 not, it's something else. And there is data. You can
22 go pull it now to be able to determine all this. I
23 don't know what it was on May 5th -- May 15, 2014.
24 No clue. I haven't looked it up.

25

Usry - Cross by Mr. Player

1 BY MR. PLAYER

2 Q. Okay.

3 A. So I'm not, I'm not going to speak on it.

4 Q. But that's what you don't understand. When I ask
5 you to assume a fact and present your opinion, or
6 your answer based on the assumption of that fact,
7 you have to answer those questions.

8 A. But you're trying to make me assume something for
9 your benefit that's --

10 THE COURT: Well, as he said he presents a
11 hypothetical. I am instructing you to answer the
12 hypothetical. And with the understanding that it is
13 hypothetical. It is not a fact.

14 THE WITNESS: Hypothetically, I'm still struggling
15 with this because I, I don't think that's a two-year
16 storm. Hypothetically, if it was a two-year storm, I
17 think that there could be measures taken to assist
18 that.

19 BY MR. PLAYER

20 Q. Okay. Well, this video is from 2014. What has
21 DOT done in the last nine years to correct this
22 problem, if it is actually a problem? And I --
23 let me, let me -- scratch that. Let's back up.
24 Why do you think it's not a two-year rain event?
25 It's too much water, right?

Usry - Cross by Mr. Player

1 A. Yeah. It looks more than a two-year rain event to
2 me.

3 Q. That should be controlled then.

4 A. But I don't have those facts.

5 Q. Okay.

6 A. Well, I think what I'm looking at here based on my
7 experience in active construction projects that
8 I'm responsible for, I think what was there -- and
9 I think there's a witness after me that will be
10 able to confirm this, but I believe that was a
11 temporary sediment basin, to the best of my
12 knowledge. Which a temporary sediment basin
13 are -- they are typically required during the
14 construction of a project. It may or may not have
15 an outfall structure. Typically they will have
16 some sort of spillway that will allow water to
17 leave.

18 But in most cases temporary sediment basins
19 are actually removed once you meet the
20 requirements of stabilization on a project. And
21 stabilization is usually, kind of, dictated by
22 DHEC with our permits on the project. Usually
23 70 percent stabilization is considered the project
24 stabilized. And that means 70 percent over the
25 entire project.

Usry - Cross by Mr. Player

1 So I think what I'm looking at here is a
2 sediment basin at one point in time. Once the
3 project was vegetated and it met the requirements
4 of the temporary sediment basin being removed, I
5 have a strong feeling they probably took that
6 riprap and just spread it out.

7 And it is not uncommon for us at most
8 discharge points to put a riprap pad. That is an
9 effort to displace the velocity before it leaves
10 the department's right-of-way.

11 Q. Does that look like it's slowing water down?

12 A. It's slowing it down versus if it wasn't there,
13 that's a fact.

14 Q. Okay. And does that look stable to you?

15 A. Does what look stable?

16 Q. That flow?

17 A. Does the flow look --

18 Q. Is that stable? I mean, what you are saying is
19 there should be less control there, right?

20 A. -- not, that's not --

21 Q. Because this is intended to be taken away.

22 A. I'm saying -- and I was not the construction
23 engineer on that particular project. Most of my
24 projects that I deal with at DOT at a discharge
25 location will have a riprap pad at the outfall at

Usry - Cross by Mr. Player

1 the discharge point. Riprap pads are designed to
2 displace velocity coming through it. I can't
3 speak on if that was a design outfall pad or not.
4 I'm not sure.

5 Q. Okay.

6 A. That's, that's common practice though.

7 Q. Does that appear safe for human traffic?

8 A. To walk through the water?

9 Q. Mm-hmm.

10 A. Well, I don't, I don't consider any discharge at
11 any pipe safe for human travel. I'm not sure why
12 you would be doing that.

13 Q. Do you think they should put up a sign warning
14 people?

15 A. I don't think they make that sign. I'm -- not
16 that I'm aware of.

17 Q. Okay. How many times has Ascauga Lake Road been
18 shut down in the last ten years for flooding?

19 A. I mean, that I can speak on, twice that I know of.
20 And I wouldn't say we shut all of it down. We --
21 there were some times -- and oh, man, I would say
22 probably 2010, 2011, 2012 timeframe there were a
23 couple of events I know we had that we created
24 some, some flooding on Ascauga Lake Road. We had
25 to either close the road for a brief period of

Usry - Cross by Mr. Player

1 time to allow everything to, to migrate out. And
2 I know when I was in maintenance that we came back
3 along Ascauga Lake Road and made some adjustments
4 and modifications to our, our roadside ditches,
5 you know, with riprap and things of the sort.

6 Q. And that was more for the folks down at the
7 intersection between Sudlow and Ascauga?

8 A. Well, I'm not going to say it was for anybody
9 specifically. I mean, yes, they were involved as,
10 as requestors for service. But I mean the
11 department never wants to put a bunch of water in
12 the middle of a road to create a safety hazard, so
13 it was an effort to, to, you know, control the
14 best we could the water that was, that was going
15 through there.

16 Q. You don't have any first-hand knowledge of the
17 conditions of this area prior to the construction
18 being complete on 520, correct?

19 A. So prior to 2009?

20 Q. Yes.

21 A. No, sir.

22 Q. Okay.

23 MR. PLAYER: No further questions, Your Honor.

24 THE COURT: Okay. Any redirect, Mr. McCants?

25 MR. MCCANTS: I think not, Your Honor. Ready to

Usry - Cross by Mr. Player

1 move on.

2 THE COURT: All right. This witness may be
3 excused. Please watch your step.

4 THE WITNESS: Yep.

5 MR. MCCANTS: All right. Now do you intend this
6 to be part of the exhibit? Or does that just
7 illustrate --

8 MR. PLAYER: Yeah, yeah, sorry.

9 (inaudible)

10 MR. MCCANTS: Woah, woah. You shouldn't trust
11 that guy.

12 THE COURT: I don't.

13 (inaudible crosstalk)

14 THE COURT: Well, thank you for defending my
15 honor, sir.

16 MR. PLAYER: I would not let him talk.

17 THE COURT: I know it. All right. Mr. McCants.

18 MR. MCCANTS: I'm going to call Mr. Auld to the
19 stand, Your Honor.

20 THE COURT: All right.

21 CLERK: Do you solemnly swear the testimony you
22 should give the Court in this case shall be the truth,
23 the whole truth, and nothing but the truth, so help you
24 God?

25 THE WITNESS: I do.

Auld - Direct by Mr. McCants

1 CLERK: Okay. Please take a seat in the witness
2 stand and state your full name for the Court.

3 THE WITNESS: Donald Krishjen Auld.

4 COURT REPORTER: Spell your last name for me.

5 THE WITNESS: A-U-L-D.

6 DONALD KRISHJEN AULD, being first duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MCCANTS

10 Q. Mr. Auld, you go by Krishjen, is that correct?

11 A. That's correct.

12 Q. Can you spell that for the court reporter?

13 A. Kr -- all right. I'll go ahead and spell it for
14 you. It's K-R-I-S-H-J-E-N.

15 COURT REPORTER: K-R-I-S-H --

16 THE WITNESS: J-E-N. It took me a while in
17 elementary school to spell that.

18 COURT REPORTER: Thank you.

19 BY MR. MCCANTS

20 Q. It's a very unique spelling of Christian, but you
21 pronounce it Christian, is that correct?

22 A. You can thank my parents for that. I'm still not
23 sure where they came up with it.

24 Q. I understand. Where do you live?

25 A. I live in Columbia, South Carolina in the

Auld - Direct by Mr. McCants

1 (inaudible).

2 Q. All right. You are from there originally?

3 A. More or less. I grew up out in Elgin in Kershaw
4 County, and then moved into Columbia.

5 Q. Say you're not sure how your mother wound up with
6 that spelling. You haven't got any idea?

7 A. No. I'm not too sure.

8 Q. Your mother's background, she's a schoolteacher.
9 Where?

10 A. I don't know. My grandmother was a schoolteacher.

11 Q. Excuse me.

12 A. She used to teach at Greer.

13 Q. You asked me if I remembered her and I told you I
14 think I do remember Ms. Auld.

15 A. Sarah Auld. Yes, sir. She was a math teacher.

16 Q. Didn't have the pleasure, anyway. Okay. How are
17 you employed?

18 A. I work for Civil Engineering Consulting Services,
19 Inc. in Columbia.

20 Q. How long have you worked for them?

21 A. I've worked for them since January of 2009.

22 Q. And you, right now, are a professional engineer,
23 is that correct?

24 A. That's correct.

25 Q. You have got a PE?

Auld - Direct by Mr. McCants

1 A. That's correct.

2 Q. You hear that testimony earlier about Bobby Usry
3 and his credentials? So you are a PE?

4 A. Yes, as of 2013.

5 Q. Gotcha. Well, let's talk a little bit about your
6 education and your training. Let's start with
7 high school. Where did you finish high school?

8 A. I graduated from Hammond Academy.

9 Q. And what year was that?

10 A. That was in 1990.

11 Q. We were talking about Hammond earlier. Okay.
12 From Hammond where did you go?

13 A. From Hammond I went to Carolina. And I took some
14 time off. I graduated from Carolina with a
15 business degree in 1999.

16 Q. And ultimately you returned to USC, correct?

17 A. That's correct.

18 Q. Was it the Sumwalt School of Engineering?

19 A. It was the Swearingen, was where they --

20 Q. Was it Swearingen?

21 A. -- yes, sir. Down near the Whaley's Mill.

22 Q. Gotcha. So you took some time off between your
23 degree with business administration and returned
24 what year to Carolina?

25 A. Let's see. I graduated in December 2008, so

Auld - Direct by Mr. McCants

1 probably around 2005, I believe.

2 Q. What did you do in the interim?

3 A. Well, coming out with my business degree I worked
4 for a mechanical contracting firm.

5 Q. Which one?

6 A. North Valley Services. They're heating and air
7 conditioning. And then, after that I went into
8 surveying and field engineering for a construction
9 firm. And then I went back to Carolina, got my
10 civil degree, graduated in '99 and then went to
11 work for Civil Engineering Consulting Services.

12 Q. All right. So you say you have civil.
13 Specifically, what did you obtain a degree in when
14 you graduated from Carolina the second time in
15 1999?

16 A. It was engineering. It's a bachelor's degree of
17 engineering, majoring in civil engineering.

18 Q. That was my next question. But with an emphasis
19 in civil, correct?

20 A. That's correct.

21 Q. And part of that would have also been a
22 sub-emphasis in hydrology?

23 A. That's correct.

24 Q. Took classes regarding all that. And then came to
25 work for what I would call CECS, is that correct?

Auld - Direct by Mr. McCants

1 A. That's correct.

2 Q. All right. And you have worked there ever since,
3 is that correct?

4 A. Yes.

5 Q. Tell, tell Judge Pope a little bit about what you
6 have done as part of that consulting work.

7 A. Well, CECS is a transportation firm, so we do
8 civil engineering for highway roadway projects. I
9 started in their hydrology department and have
10 since taken over for the director of hydrology and
11 of SUE, which is subsurface utility engineering.
12 The bulk of my design work has been roadway
13 drainage, bridge hydraulics, sediment and erosion
14 control design for highway projects.

15 Q. I'm looking at your sheet. You're a registered PE
16 in South Carolina?

17 A. Yes, sir.

18 Q. And you said in North Carolina, also?

19 A. Yes, sir.

20 Q. And Georgia, also?

21 A. Yes, sir.

22 Q. Florida, also?

23 A. Yes, sir.

24 Q. You have got in here certified floodplain manager?

25 A. Yes, CFM.

Auld - Direct by Mr. McCants

1 Q. Tell us what that is.

2 A. So FEMA designates floodplains for communities.
3 And in the course -- generally you would have -- a
4 certified floodplain manager would work for the
5 municipalities, for counties, and they would help
6 that community plan their response to floodplains,
7 and the maps and manage things with that. And so
8 my certification, I have those same credentials
9 that I am familiar with flood mapping, flood
10 insurance, and so forth.

11 Q. And floodplain, by its very nature means you do a
12 lot with water, is that correct?

13 A. Yes, sir.

14 Q. And water is also designated as the subset, subset
15 field that you specialize in, which is what?

16 A. Drainage, hydrology, hydraulics.

17 Q. Hydraulics. And that's a pretty extensive field
18 of engineering, isn't it.

19 A. It is. You have the roadway design, but then we
20 design how any runoff and drainage of that road,
21 the rainfall that the road deals with, how to
22 convey it away safely to protect the road to
23 protect the traveling public.

24 Q. Which not always has been done with the designs of
25 roads throughout the world. Is that fair?

Auld - Direct by Mr. McCants

1 A. That's fair.

2 Q. It takes an expert to deal with the water that
3 comes from above, from heaven, correct?

4 A. Yes, sir.

5 Q. And that's your specialty, isn't it?

6 A. It is.

7 Q. And civil engineering in general deals a lot with
8 road construction and design, is that correct?

9 A. Yes, sir.

10 Q. Or design and construction. All right. And you
11 have been asked to provide expert services before
12 and litigate -- in consulting work and in
13 litigated cases, is that correct?

14 A. I have. I've never testified before but I
15 provided expert work for the cases, but have never
16 gone to trial.

17 Q. But when you say you have never testified, you
18 have been under oath, you just haven't been in a
19 courtroom like this. Is that correct?

20 A. That's correct. I have been deposed on cases
21 previously.

22 Q. Well, every expert has to have a first time
23 testifying. This is your day.

24 MR. MCCANTS: With that, Your Honor, I would ask
25 he be qualified as an expert in civil engineering with

Auld - Direct by Mr. McCants

1 a subset specialty in hydrology.

2 THE COURT: Mr. Player, do you have any questions
3 for this proposed expert?

4 MR. PLAYER: No, Your Honor. No questions, no
5 objections.

6 THE COURT: All right. We will designate him as
7 an expert in civil engineering.

8 MR. MCCANTS: Thank you, Your Honor. Thank you,
9 Mr. Player.

10 BY MR. MCCANTS

11 Q. You were asked by the Department of Transportation
12 to review this case, is that correct?

13 A. Yes, sir.

14 Q. And do you have certain opinions you want to offer
15 to Judge Pope with respect to what you have done?

16 A. I do.

17 Q. We'll talk about those opinions in a little bit,
18 but what I want you to do is tell her what you did
19 to get to the point where you can offer her, offer
20 to her your opinions. Okay. What did you do in
21 this case?

22 A. I reviewed the information that was provided by
23 the plaintiff. Information that was provided to
24 me by Mr. McCants. I looked at previous drainages
25 studies, the plan for the roadway, drainage

Auld - Direct by Mr. McCants

1 studies that were done after the road was
2 constructed, and I looked at USGS information for
3 topography. I looked at aerial imagery. I walked
4 the site, and reviewed the -- Mr. Simono's
5 testimony and reviewed the case material in
6 general.

7 Q. You have been out to the property involved in this
8 case?

9 A. Yes, I have.

10 Q. You have walked it and looked at it?

11 A. I have.

12 Q. That's generally part of being a civil engineer,
13 isn't it?

14 A. It is.

15 Q. You have to get out in the woods, don't you?

16 A. Yes, sir.

17 Q. We promised Judge Pope from the beginning in my
18 opening statement, we have got some historical
19 data for her to look at. Do you have historical
20 data for her to consider?

21 A. I do.

22 Q. And that historical data includes what?

23 A. It includes satellite imagery and USGS topographic
24 maps. That would be the bulk of the historical
25 information.

Auld - Direct by Mr. McCants

1 Q. All right. I kind of want to go back as far as
2 you feel comfortable going back, Mr. Auld, to
3 obtain from you information or facts that you used
4 to support your opinions in this case. I'm not
5 going back 10,000 years. I trust that is okay
6 with Mr. Player?

7 MR. PLAYER: Well, I mean you were just a little
8 toddler back then.

9 MR. MCCANTS: Okay.

10 BY MR. MCCANTS

11 Q. I'm going to show you this. And we actually
12 haven't marked this. You looked at this, Judge.
13 We, maybe, should mark it at some point. Let me
14 hand this to you, Mr. Auld, and ask you to
15 identify this if you would, sir.

16 A. This is the subject property.

17 Q. Let's work on the map first.

18 A. Okay.

19 Q. What kind of map is this?

20 A. Oh, I'm sorry. This is a USGS topographic map.
21 It's dated 1964 with a revision in 1980.

22 Q. (inaudible) topographic maps.

23 A. Okay.

24 Q. But give her a couple of minutes on what they are
25 and why they existed and what they're used for, if

Auld - Direct by Mr. McCants

1 you would.

2 A. Okay. So the USGS, United States Geological
3 Service surveyor goes out and they map the United
4 States. And they do survey work and will draw it
5 up into a topographic map. And the topography is
6 just how the land lays outs, hills and valleys and
7 rivers and streams. And they will detail that on
8 a map.

9 Q. What do the squiggly lines mean, for example, as
10 far as the topography. Show her the squiggly
11 lines.

12 A. So we have these lines here, you see these curving
13 lines. Those are contours. So these are areas of
14 equal elevation. So say, for instance, we have a
15 350 contour, that's your darker line right there.
16 So as that line goes around, everything is a
17 350-foot elevation relative to sea level. And
18 this would be either the top or bottom, and it's
19 going to drop down into it or rise up towards it.
20 And so this is a 400, so you know this is a
21 hilltop and it goes down into a valley. And
22 that's where you have this stream running through
23 the property.

24 Q. When I was in Boy Scouts the general principle was
25 the farther the lines are apart, the flatter it

Auld - Direct by Mr. McCants

1 is.

2 A. That's correct.

3 Q. The closer the lines are together, that indicates
4 steepness.

5 A. That's correct. It's, it's --

6 Q. We would use those maps to avoid the lines close
7 together because that means it was steep and it
8 was harder than to walk on a flat surface.

9 A. That's right. That's correct. The distance
10 between the lines is -- it depends on the scale of
11 the lines themselves but it could be one-foot
12 contours, which for every one contour it would be
13 a foot in elevation change. And then the distance
14 between them would be how quickly that, that foot
15 changes.

16 Q. And I'm not trying to make you an expert in
17 mapmaking, but you had to become familiar with
18 these types of maps to do your work, correct?

19 A. That's correct.

20 Q. And how in the world did they decide where the
21 lines are squiggly and how far apart they are?

22 A. It's based off of survey information. They have
23 gone out and physically surveyed the area.

24 Q. You were a surveyor?

25 A. Yes.

Auld - Direct by Mr. McCants

1 Q. So you know about going into the woods with one of
2 those things on a tripod and scope, and sending
3 somebody down, I don't know, 300 yards and scoping
4 it and getting an idea of where those lines should
5 be.

6 A. That's correct.

7 Q. A lot of work has gone into these lines over the
8 years, haven't they?

9 A. It has.

10 Q. And President Jefferson was a surveyor back in the
11 day. He drew contour maps. Is that true?

12 A. I couldn't speak to that.

13 Q. I'm just trying to impress you with my knowledge
14 of presidential history. Now, how reliable are
15 these maps for the purposes of what you do?

16 A. We, historically, have used USGS maps in design.
17 It's the basis of what we would use in delineating
18 watersheds, and for getting a general idea of
19 topography. So they are very reliable.

20 Q. And they're a product of an agency of the United
21 States government?

22 A. Yes.

23 Q. We talked about a blue ink line on the maps as
24 part of this case. We have bantered back and
25 forth about whether or not that is a blue-line

Auld - Direct by Mr. McCants

1 stream, or intermittent stream, or whatever it is,
2 and every little symbol on these maps has a
3 designation, is that correct?

4 A. That's correct.

5 Q. And you gave to me -- you have given this to me?

6 A. Yes.

7 Q. Which is kind of an index of symbols on what we
8 call a topo map. I'm going to call it a topo map,
9 okay?

10 A. Okay.

11 Q. Just explain briefly, if you can, to Judge Pope a
12 little bit about how the index, the guide to topo
13 maps, describes these blue lines.

14 A. It has -- so every symbol (inaudible) that's used
15 on a map, it has to be in this legend. So the
16 section we are looking at, it would be dealing
17 with rivers, lakes and canals. And so you have
18 perennial streams, perennial rivers -- of course,
19 perennial, it flows year-round.

20 Then we come down and we will have
21 intermittent stream or intermittent river. Now
22 the intermittent stream, it flows during periods
23 of wet weather, but it doesn't always flow like a
24 perennial stream would. And so it -- if you have
25 rainfall it's going to flow. But it also, as long

Auld - Direct by Mr. McCants

1 as it's not an overly dry spell, it will have some
2 base flow just from water that's flowing
3 underground that ends up in the stream. So it
4 gets water from there and then from rainfall
5 events. And so they don't flow year-round, but
6 it's -- if it's overly dry, they dry up. But,
7 generally, in wet weather conditions they're going
8 to have water in them.

9 Q. And you call mapmakers cartographers. Is that
10 what they are called?

11 A. That sounds right.

12 Q. Over the years, accumulate data to make marks on
13 topo maps, correct?

14 A. Correct.

15 Q. And we had a lot of testimony and discussion in
16 this case about this yellow line traversing the
17 Chadwick Development in Exhibit Number 2, and its
18 relationship to some reference on a topo map.

19 A. Correct.

20 Q. Correct?

21 A. Yes, sir.

22 Q. And what, in your professional opinion in
23 engineering, how would you characterize the
24 characterization of this yellow line on this topo
25 map? What is it?

Auld - Direct by Mr. McCants

1 A. It's an intermittent stream according to the topo
2 map.

3 Q. And I think we all know what those words mean but,
4 formally, would you tell us and tell the Court
5 what an intermittent stream is.

6 A. An intermittent stream is represented by a line
7 with breaks and dots in it. And so this stream
8 flows through the property is detailed on this map
9 as a blue line -- a broken blue line with dots.

10 Q. That was going to be my next question. What color
11 is it on the topo map?

12 A. Blue.

13 MR. MCCANTS: Have you got an issue with me
14 marking this, Mr. Tucker? You okay? This will be my
15 next exhibit, Your Honor.

16 THE COURT: All right.

17 MR. MCCANTS: Thank you, ma'am.

18 BY MR. MCCANTS

19 Q. All right. Mr. Auld, if you would, would you
20 write in, probably red, perhaps that won't be
21 confused with any other color in this plan. I
22 want you to draw a circle around that intermittent
23 stream that you describe. But before you do let's
24 make sure that it includes enough of the property
25 involved in this case. In other words, not a

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1 little circle. Kind of make it big enough so that
2 she can see it in relation to the property in this
3 case.

4 A. Just circle the track basically. This stream
5 comes down through here. It's not showing up too
6 good, but I tried to capture the full extent of
7 the stream as it ties into Franklin Branch.

8 MR. MCCANTS: Do you have a Flair pen? What
9 colors you got?

10 MR. PLAYER: What pen?

11 MR. MCCANTS: A Flair.

12 MR. PLAYER: I've got a whole lot.

13 MR. MCCANTS: Red Flair.

14 THE COURT: Mr. McCants, what is a Flair?

15 MR. MCCANTS: We used to use in elementary school.
16 I'm sorry.

17 MR. PLAYER: It's a brand, Judge.

18 MR. MCCANTS: Raise your hand if you know what a
19 Flair pen is. Does anybody else besides Mr. Fischer
20 know what a Flair pen is?

21 (Whereupon an off-the-record discussion was
22 held.)

23 MR. MCCANTS: All right. That looks good, I
24 think. I think the judge can see that now. So the
25 rest of everybody can see that. I'll pick that up. So

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1 that is, what you circled with a red -- excuse me,
2 orange felt tipped pen on Exhibit Number 10 is the
3 intermittent blue stream, is that correct?

4 A. That's correct.

5 Q. Okay. What's the date of this map again?

6 A. 1964.

7 Q. All right. Now, Mr. Auld, do you know when topo
8 maps were first created by the United States
9 government?

10 A. I do not.

11 Q. Have you -- we were going to try and get an old
12 one in here. It may be too late. But have you
13 looked at other older topo maps?

14 A. Yes, sir.

15 Q. Does that blue-line stream appear on those maps?

16 A. Yes.

17 Q. Have you got any idea how long that blue-line
18 stream has traversed the property involved in this
19 case and through -- meandered through this neck of
20 the woods?

21 A. I do not know the full extent. I do know that I
22 looked at a map from 1923 that had that same
23 stream on it.

24 Q. What does that tell you that if you see a
25 reference to a stream on a map in the late '20s?

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1 What does that tell you?

2 A. It's been there for quite a while.

3 Q. Long time?

4 A. A long time.

5 Q. It's not man-made.

6 A. That's correct.

7 Q. All right. As a designer and engineer dealing
8 with roadways, what do you do when you confront
9 either bodies of water, or streams, or rivers, or
10 intermittent streams?

11 A. We have to design -- so the roadway is going to be
12 where the road goes. So they will choose the
13 alignment of where, the way it is going to best
14 fit. And that's determined off of certain
15 mathematical equations they have to, to use to
16 make sure that the road is safe for cars to drive
17 on.

18 Aside from that, whatever it goes over the
19 top of. We -- if it's going over a stream or a
20 river or anything, we have got to design the
21 conveyance for that body of water to pass under
22 the roadway. And so we'll look at the overall
23 contributing watershed, or drainage basin I think
24 is the term I heard frequently, but -- so a
25 watershed or drainage basin is that area of land

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1 that if a drop of water falls on it, it's going to
2 end up eventually going to that low spot. And so
3 we'll define that drainage basin.

4 We'll look at land cover. And we'll look at
5 how steep it is. If it's flat. The land cover
6 and steepness, those dictate what's called time
7 and concentration. So time and concentration is
8 how long it takes a drop of water at the
9 furthest (sic) distance time-wise, for a drop of
10 water to go -- to fall on the ground out of the
11 sky and end up to your point of analysis. And so
12 that's a function of the steepness and what the
13 land cover is, if it's wooded, or if it's just
14 grass, or if it's pavement, whatever the case may
15 be. And so that will determine our time and
16 concentration.

17 We'll take that and then look at land cover
18 again, to see -- so when a storm event starts, you
19 have rainfall that's going to fall out of the air,
20 and it's going to land on the ground. Well, some
21 of that is going to be absorbed. And that's what
22 we typically call initial extractions, when it's
23 absorbed into the ground.

24 Then once that ground absorbs as much as it
25 can, the rest of it goes to runoff. And the

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1 runoff is the surface water that then we have to
2 deal with, with our designs, our pipes and our
3 outfalls. It's to convey that underneath the
4 roadway through the DOT's property and out, allow
5 it to continue on its path.

6 Q. I think you included in your last answer that you
7 have to deal with water, correct?

8 A. That's correct.

9 Q. Why?

10 A. Water is -- can be a hazard. Water can be a
11 hazard on the road. So the first, first thing we
12 look at is that, is the vehicle, the type of
13 (inaudible). That's a common, common issue that
14 you have on roadways. So we want to get the water
15 off the roads as quickly as possible. And once
16 the water is off the road, then we have to convey
17 that water safely to, to an outfall. An outfall
18 is typically defined as where that break in the
19 right-of-way is. So where we leave SC DOT
20 right-of-way, that's typically the end of that
21 outfall.

22 And it -- so secondly, with water we have to
23 worry about any -- it's safely conveyed.

24 So say, for instance, we have a stream
25 channel or a river. We want to make sure that

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1 during storm events that that bridge, or however
2 you are conveying it, has enough capacity that
3 you're not worrying about the road overtop or the
4 bridge washing out or something along those lines.
5 And those are the two primary concerns with water
6 is traveling safety, safety of the traveling
7 public and then safety of the roadway.

8 Q. The first component of that safety, on the new
9 constructed road you are now creating an
10 impervious condition that previously would absorb
11 water. That's the first thing. Hard asphalt or
12 concrete, correct?

13 A. That's correct.

14 Q. The second component of that is, if you deal with
15 a stream or riverbed you have got to construct
16 safely above it or around it, correct?

17 A. That's correct.

18 Q. Most typical example, they have bridges crossing
19 the Mississippi River. That's a readily apparent
20 body of water, correct?

21 A. Correct.

22 Q. But what do you do with intermittent blue-line
23 streams that are not so apparent, you know. It's
24 apparent at some times, and some points you can
25 walk out there and it's as dry as a bone. Is that

Auld - Direct by Mr. McCants

1 correct?

2 A. That's correct. We still have to design for it
3 because during rain events, that's when it's going
4 to carry water. And we have to design for that
5 water that starts over here to make it through the
6 roadway and to continue on its path.

7 Q. And in addition, this other construction, it
8 creates impervious conditions that's going to
9 increase the amount of water that may be flowing
10 through an area, is that fair?

11 A. That's correct. Development in a basin, which is
12 happening everywhere, as you build up you have
13 more parking lots, you have more buildings, and
14 you have more runoff.

15 Q. As an engineer, what would happen -- let's talk
16 about probabilities. What could probably happen
17 if you didn't deal with that blue-line stream on
18 that topo map when you constructed the Palmetto
19 Parkway?

20 A. It would potentially overtop the roadway.

21 Q. And then what happens?

22 A. It would endanger the traveling public and wash
23 the road out.

24 Q. A road washout?

25 A. Yes, sir.

Auld - Direct by Mr. McCants

1 Q. And, tragically, we have seen these in the news
2 today with the events in Libya. I've seen it time
3 and time again, roadways may have not been
4 constructed correctly, literally falling down into
5 the water below. That's, that's the purpose of
6 proper engineering, isn't it?

7 A. That's correct. As a civil engineer we have an
8 obligation to protect the public.

9 Q. And based upon your review of the records and
10 documents, your discussions with DOT personnel,
11 others involved in the Palmetto Parkway, what is
12 your opinion within a reasonable degree of medical
13 certainty as to whether or not the Department of
14 Transportation properly designed and constructed
15 the parkway in relation to this intermittent
16 stream?

17 A. My experience and my opinion is it is properly
18 designed.

19 Q. All right.

20 MR. PLAYER: Judge, he said to a medical
21 certainty.

22 MR. MCCANTS: Engineering. Thank you, Mr. Player.
23 Madam Court Reporter, if you can clean me up I would
24 appreciate it.

25

Auld - Direct by Mr. McCants

1 BY MR. MCCANTS

2 Q. Within a reasonable degree of engineering
3 certainty.

4 A. Yes, sir.

5 Q. And you'll hear that phrase, again. Thank you,
6 Tucker. So we start from this basic proposition
7 that you think the project itself was properly
8 engineered and constructed. Is that a fair
9 statement?

10 A. That's fair.

11 Q. All right. Now, we then, kind of, get to the
12 issues in this case and the plaintiffs' complaint,
13 as you know, it is a result of the construction of
14 the parkway they have been suffering damages as a
15 result of water flowing across their property,
16 correct?

17 A. Okay.

18 Q. Is that generally what you understand is going on
19 in this case?

20 A. That is what I understand the case is about.

21 Q. All right. And you heard us talk a great deal
22 about the plans for a development known as
23 Chadwick and referencing the yellow line and
24 whatnot, correct?

25 A. Correct.

Auld - Direct by Mr. McCants

1 Q. Now, you have heard testimony, but I'm interested
2 in your opinion. What is this yellow line on
3 Exhibit Number 2, the Chadwick Development in
4 relation to the topo map?

5 A. The yellow line on the development plan is the
6 same channel that showed on the topographic map.

7 Q. If you had been the one designing Chadwick, would
8 you go and look at historical data before you
9 undertook to draw plans for Chadwick?

10 A. I would have an obligation to do that.

11 Q. A lawful obligation?

12 A. Yes, sir.

13 Q. And you can't venture back in time to dip into the
14 heads of the planners of Chadwick but, just based
15 upon your experience and your research in this
16 case, does it appear as though that someone did
17 refer to historical maps in drawing the plans for
18 Chadwick?

19 A. It does.

20 Q. Why do you say that?

21 A. Because the drainage channel, or the intermittent
22 stream that shows up on the topo map is also
23 mirrored in their development plan.

24 Q. You used the interesting word mirrored. It is, it
25 is a line which doesn't look like it was an

Auld - Direct by Mr. McCants

1 engineered line. It looks like it's a line that
2 is following something in history. Is that what
3 that is?

4 A. I would agree with that.

5 Q. Is there any question in your mind about that?

6 A. No, sir.

7 Q. All right. So, naturally, one looking at that
8 would say well, what did the planner or designer
9 look to, and how long has that line traversed that
10 property. And have you done that? Again, looking
11 at maps.

12 A. Okay.

13 Q. You have also looked at some aerial imaging, is
14 that correct?

15 A. That's correct.

16 Q. All right. Where are your actual photographs,
17 Mr. Auld? Do you have them with you on the
18 witness stand? I know we blew one up.

19 A. They're -- the ones I brought with me are in that
20 manila folder that's on the --

21 Q. Go grab it so we can --

22 A. -- I can.

23 Q. -- so we can look it.

24 (Whereupon an off-the-record discussion took
25 place among people within the courtroom.)

Auld - Direct by Mr. McCants

1 BY MR. MCCANTS

2 Q. All right. Mr. Auld, I'll hand you what I believe
3 is your best photograph with the exception of the
4 one we enlarged for Judge Pope. Let's walk
5 through this if we can, okay?

6 A. Okay. The first two would be the one that was
7 enlarged. Do you want to skip over?

8 Q. Let's skip over those for the time being. And
9 what I'm trying to do, let's go to the most recent
10 ones and get that.

11 A. Okay.

12 Q. Let me ask you some foundation. And you are going
13 to have to take that clip off if you want us to
14 get the Court to mark it, okay? And we want to
15 mark them as we go along showing the photographs.
16 All right. Let's look at the last one in the
17 back. And you have got labels on them, land cover
18 2010 10 5. Do you see that one?

19 A. Yes, sir.

20 Q. All right. Now first, let's get a foundation for
21 what we are doing here. Down there it says Google
22 Earth.

23 A. Right.

24 Q. Did you extract these or pull these images off
25 Google Earth?

Auld - Direct by Mr. McCants

1 A. That's correct.

2 Q. Yourself?

3 A. Myself, yes.

4 Q. And you heard me talking to Mr. Simono about the
5 reliability of Google Earth. Do you share his
6 thoughts in that regard?

7 A. I do. We use it frequently for design.

8 Q. We're getting reliable images from the satellites
9 that haven't been altered or doctored or anything
10 like that. Is that true?

11 A. That is my opinion.

12 Q. You feel comfortable with -- were all these
13 photographs pulled off Google Earth?

14 A. Yes.

15 Q. In your experience, and is it your opinion, they
16 are all reliable images?

17 A. That is my opinion.

18 MR. MCCANTS: All right. We'll mark this one
19 first, Madam Court Reporter. Mr. Tucker -- Mr. Player,
20 this will be a 2010 10 5.

21 (Whereupon an off-the-record discussion
22 occurred with the court reporter and attorney.)

23 (Whereupon an exhibit was marked.)

24 MR. PLAYER: Clarke?

25 MR. MCCANTS: Yes.

Auld - Direct by Mr. McCants

1 MR. PLAYER: Can I see the USGS for '64.

2 MR. MCCANTS: Yes.

3 MR. PLAYER: Thank you.

4 MR. MCCANTS: Can I keep going?

5 MR. PLAYER: Yes.

6 BY MR. MCCANTS

7 Q. All right. I'm going to hand you what the court
8 reporter has marked as Defendant's Exhibit
9 Number 11. Can you identify that for Judge Pope
10 and tell her what it depicts? In particular that
11 one has the Palmetto Parkway on it, correct?

12 A. That's correct.

13 Q. Depicted on it. So that?

14 A. This is 2010 imagery. It shows I-20 up here. And
15 you have Palmetto Parkway. This is the outfall
16 that we have been discussing. And this will be
17 DOT's property line. And as the, the intermittent
18 stream begins here and falls towards this outlet,
19 towards this direction before leaving the
20 property. And --

21 Q. All right. Then, let's take a look at the next
22 couple of images.

23 MR. MCCANTS: Madam Court Reporter, I would like
24 to mark these as 12 and 13. And, again, I think these
25 need (inaudible).

Auld - Direct by Mr. McCants

1 (Whereupon exhibits were marked.)

2 BY MR. MCCANTS

3 Q. Okay. And the next one would be 13. All right.
4 We'll do this, start looking at that one,
5 Mr. Auld. I'm going to hand you 13. So based
6 just upon my examination, 12 and 13 are the same
7 area as the one that's enlarged.

8 A. That's correct.

9 Q. All right. Tell the judge what we have got here
10 with Number 12 and 13. That's someone's swimming
11 pool, right?

12 A. Yes. Swimming pool. So, and we have 2007 there
13 which that's -- these are zoomed in off of the
14 image took out there.

15 Q. What is 2007?

16 A. I think that's 2007, where your hand is.

17 Q. This?

18 A. Yes.

19 Q. It says 2006 6 4.

20 A. 2006. Okay. That was supposed to be 2006 then.
21 I had a few of them floating around. So these
22 would have been the same time period as what that,
23 that image where your hand is. And these are down
24 --

25 Q. Give us just a minute.

Auld - Direct by Mr. McCants

1 A. -- okay.

2 Q. Where's the swimming pool on this?

3 A. It's all the way down here. So this is the
4 overview of the site.

5 Q. All right. Let me hand them back to you then.

6 A. Okay.

7 Q. These are a group.

8 A. That's correct.

9 Q. All right. That's a swimming pool there?

10 A. Yes, sir.

11 Q. All right.

12 (Whereupon an off-the-record discussion was
13 held between attorneys.)

14 MR. MCCANTS: If you just hold it up. There it
15 is. That was my error there, Your Honor. I recognize
16 that was the group for that one. Tucker, what you have
17 got is a group number. Your Honor, may I talk to
18 Mr. Tucker about organizing these?

19 (Whereupon, an off-the-record discussion was
20 held between attorneys.)

21 BY MR. MCCANTS

22 Q. All right. Let's walk through these and tell
23 Judge Pope what we are looking at.

24 A. Okay.

25 Q. 2006, is that correct?

Auld - Direct by Mr. McCants

1 A. That's correct, 2006 06 04.

2 Q. All right, now. Stop for a second. What's,
3 what's significant about 2006?

4 A. This is before SC DOT would have taken over
5 ownership of the acquired tract.

6 Q. Before they moved any dirt to construct the
7 Palmetto Parkway, correct?

8 A. Correct.

9 Q. And that shows an aerial image you believe is a
10 reliable image of the area before DOT began moving
11 dirt constructing the Palmetto Parkway, correct?

12 A. Correct.

13 Q. All right. Show the Judge -- show Judge Pope what
14 you have got.

15 A. So this is the same location that we see here
16 where the outfall is consistent. This is back in
17 2006. So this is the area where 520 was
18 constructed. And you can see where it was logged
19 through that stretch before DOT took over
20 possession of it. And so this would be the
21 condition of the tract before construction. And
22 what I'm showing with these is, as you zoom in you
23 can follow down, you can see the existing delta
24 pattern from the runoff where the creek is falling
25 through. You can also see the 72-inch pipes

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1 there. Here it's close-up, you can see it a
2 little bit better how the erosion would be that's
3 just -- in that delta area, and the close-up of
4 the pipes.

5 Q. Where are the pipes?

6 A. Right here.

7 Q. Those are the concrete, 72-inch concrete pipes
8 that we've talked so much about here?

9 A. That's correct.

10 Q. Viewed from above?

11 A. Yes, sir.

12 Q. Those satellites can actually see those big pipes?

13 A. It's impressive what they can do these days.

14 Q. I really want to focus on this one, okay.

15 MR. MCCANTS: Madam Court Reporter, this is going
16 to be -- does this follow this one?

17 THE WITNESS: That is a close-up of that one.

18 MR. MCCANTS: This will be the next one.

19 (Whereupon multiple exhibits were marked.)

20 BY MR. MCCANTS

21 Q. All right. Mr. Auld, let's talk about 15 and 16.
22 I'm going to show you 15 first. I would like to
23 know what date that image is pulled from Google
24 Earth.

25 A. The date of the image is February 1, 1994.

Auld - Direct by Mr. McCants

1 Q. All right. That's 12 years before construction
2 began on the Palmetto Parkway, is that correct?

3 A. Yes, sir.

4 Q. All right. Tell Judge Pope what you have got.

5 A. This is the same location we looked at previously.
6 And so we see the outfall. This is the stream
7 channel. You can see it much more clearly here as
8 it goes down and crosses. This is -- if you look
9 at the development map over there, this road they
10 have cut in, they have shown. This is the
11 drainage easement through this stretch here. It's
12 highlighted in yellow. You can see the pipes they
13 have arranged along the roadway here for placement
14 right at this point where their proposed road
15 would cross over the inlet stream.

16 THE COURT: All right. Did you get all that,
17 Madam Court Reporter?

18 COURT REPORTER: No.

19 THE WITNESS: Are you having trouble hearing me?
20 Oh, I'm sorry. I'll speak up.

21 COURT REPORTER: (inaudible).

22 THE COURT: Okay, we will project louder.

23 COURT REPORTER: Thank you.

24 MR. MCCANTS: Mark this as the next one.

25 (Whereupon an exhibit was marked.)

Auld - Direct by Mr. McCants

1 BY MR. MCCANTS

2 Q. All right. We actually enlarged 15 a little bit
3 more and put it on a board. We marked this as
4 Number 17, okay. Now it was hard for me to hear
5 what you were telling Judge Pope, but I'm going to
6 ask you a few questions. That is what, this dark
7 area on Exhibit Number 17?

8 (Whereupon an exhibit was marked.)

9 A. Mathis Lake.

10 Q. Use the topo to show Judge Pope where Mathis Lake
11 is on that old topographic map.

12 A. This is Mathis Lake here.

13 Q. Now, again, outfall being what?

14 A. That is the point at the current SC DOT
15 right-of-way, where their property ends.

16 Q. Now, just generally with your finger, mark an
17 outline where the Palmetto Parkway is in relation
18 to the outfall on Exhibit Number 17.

19 A. The Palmetto Parkway would fall somewhere through
20 this stretch along here with the edge of the
21 right-of-way would be along where the outfall mark
22 is.

23 Q. When we're talking about the outfall, we're
24 talking about that pipe underneath the interstate
25 that's discharging water the plaintiffs are

Auld - Direct by Mr. McCants

1 complaining about, correct?

2 A. Well, the outfall is technically where that
3 channel leaves DOT right-of-way.

4 Q. All right. Fair enough. I'm not being precise.

5 A. Okay.

6 Q. And there's another mark here called riser.

7 A. That's correct.

8 Q. We're going to talk about it in a second, okay?

9 A. All right.

10 Q. But I am particularly interested in the
11 description of what this white-appearing line is
12 along that area on the aerial image taken, if they
13 were, in 1994.

14 A. That is the intermittent blue-line stream that's
15 shown on the 1946 topo map, that's also detailed
16 on their development plan in the yellow
17 highlighter.

18 Q. I will leave it to the Court, the factfinder, but
19 would you agree with me that it is readily visible
20 from a satellite in this image that's marked as
21 Number 17?

22 A. Yes, sir.

23 Q. That's not a road, is it?

24 A. No, it's not.

25 Q. Are roads depicted on Number 17?

Auld - Direct by Mr. McCants

1 A. They are.

2 Q. And based upon your research and your information,
3 what roads are those?

4 A. The roads depicted, we have I-20 up at the top and
5 then we have the proposed road that's shown on the
6 development plan.

7 Q. The Chadwick development which was never
8 completed?

9 A. That's correct.

10 Q. But roads graded. We don't believe they were
11 asphalted.

12 A. That's correct.

13 Q. They were graded, correct?

14 A. Correct.

15 Q. What, what does it tell you that the satellite
16 with a camera, how apparent or visible that
17 blue-line stream is on Number 17 is if it can be
18 captured by a satellite? What does that tell you?

19 A. It's a significant drainage channel.

20 Q. It's been there a long time.

21 A. Yes, sir.

22 Q. To the point that it's eroded ground, taken down
23 trees that would have obscured a view, is that
24 fair?

25 A. That's reasonable.

Auld - Direct by Mr. McCants

1 Q. For example, show her where the timber was that we
2 believe, and I think the evidence shows, was
3 removed by the landowners before construction of
4 the parkway began.

5 A. So where the outfall line is, you see the outfall
6 mark on both maps. And so the DOT right-of-way
7 will follow this curve, and that was what was
8 removed. And I -- so you are looking at the
9 curves like this where this would have been the
10 section that's logged.

11 Q. All right. So that stream has flowed through
12 there for many, many moons.

13 A. Yes.

14 Q. To the point where it has eroded ground, taken
15 down or eroded top cover, what they call it in the
16 rainforest when you have a trees -- canopy.

17 A. Canopy.

18 Q. I mean it's taken away the canopy that would block
19 a camera on a satellite or a plane trying to
20 record an image. Is that fair?

21 A. That's fair.

22 Q. That's a lot, isn't it?

23 A. It is.

24 Q. All right. So what is your opinion then, to a
25 reasonable degree of engineering certainty, as to

Auld - Direct by Mr. McCants

1 the existence of the presence of severe erosion
2 due to a stream? Its presence in relation to the
3 construction of the Palmetto Parkway.

4 A. The stream and any associated erosion with it has
5 been a long-standing situation on the property
6 that was not aggravated by the Palmetto Parkway
7 construction.

8 Q. And the degree of severity before construction
9 would have been -- how would you characterize it?
10 Slight, moderate, heavy or severe?

11 A. The erosion itself is -- the condition of it from
12 my experience is, when I walked the site, is
13 consistent with a, with that type of stream. With
14 an alluvial stream that's going to have
15 degradation of the channel just related to water
16 flowing through it. That, that's consistent.

17 So what we are seeing over time, that level
18 of erosion within that channel is, is to be
19 expected. I don't honestly see anything
20 particularly out of the ordinary with that
21 channel. It's consistent with other channels that
22 I've seen.

23 Q. Is it consistent with the level of movement of
24 earth and dirt and trees that are in Mr. Saunders'
25 appraisal?

Auld - Direct by Mr. McCants

1 A. I would agree with that.

2 Q. All right. And you have seen, for example on
3 Number 6, it's no longer there because,
4 apparently, it may have been in the area of
5 acquisition but you have seen the historical
6 pictures. How would you characterize what is
7 depicted on Exhibit Number 6, if I may ask you?

8 A. As a stream channel.

9 Q. I called it a gully, chasm, riverbed. They seemed
10 to argue with that, so it is a severe depression
11 in the earth caused by erosion?

12 A. Yes. That is why that is there is due to erosion.

13 Q. And what causes erosion?

14 A. The water flowing through that channel.

15 Q. All right. While we're on the subject of the
16 timber cut, if the landowners cut the timber off
17 that section as described by Mr. Giddens and
18 before we -- I say we, our state Department of
19 Transportation, before they did any work, did that
20 help or hurt things with regard to the stability
21 of the ground out there for purposes of erosion?

22 A. It would have increased runoff and the likelihood
23 of sediment movement on site.

24 Q. All right. And you pointed out the delta area, I
25 believe --

Auld - Direct by Mr. McCants

1 A. Yes, sir.

2 Q. -- that we have. Then let's move to the flow of
3 water. And I'm going to try and get through this
4 without displaying too much of my ignorance about
5 physical and scientific principles, but it, it
6 appears to me after listening to Mr. Simono, that
7 we have passed the issue in this case as to
8 whether or not the volume of water flowing onto
9 the plaintiffs' water (sic) is an issue. That
10 we're more focused on the speed or the velocity of
11 that water. Is that your understanding?

12 A. Yes, sir.

13 Q. So they don't at least, from their own expert's
14 testimony, they don't complain of the volume of
15 water whether it be a quart or a gallon, but it's
16 how fast that gallon of water is moving, correct?

17 A. Correct.

18 Q. All right. I want you to tell Judge Pope what you
19 have done to research that issue and what
20 conclusions you have come to with regard -- and
21 you can talk about the amount also, but we are
22 particularly interested in what the flow
23 characteristics are, okay? Preconstruction and
24 post-construction.

25 A. I reviewed the SC DOT design work in preparation

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1 for coming here today. What I saw was that in
2 2013, as a result of what happened previously with
3 Auscuaga (sic)Lake Road -- Ascauga Lake Road, I'm
4 incorrect with my pronunciation sometimes. There
5 was a riser structure that was installed on the
6 upstream end of the pipe that is passing under
7 526(sic), which is what we identified here as a
8 riser.

9 Q. Would this help?

10 A. That might. Yes, sir.

11 Q. Can you come down here for a minute? Is that all
12 right, Judge, for him to come down? And, Judge,
13 we would have this reduced to a smaller size, a
14 manageable size if you request it. But I'd like
15 to go ahead and mark this one real quickly.

16 THE COURT: Certainly.

17 MR. MCCANTS: What are we up to next, Madam Court
18 Reporter?

19 COURT REPORTER: (inaudible).

20 MR. MCCANTS: What number are we up to next?

21 COURT REPORTER: Eighteen.

22 MR. MCCANTS: I'm sorry, I shouldn't ask. I'm just
23 going to hand it to you. Sorry about that. Okay, you
24 got it?

25 (Whereupon an exhibit was marked.)

Auld - Direct by Mr. McCants

1 BY MR. MCCANTS

2 Q. All right. Number 18. Mr. Auld, come up close so
3 the judge can hear you, and also speak loudly so
4 Mr. Player can hear you and his clients.

5 A. All right. In 2013 there was the flooding
6 incident on Ascauga Lake Road. As a result of
7 that the department installed what's called a
8 detention riser on the upstream of the 54-inch
9 pipe that passes under the access ramp for
10 I-526 -- I-520. The riser works as a detention
11 structure. And it turned the (unintelligible)
12 area within the loop, and it's not clearly shown
13 here but it will probably show up better in one of
14 these illustrations.

15 Q. That help?

16 A. It does. Thank you. So this, this
17 (unintelligible) area which is the area between
18 the ramps, all the ramps are higher than the
19 inside of it. So what they allow it to do is they
20 allow water to clog up in this area, which makes
21 it a detention basin. And so with the
22 installation of this detention basin in 2013, what
23 we now have is a reduction in peak discharge
24 that's leaving the SC DOT right-of-way. The --
25 for the 2-year storm we have -- before I-520

Auld - Direct by Mr. McCants

1 construction, this is before any of this was built
2 when I-20 was still there, we had 52 CFS that
3 would run off onto the plaintiffs' property.

4 Q. Talk about CFS. What is that?

5 A. That's cubic feet per second. So it's a
6 volumetric measure by time. So if you want to
7 think about soccer balls or basketballs or
8 whatever the case may be, flowing through a pipe.
9 And so say that ball is a square -- cubic foot.
10 So that's a measure of volume. And so you can
11 move X amount of balls through that pipe. It just
12 depends on how fast they are going.

13 So if you can -- 50 cubic feet per second,
14 that's -- you're getting 50 balls through there
15 per second. Fifty-two cubic feet per second,
16 you're getting 52 balls through there per second.
17 And it's just a volumetric measure per time.

18 And so preconstruction, before I-520 was
19 constructed, there were 52 CFS discharging onto
20 the plaintiffs' property. After construction of
21 the riser in 2013 that was reduced by two CFS down
22 to 50 CFS. So we're moving two fewer balls onto
23 their property, essentially. That's for a 2-year
24 storm.

25 Now I think it's been discussed here, but the

Auld - Direct by Mr. McCants

1 2-year storm is, on average you're going to have a
2 storm of that magnitude, that much water every
3 two years. You might have two of them back to
4 back, but on average you are going to have it
5 every two years. And they look at the long-term
6 trends and they see how many times that level of
7 rainfall occurs. And it occurs about every
8 two years, that becomes their 2-year storm.

9 The next event we looked at was a 10-year
10 event. So for that 10-year event we're seeing a
11 little bit better performance. We had 107 CFS
12 before construction. After construction, with
13 this 2013 riser, we decreased it 7 CFS. So now
14 they're only seeing 100 CFS discharged on their
15 property. So there's a net benefit.

16 We also looked at it for the 25-year storm.
17 So the 25-years -- 10-years your storms get more
18 intense. You have more water the less frequent
19 the event is. With a 10-year storm it happens, on
20 average, every 10 years. 25 on average happens
21 every 25 years. So we have reduced it from
22 158 CFS to 126 CFS leaving onto the plaintiffs'
23 property for a 25-year event. And that's with the
24 construction of this in 2013. So --

25 Q. Now pause a second. Is that the riser that I

Auld - Direct by Mr. McCants

1 discussed with Mr. Simino and whether or not he
2 considered it as far as any opinion?

3 A. Yes, it is.

4 Q. And you heard what he said, he said he didn't.

5 A. That's correct.

6 Q. Is that significant to you?

7 A. Stormwater detention is a basic part of stormwater
8 control. And it's quantity control. And it's
9 used every day on any type of development. Even
10 with the previous development for Chadwick we
11 have, a detention structure was going to be used
12 right here, which is a detention basin, which it
13 has a riser associated with that. This little
14 pond was designed to control the stormwater runoff
15 from their development. So they have had internal
16 drainage design. You have catch basins and piping
17 discharging into the, the blue-line stream.

18 But you also had -- some of it was routed
19 down into this little pond right here. And so
20 from this little pond then it stores water and
21 discharges it back into that same (inaudible),
22 that same blue-line stream. And so what they are
23 doing is controlling for the additional runoff by
24 detaining some of it in this little riser, or
25 little pond detail. But the bulk of the drainage

Auld - Direct by Mr. McCants

1 is coming from off-site, from north of I-20
2 falling under I-20 to 520, down through their
3 property, under their proposed road, and on out
4 towards Ascauga Lake.

5 Q. While I'm thinking about it, the Chadwick plan
6 even had a riser, holding device and --

7 A. That's correct. That was for detention of their
8 on-site runoff.

9 Q. Yeah.

10 A. And it didn't have any impact -- they weren't
11 trying to detain anything in the main drainage
12 swell, though. This is a large volume of water.
13 It takes something on the scale of what we've done
14 here in the interchange area to detain that large
15 volume of water. This, this was not an intent to
16 do anything with what was coming into their
17 property. It's strictly dealing with on-site
18 runoff.

19 Q. All right.

20 A. So back to the question of velocity which, I
21 think, is where we are going with this. So the
22 velocity that water flows at in a channel is
23 dependent on a few factors. You have the
24 friction, which I think Mr. Simono touched on
25 that. If you think about it you can have a

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1 hardwood floor, you're going to slide across it
2 pretty easy if you're wearing socks. If you're on
3 a carpet, you kind of don't move too fast. Well,
4 the same thing with the runoff coefficient for
5 that pipe or channel.

6 Then you have the, the slope that something's
7 running at. And that's the grade, now, how steep
8 the hill is. And everything we do with storm
9 drainage -- well, I won't say everything but
10 99 percent of it is going to be driven by gravity.
11 So the steepness of that slope has a big impact on
12 how fast something moves. And if it's a -- so if
13 it's a flat slope, it's not going to move very
14 fast. Gets steeper, it goes faster and faster and
15 faster the steeper it gets. So that's the other
16 component.

17 The third component is the size of the
18 channel that you are running through. So if you
19 have a small channel it's got to, to move that
20 same volume of water, it's got to move a lot
21 faster. The bigger the channel, the slower that
22 water can move if you maintain the same slope,
23 same Mannings N value, same roughness. But as you
24 change some of those factors you can modify how it
25 flows and all.

Auld - Direct by Mr. McCants

1 But it's basically slope, roughness. And
2 channel cross-section. That's what determines how
3 much flow can be carried by gravity. And you can
4 carry it in a pipe, you can carry it in a ditch,
5 even a roadway. If look at -- if you're driving
6 in the city center where you have curb and gutter,
7 those gutters along the side, that's a channel.
8 So we design stuff the size to maintain how wide
9 that spreads out. That's based on slope, and all
10 of it works the same.

11 But what we are doing is we're moving a
12 certain volume of water at a certain rate, and
13 it's a function of how much water we are trying to
14 move, steepness, cross-section. So we are
15 putting, now, less water onto their property. So
16 we reduced one thing. We have changed the amount
17 of water that is going over to it.

18 We haven't changed the slope because that's
19 their property. We haven't changed the
20 cross-section because that's their channel. So
21 you have the slope, the cross-section that's on
22 their property. That dictates how that water
23 flows. Roughness, that's with that channel on
24 their property. That dictates how the water
25 flows. So we have no control over that because

Auld - Direct by Mr. McCants

1 that's all within the limits of their property and
2 none of that's been changed. That's constant.

3 What we have done and what we've done to
4 benefit them is, we have reduced the amount of
5 water that's actually going through there.

6 Q. How do you get there though? I mean, I understand
7 the gravity from a standpoint. I look at it green
8 is in comparison to red over time. How do you,
9 how do you find out what numbers to put there?
10 How do you get to that conclusion?

11 A. Well --

12 Q. Those conclusions.

13 A. -- we model the drainage basin. We look at the
14 total contributing area. We'll look at land cover
15 to see how much runs off, how much of it gets
16 absorbed. We'll look at land cover to see how
17 fast it runs off. If it's on pavement, it runs a
18 lot faster. So that gives you a lower time and
19 concentration.

20 So you have got your initial extractions,
21 your run-off, how much is absorbed, and size of
22 the drainage basin. The size of the drainage
23 basin is usually fairly constant, especially when
24 you're dealing with large ones like this. So
25 we'll then look at the imperviousness, how much

Auld - Direct by Mr. McCants

1 water we get in, and we'll look at our time and
2 concentration, and we'll decide -- see how much
3 water we have. We'll compare that to land cover
4 beforehand, what the time and concentration was,
5 how much water you had then. And we'll take those
6 two numbers and we'll see if the pre exceeds the
7 post or the post exceeds the pre.

8 In the instance with I-520, prior to this
9 riser structure there was a slight increase in
10 discharge post-development compared to
11 predevelopment. So they put more imperviousness
12 down. That end result was there was more water
13 running onto the plaintiffs' property.

14 The original study looked at the depth of
15 flow in that channel. There was a negligible
16 change. I think it was, it was a negligible
17 increase, around ten percent if I recall
18 correctly. I could be mistaken. I just want it
19 on record as that. But that wasn't controlled
20 for. After this Ascauga Lake Road incident, they
21 put this in. So now, at this point, they are
22 controlling for the additional runoff that is
23 coming through.

24 And so the way this is going to work is you
25 have this large basin. So they have looked at and

Auld - Direct by Mr. McCants

1 said, well, we have got this much more water
2 coming into it than we did before. And we have
3 got to hold this water. We have to detain it.
4 And so we're going to hold this water here and not
5 let it flow out off-site at any higher rate than
6 what it did before we built I-520.

7 And so the way they do that is before there
8 was just this 54-inch pipe that went under the
9 interstate ramp. And so there was nothing on the
10 end of it to limit how much water. So however
11 much water got to it, it would go right through it
12 on out onto plaintiffs' property. But now they
13 built this box on top of it, on the face of it.

14 So they basically stuck a plug, a box on the
15 end of it. And so nothing can get through that
16 box. So you are not getting any water through it.
17 So then what they do is they cut, they cut holes
18 in the box. And they will cut smaller holes than
19 the size of the big pipe.

20 Q. What is the box made of?

21 A. Concrete. I'm sorry. Yes. It's a permanent
22 concrete structure that is made out of reinforced
23 concrete, and it goes -- so you will have your
24 54-inch pipe, and they will construct it over the
25 upstream end of it. This side right here. And

Auld - Direct by Mr. McCants

1 they will -- so that's this box that goes on the
2 top of it. And they will put smaller holes in it.
3 They put a 24-inch hole coming into it. So
4 there's a 24-inch hole coming and a 54-inch hole
5 coming out. So all this 54-inch pipe would see is
6 a 24-inch amount of water. Because it's got the
7 smaller hole. And then on top of that they put
8 another box. And in that box there's another
9 24-inch hole. And the reason you do that is for
10 lower flow events. This is what's metering the
11 water through, this first lower 24-inch pipe. And
12 as it comes up, water will get high enough it will
13 start coming into this pipe, too, so you can get
14 more water through. Because you don't want to let
15 the water get so that it's a danger to the people
16 traveling on the interstate or risk of overtopping
17 any of those ramps.

18 And so you -- at the very top of it you have
19 another opening, that if the water gets up this
20 high, it can all go over the crest, drop in and
21 come back out. So that's the emergency overflow
22 with it. But the end result is they store the
23 water. They keep it in that basin and just meter
24 the amount that is able to flow out.

25 Kind of with a garden hose. You know you

Auld - Direct by Mr. McCants

1 have a nozzle on it. You can open all the way up
2 and it shoots out, or you can screw it down a
3 little bit tighter and you don't get as much water
4 out. The same idea.

5 Q. Riser devices, are they relatively new in
6 stormwater?

7 A. Well, they were using them here back in the
8 1980s.

9 Q. Yes. True. When I say recent, within the last
10 50-some-odd years.

11 A. Well, yeah. It's a response to the Clean Water
12 Act. A lot of --

13 Q. What year?

14 A. -- back in the --

15 Q. '60s?

16 A. -- '60s and '70s. And then, really it didn't
17 get implemented in South Carolina until the 1990s.
18 That's when DHEC first had their real regulations
19 come out. But prior to that some of the counties
20 had different standards.

21 Q. All right. Pause just a second. And obviously
22 with these changes and what you could and couldn't
23 do with water, we didn't install risers everywhere
24 immediately but -- and they have taken time to be
25 installed in various stormwater plans, but is --

Auld - Direct by Mr. McCants

1 if we ride down the road and see those huge square
2 concrete pads with a manhole in the middle of it,
3 there's obviously something below it, correct?

4 Are those typically riser devices that are doing
5 what you're talking about, controlling amounts of
6 water and depositing it in a certain fashion?

7 A. You will see a lot of them in subdivisions or in
8 large, like the large Walmart parking lot where
9 they come in and pave the whole thing. You will
10 have an area that's a pond basin, typically, with
11 new development. Or in subdivisions you might
12 have a pond in the middle of the subdivision or
13 back behind some of the houses. And that's what
14 would have that riser structure. That's to
15 control the amount of runoff from that new
16 development from all that new impervious surface.

17 Q. And it's an intriguing device, what you're saying.
18 Water comes in. It rises and falls but it's
19 discharged at a more controlled rate due to the
20 construction of the device. Is that correct?

21 A. That's correct.

22 Q. All right. And that was put into place when?

23 A. This one was in 2013.

24 Q. All right. And you think that's important for
25 developing an opinion here from a hydrological and

Auld - Direct by Mr. McCants

1 civil engineering standpoint, right?

2 A. I do.

3 Q. And it is a lot of the foundation for your
4 opinion, is that fair?

5 A. It is. Yes, sir.

6 Q. All right. And based upon that, it is your
7 opinion within a reasonable degree of engineering
8 certainty that even the flow, the amount of water
9 may have slightly increased, the installation of
10 that riser in 2013 reduced it again. Is that
11 fair?

12 A. That's correct.

13 Q. And on top of that, reduced the speed or the
14 velocity of the water at the outfall point?

15 A. Well, you're moving less water so the speed is
16 probably going to go down a little bit, but it's
17 really the velocity through the reach is
18 determined by the slope of the ground, the
19 cross-section and the, and the roughness. None of
20 that has changed throughout the plaintiffs'
21 property. So that's been consistent since I-20 --
22 once 520 was constructed. None of that has been
23 changed. So those factors have not changed. The
24 only thing we can control is the amount of water
25 that we let out of this pipe here and that's been

Auld - Direct by Mr. McCants

1 reduced.

2 Q. I am going to put it in terms which I can
3 understand pretty simply. As a result of the
4 construction efforts, the installation of this
5 interesting intriguing riser device, Number 1: Is
6 more water coming off of this property onto the
7 plaintiffs' property now post-construction as
8 opposed to preconstruction?

9 A. No. There's less water now.

10 Q. Less water. Second question: Whatever water was
11 coming off of the Palmetto Parkway onto the
12 plaintiffs' property, it's speed or it's velocity,
13 what is the current speed or velocity in relation
14 to the preconstruction of the Palmetto Parkway?

15 A. Preconstruction of the Palmetto Parkway at that
16 point, I could not specifically answer that.

17 Q. Can you tell the judge, though, whether or not
18 it's coming faster off of there or slower?

19 A. It's -- so the discharge from this point to where
20 we get to their, their outfall, their property
21 line is very flat.

22 Q. Yes, sir.

23 A. And it has a lot of grass over the top of it.
24 Grass has a very high friction coefficient. In my
25 opinion, the water moving from the pipe to the

Auld - Direct by Mr. McCants

1 edge of the property will be going at a slower
2 rate than what it sees in the channel.

3 Q. You do a lot better than I say with that. And of
4 course, once it enters the plaintiffs' property
5 you don't have any control of it, do you?

6 A. That's correct.

7 Q. I mean that's their property.

8 A. That's correct.

9 Q. And their Chadwick plan anticipated the need for
10 devices, stormwater management would speak for
11 itself, correct?

12 A. Correct.

13 Q. And by the way, do you agree with everything that
14 was proposed as far as the Chadwick development?
15 Are you okay with that?

16 A. I don't see any obvious problems with it.

17 Q. All right.

18 MR. MCCANTS: Now one minute, Your Honor?

19 THE COURT: Yes.

20 BY MR. MCCANTS

21 Q. Mr. Auld, do you have anything else for the judge
22 in support of your opinions in this case?
23 Anything else you want to tell her to bolster or
24 support or add to your opinion?

25 A. No. I think I --

Auld - Cross by Mr. Player

1 Q. And have all of your opinions been, again, within
2 a reasonable degree of engineering certainty?

3 A. Yes.

4 MR. MCCANTS: Thank you. Thank you, Mr. Auld.
5 Mr. Player has some questions for you.

6 MR. PLAYER: Are you ready to proceed, Judge, or
7 you want --

8 THE COURT: Yes. You all need a break? Do you
9 need a break? All right. Mr. Player, we'll stand down
10 for about ten minutes.

11 MR. PLAYER: Okay.

12 THE COURT: And start back up again.

13 (WHEREUPON, the Court took a recess.)

14 THE COURT: Mr. Player.

15 MR. PLAYER: Yes, Your Honor. Thank you. Clarke
16 gave these to me in a certain order and then I switched
17 them.

18 CROSS EXAMINATION

19 BY MR. PLAYER

20 Q. All right. We're going to start with Defendant's
21 Exhibit 15. Okay?

22 A. All right.

23 Q. And you see there are these two lines, right? One
24 with the riser where the outlet pins are and then
25 there's one kind of parallel to it.

Auld - Cross by Mr. Player

1 A. Yes.

2 Q. And you agree that this is erosion, right?

3 A. I do.

4 Q. But you say this isn't?

5 A. That's correct.

6 Q. What visually do you see between those two lines
7 that indicates this is erosion and this isn't
8 erosion?

9 A. Well, I started with today's imagery in Google
10 Earth. Also looked -- transposed the topographic
11 maps over the top of it. This map, this -- what
12 you see here where this erosion is, is in the same
13 location as where the USGS map shows the
14 intermittent stream, and also matches over time as
15 you go through, and you can see it historically.
16 This is why I say this is the intermittent stream
17 because it matches up with where the intermittent
18 stream is shown on the USGS map, as well.

19 Q. And your testimony is that this has been going on
20 for a long time, right?

21 A. Yes, sir.

22 Q. So, and that's 1994. All right. 1994 was that
23 one and then we get to -- Clarke is trying to
24 confuse me.

25 MR. PLAYER: Did you put this one in?

Auld - Cross by Mr. Player

1 MR. MCCANTS: Let me see it a moment.

2 THE WITNESS: That was the second package of them,
3 I believe.

4 MR. PLAYER: Okay. All right. So we'll put this
5 in as Plaintiffs' 13. All right. You handed it to me.

6 (Whereupon an Exhibit was marked.)

7 MR. MCCANTS: Yeah, it was in the stack. In fact
8 it was 2006.

9 THE WITNESS: We had multiple copies up here.

10 MR. MCCANTS: Sorry?

11 THE WITNESS: We had multiple copies. So there
12 should potentially be one in that stack that should be
13 marked.

14 MR. MCCANTS: I don't think he's asking me whether
15 or not it's been marked. There's been (inaudible).

16 MR. PLAYER: She said no.

17 MR. MCCANTS: Okay. Well, mark it, yeah. That's
18 fine.

19 BY MR. PLAYER

20 Q. So this is 12 years later, right?

21 A. Correct.

22 Q. Where did it go?

23 A. It's right here. So, this is after the original
24 clearing was done for the development. So --

25 Q. I don't think that's correct. 1994?

Auld - Cross by Mr. Player

1 A. It was 1980s was what was on the --

2 Q. Oh. What development are you talking about?

3 A. I'm talking about the on-site development,
4 Chatham.

5 Q. Chadwick.

6 A. Chadwick, okay.

7 Q. Okay.

8 A. So you had work being done prior to this on-site,
9 which that would have destabilized anything that
10 was going on here. What we have here is when the
11 site is starting to regrow itself after that
12 development work was done and stopped.

13 Q. Okay.

14 A. So, as we move forward to here, we have a site
15 that's more stabilized after this development.
16 You can see this road here. See how it started to
17 even grow back in itself.

18 Q. Sure. You hadn't -- can you tell me what the
19 depth or any calculations with regards to erosion
20 from this picture?

21 A. No. But I can tell you that it's very obvious
22 that there is a channel there.

23 Q. Okay. But if there is an obvious channel here it
24 disappeared within 12 years, right?

25 A. Right.

Auld - Cross by Mr. Player

1 Q. Okay.

2 A. Because the truth of it, there's trees on top of
3 it. So you have canopy that's obscuring what's
4 there.

5 Q. Okay.

6 MR. PLAYER: Can I have this marked as Plaintiffs'
7 13?

8 COURT REPORTER: You have to move it in.

9 MR. PLAYER: Oh. I introduce that as
10 Plaintiffs' 13.

11 MR. MCCANTS: No objection.

12 THE COURT: All right. So moved.

13 (Exhibit entered into evidence.)

14 MR. PLAYER: I want to go through a couple of
15 things --

16 COURT REPORTER: One second.

17 MR. PLAYER: I'm sorry.

18 COURT REPORTER: It's okay. Okay.

19 BY MR. PLAYER

20 Q. I forgot where I was. Sorry. The riser. Your
21 calculations for your conclusion that they didn't
22 increase the amount of water or speed is based on
23 that riser being there, correct?

24 A. My analysis of that, yes. My opinion.

25 Q. So between 2009 and 2013 DOT was dumping too much

Auld - Cross by Mr. Player

1 water too fast there, correct?

2 A. There was a negligible increase. In looking at
3 the hydraulic reports it was not an excessive
4 amount of water. It would normally fall within
5 acceptable parameters of a negligible increase to
6 an outfall.

7 Q. I'm going to ask you about that. Did y'all say
8 that -- what is a negligible increase in flow?

9 A. It's kind of a rule of thumb, is 10 percent.

10 Q. Okay. 10 percent. So it only takes four
11 iterations to double the amount of water that is
12 being transferred with a 10 percent error, if it's
13 going the same direction every day, correct?

14 A. I'm not following you.

15 Q. All right. Say a hundred CFS. I increase it to
16 110. The next guy comes along and he raises it to
17 121. The next guy comes along and we're at 133.
18 Isn't that how that would work?

19 A. So who is the next guy? That's what I'm --

20 Q. Whoever is in charge of the discharge. And he
21 makes a development on the land that affects the
22 amount of water he's discharging, and he can
23 increase it 10 percent. That's going to get
24 exponentially huge as you go down the development
25 of the land, is it not?

Auld - Cross by Mr. Player

1 A. So you are saying where I-20 was built and then we
2 have 520 built and then somebody downstream from
3 there is going to increase it again and downstream
4 from there going to increase it again?

5 Q. No. I'm saying, I'm saying in general terms, you
6 have a 40-acre property. Somebody comes in and
7 uses 20 percent of it. It's going to increase
8 water flow for the neighboring property by
9 10 percent. And then somebody else buys it and
10 they change the footprint where they increase the
11 water. It doesn't take very long to double the
12 water, right? You're not keeping it stable if
13 you're allowing a 10 percent rate of error, right?

14 A. I'm don't know if it's rate of error, per se.
15 It's a change in discharge so I don't know if
16 there's an error involved with it.

17 Q. So -- okay. If the detention riser works because
18 they were sending a lot more water a lot faster
19 between 2009 and 2013, correct?

20 A. No. We have not established it was a lot more
21 water. There was some water.

22 Q. Okay. And what detention measures were in place
23 between 2009 and 2013?

24 A. There were none at that point.

25 Q. Okay. And, again, I want to make sure that we

Auld - Cross by Mr. Player

1 agree, this is the -- you called it a watershed
2 basin, this is the outfall. The watershed basin
3 was about 220 acres, correct?

4 A. That's what you -- the DOT analysis showed and
5 that's what your expert --

6 Q. Okay. So 220 acres of water has been sent to my
7 clients' property through CFS pipes with a Manning
8 coefficient of 012 -- .012, correct?

9 A. That's correct. The pipe where it's in is .012.
10 The channel that it's flowing from, over about
11 200 feet, would not have that same impact.

12 Q. Say that one more time.

13 A. So there's about 200 feet before, where the pipe
14 opens up and you start into a grass channel,
15 before it enters your clients' property. So that
16 would not have the same Mannings value as the
17 concrete pipe.

18 Q. If it was, if there was riprap down there what
19 would the --

20 A. The riprap is probably about a 035 and 04.

21 Q. Okay.

22 A. Grass would be higher than that.

23 Q. All right. But before that pipe was there that --
24 it definitely wasn't a 0.12 coefficient in
25 (inaudible), correct?

Auld - Cross by Mr. Player

1 A. Well, the pipe is a good ways from the outfall.
2 You're about 200 feet. So the flow along that
3 stretch from one of the pipe outlets to where you
4 get to the edge of the right-of-way, what's
5 happening in that channel is going to have more
6 impact on the velocity of the water than what's
7 happening in the pipe.

8 Q. I understand there's going to be a change from the
9 pipe to my clients' property. But my question is,
10 DOT changed the flow of water to make it
11 extreme -- much more rapid in terms of sending
12 this to the outfall of that pipe, right?

13 A. I don't necessarily agree, because what you have
14 starting up one side of I-20, you had an existing
15 48-inch pipe that conveyed water from the north
16 side of I-20 under I-20. And that pipe then
17 discharged into a channel that would eventually
18 make it onto your plaintiffs' property.

19 Q. Okay. And stop for just a second. I know what
20 you're saying. That's not predevelopment.

21 A. How so?

22 Q. Because you just said pipe.

23 A. Yes. It's predevelopment prior to the I-520
24 project.

25 Q. That -- that's your understanding of

Auld - Cross by Mr. Player

1 predevelopment?

2 A. That is the definition of predevelopment. It is
3 what occurs prior to your project. It doesn't
4 have anything to do with what's occurred in the
5 basin that you can't control. It's strictly to do
6 with what happens on your side. So I-20 was built
7 back, I believe, in the 1960s. Prior to that
8 there was development in the basin. I-20 was
9 constructed, there was a pipe put in. Prior to
10 I-20, you have the predevelopment and I-20 is
11 built. So that's post-development. But then that
12 becomes the existing condition.

13 Q. All right.

14 A. You can't, you have to only compare it to the
15 existing condition. So that's at the time of
16 design, at the time of construction. That's your
17 predevelopment. What happens in that watershed on
18 your site only, is what you can control.

19 Q. Okay. Well, DOT has controlled this for quite a
20 while, correct? And the developments that you
21 just mentioned were all DOT developments. So
22 under your analysis every time they put some other
23 type of structure out there for stormwater they
24 get 10 percent leeway.

25 A. No. That's not what I said.

Auld - Cross by Mr. Player

1 Q. You just said 10 percent, you can add 10 percent,
2 and that's negligible.

3 A. So back when I-20 was constructed, back in the
4 1960s, there were no stormwater regulations.

5 Q. Okay.

6 A. So the stormwater regulations came about with the
7 Clean Water Act. And DOT and SC DHEC, so SC DHEC
8 is the regulating authority. Water detention and
9 those requirements really came into being in the
10 early '90s. And so you started looking at pre
11 and past development discharges back at that time
12 period. It wasn't as much of a concern prior to
13 that. In 1960s it wasn't much of a concern.
14 There was nothing out there. It was just an
15 interstate being put in with a lot of wooded
16 areas. If you have a negligible increase in
17 discharge, it's not going to impact anybody and
18 that becomes your current existing condition.
19 Prior to when your -- when anybody was involved
20 with this tract of property.

21 Q. Okay. And then the next time they build
22 something, according to you, they are going
23 through the 10 percent increase they got on the
24 first development.

25 A. No. I'm saying there was no issue with

Auld - Cross by Mr. Player

1 development. So any town, Aiken, Columbia, any
2 town that you built back in the 1960s, that was
3 not a concern.

4 Q. I'm saying from the time that the Clean Water Act
5 regs came and from now, moving forward, you're
6 saying that you can add 10 percent for every
7 project that is developed on land. Every time you
8 do a new project your baseline is set back to the
9 10 percent you were able to flood to your neighbor
10 before?

11 A. No. What I said was that it's generally viewed as
12 a negligible increase. Whenever we have an
13 increase, typically, we will look at the impacts
14 to the channel. If the channel can still
15 accommodate whatever discharge you have, then it's
16 considered no impact. So it's, it's, there's no
17 hard-and-fast rule. You have to look at every
18 situation.

19 Q. But this is -- it's more of a logic question. If
20 the pre-development only goes back to this
21 development, and whoever developed on the property
22 previously and had to follow the Clean Water Act,
23 they got a 10 percent Mulligan. So you are not
24 going back to what was predevelopment. You now
25 have 10 percent more water as a matter of fact.

Auld - Cross by Mr. Player

1 So every time a new job is done, if you don't go
2 back to predevelopment, before all development,
3 it's going to increase 10 percent compounded every
4 single time there's a new project.

5 A. So who is this hypo individual? Is this a state
6 agency? Is this an individual? Who is doing the
7 development?

8 Q. The DOT.

9 A. So, DOT, okay. So every time -- you're saying
10 every time DOT stacks a road, so if we kept
11 building roads on down until we got to Ascauga
12 Lake, or we did any kind of project, that we're
13 allowed to incrementally increase 10 percent every
14 time.

15 Q. You said that.

16 A. I'm just trying to understand the question.

17 Q. Yes, sir.

18 A. Okay. So what we have to look at is what impact
19 there is on the receiving water body on the
20 downstream properties. It's not -- with, with DOT
21 you have to look and balance what it would cost to
22 do excessive detention design versus a negligible
23 increase. And so because of how they are
24 regulated, because they are a state agency, there
25 is -- you have that certain gray area of that 10

Auld - Cross by Mr. Player

1 percent that we look at, but if we have that
2 10 percent we're looking at what impacts it has on
3 that receiving channel.

4 So if there is an adverse impact on the
5 receiving channel, if we increase it, we get it up
6 out of its banks or have an adverse impact to it,
7 then we would look at detention. But if what we
8 are discharging is not going to have a measurable
9 negative impact, then it's allowed to proceed. So
10 I think at some point you're going to get to -- if
11 you keep adding them all together you are going to
12 have more of an adverse impact.

13 So you -- that's not going to continue on
14 forever that you can add 10 percent, 10 percent,
15 10 percent. At some point it's going to have a
16 measurable impact. But our goal would be to not
17 have a measurable impact.

18 Q. I'm certain. But if you're allowed to add 10
19 percent every time you do one of these post/pre,
20 and the pre is only going back to the last
21 development, you agree that eventually you're
22 going to get to a substantial water increase that
23 will affect (inaudible)?

24 A. Well, we're not really allowed -- it's not you are
25 allowed to do 10percent every time. That's not

Auld - Cross by Mr. Player

1 the rule. We have to look at what impact that's
2 going to have. So if we build -- if we wind a
3 roadway here, we have to look and see what that
4 additional pavement, what impact that is going to
5 have on the overall watershed. If -- when we look
6 at the overall impact, if it's a negligible
7 impact, if there's no adverse impact, then it's
8 permissible. But if there's an adverse impact, it
9 wouldn't be permissible.

10 Q. Okay. You talked about the historical data that
11 you considered in your opinion. Did you consider
12 the timeline of complaints to DOT about water in
13 this particular area?

14 A. So the first record I saw of complaints began
15 prior to the riser being placed there.

16 Q. Correct.

17 A. And --

18 Q. After 520 was developed, correct?

19 A. -- I believe it was already, it was under
20 construction. However, that case worked out. I'm
21 not -- I wasn't directly involved with that.

22 Q. Okay.

23 A. So I, were there -- you are asking if I followed
24 additional complaints after that. I'm not sure of
25 the exact timeline.

Auld - Cross by Mr. Player

1 Q. I'm asking about your timeline. When did the
2 complaints about water coming from the area of the
3 outfall, when did DOT begin receiving them, that
4 you are aware of?

5 A. Well, the only thing I'm aware of is the issue
6 down at Ascauga Lake Road.

7 Q. Okay. That was in 2010 after they had built the
8 parkway, right?

9 A. I believe so. That sounds right. I'll accept
10 your data. I'm not confident on that but I'll
11 accept that if that's what you want to say.

12 Q. And I want to ask you, looking at this video, do
13 you see any problem with it? (inaudible).

14 A. I mean, not specifically, no.

15 Q. Right there? The actual outfall directly at the
16 property line? That's okay? That's controlled?

17 A. I mean, I've got a creek that runs down the side
18 of my yard that looks worse than that sometimes.

19 Q. Is it a perennial creek?

20 A. It is a perennial creek that's fed by 24-inch
21 pipe.

22 Q. Is that safe for human travel?

23 A. Well, most people aren't out traipsing through
24 that in the rain, I would assume. I mean, I don't
25 know whether that's even a factor of design. As

Auld - Cross by Mr. Player

1 long as that's outside of the clear zone that's on
2 a controlled access highway. So that fence is
3 there to keep people from accessing that area.

4 Q. Well, Bobbie Usry just told you the fence don't
5 work. He went under it.

6 A. Yeah. I mean, we've got kids running across the
7 interstate, too. I mean you can't, you can't
8 really control what other people do. But the
9 design for that, that amount of water, I can't say
10 that that is specifically out of the ordinary.
11 It's all relative to the size of the drainage
12 basin.

13 Q. Okay. Isn't it your job as a designer to prevent
14 scour and erosion on a neighboring property?

15 A. If it's a natural waterway, which is what's on
16 your plaintiffs' property, you generally try not
17 to do any modifications to that natural waterway.

18 Q. And it's your testimony that that's not modifying
19 that channel?

20 A. This is on DOT property where this is going, what
21 you are showing me in, in DOT right-of-way.

22 Q. No. Let's go back. That, you can see the
23 fence --

24 A. Correct.

25 Q. -- that was put directly at the property line for

Auld - Cross by Mr. Player

1 my clients' property. When it gets to the rapids,
2 that's DOT, your right-of-way.

3 A. From my experiences when I was out on-site walking
4 up to 520, there is a steep incline from there to
5 get from your clients' property onto 520.

6 Q. Right there?

7 A. Right there along that whole stretch, so not just
8 where water is running off. It's controlled
9 through that outfall, that existing ephemeral
10 stream, or intermittent stream. But all through
11 that area it's a fairly steep drop-off. So you
12 would expect where you have a steep drop-off that
13 you are going to see something like that.

14 Q. And you don't know the condition of this property
15 or this drop-off before when? You went out there
16 in 2013 or 2018?

17 A. I have not been at the site prior to 2020.

18 Q. Okay. Does that water appear to cause scouring
19 and erosion?

20 A. At that point, but once it leaves this area -- so
21 running through the channel to get to the edge of
22 the property, so then it's dropping off. At that
23 point you have a drop. So I'm assuming it's
24 following the existing topography that was out
25 there. Once it enters your plaintiffs' property,

Auld - Cross by Mr. Player

1 how it flows is strictly dictated by, by the
2 existing channel on the property, cross-section of
3 it and (inaudible).

4 Q. So DOT can send 220 acres of water through pipes
5 and as long as it travels over grass for 300 feet
6 they are done with the impact.

7 A. DOT is not sending it there. That's where the
8 existing topography, how that site has always
9 been. That ephemeral stream has always been
10 there. So DOT is just providing a conveyance
11 through their roadway from waters originating off
12 of their site, through their site, and allowing it
13 to continue on the path it's always followed.

14 Q. Okay. When there was no pipes here, what was the
15 friction coefficient that would have applied to
16 the flow of water?

17 A. Where? At what point? Because, I mean, you have
18 had (unintelligible) so you have the entire
19 (unintelligible) on your clients' property so --
20 it's what's happening on that property is what,
21 that property is what controls the flow through
22 that property. But you have going from I-20 down
23 to 520, and then down to the, to the property line
24 that has impacts through that channel, but the
25 channel itself on the -- on your clients' property

Auld - Cross by Mr. Player

1 that's what controls that flow through their
2 property. So what, irrespective of what the end
3 value of the conveyance was through the acquired
4 tract and under I-20, that's not going to
5 dramatically impact what is happening on that
6 stretch through your clients' property.

7 Q. Okay. Now I want to make sure you understand the
8 video. You see the fence line. I want you to
9 explain how my clients' property can cause the
10 rapids to develop before it reaches their property
11 line.

12 A. Rapids. So there's riprap left, there's riprap
13 out there on site. And that's what we are calling
14 the rapids.

15 Q. I'm talking about what's in the picture right now.
16 Those rapids going underneath the fence. That's a
17 whitewater rapid. I don't know how else to
18 explain it. I mean that is roaring water. Let's
19 hear it.

20 (WHEREUPON, a video was played for the
21 Court.)

22 A. No. I can hear it and I understand what you're
23 saying, but relative to the drainage basin that's
24 flowing through there that's not extensive.

25 Q. So it's your testimony that that water has been

Auld - Cross by Mr. Player

1 flowing like that for hundreds of years?

2 A. That's what I've seen through my analysis.

3 Q. Through math?

4 A. No, through observation. I reviewed the DOT's
5 calculations. I reviewed your expert's testimony
6 and his calculations. Both of those agreed with
7 each other. He supported their results. I saw no
8 reason to do additional calculations.

9 I reviewed existing aerial photography. I
10 reviewed existing and historical aerial
11 photography, existing and historical topographic
12 maps. All that supports my conclusion.

13 Q. Did you -- have you ever seen water flow through
14 there?

15 A. You're showing me there.

16 Q. Personally?

17 A. When I was out on-site there was water in the
18 channel and ponding areas but I have not seen, I
19 have to look back at pictures. No, I have not
20 seen water flow through there personally.

21 Q. Okay. I'll ask if you have ever seen this before?
22 And it's a portion.

23 A. Okay.

24 Q. It is not easy to doubt. What are those?

25 A. This is the current SC DOT design manual.

Auld - Cross by Mr. Player

1 Q. Okay, well, maybe. It's 2009, is that --

2 A. It's still current.

3 Q. -- okay. I'm wanting to go to the, Page 48, Storm
4 Drain and Roadside Ditches. And according to
5 that, what kind of year, what year storm does DOT
6 have to design for?

7 A. The design requirement for that cross-line is a
8 50-year storm.

9 Q. Okay. Because it's between 50 and 400 acres,
10 correct?

11 A. No. It is because it is a cross-line on a primary
12 route.

13 Q. And that's my question. I didn't know if this was
14 a storm drain which depends on the area which is
15 below it. You're saying this is a cross pipe?

16 A. That's correct.

17 Q. Okay. So it is a 50-year discharge?

18 A. Yes.

19 Q. And then Page 50. Two, two, twelve, right?

20 A. Yes.

21 Q. Second bullet point. What -- read that out loud.

22 A. The drainage outfall that are natural water
23 courses, no modifications will be made to the
24 channel except as necessary to prevent scouring --
25 excuse me, or erosion to accommodate highway

Auld - Cross by Mr. Player

1 drainage structures or to provide positive
2 drainage.

3 Q. So earlier you talked about you don't make changes
4 to existing structures, but this says unless it's
5 causing scouring. And my question is, that amount
6 of water coming off that backout, that's scouring
7 the ground, right? That's causing erosion.

8 A. Well, it's channeled within the DOT's control, so
9 outside of their control, which on your clients'
10 property that would be outside the area of design
11 and construction.

12 Q. Okay. But the design is to send that much water
13 to that point?

14 A. It's sending -- generally in hydrology and
15 hydraulic design you try to maintain the existing
16 flow patterns, the existing routings in a
17 watershed area. So historically, if water has
18 been going in a particular direction we try to
19 keep it going in the same spot it has always gone.
20 We don't develop new outfalls. We keep everything
21 the same throughout a watershed as much as
22 possible on the direction and the routings of the
23 water.

24 Q. Would a detention pond on the property of DOT stop
25 that, the water moving at that speed directly onto

Auld - Cross by Mr. Player

1 my clients' property?

2 A. It depends on how big of a detention basin you
3 want to put in. I mean, you could put, you could
4 stop the water. I mean, it is always going to go
5 there. That is a blue-line intermittent stream so
6 you wouldn't want to choke off water to it because
7 that would actually be eliminating that stream.

8 Q. But a detention basin doesn't cut off water, it
9 only delays the transfer.

10 A. That's correct. And that's what -- I forget what
11 the exhibit was but that's what we put in the
12 interchange.

13 Q. The riser.

14 A. That is a detention basin.

15 Q. Correct. But the detention basin, once it becomes
16 full is not going to affect the velocity of the
17 water, correct?

18 A. Once it becomes full it's not going to -- so it
19 affects the volume of water.

20 Q. Correct. But --

21 A. Well, actually it's the peak discharge. What you
22 design for is your peak discharge.

23 Q. Correct.

24 A. Which is a cubic feet per second.

25 Q. They're giving you some leeway. That peak

Auld - Cross by Mr. Player

1 discharge is going to fill up in the riser and not
2 explode and flood everything, right?

3 A. Well, the peak -- so you look at the peak
4 discharge for the predevelopment, before your
5 project was built, and you look at your peak
6 discharge afterwards. If it is excessive after
7 development, then you would volume, volumetric
8 control.

9 Q. Okay. Introduce that as 14.

10 MR. MCCANTS: No objection.

11 THE COURT: So moved.

12 (Exhibit entered into evidence.)

13 MR. PLAYER: Three pages of the hydraulic design
14 services.

15 MR. MCCANTS: All right.

16 BY MR. PLAYER

17 Q. I asked David, I don't know if you saw it. Watch
18 this video and see if you agree with me that it
19 looks like water is flowing into an area but it's
20 not flowing out, which seems to indicate it's
21 going underground. Would you agree with that?

22 A. I think -- I don't know what's 10 feet away so
23 it's hard to say. I mean, I can't say --

24 Q. At that particular point does it appear that it's
25 going underground?

Auld - Cross by Mr. Player

1 A. I could not say that one way or the other.

2 Q. Okay.

3 MR. PLAYER: Give me just one second. You're in
4 luck. No further questions. So Clarke will be the one
5 that takes us past five.

6 THE COURT: Mr. McCants, any redirect, sir?

7 MR. MCCANTS: I don't think so, Your Honor.

8 THE COURT: All right. All right. Please watch
9 your step.

10 THE WITNESS: Thank you. Do y'all want these for
11 evidence?

12 MR. PLAYER: I think that one -- you put the one I
13 handed to you?

14 COURT REPORTER: I did.

15 MR. PLAYER: Judge, you can have this. It's
16 whatever number it is.

17 (Whereupon an off-the-record discussion was
18 held by court personnel.)

19 THE COURT: All right. Mr. McCants, any further
20 witnesses, sir?

21 MR. MCCANTS: I do not, Your Honor. That would be
22 the presentation of the defendant's case.

23 THE COURT: All right. Gentlemen, do you all have
24 any closing remarks or any motions to make?

25 MR. MCCANTS: Mr. Player and I have talked about

1 closing remarks. I do have motions, Your Honor. For
2 the record I would renew the motions that I made at the
3 end of the presentation of Plaintiffs' case.

4 THE COURT: Yes.

5 MR. MCCANTS: I understand that you denied those
6 and I would renew those. And I understand that you,
7 perhaps, respectfully deny those at this point also, so
8 I'm just making sure I'm protecting my record --

9 THE COURT: Certainly.

10 MR. MCCANTS: -- if there's anything else I need
11 to add to that, please let me know. And I would make
12 more objections if I can. But for the time being I'm
13 going to rest on the motions that I made at the end of
14 the plaintiffs' case.

15 THE COURT: Yes. All right. Mr. McCants, I'm
16 going to respectfully deny, but your record is
17 available.

18 MR. MCCANTS: Thank you.

19 THE COURT: All right.

20 MR. MCCANTS: He and I talked about how -- we
21 very -- you have been very engaged in this case, we can
22 tell, Your Honor. We appreciate that because this is
23 an intricate and detailed case with a lot (inaudible).
24 I think I can speak for Tucker when I say we don't want
25 to keep you, at this point, listening to us argue

1 points which we think you and your law clerk have
2 understood and got your arms around. But we're happy
3 to do so if you want us to. But we don't necessarily
4 feel that we have to, to help our clients as part of
5 this process. (inaudible) said he was very comfortable
6 with you.

7 THE COURT: I will note it is a practice where I
8 take notes, even down to the time we change our
9 witnesses.

10 MR. MCCANTS: Sure.

11 THE COURT: So we do have, I think, I am
12 comfortable with the argument you have made thus far.
13 However, I do not wish to stop you from any argument if
14 that is what you wish to do.

15 MR. MCCANTS: We don't wish to do it, do we
16 Mr. Player?

17 MR. PLAYER: I always like to argue, but I mean,
18 Your Honor, here's -- this is more of just how, how do
19 you want to do this. Because in a case like this, I
20 mean, I don't think a verdict form, just a feeling -- I
21 I don't think that's sufficient for everything that is
22 in this. So I think there's going to be a written
23 order, which more often than not the judge says you
24 win, write the order. Or you say both submit proposed
25 orders, and if that one is going to happen then I'm,

1 like, then we're just going to put our arguments in
2 that and present it to the Court. Now, Clarke's old
3 and busy and he don't want to write a brief. But I
4 don't think he's going to have a choice, especially if
5 he wins.

6 THE COURT: Well, he's got young Mr. McCants.

7 MR. MCCANTS: Sorry?

8 THE COURT: You have got young Mr. McCants.

9 MR. MCCANTS: (inaudible). That's how old I am.

10 THE COURT: That's okay. You've got young
11 Mr. McCants should it be necessary that you write an
12 order.

13 MR. MCCANTS: That's correct.

14 THE COURT: So what I will do is look over all of
15 our notes extensively, as well as the exhibits. Are
16 there smaller versions of these that you wish for me to
17 have, or you wish for me to take? I mean, I can
18 certainly can store (inaudible).

19 MR. PLAYER: Clarke, why don't you just send her
20 digital copies, copies through email and then she can
21 print them out or do whatever she wants to? I can do
22 that with all my exhibits for sure.

23 MR. MCCANTS: What would you prefer? The reason
24 I'm asking that is because the detail in that,
25 especially in that Chadwick plan, is such that I think

1 you need a large view of it.

2 MR. PLAYER: Yeah. You can't read it unless you
3 have the large version.

4 THE COURT: Okay. We certainly will take that.
5 I've got, again, I've got room in my office where we
6 can display --

7 MR. MCCANTS: That would be great for the time
8 being.

9 THE COURT: -- and we will take the bigger version
10 of that and I will render a decision just as soon as
11 I've had the opportunity to look over all of my notes
12 and to do my own research and look over all the
13 exhibits. And so, please, look to hear from me. I
14 cannot give you timeline on it.

15 MR. MCCANTS: No pressure, Judge.

16 THE COURT: Except to say we'll do so as
17 expeditiously as possible.

18 MR. MCCANTS: And it's kind of like, okay, Judge,
19 I understand my motions with respect to the release and
20 mitigation. But the -- we would invite you, if you
21 think you need briefing on a particular area, I've
22 always thought that that's a good way to go about it.

23 THE COURT: Yes. I will certainly request that
24 should we get stuck in a place that needs more
25 information, I will. So don't be surprised if you see

1 that. But I will request briefing if I need to do
2 that.

3 MR. MCCANTS: Thank you, Judge. Great.

4 THE COURT: Anything further, gentlemen?

5 MR. PLAYER: No, Your Honor.

6 THE COURT: All right. Very good. It's been a
7 pleasure to -- because I know the both of you --

8 MR. PLAYER: Yes, ma'am.

9 THE COURT: -- so I hope y'all have a great rest
10 of the weekend.

11 MR. PLAYER: Thank you.

12 MR. MCCANTS: Thank you, Judge.

13 THE COURT: Thank you very much.

14 END OF TRANSCRIPT OF RECORD

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1 CERTIFICATE OF REPORTER

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3 STATE OF SOUTH CAROLINA)

4 COUNTY OF AIKEN)

5 I, the undersigned Emily H. Walker, official
6 Court Reporter for the 2nd Judicial Circuit of the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate, and complete transcript
9 of the record of all proceedings had and evidence
10 introduced in the hearing of the captioned case,
11 relative to appeal, in the Court of Common Pleas for
12 Aiken County, South Carolina, on the 21st of
13 September, 2023.

14 I do further certify that I am neither kin,
15 counsel, nor interest to any party hereto.

16 In witness whereof, I have hereunto
17 subscribed my name, this 10th of May, 2024.

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21 Emily H. Walker, CVR

22 Court Reporter

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