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RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master in Equity

Case No. 2010-CP-23-4786

Tony Ray Green and Frances
K. Pittman,

Appellants,

v.

Samuel D. Humphries and
Veronica L. Humphries,

Respondents.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No.: 2010-CP-23-4786

2012 APR -3 P 4: 17
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Tony Ray Green and Frances K. Pittman,

Plaintiffs,

v.

ORDER

Samuel D. Humphries and Veronica L. Humphries,

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

Verified

Defendants.

This matter comes before me by Consent Order of Reference dated April 18, 2011. The trial was held without a jury on March 21, 2012. The Plaintiffs were represented by M. Kyle Thompson, Esquire. The Defendants were represented by John H. Heckman, III, Esquire. At the conclusion of the trial, I make the following findings of fact and rulings of law.

FINDINGS OF FACT

1. Plaintiff Tony Green is the owner of a tract of real property, tax map number 0666040100713 on Beaver Dam Road in Marietta, South Carolina, said property having been deeded to him on April 24, 2000.

2. The deed to Tony Green references a plat recorded in Plat Book 24-W at Page 9 recorded May 6, 1993, in the Greenville County Register of Deeds. This plat states, with reference to the southern boundary for this tract of land, that "Beaver Dam Creek is the line". This plat also gives metes and bounds measurements for the same boundary.

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SC Court of Appeals

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3. Plaintiff Frances K. Pittman the owner of real property located at 602 Beaver Dam Creek Road, said property having been deeded to her jointly with Roy Green on December 30, 1994 with Roy Green deeding his interest in the property to Pittman on September 9, 1996. The tax map number for this piece of property is 0666040100700.

4. The legal description contained in the deeds to Frances Pittman for this property states that it is the last parcel of a tract of property deeded to Katie Emery in 1943 and does not contain any boundary description.

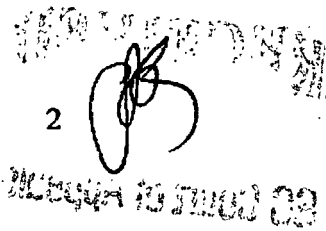
5. Defendant Veronica Humphries was deeded a piece of real property located at 604 Beaver Dam Road, Marietta, South Carolina on May 13, 1993. The tax map number for this piece of property is 0666040100708.

6. The legal description in the deed to Veronica Humphries references a plat recorded in the Greenville County Register of Deeds Office in Plat Book 20-Y at Page 97, said plat having been recorded on September 11, 1991. This plat contains the following language to describe the northern boundary of this property, "Beaver Dam Creek is property line". The plat also contains a metes and bounds description for the same boundary line.

7. Defendant Veronica Humphries deeded this same piece of property to Samuel Humphries on May 19, 2006.

8. The Humphries property is directly south of the Green property and directly west of the Pittman property. Beaver Dam Creek flows from west to east and is to the south of the Green property and to the north of the Humphries and Pittman property.

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A handwritten signature in black ink is written over a circular stamp. The stamp contains the number '2' and some illegible text. Below the signature, there is another stamp with the number '2' and some illegible text.

9. At some point prior to 2004, Tony Green and Pittman believed that the Humphries were attempting to build up the bank on their side of the creek and were doing so beyond the original property line.

10. In 2004, Roy Green, brother of Tony Green and Pittman, used equipment to excavate and dig in the creek and on the banks of both sides of Beaver Dam Creek, including on the side of the creek on property claimed by the Humphries.

11. Some time after that in 2004, a significant rainfall caused flooding on all properties involved.

12. Some time after that, Humphries erected a wall along the southern bank of Beaver Dam Creek.

13. Subsequent to the wall in question being built, Tony Green and Pittman observed erosion and damage to their respective properties.

14. On June 10, 2010, the Plaintiffs filed this action seeking a judicial determination as to the property line and seeking actual damages for damage sustained to their real properties.

15. On September 15, 2010, pursuant to South Carolina Supreme Court Rules of Alternative Dispute Resolution, a mediation was held. The Humphries and Pittman were in attendance, and Tony Green was receiving medical care.

16. That same day, Roy Green and other individuals utilized equipment and removed the wall and other portions of earth from the southern bank of Beaver Dam Creek on property claimed by the Humphries.

17. On November 3, 2010, the Defendants filed their Answer and Counterclaim. The Counterclaim sought an Order from the Court regarding the property line and damages from the Plaintiffs for the damage to the Defendants property.

18. Some time in December 2010, Roy Green used equipment to excavate and dig along the southern bank of Beaver Dam Creek. This was not done on the Humphries property but on property located to the west, or upstream, of the Humphries.

RULINGS OF LAW

A. Damages.

Each party has the burden of proof with regard to proving that the actions of the other party caused the damages in question. They also have the burden of proving the amount of damage.

I find that neither has met their burden of proof with regard to damages. I further find that both parties have contributed to changes in Beaver Dam Creek which has led to losses of all property owners involved in this matter.

Therefore, the Court declines to award damages to either the Plaintiffs or Defendants in this matter.

B. Accretion.

The Defendants have alleged that any increase of their property adjacent to Beaver Dam Creek is a result of natural accretion and that they are therefore allowed to claim the property as their own. Based on the evidence presented in this case, I find that there has been no natural accretion with regard to any of the property owners in this case.

C. Property Line.

Normally, an action to determine a property line is at action at law. See Coker v. Cummings, 381 S.C. 45, 671 S.E.2d 383 (Ct. App. 2008). However, a court may act in equity to settle and fix a boundary line between adjoining landowners when there is an inadequate remedy of law and when there is confusion or alteration alleged with regard to the boundary line. See Little v. Little 223, S.C. 332, 75 S.E.2d. 871 (1953); Knotts v. Knotts, 191 S.C. 253, 1 S.E.2d 809 (1939). Given that both the plat related to the Green property and the plat related to the Humphries property both include references to the creek being the property line and also show metes and bounds measurements that do not necessarily match up with one another, I do not believe there is an adequate remedy at law for the parties in question, and therefore it is incumbent to this Court, in equity, to fix the boundary of the property.

Therefore it is the Order of this Court that Bryan A. Gosnell, Registered Land Surveyor, survey a new property line as of the date of the hearing, March 21, 2012, and that said property line is and will be the exact center line of the creek from the western boundary of Humphries' property running along the creek to the eastern boundary of Humphries' property. Furthermore, Gosnell will prepare a plat setting forth this boundary line, and the parties will have this plat recorded. The boundary line will be a fixed boundary line using metes and bounds and will not use the creek itself as the boundary.

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D. Injunctive Relief.

Based on the actions and conduct of the parties up to this point, I find that an injunction shall apply to all parties of this case, their agents and/or servants. The parties are hereby enjoined from any excavation, alteration, reinforcement, or other work in the creek itself or along the creek bank where such creek banks are opposite from an opposing party in this case without prior written notice to the opposing party and without obtaining any and all necessary permits from Greenville County, South Carolina or the United States of America. This injunction shall be in force so long as the named parties or any family members of the named parties are the owners of the pieces of property in question.

E. Costs.

Each side is responsible for their own costs and expenses with regard to the litigation in this matter. Bryan A. Gosnell will submit the bill for surveying a new property line and preparing a plat to both the Plaintiffs and Defendants in this case, and each side is responsible for one half of the costs.

IT IS SO ORDERED!


The Honorable Charles B. Simmons, Jr.
Master-In-Equity

Greenville, South Carolina
March 30, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

Tony Ray Green and Frances K.)
Pittman,)

Plaintiffs,)

v.)

Samuel D. Humphries and Veronica L.)
Humphries,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-4786

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ORDER

2012 JUN - 6 P 3: 21

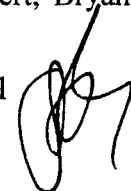
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

This matter comes before me on the Plaintiffs' Motion For a New Trial Or, In The Alternative, To Alter or Amend the Judgment in this case pursuant to Rule 59(a) and (e), South Carolina Rules of Civil Procedure. A telephonic hearing was conducted on May 22, 2012. The Plaintiffs were represented by M. Kyle Thompson, Esquire, and the Defendants were represented by John H. Heckman, III, Esquire.

The Plaintiffs' motion asked the Court to grant them a new trial or, in the alternative, alter or amend the ruling of the Court dated March 30, 2012, filed April 3, 2012, and received by the Plaintiffs' counsel on April 6, 2012. The Plaintiffs' Motion was filed April 18, 2012, and no objection was raised in regard to the timeliness of filing of the Motion, so I find that the Motion was timely filed.

In their Motion, the Plaintiffs raise three grounds for a new trial or for the Court to alter or amend its judgment. One of these grounds was that the Court ordered an expert witness of the Defendants to work as the Court's surveyor and survey the property line and prepare a plat showing the location of the current property line. The Plaintiffs objected to the use of the Defendants' expert, Bryan A. Gosnell, and alleged that Mr.

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fees incurred by Wallace. Wallace shall submit his invoice to the attorneys for the parties, and the parties themselves are responsible for the payment.

The Plaintiffs' other grounds for the Motion are that the Court failed to consider applicable case law in determining the boundary between the parties and that the Court, acting in equity, issued a ruling that was inequitable with regard to the fixing of the boundary line. The Court has heard arguments from counsel in this matter and is aware that the hearing, which lasted for a full three hours, was the culmination of two years of litigation. Both parties had ample opportunities to fully flesh out all issues raised in this case. The Court is not inclined to revisit the controlling law in this matter. Furthermore, nothing contained in the evidence presented to the Court suggests that the boundary line as set in the Court's Order as of March 30, 2012, is unfair or inequitable to the Plaintiffs. Nothing contained in any testimony offered by the Plaintiffs, their witness, the Defendants, or their witnesses suggest anything to the contrary.

THEREFORE,

IT IS ORDERED that the Court's Order of March 30, 2012, is amended to name Jeff Wallace as the Court's surveyor in this matter, and he shall carry out the survey as set forth herein.

IT IS FURTHER ORDERED that the Plaintiffs' Motion For New Trial or to Alter or Amend the Court's Order of March 30, 2012, as to all other issues is denied.

IT IS SO ORDERED!



The Honorable Charles B. Simmons, Jr.
Master-In-Equity

Greenville, South Carolina
June 5, 2012

12. The Plaintiffs seek actual damages to restore the real property to its prior state.

**FOR A SECOND CAUSE OF ACTION
(Nuisance)**

13. Plaintiffs reaffirm and reiterate all allegations in the above paragraphs as if fully repeated and incorporated herein verbatim.

14. Upon information and belief, Defendants' actions have unreasonably interfered with Plaintiffs' use and enjoyment of their real property.

15. Upon information and belief, Defendants' actions have substantially reduced the value of Plaintiffs' real property.

16. Upon information and belief, Defendants' actions are the actual and proximate cause of Plaintiffs' loss of use and enjoyment of their real property and the reduction in value of their real property.

17. Plaintiffs seek actual damages, punitive damages, and injunctive relief.

**FOR A THIRD CAUSE OF ACTION
(Trespass)**

18. Plaintiffs reaffirm and reiterate all allegations in the above paragraphs as if fully repeated and is incorporated herein verbatim.

19. Upon information and belief, Defendants or Defendants' agents did voluntarily enter the property of Plaintiffs for the purpose of constructing a wall without Plaintiffs' permission.

20. Upon information and belief, said entry onto Plaintiffs' property was wanton, willful, and reckless.

21. Plaintiffs moved the property line 11 feet onto Defendants property, filling earth behind the wall constructed by Defendants, causing the creek to run further into Plaintiffs property and erode their land at an accelerated rate

22. Upon information and belief, Defendants repeatedly came onto Plaintiffs' property over Plaintiffs' express objections.

23. Upon information and belief, Defendants' repeated destruction to Plaintiff's property was wanton, willful, and reckless.

24. Upon information and belief, Defendants' actions are continuous.

**FOR A FOURTH CAUSE OF ACTION
(Forcible Entry and Detainer)**

25. Plaintiffs reaffirm and reiterate all allegations in the above paragraphs as if fully repeated and is incorporated herein verbatim.

26. Upon information and belief, Defendants did use force or the threat of force to enter the property of Plaintiffs for the purpose of deseizing their of her real property.

27. Upon information and belief, Defendants have entered onto Plaintiffs property for the purpose of moving or removing property line pins.

28. That Plaintiffs seek a finding as to the exact boundary between the parties' property.

29. Upon information and belief, Defendant has encroached upon Defendants' property with structures and/or personal property.

30. That Plaintiffs seek an injunction requiring Defendants to remove all encroachments from Plaintiffs' property.

31. That Plaintiffs seek actual damages, punitive damages, and treble damages.

WHEREFORE, Plaintiffs respectfully prays as follows:

1. For Plaintiffs' Complaint to be granted in its entirety;
2. For an award of actual damages to each Plaintiffs;
3. For an award of punitive damages to each Plaintiffs;
4. For an award of treble damages to each Plaintiffs;
5. For an injunction restoring the natural flow of water, or in the alternative for an injunction otherwise resolving the issue of water flow on to and off of Defendants' real property;
6. For a finding as to the exact location and description of the boundary between the parties' property lines;
7. For an award of attorney's fees as to each Plaintiff;
8. For an Order allowing the parties to conduct discovery as provided under the South Carolina Rules of Civil Procedure;
9. For such further relief as this Court may deem just and proper.

Respectfully submitted,

Stokes & Southerlin, PA



Kenneth G. Southerlin, Jr.
Attorney for Plaintiff
SC Bar # 71891
P.O. Box 2077
Greer, SC 29650
(864) 801-0540

Dated: 6/7/10
Greer, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE 2010 NOV -3 P 2: 32

Tony Ray Green and Frances K.)
Pittman)

FILED - CLERK OF COURT)
GREENVILLE CO. S.C.) C.A. No. 2010-CP-23-4786
RECEIVED)
NOV 3 2010)

Plaintiff,)

v.)

ANSWER

Samuel D. Humphries and)
Veronica L. Humphries)

Defendants,)
_____)

The defendants, Samuel D. Humphries and Veronica L. Humphries, answering the complaint of the plaintiffs herein, respectfully allege that:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted, qualified or explained, is denied and strict proof is demanded thereof.
2. Defendants do not have enough information to admit or deny the allegations of Paragraph 1 and therefore deny same and demand strict proof thereof.
3. Defendants admit the allegations of Paragraphs 2, 3, 4, 5 and 6.
4. Defendants deny the allegations of Paragraph 7 and demand strict proof thereof.
5. Defendants deny the allegations of Paragraph 8 and demand strict proof thereof.
6. Defendants deny the allegations of Paragraph 9 and demand strict proof thereof.
7. Defendants deny the allegations of Paragraph 10 and demand strict proof thereof.
8. The Defendants deny the allegations of Paragraph 14 and demand strict proof thereof.

23. Any injury or damages sustained by the plaintiff were due to his own reckless, willful, wanton, negligent, careless, grossly negligent acts and conduct, which combined with any negligence on the part of the defendants, which is specifically denied, to produce such injury or damage, and without which the same would not have occurred; such grossly negligent actions on the part of the plaintiff being more particularly set forth as follows:

- (a) The Plaintiff has repeatedly used a track hoe or other similar heavy machinery to dig out the bank of the creek on the side of the property line or in the bed of the creek itself.
- (b) The Plaintiff has willfully, wantonly and repeatedly trespassed on to the defendants' property tearing out the bank and altering the creek's natural flow.

All of which are acts contrary to the laws and statutes of the State of South Carolina and were a proximate cause of any damage suffered by the Plaintiffs.

**FOR A THIRD DEFENSE AND
BY WAY OF COUNTERCLAIM**

24. Further answering the complaint herein and as a second defense thereto, the defendants re-iterate all of the allegations contained in the first defense above, as fully as if repeated herein.

25. On September 15, 2010 the Plaintiffs or their agents did willfully and voluntarily trespass on to the Defendants property against the Defendants' express objections by using a track hoe to dig out the Defendant's side of the bank, removing several of the Defendant's fruit trees and causing damage, erosion and waste to the property and altering the natural flow of the creek.

26. Several times prior to September 15, 2010 the Plaintiffs or their agents were seen digging with a track hoe or other similar heavy machinery in the creek bed both upstream and downstream of the Defendants property, intentionally altering the natural flow of the creek.

27. The Plaintiffs actions were intentional, wanton, willful, reckless, careless, negligent and or grossly negligent.

28. The Plaintiffs actions have caused physical damage to the Defendants property value.

29. The Plaintiffs actions constitute a nuisance to the Defendants.

30. The Plaintiffs have forcibly entered and detained the Defendants real property.

9. The Defendants deny the allegations of Paragraph 15 and demand strict proof thereof.
10. Defendants deny the allegations of Paragraph 16 and demand strict proof thereof.
11. Defendants deny the allegations of Paragraph 19 and demand strict proof thereof.
12. Defendants deny the allegations of Paragraph 20 and demand strict proof thereof.
13. Defendants deny the allegations of Paragraph 21 and demand strict proof thereof.
14. Defendants deny the allegations of Paragraph 22 and demand strict proof thereof.
15. Defendants deny the allegations of Paragraph 23 and therefore deny same and demand strict proof thereof.
16. Defendants deny the allegations of Paragraph 24 and demand strict proof thereof.
17. Defendants deny the allegations of Paragraph 25 and demand strict proof thereof.
18. Defendants deny the allegations of Paragraph 26 and demand strict proof thereof.
19. Defendants deny the allegations of Paragraph 27 and demand strict proof thereof.
20. Defendants deny the allegations of Paragraph 29 and demand strict proof thereof.
21. Defendants do not have enough information to admit or deny the balance of the complaint and therefore deny same and demand strict proof thereof.

FOR A SECOND DEFENSE

22. Further answering the complaint herein and as a second defense thereto, the defendants re-iterate all of the allegations contained in the first defense above, as fully as if repeated herein.


31. The Defendants seek an injunction requiring the Plaintiffs to refrain from harassing the Defendants, digging in the creek bed and to restore the natural flow of water.

32. The Defendants seek a finding as to the exact boundary between the parties' property.

33. The Defendants seek actual damages restore the real property and punitive damages for the Plaintiffs acts of trespass, nuisance and forcible entry.

34. The Defendants are informed and believe that they are entitled to judgment against the plaintiff in the sum of Twenty Five Thousand and No/100s (\$25,000.00) Dollars actual damages together with punitive damages in the appropriate amount.

WHEREFORE, the defendants, having fully answered the complaint of the plaintiffs, prays that the same be dismissed with costs, and that the defendants be awarded judgment against the plaintiffs in the sum of Twenty Five Thousand and No/100s (\$25,000.00) Dollars, for actual damages, together with punitive damages and for such other and further relief as this Court may deem just and proper.



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Attorney for Defendants

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	13 th JUDICIAL CIRCUIT
)	
Tony Ray Green and Frances K. Pittman,)	
)	
Plaintiff,)	
)	
vs.)	
)	REPLY
)	
Samuel D. Humphries and Veronica L. Humphries,)	
)	
)	Case #: 2010-CP-23-4786
)	
Defendant.)	
)	

The Plaintiff above would respectfully show unto the Court that the allegations of the Counterclaim which are inconsistency with the Plaintiff's Complaint are hereby denied.

WHEREFORE, Plaintiff prays:

1. That this Court take grant the Plaintiff's Complaint in full and deny Defendant's Counter-claim to the extent it contradicts Plaintiff's Complaint.
2. That the Court grant such other and further relief as it should deem fit and proper.

Respectfully submitted,

Stokes & Southerlin, PA



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 Attorney for Plaintiff
 SC Bar # 71891
 P.O. Box 2077
 Greer, SC 29650
 (864) 801-0540

Dated: 2/24/11
 Greer, South Carolina

154 (1918). These cases clearly set forth that when a waterway serves as a boundary between two parcels, and the waterway is moved or relocated, the boundary itself does not change and remains fixed. This applies to the case at hand where the boundary line of the deed into the Defendants is fixed not only by the location of Beaver Dam Creek as the boundary but also by a metes and bounds measurement. Despite the fact that Beaver Dam Creek's location has changed, under this case law, the location of the boundary itself does not change.

As the Court did not take into consideration this tone of case law, which the Plaintiffs did not have the opportunity to present at the conclusion of the taking of evidence, the Court should grant a new trial in this matter, or, in the alternative, amend the Court's judgment to set the boundary at the location of the time of the deed into the Defendants.

2. The Court erred by appointing the Defendants' expert witness as the Court's surveyor.

At the conclusion of this matter, the Court ruled that the boundary be fixed and that Bryan A. Gosnell, an expert witness for the Defendants, would survey the new property line for the creek. The Plaintiffs were not given any opportunity to object or otherwise suggest an equally qualified surveyor.

The appointment of a Court witness is a matter of discretion. The Court exercising discretion can be considered abuse when the Judge's ruling is (1) based on an error of law (2) is without evidentiary support (3) is not an exercise of discretion (4) does not fall within the range of permissible decisions applicable to the particular case. See Ex Parte U-Drive-It Inc., 369 S.C. 1, 630 S.E.2d 464 (2006). The decision to appoint Gambrell,

who appeared at trial and testified on behalf of the Defendants, and who had been paid to do work for the Defendants and had visited their property days before the trial in order to enhance his testimony on the Defendants' behalf, does not fall within the range of permissible decisions applicable to this case. Given the animosity between the parties and the significance of the fixing of a property line that will affect all future owners of both properties, the Court should have selected an unbiased person or entity to perform this function on behalf of the Court.

Therefore, the Plaintiffs would ask the Court to amend its judgment and select a different, unbiased witness to prepare a boundary line in accordance with the Court's Order.

3. The Court, ruling in equity, issued a ruling as the location of the boundary line that is unfair to the Plaintiffs.

The Court, in equity, ruled that the boundary line would follow the central line of the creek as it existed as of the day of the trial of this case. However, clear testimony from Plaintiff Tony Green and from the Plaintiff's expert witness, Alan Johnson, a licensed engineer who specializes in ground water issues, established that a bend in the creek bed on the easterly, or downstream, side of the Defendants property causes the creek to take a northerly bend before returning back to the south and continuing in its generally west to east flow. Plaintiff Tony Green testified that he has and continues to observe damage to his property as a result of high water flows that come into this bend and erode his property on the north side of the creek. Alan Johnson, in his capacity as a expert witness, testified that, regardless of fault, that the creek would continue to erode and cause damage to Plaintiff Tony Green's property.

The Court should, if it is acting in equity, fix a property line that would not cause harm to either the Plaintiffs or Defendants. Therefore, the Plaintiffs would argue that the Court alter or amend its judgment and set a property line that is consistent with fairness to both sides. The Plaintiffs would propose that the Court, if it is unwilling to reopen the matter and reconsider its decisions with regard to the finding of the boundary in the case, to set a boundary using the reference pins in place and establish a clear line from the western end of the Defendants' property to the eastern end of the Defendants' property that follows the generally straight nature of the creek but does not permit the artificial sandbar protruding to into the creek to continue to push water into the Plaintiffs' property.

CONCLUSION

The Plaintiffs would ask that the Court consider granting a new trial in this case to consider the matters raised. In the alternative, the Plaintiffs would ask that the Court fix the property line consistent with South Carolina case law. In the alternative, the Plaintiffs would ask that the Court consider, acting in equity, fixing a property line that is equitable to both parties and does not allow ongoing harm to continue to the Plaintiffs' property on the north side of the creek. Furthermore, the Plaintiffs would ask the Court to appoint an unbiased independent surveyor to perform the survey work of the Court.

Counsel certifies that consultation with opposing counsel would serve no useful purpose.

Respectfully Submitted,

LOVE, THORNTON, ARNOLD & THOMASON, P.A.

By: 

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Attorney for Plaintiffs

Date: April 16, 2012
Greenville, South Carolina

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 (PER JUDGE SIMMONS' INSTRUCTIONS, ALL EXHIBITS WERE MARKED
2 PRIOR TO THE COMMENCEMENT OF THE TRIAL)

3 BY THE COURT: GO ON THE RECORD. THIS IS 2010-4786. YOU
4 CAN CALL YOUR FIRST WITNESS.

5 MR. THOMPSON: THANK YOU, YOUR HONOR. THE PLAINTIFF WOULD
6 CALL TONY GREEN AT THIS TIME.

7 BY THE COURT: IF YOU WOULD COME AROUND OVER HERE, PLEASE,
8 SIR.

9 **TONY RAY GREEN, SR.,** BEING FIRST DULY SWORN, TESTIFIED AS
10 FOLLOWS:

11 BY THE COURT: THANK YOU. COME AROUND AND HAVE A SEAT,
12 PLEASE, SIR. (COMPLIES)

13 FOR MY COURT REPORTER, IF YOU WOULD STATE YOUR FULL NAME.

14 THE WITNESS: MY NAME IS TONY RAY GREEN, SR.

15 BY THE COURT: ALL RIGHT. THANK YOU.

16 **DIRECT EXAMINATION BY MR. THOMPSON:**

17 Q TONY, GOOD MORNING.

18 A GOOD MORNING.

19 Q COULD YOU PLEASE TELL THE COURT WHERE YOU RESIDE?

20 A I RESIDE IN GREENWOOD, SOUTH CAROLINA.

21 Q OKAY. DO YOU HAVE SOME PROPERTY UP IN MARIETTA?

22 A YES, I DO.

23 Q ALL RIGHT. WHAT'S THE ADDRESS OF THAT PROPERTY?

24 A IT'S ON BEAVER DAM ROAD. I DON'T HAVE -- IT'S A TRACT OF
25 LAND. I DON'T REALLY HAVE AN ADDRESS FOR THAT.

TONY RAY GREEN--DIRECT BY MR. THOMPSON

- 1 Q ABOUT HOW MANY ACRES IS IT?
- 2 A IT'S ABOUT 18 ACRES.
- 3 Q WAS THIS PART OF A FAMILY TRACT THAT GOT BROKEN UP?
- 4 A YES, IT WAS.
- 5 Q IS ONE PART OF YOUR PROPERTY ADJACENT TO A STREAM OR A
6 CREEK?
- 7 A YES, SIR.
- 8 Q WHAT'S THE NAME OF THAT CREEK?
- 9 A IT'S BEAVER DAM CREEK.
- 10 Q OKAY. NOW, ACROSS THE CREEK FROM YOU -- WHO'S THE PROPERTY
11 DIRECTLY ACROSS THE CREEK FROM YOU?
- 12 A THE HUMPHRIES.
- 13 Q IS THAT MR. AND MRS. HUMPHRIES SEATED AT THE DEFENSE TABLE?
- 14 A YES, SIR.
- 15 Q OKAY. WHEN DID YOU PURCHASE THIS TRACT OF LAND OR WHEN DID
16 IT GET PUT IN YOUR NAME?
- 17 A IT WAS LEFT TO ME OR GIVEN TO ME LIKE INHERITANCE. IT WAS
18 AROUND 2001, I THINK.
- 19 Q NOW, BEFORE THIS, IS THIS PROPERTY YOU WERE FAMILIAR WITH?
- 20 A I GREW UP THERE. YES, SIR.
- 21 Q YOU GREW UP IN THIS AREA, ON THIS TRACT OF LAND?
- 22 A YES, SIR.
- 23 Q ARE YOU FAMILIAR WITH THE LAY OF THE LAND, HOW IT LOOKED,
24 THAT SORT OF THING?
- 25 A YES, SIR.

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 Q OKAY. WHEN YOU GOT THIS TRACT OF LAND DEEDED TO YOU, IS IT
2 STILL IN PRETTY MUCH THE SAME CONDITION AS IT'S IN AS FAR AS THE
3 LAY OF THE LAND THE WHOLE TIME YOU WERE GROWING UP?

4 A THE CREEK, NO. THE LAND, YES, PRETTY MUCH.

5 Q OKAY. WHAT ABOUT THE CREEK WAS DIFFERENT WHEN YOU GOT THE
6 PROPERTY IN 2001?

7 A THE CREEK HAS BEEN CHANGED AND MOVED.

8 Q OKAY. BEFORE YOU GOT THE PROPERTY IN 2001?

9 A YES.

10 Q NOW, TELL ME ABOUT -- THE CREEK WAS THE PROPERTY LINE. WHEN
11 YOU GOT THE PROPERTY, THE CREEK WAS BETWEEN YOURSELF AND THE
12 HUMPHRIES. WAS IT A STRAIGHT LINE RUN? WHAT WAS THE SHAPE OF
13 THE ANGLE OF IT?

14 A IN THAT PARTICULAR AREA, YES, IT WAS. IT WAS PRETTY
15 STRAIGHT THROUGH THERE.

16 Q DO YOU HAVE -- ARE THERE OTHER PROPERTY OWNERS ON THE OTHER
17 SIDE OF THE CREEK TO EITHER SIDE OF THE HUMPHRIES?

18 A WELL, MY BROTHER LIVES ACROSS THE STREET FROM THERE.

19 Q NOW, AT SOME POINT DID YOU OBSERVE THE HUMPHRIES START TO DO
20 SOME WORK OR MAKE SOME MODIFICATIONS TO THE RUN OF THE CREEK?

21 A YES, SIR, WE DID.

22 Q OKAY. WHEN DID THAT FIRST START?

23 A I'M THINKING AROUND 2004, 2003, POSSIBLY A LITTLE BIT BEFORE
24 THAT.

25 Q OKAY. LET ME ASK YOU, THE PROPERTY, THE LAND THAT'S

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 ADJACENT TO THE CREEK ON EITHER SIDE, IS IT IN A FLOODPLAIN?

2 A IT'S A CLASS A FLOOD ZONE.

3 Q LET ME SHOW YOU WHAT I'VE MARKED AS EXHIBIT NO. 1 AND ASK IF
4 YOU CAN -- DO YOU RECOGNIZE THE PHOTOGRAPHS, THE FIVE
5 PHOTOGRAPHS, CONTAINED IN EXHIBIT 1?

6 A YES, SIR.

7 Q ARE THOSE PHOTOGRAPHS OF THE PROPERTY IN APPROXIMATELY 2003?

8 A YES, SIR.

9 Q OKAY. LET ME GET YOU TO LOOK AT THE FIRST PAGE THERE. DOES
10 THE TOP PICTURE ON THIS FIRST PAGE HERE SHOW ANY MODIFICATIONS TO
11 THE CREEK?

12 A YES, SIR, IT DOES.

13 Q WHAT DOES IT SHOW?

14 A WELL, THERE'S SOME STONES LIKE HE HAD CREATED A DAM THERE TO
15 DIRECT THE WATER TOWARDS THE OTHER SIDE, AND THERE'S A PARTIAL
16 WALL BUILT OUT OF PLYWOOD OR SOMETHING THAT HE PUT UP.

17 Q WHAT WAS THE EFFECT OF THIS PLYWOOD WALL AND THESE ROCKS
18 THAT HE PUT IN THE RIVER? WHAT EFFECT DID THAT HAVE ON THE FLOW
19 OF THE WATER?

20 A WELL, IT FORCED THE WATER TO HIT THE OTHER SIDE, AND IT
21 CAUSED LIKE A SANDBAR THERE WHICH HE COULD FILL IN EASILY ON THAT
22 SIDE, ON HIS SIDE.

23 Q ALL RIGHT. AT SOME POINT SHORTLY AFTER THAT, DID YOU HAVE
24 THE PROPERTY LINE SURVEYED? DID YOU HAVE THE PROPERTY SURVEYED?

25 A I DID. THE HUMPHRIES NEVER HAD THEIR PROPERTY SURVEYED. HE

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 WAS ENCROACHING ON OUR PROPERTY. WE WANTED TO HAVE IT SURVEYED
2 JUST SO THAT HE KNEW -- WE KNEW THAT HE KNEW WHERE THE PROPERTY
3 LINES WERE.

4 Q AT SOME POINT, DID THE WALL, THE ROCK AND THAT KIND OF
5 PLYWOOD WALL, WERE THOSE REMOVED AT SOME POINT?

6 A YES, THEY WERE.

7 Q WHO REMOVED THOSE?

8 A MY BROTHER.

9 Q DOES YOUR BROTHER HAVE ANY OWNERSHIP INTEREST IN THAT TRACT
10 OF LAND?

11 A WELL, IT WAS INHERITED PROPERTY. YES, SIR.

12 Q BUT IS IT TITLED IN HIS NAME AT ALL?

13 A NO.

14 Q ALL RIGHT.

15 A HE LIVES THERE.

16 Q DID THE HUMPHRIES SUBSEQUENTLY PUT UP SOME OTHER KIND -- LET
17 ME ASK YOU THIS, TONY, AT ANY TIME BEFORE THAT, HAD YOU EVER DONE
18 ANY WORK IN THE CREEK, YOU KNOW, WITH HEAVY EQUIPMENT TO CHANGE
19 OR ALTER THE FLOW OF THE CREEK?

20 A I NEVER HAVE.

21 Q DID ANYBODY EVER ON YOUR BEHALF, HAVE YOU EVER ASKED OR TOLD
22 ANYBODY TO DO THAT?

23 A NO, NOT REALLY. AS -- GROWING UP THERE, WE'VE ALWAYS KEPT
24 THE CREEK CLEANED OUT.

25 Q WHAT DO YOU MEAN BY "CLEANED OUT"?

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 A WELL, IT GROWS UP AND DEBRIS CATCHES IT, AND WE HAVE TO
2 CLEAN IT OUT SO IT WON'T BACK UP AND FLOOD THE FIELDS.

3 Q WHEN YOU DO THAT, DO YOU ALTER THE FLOW OR THE DIRECTION OF
4 THE CREEK AT ALL?

5 A NO. WE JUST HELP THE WATER. HOPEFULLY, IT FLOWS ON OUT.

6 Q ALL RIGHT. AT SOME POINT AFTER THOSE PICTURES WERE TAKEN,
7 DID THE HUMPHRIES PUT UP SOME OTHER STRUCTURE?

8 A THEY DID. THEY BUILT A SEAWALL AND -- WHAT I CALL A
9 SEAWALL. IT'S A STRUCTURE THAT IT WAS DIRECTED TOWARDS THE
10 OPPOSITE SIDE. TO ME, IT WAS ACTING LIKE A DREDGE. WHEN THE
11 WATER CAME DOWN THROUGH THERE, IT JUST POURED INTO US AND JUMPED
12 THE FIELDS. IT CAUSES ALL KIND OF PROBLEMS LIKE EROSION AND---

13 Q LET ME SHOW YOU SOME PICTURES THAT HAVE BEEN MARKED AS
14 PLAINTIFFS' EXHIBIT NO. 2, SEE IF YOU RECOGNIZE THE PHOTOGRAPHS
15 OF THOSE -- IN THAT EXHIBIT.

16 A I DO.

17 Q ARE THOSE PHOTOGRAPHS OF THE CREEK IN QUESTION AND THE
18 PROPERTY IN QUESTION?

19 A YES, SIR.

20 MR. THOMPSON: YOUR HONOR, BEFORE I FORGET, I WOULD MOVE
21 PLAINTIFFS' 1 AND 2 TO BE INTRODUCED INTO EVIDENCE. THEY WERE
22 PREVIOUSLY MARKED.

23 BY THE COURT: ANY OBJECTION?

24 MR. HECKMAN: NO OBJECTION.

25 BY THE COURT: ALL RIGHT.

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 (THREE PAGES OF PHOTOGRAPHS DATED 2003 ENTERED INTO EVIDENCE
2 AS PLAINTIFFS' EXHIBIT NO. 1)

3 (NINE PAGES OF PHOTOGRAPHS DATED 2006 ENTERED INTO EVIDENCE
4 AS PLAINTIFFS' EXHIBIT NO. 2)

5 Q ON THE FIRST PAGE, TONY, IS THAT THE WALL THAT YOU WERE
6 REFERENCING?

7 A YES, SIR.

8 Q IS THERE WATER BEHIND THE WALL IN THAT PHOTOGRAPH?

9 A YES, SIR, THERE IS.

10 Q OKAY.

11 BY THE COURT: DO YOU HAVE AN EXTRA COPY? IT'S DIFFICULT
12 FOR THE COURT TO SEE THEM.

13 MR. THOMPSON: NO, YOUR HONOR. YOUR HONOR, I'M SORRY. I DO
14 NOT HAVE AN EXTRA COPY OF THOSE PHOTOGRAPHS. I APOLOGIZE.

15 BY THE COURT: ALL RIGHT.

16 Q TONY, LET ME GET YOU TO FLIP TO THE SECOND PAGE THERE. WHAT
17 PROPERTY CAN YOU SEE IN THE SECOND PAGE OF THOSE PHOTOGRAPHS?

18 A THAT'S THE PROPERTY ON THE OPPOSITE SIDE WHICH IS OUR
19 PROPERTY -- MY PROPERTY.

20 Q AND WHAT IS HAPPENING TO THE STREAMBANK IN THIS PICTURE?

21 A IT'S JUST EAT OUT TREMENDOUSLY.

22 Q WHAT HAS CAUSED THE STREAM TO GO IN THAT DIRECTION?

23 A IN MY OPINION, IT WAS THE WALL BECAUSE IT FORCES IT OVER
24 THERE. IT HAS NO WHERE ELSE TO GO. LIKE THE WALL -- THE WATER
25 IS ON BOTH SIDES OF THE WALL. THE CREEK WANTS TO GO BACK WHERE

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 IT NATURALLY WAS. IN MY OPINION, HE'S FORCING THE WATER IN A
2 DIFFERENT DIRECTION.

3 Q ALL RIGHT. DID YOU CAUSE THIS FLOOD TO TAKE PLACE?

4 A NO, SIR.

5 Q LET ME SHOW YOU -- LOOK ON PAGE 3 OF THIS EXHIBIT. IS THERE
6 A TREE THAT HAS FALLEN OVER INTO THE CREEK ON MR. HUMPHRIES'
7 SIDE?

8 A YES, SIR.

9 Q THAT LOOKS LIKE SOME KIND OF A FRUIT TREE?

10 A IT DOES.

11 Q OKAY. WAS THAT THE RESULT OF SOME KIND OF EROSION OR WATER
12 EVENT?

13 A YES, SIR.

14 Q NOW, DID MR. HUMPHRIES CONTINUE TO DO SOME WORK ON THIS WALL
15 AT SOME POINT AFTER THIS?

16 A YES, HE DID.

17 Q WHAT KIND OF STUFF DID HE DO TO IT?

18 A HE HAD FILLED IN BEHIND THE WALL. HE SECURED IT MORE SECURE
19 WITH CABLES. HE PUT MAIL BAGS FULL OF -- SAND BAGS IN THERE,
20 TELEPHONE POLES, BRICK, WHATEVER HE COULD PUT IN THERE.

21 Q LET ME SHOW YOU A GROUP OF PHOTOGRAPHS THAT HAVE BEEN MARKED
22 FOR IDENTIFICATION AS PLAINTIFFS' EXHIBIT 3. FLIP THROUGH THOSE
23 REAL QUICK, TONY, AND TELL ME IF YOU RECOGNIZE THOSE PHOTOGRAPHS.

24 A YES, SIR.

25 Q ARE THOSE PHOTOGRAPHS OF THE CREEK AND THE PROPERTY IN

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 QUESTION?

2 A YES, SIR.

3 Q WHAT IS THE APPROXIMATE TIMEFRAME IN THESE PHOTOGRAPHS AS
4 LISTED ON THE TOP OF THE PAGE?

5 A THESE WERE TAKEN IN PROBABLY 2007.

6 MR. HECKMAN: I OBJECT. WHO TOOK THESE PHOTOGRAPHS? YOU
7 HAVE NOT ESTABLISHED WHO TOOK THE PHOTOGRAPHS. DID YOU TAKE THE
8 PHOTOGRAPHS?

9 MR. THOMPSON: YOUR HONOR---

10 BY THE COURT: WHAT'S THE BASIS OF YOUR OBJECTION?

11 MR. HECKMAN: WE DON'T HAVE ANY BASIS OF FACTUAL NATURE OF
12 THE PHOTOGRAPHS. WE DON'T KNOW WHO TOOK THEM, AND HE'S TRYING TO
13 TESTIFY AS TO WHEN THEY WERE TAKEN.

14 BY THE COURT: I DON'T THINK THE ISSUE IS WHO TOOK THEM. I
15 THINK THE ISSUE -- THE QUESTION PROPERLY IS: ARE THEY FAIR AND
16 ACCURATE REPRESENTATIONS OF THE EVENTS AT THE TIME THEY WERE
17 TAKEN?

18 MR. HECKMAN: EXACTLY.

19 BY THE COURT: IF YOU COULD LAY SOME ADDITIONAL FOUNDATION,
20 PLEASE, SIR?

21 MR. THOMPSON: ALL RIGHT.

22 Q MR. GREEN, ON THE BACK OF THESE PHOTOGRAPHS IS THERE A DATE
23 WHEN THE PHOTOGRAPH WAS PROCESSED?

24 A YES, SIR.

25 Q WHAT'S THAT DATE, PLEASE, SIR?

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 A 3/21/07.

2 Q OKAY. DO THESE PHOTOGRAPHS FAIRLY AND ACCURATELY DEPICT THE
3 CONDITION OF THESE PROPERTIES IN THE MARCH OF 2007 TIMEFRAME?

4 A YES, SIR, IT DOES.

5 Q LET ME GET YOU TO LOOK AS WE'RE GOING THROUGH, LOOKING ON
6 PAGE 2. DOES IT DEPICT THE WALL IN QUESTION IN THESE TWO
7 PHOTOGRAPHS?

8 A YES, SIR.

9 Q WHAT'S BEHIND THE WALL IN QUESTION?

10 A ROCKS AND DIRT.

11 Q ALL RIGHT. FLIPPING AHEAD TO PAGE 5 OF PLAINTIFFS' EXHIBIT
12 NO. 3, WHAT'S BEHIND THE WALL IN THIS PHOTOGRAPH?

13 A DIRT, AND A SMALL TREE AND A ROCK.

14 Q FLIPPING AHEAD, MR. GREEN, TO PAGE 10 OF PLAINTIFFS' EXHIBIT
15 3, WHAT DO YOU SEE BEHIND THE WALL IN QUESTION THERE?

16 A FROM WHAT I CAN SEE, THERE'S -- LOOKS LIKE SHRUBBERY, DIRT,
17 ROCK.

18 Q ALL RIGHT, SIR. NOW, AGAIN LOOKING AT PAGE 10, IS YOUR
19 PROPERTY DEPICTED IN THOSE PICTURES?

20 A YES, IT IS.

21 Q CAN YOU DESCRIBE WHAT YOU OBSERVE ABOUT YOUR PROPERTY IN
22 THOSE PHOTOGRAPHS?

23 A WHAT I DESCRIBE IS A SEAWALL, WHAT I CALL A SEAWALL. IT'S A
24 STRUCTURE---

25 Q WHAT ABOUT YOUR PROPERTY? WHAT DO YOU OBSERVE ABOUT YOUR

1 PROPERTY?

2 A MY PROPERTY IS TOTALLY ERODED OUT.

3 Q DID YOU CAUSE THAT EROSION OR DID YOU CAUSE THAT EROSION
4 WITH A BACKHOE?

5 A NO, SIR.

6 Q MR. GREEN, LOOKING AT PAGE 14 OF PLAINTIFFS' EXHIBIT NO. 3,
7 WHAT DO YOU OBSERVE DOWNSTREAM OF THIS STRUCTURE THAT IS BUILT ON
8 TO THE HUMPHRIES' SIDE OF THE CREEK?

9 A WELL, THE SEAWALL HAS FORCED A CURVE INTO A REALLY -- IT
10 HITS ME, IT RICOCHETS BACK AROUND TO ANOTHER PIECE OF PROPERTY
11 AND IT FORCES -- CAUSES A SANDBAR THERE.

12 Q WAS THAT SANDBAR IN THOSE PICTURES, HAD THAT PREVIOUSLY BEEN
13 THE BED OF THE CREEK?

14 A THAT WAS PREVIOUSLY WHERE IT WAS BEFORE HE PUT THE SEAWALL
15 THERE.

16 MR. THOMPSON: YOUR HONOR, I WOULD MOVE PLAINTIFFS' EXHIBIT
17 3 BE MOVED INTO EVIDENCE.

18 BY THE COURT: ALL RIGHT.

19 (FIFTEEN PAGES OF PHOTOGRAPHS DATED MARCH 2007 ENTERED INTO
20 EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 3)

21 Q MR. GREEN, LET ME SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFFS'
22 EXHIBIT NO. 4 OR IDENTIFIED AS PLAINTIFFS' EXHIBIT 4, TELL ME IF
23 YOU RECOGNIZE THE PROPERTY DEPICTED IN THOSE PHOTOGRAPHS.

24 A YES, SIR.

25 Q ALL RIGHT. APPROXIMATELY, WHAT TIMEFRAME ARE THOSE

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 PHOTOGRAPHS FROM?

2 A THE TIMEFRAME IS 2007.

3 Q IS THAT A FAIR AND ACCURATE REPRESENTATION OF THE PROPERTY
4 IN QUESTION?

5 A YES, IT IS.

6 Q ALL RIGHT. THE FIRST PAGE, WHAT DO YOU RECOGNIZE -- DO YOU
7 MAKE ANY OBSERVATIONS ABOUT THE SANDBAR WE DISCUSSED A MOMENT
8 AGO?

9 A YES, SIR. THE SANDBAR HAS INCREASED IN SIZE TREMENDOUSLY.
10 THE SEAWALL IS STILL INTACT.

11 Q WHAT DO YOU NOTICE ABOUT THE GROUND IN THE PROPERTY BEHIND
12 THE WALL?

13 A IT'S GOT ROCK IN IT. IT'S GROWING GRASS ON IT NOW WHERE
14 HE'S FILLED IT IN.

15 Q WAS THAT PREVIOUSLY WHERE THE CREEK RAN?

16 A SIR?

17 Q IS THAT PREVIOUSLY WHERE THE CREEK RAN?

18 A YES.

19 Q ALL RIGHT.

20 MR. THOMPSON: YOUR HONOR, I WOULD MOVE EXHIBIT 4 BE
21 ADMITTED INTO EVIDENCE.

22 BY THE COURT: ALL RIGHT.

23 (TWO PAGES OF PHOTOGRAPHS DATED SEPTEMBER 2007 ENTERED INTO
24 EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 4)

25 Q MR. GREEN, LET ME SHOW YOU WHAT'S MARKED FOR IDENTIFICATION

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 AS PLAINTIFFS' EXHIBIT 5. TELL ME IF YOU RECOGNIZE THE
2 PHOTOGRAPHS.

3 A YES, SIR.

4 Q AND THOSE?

5 A I DO.

6 Q SOME OF THOSE PHOTOGRAPHS ARE TIME OR DATE STAMPED. WHAT IS
7 THE DATE OR THE TIME THAT'S ON THOSE PHOTOGRAPHS?

8 A THIS IS 2010.

9 Q IS THERE A SPECIFIC MONTH OR DAY?

10 A IN MARCH.

11 Q LOOK AT THAT FIRST PAGE OF THESE PICTURES FROM MARCH 2010,
12 WHAT DO YOU OBSERVE ABOUT THE PROPERTY ON MR. HUMPHRIES' SIDE OF
13 THE CREEK BEHIND THE WALL?

14 A HE'S RE-ENFORCED THE WALL. HE'S -- I SEE A PIPE UP WHERE IT
15 HAS CABLE HE ATTACHED TO TO KEEP THE WALL IN PLACE. HE HAS
16 FILLED DEBRIS IN THE BACK OF IT LIKE OLD BRICK AND DIRT.

17 Q NOW, AROUND THIS TIMEFRAME, DID YOU HAVE SOMEBODY ELSE COME
18 OUT AND SURVEY THIS PROPERTY?

19 A YES, SIR, I DID. THERE'S A SURVEY FRESH FLAG ON THE PHOTO.

20 Q LET ME SHOW YOU THE PHOTOGRAPH ON PAGE 9 OF PLAINTIFFS'
21 EXHIBIT 5, THE TOP PHOTOGRAPH, WHAT DOES THAT DEPICT?

22 A IT SHOWS WHERE THE SANDBAR HAS INCREASED IN SIZE. IT SHOWS
23 WHERE THE SURVEY MARKER, WHERE THE PIN IS.

24 Q IS THERE ONE PIN KIND OF THERE IN THE FRONT OF THE PICTURE?

25 A YES, SIR.

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 Q CAN YOU SEE IN THAT PICTURE WHERE THE OTHER PIN IS LOCATED?

2 A THERE'S A PIN DIRECTLY IN FRONT OF THE DOOR OF THE RED
3 BUILDING.

4 Q THAT'S THE BUILDING IN THE BACKGROUND OF THAT PHOTOGRAPH?

5 A YES, SIR.

6 Q AGAIN, THIS SANDBAR THAT WE'VE DISCUSSED, WHAT KIND OF
7 COVERING, WHAT KIND OF MATERIAL DO THEY HAVE ON IT NOW?

8 A IT'S SAND, SOME GRASS.

9 MR. THOMPSON: YOUR HONOR, I WOULD MOVE THAT PLAINTIFFS'
10 EXHIBIT 5 BE ADMITTED INTO EVIDENCE.

11 BY THE COURT: ALL RIGHT.

12 (TEN PAGES OF PHOTOGRAPHS DATED MARCH 2010 ENTERED INTO
13 EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 5)

14 Q MR. GREEN, LET ME SHOW YOU WHAT'S MARKED FOR IDENTIFICATION
15 AS PLAINTIFFS' EXHIBIT NO. 6. DO YOU RECOGNIZE THE PROPERTIES IN
16 THOSE PHOTOGRAPHS?

17 A YES, SIR, I DO.

18 Q WHAT PROPERTIES ARE THOSE?

19 A IT'S THE PROPERTY OF MY SISTER'S BELOW IT, IT'S THE
20 HUMPHRIES AND MYSELF.

21 Q NOW, IS THE CREEK -- DO YOU STILL SEE A SANDBAR IN THOSE
22 PHOTOGRAPHS?

23 A YES, SIR.

24 Q IS THE CREEK STILL CURVED INTO YOUR PROPERTY IN THIS
25 PHOTOGRAPH?

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 A YES, SIR.

2 Q TONY, LET ME ASK YOU THIS, THERE HAS BEEN SOME ALLEGATION
3 THAT AT SOME POINT THAT WALL WAS REMOVED. WERE YOU INVOLVED IN
4 THE REMOVAL OF THE WALL THAT WAS PUT UP?

5 A NO, SIR.

6 BY THE COURT: ARE YOU REFERRING TO WHAT HE'S REFERRED TO AS
7 THE SEAWALL?

8 MR. THOMPSON: YES, SIR.

9 Q DID YOU REMOVE THE SEAWALL, MR. GREEN?

10 A NO, SIR, I DID NOT.

11 Q DID YOU INSTRUCT OR HIRE ANYONE TO DO THAT?

12 A NO, SIR, I DID NOT.

13 Q DID YOU ASK ANYONE TO DO THAT ON YOUR BEHALF?

14 A NO, SIR, I DID NOT.

15 Q DO YOU KNOW WHO DID IT?

16 A I DO KNOW WHO DID IT.

17 Q WHO DO YOU KNOW REMOVED THAT WALL?

18 A MY BROTHER REMOVED IT AND A FRIEND OF HIS.

19 Q WAS HE ACTING ON ANY INSTRUCTION OR DIRECTIVE OF YOURS?

20 A NO, SIR.

21 MR. THOMPSON: YOUR HONOR, I WOULD MOVE PLAINTIFFS' EXHIBIT
22 6 BE ADMITTED INTO EVIDENCE.

23 BY THE COURT: ALL RIGHT.

24 THE WITNESS: MAY I SAY, I WAS IN THE HOSPITAL AT THE TIME.

25 (ONE PAGE OF PHOTOGRAPHS LABELED "TIMEFRAME UNCERTAIN")

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 ENTERED INTO EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 6)

2 Q NOW, MR. GREEN, ARE YOU FAMILIAR WITH THE DEEDS AND GRANTS
3 OF THE VARIOUS PROPERTIES IN QUESTION?

4 A YES, SIR, I AM.

5 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFFS' EXHIBIT 8
6 AND ASK IF YOU RECOGNIZE THIS DOCUMENT THAT'S KNOWN AS
7 PLAINTIFFS' EXHIBIT 8. WHAT DOCUMENT IS THAT?

8 A YES, SIR. THAT'S THE PLAT OF THE PROPERTY WHEN IT WAS
9 SURVEYED OUT THAT MY GRANDMOTHER HAD DEEDED TO DORA LEE HALL.

10 Q WHICH PROPERTY -- JUST SO THE COURT'S FAMILIAR -- WHICH
11 PROPERTY IS THIS PLAT?

12 A THIS IS THE HUMPHRIES' PROPERTY WHICH THEY PURCHASED.

13 Q WHAT'S THE DATE OF THIS PLAT?

14 A 20-97. I MEAN, '97. I'M SORRY.

15 Q ACTUALLY, LET ME DIRECT YOU TO THE DATE DOWN HERE.

16 A OH, OKAY. THAT'S '91.

17 Q ALL RIGHT. DOES IT REFERENCE THE PROPERTY LINE IN QUESTION
18 BETWEEN YOURSELF AND THE HUMPHRIES?

19 A IT DOES.

20 Q DOES IT INCLUDE WHAT WE COMMONLY REFER TO AS A METES AND
21 BOUNDS DESCRIPTION THERE ON THAT PLAT?

22 A YES, IT DOES.

23 Q ARE YOU FAMILIAR -- AGAIN, WERE YOU KIN OF DORA LEE HALL?

24 A THAT'S MY UNCLE'S DAUGHTER, COUSIN.

25 Q ALL RIGHT. KATIE EMERY, WHO IS KATIE EMERY?

TONY RAY GREEN--DIRECT BY MR. THOMPSON

1 A KATIE EMERY IS MY GRANDMOTHER.

2 Q SHE WOULD HAVE ALSO BEEN DORA LEE HALL'S GRANDMOTHER?

3 A YES.

4 Q ARE YOU FAMILIAR WITH THE DEED FROM MS. EMERY TO DORA LEE
5 HALL FOR THIS PIECE OF PROPERTY?

6 A YES, I AM.

7 MR. THOMPSON: BEFORE I GO ANY FURTHER, YOUR HONOR, I WOULD
8 MOVE PLAINTIFFS' EXHIBIT 8 BE ADMITTED INTO EVIDENCE.

9 MR. HECKMAN: NO OBJECTION.

10 BY THE COURT: ALL RIGHT.

11 (PLAT DATED JULY 23, 1991 ENTERED INTO EVIDENCE AS
12 PLAINTIFFS' EXHIBIT 8)

13 Q PLAINTIFFS' EXHIBIT 8, DOES THAT SAY THE AMOUNT OF ACREAGE
14 FOR THAT PIECE -- THAT TRACT OF LAND THERE?

15 A YES, SIR, IT DOES.

16 Q WHAT IS THE TRACT?

17 A ONE ACRE.

18 Q NOW, MR. GREEN, LET ME SHOW YOU WHAT'S MARKED AS EXHIBIT 9.
19 DO YOU RECOGNIZE THAT DOCUMENT?

20 A YES, SIR, I DO.

21 Q WHAT DOCUMENT IS THAT?

22 A IT'S THE DEED WRITTEN OUT TO MY COUSIN.

23 Q DOES THAT INCLUDE A DESCRIPTION OF THE PROPERTY IN QUESTION?

24 A YES, IT DOES.

25 Q DOES IT DESCRIBE THE BOUNDARY LINES OF THE PROPERTY?

1 A IT DOES.

2 Q WHEN I SAY "DESCRIBE THE BOUNDARY LINES" DOES IT GIVE
3 DISTANCES AND DEGREES AND REFERENCE IRON PINS?

4 A YES, IT DOES.

5 Q DOES IT ALSO AT ONE POINT REFERENCE THE CREEK FOR ONE
6 PORTION OF THE PROPERTY LINE?

7 A I'M SORRY. WHAT?

8 Q IN THE MIDDLE OF THAT DESCRIPTION, DOES IT ALSO REFERENCE
9 THAT BEAVER DAM CREEK IS THE LINE OR AS THE LINE?

10 A IT DOES.

11 Q ON THAT PLAT IN QUESTION DOES THE PROPERTY LINE APPEAR TO BE
12 IN THE SAME LOCATION AS THE CREEK?

13 A AT THE TIME, YES.

14 Q DOES THIS DEED FROM MS. EMERY TO MS. HALL INCLUDE A
15 MEASUREMENT FOR THE AMOUNT OF PROPERTY, THE AMOUNT OF ACREAGE?

16 A YES, IT DOES.

17 Q HOW MUCH IS THAT?

18 A IT'S LIKE ONE ACRE.

19 MR. THOMPSON: YOUR HONOR, I WOULD ASK THAT PLAINTIFFS'
20 EXHIBIT NO. 9 BE ADMITTED INTO EVIDENCE.

21 BY THE COURT: WHICH DEED IS THIS? I HADN'T HEARD---

22 MR. THOMPSON: THIS IS -- I'M SORRY, YOUR HONOR.

23 Q WHO IS THE GRANTOR IN THIS DEED, MR. GREEN? WHO IS GIVING
24 THE PROPERTY?

25 A MY GRANDMOTHER, KATIE EMERY, IS GIVING THE PROPERTY.

1 Q AND WHO IS SHE GIVING IT TO?

2 A SHE'S GIVING IT TO DORA LEE HALL.

3 Q WHAT'S THE DATE OF THE DEED ON THERE? LOOK AT THE BOTTOM
4 WHERE IT'S SIGNED, SIR.

5 A IS THIS IT?

6 Q YES.

7 A SEPTEMBER OF '91.

8 Q OKAY. DO YOU KNOW WHO MS. HALL DEEDED THE PROPERTY TO?

9 A SHE SOLD IT TO THE HUMPHRIES.

10 (DEED DATED SEPTEMBER 10, 1991 ENTERED INTO EVIDENCE AS
11 PLAINTIFFS' EXHIBIT NO. 9)

12 Q NOW, MR. GREEN, LET ME ASK YOU AT THIS TIME, WHAT HAS BEEN
13 THE IMPACT ON THE HUMPHRIES' ACTIVITIES WITH REGARD TO THIS CREEK
14 ON YOUR PROPERTY? WHAT EFFECT HAS IT HAD ON YOUR PROPERTY?

15 A WELL, IT'S DESTROYED MY PROPERTY AND IN THE PROCESS OF HIM
16 DESTROYING IT, HE'S GAINING PROPERTY.

17 Q WHEN YOU SAY HE DESTROYED YOUR PROPERTY, CAN YOU BE A LITTLE
18 MORE SPECIFIC FOR THE COURT? WHAT'S HAPPENED TO YOUR PROPERTY?

19 A WELL, BY HIM CONSTRUCTING A STRUCTURE ON THERE, IT FORCED
20 THE WATER IN ON ME.

21 Q HAS THAT CAUSED EROSION TO THE BANK?

22 A TREMENDOUS EROSION.

23 Q HAS THAT DECREASED THE AMOUNT OF PROPERTY ON YOUR SIDE OF
24 THE CREEK?

25 A TREMENDOUSLY. I'VE HAD TWO SURVEYS DONE AND JUST IN A SHORT

TONY RAY GREEN--CROSS BY MR. HECKMAN

1 PERIOD OF TIME, IT'S MOVED THE PROPERTY OVER, LIKE, 11 FEET, I
2 THINK.

3 Q MR. GREEN, WOULD YOU LIKE -- HAVE YOU EVER DEEDED ANY
4 ADDITIONAL PROPERTY TO THE HUMPHRIES?

5 A NO.

6 Q ARE YOU ASKING THE COURT TO RESTORE THE CREEK AND THE
7 PROPERTY BACK TO THE CONDITION IT WAS PRIOR TO 2003 WHEN THE WALL
8 STARTED BEING CONSTRUCTED?

9 A YES, SIR.

10 Q WHAT DO YOU USE THAT PROPERTY UP THERE FOR, MR. GREEN?

11 A WHEN I GREW UP THERE, WE ALWAYS FARMED IT. IT'S IN
12 AGRICULTURAL WHEN I ACQUIRED THE PROPERTY, AND WE ARE IN THE
13 PROCESS OR MAKING IT A WORKING FARM.

14 Q BECAUSE IT'S IN A FLOODPLAIN IS THERE MUCH ELSE YOU CAN DO
15 WITH THAT PROPERTY?

16 A NO, SIR, NOT A WHOLE LOT, JUST AGRICULTURE.

17 MR. THOMPSON: YOUR HONOR, I BELIEVE THAT'S ALL OF THE
18 QUESTIONS I HAVE FOR THIS WITNESS.

19 BY THE COURT: ALL RIGHT. YOUR WITNESS.

20 **CROSS-EXAMINATION BY MR. HECKMAN:**

21 Q GOOD MORNING, MR. GREEN.

22 A GOOD MORNING. YOU TESTIFIED EARLIER THAT YOU INHERITED THIS
23 PROPERTY IN 2000. BUT THAT'S NOT REALLY THE CASE, IS IT?

24 A IN 2001 OR SOMETHING LIKE THAT.

25 Q IN FACT, THAT WAS A GIFT TO YOU FROM A LILLIE MAE BONNAKE

1 Q CAN YOU TELL THE JUDGE WHERE YOU LIVE?

2 A I LIVE AT 612 BEAVER DAM ROAD.

3 Q MS. PITTMAN, WHERE IS THAT IN RELATION TO THE HUMPHRIES'
4 PROPERTY?

5 A IT'S TWO DOORS UP.

6 Q IS YOUR PROPERTY RIGHT NEXT TO THE HUMPHRIES' PROPERTY?

7 A I HAVE A PIECE OF PROPERTY THERE.

8 Q OKAY. WHAT'S THE ADDRESS OF THAT PROPERTY?

9 A IT'S 602 BEAVER DAM ROAD.

10 Q OKAY. YOUR PROPERTY AT 602 BEAVER DAM ROAD IS THAT
11 DOWNSTREAM FROM THE HUMPHRIES' PROPERTY?

12 A YES, SIR.

13 Q HAVE YOU OBSERVED OVER THE LAST SEVERAL YEARS THE WORK THE
14 HUMPHRIES HAVE DONE WITH REGARD TO THIS WALL AND THE CHANGES AND
15 THE EFFECT THAT IT'S HAD ON THE CREEK?

16 A YES, SIR.

17 Q DID THAT HAVE AN IMPACT ON YOUR PROPERTY AT 602 BEAVER DAM?

18 A YES, SIR.

19 Q TELL THE COURT WHAT'S HAPPENED THERE.

20 A WELL, THE SEAWALL, AS MY BROTHER TONY CALLS IT--

21 Q YES, MA'AM.

22 A --WHEN THAT WAS PUT THERE, IT ERODED OVER INTO HIS PROPERTY
23 AND THEN IT RICOCHETS -- THE WATER COMES OVER TO MY PROPERTY.

24 Q OKAY.

25 A AND IT TOOK A WALNUT TREE DOWN AT A POINT IN TIME.

1 Q HAVE YOU, YOURSELF, EVER DONE ANYTHING TO THE CREEK AS FAR
2 AS DREDGING IT OR DIGGING IT OUT?

3 A NO, SIR.

4 Q HAVE YOU EVER EMPLOYED ANYBODY OR ASKED ANYBODY TO ACT ON
5 YOUR BEHALF IN TERMS OF DREDGING OUT THE CREEK OR ANYTHING LIKE
6 THAT?

7 A NO, SIR.

8 Q AL RIGHT. THERE'S BEEN AN ALLEGATION THAT YOU AS A
9 PLAINTIFF IN THIS CASE WAS RESPONSIBLE FOR DIGGING OUT THE
10 DEFENDANTS' PROPERTY ON SEPTEMBER 15, 2010. WHERE WERE YOU ON
11 THE DATE THIS HAPPENED?

12 A I WAS AT THE MEDIATION.

13 Q ALL RIGHT. DID YOU ASK, OR TELL OR ORDER ANYBODY ELSE TO DO
14 ANYTHING TO THE DEFENDANTS' PROPERTY ON THAT DATE?

15 A NO, SIR.

16 Q DID YOU ASK HIM TO TELL -- TO DO ANYTHING TO THE SEAWALL ON
17 THAT DAY?

18 A NO, SIR.

19 Q THIS WALNUT TREE THAT YOU LOST, HOW OLD WAS THAT, DO YOU
20 KNOW?

21 A WELL, IT WAS THERE WHEN MY GRANDMOTHER LIVED THERE.

22 Q AS A RESULT OF THE CREEK KIND OF RICOCHETING OFF YOUR
23 BROTHER'S PROPERTY AND COMING BACK INTO YOUR PROPERTY, HAS IT
24 CAUSED EROSION ON YOUR PROPERTY?

25 A YES, SIR.

FRANCES K. PITTMAN--CROSS BY MR. HECKMAN

1 Q WOULD YOU LIKE TO HAVE THE CREEK RESTORED OR YOUR PROPERTY
2 RESTORED TO THE WAY IT WAS BEFORE THIS WALL WAS BUILT?

3 A YES, SIR.

4 MR. THOMPSON: YOUR HONOR, I DON'T HAVE ANY OTHER QUESTIONS
5 OF THIS WITNESS.

6 BY THE COURT: YOUR WITNESS.

7 **CROSS-EXAMINATION BY MR. HECKMAN:**

8 Q GOOD MORNING, MS. PITTMAN.

9 A GOOD MORNING.

10 Q WHEN DID YOU ACQUIRE YOUR PROPERTY? DO YOU RECALL?

11 A '95.

12 Q OKAY.

13 MR. HECKMAN: IN FACT, I HAVE THE DEED INTO MS. PITTMAN.
14 KYLE, IF YOU DON'T HAVE ANY OBJECTION, THAT'S THE DEED INTO
15 FRANCES FROM HER BROTHER, THIS IS INTO HER AND ROY, AND THAT'S
16 THE ONE FROM ROY TO HER.

17 MR. THOMPSON: OKAY.

18 MR. HECKMAN: YOUR HONOR, THESE ARE THE DEEDS INTO MS.
19 PITTMAN. I'M GOING TO ASK HER TO IDENTIFY THESE DEEDS.

20 Q IS THIS THE ORIGINAL DEED INTO YOU FROM KATIE EMERY INTO YOU
21 AND YOUR BROTHER ROY?

22 A YES, SIR.

23 Q AND THEN IS THIS OTHER DEED A DEED FROM YOUR BROTHER ROY
24 INTO YOU INDIVIDUALLY?

25 A YES, SIR.

GARY ALAN JOHNSON--DIRECT BY MR. THOMPSON

1 MR. THOMPSON: YOUR HONOR, THE PLAINTIFF WOULD CALL ALAN
2 JOHNSON.

3 GARY ALAN JOHNSON, BEING FIRST DULY SWORN, TESTIFIED AS
4 FOLLOWS:

5 BY THE COURT: COME AROUND AND HAVE A SEAT. (COMPLIES) IF
6 YOU'LL STATE YOUR FULL NAME.

7 THE WITNESS: MY FULL NAME IS GARY ALAN JOHNSON.

8 BY THE COURT: WILL YOU SPELL ALAN.

9 THE WITNESS: A-L-A-N.

10 DIRECT EXAMINATION BY MR. THOMPSON:

11 Q MR. JOHNSON, WHAT DO YOU DO FOR A LIVING?

12 A I'M A PROFESSIONAL CIVIL ENGINEER.

13 Q ALL RIGHT. WHAT'S YOUR EDUCATIONAL BACKGROUND?

14 A WENT TO COLLEGE AT THE GEORGIA INSTITUTE OF TECHNOLOGY,
15 GRADUATED WITH A BACHELORS OF CIVIL ENGINEERING IN JANUARY 1994.

16 Q ARE YOU CURRENTLY LICENSED AS AN ENGINEER?

17 A I AM.

18 Q IN SOUTH CAROLINA OR OTHER STATES AS WELL?

19 A YES.

20 Q WHAT OTHER STATES ARE YOU LICENSED IN?

21 A GEORGIA AND NORTH CAROLINA, ACTIVE; AND OTHERS, INACTIVE.

22 Q WHAT IS -- YOU'RE TALKING ABOUT CIVIL ENGINEERING. WHAT IS
23 THE PRIMARY FOCUS OF YOUR AREA OF WORK?

24 A PRIMARILY LAND DEVELOPMENT, SITE DESIGN AND LAND
25 DEVELOPMENT.

GARY ALAN JOHNSON--DIRECT BY MR. THOMPSON

1 Q AS PART OF YOUR -- DOES THIS INCLUDE ISSUES SUCH AS
2 GROUNDWATER, DEALING WITH GROUNDWATER, RUN OFF TYPE ISSUES?

3 A DEFINITELY RUN OFF, GROUNDWATER NOT AS MUCH BUT I HAVE DONE
4 GROUNDWATER PROJECTS FOR LANDFILLS.

5 Q HAVE YOU EVER BEEN RETAINED BEFORE TO PROVIDE AN OPINION AS
6 AN EXPERT WITNESS?

7 A YES, I HAVE.

8 Q YOU HAVE TESTIFIED BEFORE?

9 A YES, I HAVE.

10 MR. THOMPSON: YOUR HONOR, I WOULD MOVE AT THIS TIME THAT
11 ALAN JOHNSON BE ADMITTED AS AN EXPERT WITNESS IN THE AREA OF
12 CIVIL ENGINEERING.

13 MR. HECKMAN: NO OBJECTION.

14 BY THE COURT: ALL RIGHT. I FIND HIM QUALIFIED.

15 Q MR. JOHNSON, WERE YOU HIRED TO TAKE A LOOK AT BEAVER DAM
16 CREEK UP IN MARIETTA?

17 A YES, SIR.

18 Q ALL RIGHT. TELL ME WHAT YOU OBSERVED ABOUT THE CREEK AS
19 WELL AS YOUR SITE VISIT FROM THE PHOTOGRAPHS.

20 A WELL, IT APPEARS TO BE A NATURAL WATERSHED TYPE CREEK, KIND
21 OF A MOUNTAIN TYPE CREEK, FREE FLOWING WATER. IT LOOKS LIKE THE
22 WATER IS A PERENNIAL STREAM ON THE AVERAGE OF MAYBE 10 TO 12 FEET
23 WIDE IN THE BOTTOM. WHEN I WAS THERE TWO WEEKS AGO AT THE SITE,
24 I OBSERVED MAYBE THREE INCHES OF WATER, AVERAGE, SOMETHING LIKE
25 THAT, IN THE NORMAL FLOW, CLEAR WATER.

1 Q DO YOU KNOW APPROXIMATELY HOW MANY ACRES THIS CREEK DRAINS?

2 A YES, APPROXIMATELY 890, 900; ROUGHLY, 900 ACRES.

3 Q NOW, WHEN YOU OBSERVED THE CREEK, DID YOU OBSERVE HOW IT
4 FLOWS BETWEEN THE PROPERTIES OF TONY GREEN AND THE HUMPHRIES?

5 A YES, I DID.

6 Q OKAY. WHAT WAS THE PATH OF THE STREAM? WHAT DID YOU
7 OBSERVE ABOUT THE PATH OF THE STREAM? WAS IT STRAIGHT? DID IT
8 HAVE ANY CROOKS TO IT?

9 A NO. IT HAD AN "S" SHAPED ALIGNMENT. IT WAS NOT LINEAR.

10 Q THIS CURVE, DID IT GO, THE "S" CURVE, DID IT GO MORE TO THE
11 GREEN SIDE OF THE CREEK OR MORE TO THE HUMPHRIES SIDE OF THE
12 CREEK?

13 A DEFINITELY TO THE GREEN SIDE OF THE CREEK.

14 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFFS' EXHIBIT 12
15 FOR IDENTIFICATION PURPOSES. DO YOU RECOGNIZE THIS DOCUMENT,
16 SIR?

17 A I DO.,

18 Q IS THIS SOMETHING THAT YOU HAVE WORKED UP?

19 A YES.

20 MR. THOMPSON: YOUR HONOR, I MOVE THIS BE ADMITTED AS
21 PLAINTIFFS' EXHIBIT 12 INTO EVIDENCE.

22 MR. HECKMAN: NO OBJECTION.

23 (DRAWING OF STREAM ENTERED INTO EVIDENCE AS PLAINTIFFS'
24 EXHIBIT NO. 12)

25 Q MR. JOHNSON, WHAT DOES PLAINTIFFS' EXHIBIT 12 SIGNIFY? WHAT

1 IS IT?

2 A IT IS A 8½ BY 11 DRAWING.

3 Q DOES IT DEPICT THE LOCATION BETWEEN THE HUMPHRIES' PROPERTY
4 AND THE GREEN PROPERTY?

5 A YES, IT DOES.

6 Q IS THAT -- IS THIS WHAT'S ON THIS BOARD, IS THAT THE SAME
7 PIECE OF PAPER?

8 A YES, IT IS.

9 Q COULD YOU COME DOWN HERE AND SHOW THE COURT, BASED ON YOUR
10 STUDY, A COUPLE OF THINGS -- FIRST OF ALL, WERE YOU ABLE TO
11 IDENTIFY THE APPROXIMATE LOCATION OF THE ORIGINAL PROPERTY LINE
12 THAT WAS ON THE -- I BELIEVE IT'S PLAINTIFFS' EXHIBIT NO. 7 OR
13 PLAINTIFFS' EXHIBIT 8 WHICH WAS INTRODUCED INTO -- HAVE YOU HAD A
14 CHANCE TO VIEW PLAINTIFFS' EXHIBIT 8 BEFORE TODAY?

15 A YES, I HAVE.

16 Q WERE YOU ABLE TO PUT AN APPROXIMATE LOCATION OF THAT
17 PROPERTY LINE ON YOUR GRAPH RIGHT THERE?

18 A YES, I DID.

19 Q WILL YOU STEP DOWN SO THAT YOU CAN POINT OUT TO THE COURT
20 WHERE THAT LINE IS?

21 A THE NORTHWEST CORNER OF THE HUMPHRIES' PROPERTY IS AT THIS
22 PIN, THE INTERMEDIATE PIN ON THE NORTH BOUNDARY AND THEN THE
23 NORTHEAST PIN IS THE CORNER OF THE PROPERTY.

24 Q NOW, WHAT IS YOUR UNDERSTANDING -- WAS IT YOUR UNDERSTANDING
25 THAT WAS THE CENTER OF THE CREEK AT THE TIME THAT PLAT WAS DONE?

1 A IT SAYS CREEK IS PROPERTY LINE, AND THE CREEK RUNS -- THE
2 LONG DASH AND THREE DOT TYPE LINE SYMBOL ON EXHIBIT 8 DOES SHOW
3 IT KIND OF GOING ON BOTH SIDES OF THESE LINES. YES.

4 Q NOW, WHAT IS THE MORE RECENT OR CURRENT LOCATION OF THE
5 CREEK BANK? IS THAT DEPICTED ON YOUR GRAPH AS WELL?

6 A I BELIEVE IT IS.

7 Q COULD YOU EXPLAIN TO THE COURT WHERE THE CREEK IS NOW AS
8 OPPOSED TO WHERE IT WAS ORIGINALLY?

9 A WELL, I DON'T HAVE -- I FOUND NOTHING FROM THE SURVEY OR ANY
10 OF THE PLATS THAT HAD ACTUALLY SURVEYED THE HUMPHRIES' SIDE OF
11 THE EDGE OF THE CREEK, JUST THAT IT WAS---

12 MR. HECKMAN: YOUR HONOR, I OBJECT. THIS WITNESS HAS NO
13 PERSONAL KNOWLEDGE OF THE LOCATION OF THE CREEK FROM THAT 1991
14 SURVEY IF HE WAS NEVER PRESENT DURING THAT DAY. IF HE WANTS TO
15 TESTIFY AS TO WHAT IS ON THE SURVEY THAT'S BEEN ADMITTED INTO
16 EVIDENCE, I'M OKAY WITH THAT BUT NO SPECULATION AS TO THE
17 CENTERLINE OF THE CREEK IN 1991. PLEASE KEEP HIS COMMENTS
18 SPECIFIC TO THAT SURVEY.

19 BY THE COURT: WHAT'S THE BASIS OF YOUR OPINION ABOUT WHERE
20 YOU COME UP WITH THE MARKINGS ON PLAINTIFFS' 12?

21 THE WITNESS: THIS LOWER LINE IS THE PROPERTY BOUNDARY FROM
22 EXHIBIT 8, PLAINTIFFS' EXHIBIT 8. THE LINE ON THE TOP, THIS LINE
23 ON THE TOP, IS THE LINE SURVEYED ON APRIL 20, 2010. IT SAYS
24 "EDGE OF STREAM BANK" AND IT SHOWS THE RETAINING WALL FROM THE
25 HUMPHRIES' PROPERTY. ALL OF THAT IS ON THE OTHER SIDE OF THE

1 PROPERTY LINE.

2 BY THE COURT: SO, WHAT YOU'RE SAYING IS YOU DON'T KNOW --
3 LET ME ASK IT THIS WAY. DO YOU FEEL QUALIFIED TO GIVE AN OPINION
4 AS TO WHERE THE ORIGINAL BOUNDARY LINE WAS BETWEEN WHAT IS NOW
5 KNOWN AS THE GREEN PROPERTY AND THE HUMPHRIES' PROPERTY?

6 THE WITNESS: I'M SORRY, ONE MORE TIME JUST TO MAKE SURE.

7 BY THE COURT: I PROBABLY DIDN'T ASK THAT REAL WELL. DO
8 YOU FEEL QUALIFIED TO GIVE AN OPINION AS TO WHERE THE ORIGINAL
9 PROPERTY LINE WAS BETWEEN THESE TWO TRACTS OF LAND, WHAT ARE NOW
10 KNOWN AS THE GREEN PROPERTY AND THE HUMPHRIES PROPERTY?

11 THE WITNESS: THE ORIGINAL BEING?

12 BY THE COURT: WHATEVER YOUR LAWYER JUST ASKED YOU A FEW
13 MINUTES AGO.

14 THE WITNESS: WELL, I'M LOOKING AT -- THE ANSWER TO THAT IS
15 YES, I'M QUALIFIED.

16 BY THE COURT: I KNOW YOU'RE QUALIFIED BUT ARE YOU QUALIFIED
17 TO GIVE AN OPINION ON THAT QUESTION?

18 THE WITNESS: I GUESS THAT'S MAYBE WHY WE'RE HERE. THE PLAT
19 SAYS THERE'S PINS WITH METES AND BOUNDS, DISTANCES AND BEARINGS,
20 AND IT ALSO SHOWS THE CREEK THERE, AND IT ALSO SHOWS A BRANCH ON
21 THE WESTERN SIDE. BUT IT'S CLEAR TO ME THAT WHERE THE BOUNDARY
22 LINE -- WHAT I CALLED THE BOUNDARY LINE OR NOT -- IS ON THE DEED
23 -- THAT LINE IS CLEARLY NOT IN THE CREEK NOW. THE CREEK IS WAY
24 OFF THAT LINE.

25 BY THE COURT: SUBJECT TO THE OBJECTION, YOU CAN CONTINUE

1 WITH YOUR EXAMINATION.

2 MR. THOMPSON: THANK YOU.

3 Q WHAT IS THIS YELLOW SHADED AREA, ALAN, THAT IS ON THIS GRAPH
4 THAT YOU HAVE -- THIS THING THAT YOU HAVE PREPARED?

5 A WELL, THAT IS THE AREA BETWEEN THOSE TWO LINES.

6 Q "BETWEEN THOSE TWO LINES" YOU'RE TALKING ABOUT THE LOWER
7 LINE BEING THE ORIGINAL PROPERTY LINE FROM '91 AND THE UPPER LINE
8 BEING THE LINE THAT WAS ON THE SURVEY FROM APRIL 2010?

9 A YES.

10 Q NOW, DID YOU OBSERVE THE CONDITION OF THE PROPERTY ON THE
11 GREEN SIDE OF THE BANK?

12 A YES.

13 Q ALL RIGHT. DID YOU OBSERVE ANY EFFECTS TO THAT PROPERTY
14 FROM WHAT YOU'VE HEARD DESCRIBED AS THE SEAWALL?

15 A YES.

16 Q WHAT DID YOU OBSERVE?

17 A WELL, I GUESS THE LARGE "S" PART OF THE STREAM BANK ON THE
18 GREEN SIDE, ON THE RIGHT-HAND SIDE OF THIS FIGURE, YES, THE BANKS
19 WERE STEEP. THE BANKS HAD ERODED OUT. IT WAS CLEAR -- IT WAS
20 EVIDENT THAT IT HAD ERODED, BEEN ERODED.

21 Q YOU'VE SEEN PHOTOGRAPHS OF THE SEAWALL; IS THAT CORRECT?

22 A YES, I HAVE.

23 Q DO YOU HAVE AN OPINION AS TO WHAT EFFECT THAT WOULD HAVE ON
24 THE FLOW OF THE CREEK?

25 A YES. IT WOULD HAVE DIVERTED WATER IN THE CREEK CHANNEL

1 RIGHT INTO THAT BANK.

2 Q OKAY. WHAT WOULD BE THE RESULT OF THE PROPERTY DOWNSTREAM
3 FROM ANY WALL ON THE SAME SIDE OF THE PROPERTY AS THE WALL?

4 A ON THE SAME SIDE AS THE WALL?

5 Q YES, SIR.

6 A WELL, THE WALL WOULD PROTECT WHATEVER PROPERTY IS BEHIND THE
7 WALL AND KEEP IT FROM FLOODING AS LONG AS THE FLOOD WATERS DIDN'T
8 COME ABOVE THE WALL, TOP OF THE WALL.

9 Q HAVE YOU IDENTIFIED A CERTAIN AMOUNT OF SPACE THAT --
10 CERTAIN AMOUNT OF PROPERTY THAT NOW EXTENDS BEYOND THE ORIGINAL
11 PROPERTY LINE BASED UPON A COMPARISON OF THAT 2010 SURVEY?

12 A YES.

13 Q HOW MUCH SPACE IS THAT?

14 A BY OUR CAD MEASUREMENT, THERE IS 1,576 SQUARE FEET OR 0.04
15 ACRES.

16 Q ALL RIGHT. DO YOU SEE ANY EVIDENCE OF ANY OTHER CONDITION
17 IN THE CREEK UPSTREAM FROM HERE THAT WOULD CAUSE THAT SORT OF "S"
18 CURVE, THAT SORT OF CONDITION OF THE GREEN PROPERTY?

19 A NO, I DID NOT.

20 Q HAVE YOU -- DID YOU PREPARE A PROPOSAL TO CORRECT THE
21 CONDITIONS THAT WERE EXISTING ON THE PROPERTY?

22 A YES.

23 Q I SHOW YOU WHAT'S BEEN MARKED AS PLAINTIFFS' EXHIBIT 10. IS
24 THIS A COPY OF YOUR PROPOSAL?

25 A IT'S A PROJECT NARRATIVE & PRELIMINARY SCOPE OF WORK. YES.

1 Q IS THAT SOMETHING PREPARED BY YOU?

2 A YES. I DEVELOPED THIS.

3 MR. THOMPSON: YOUR HONOR, WE WOULD REQUEST EXHIBIT 10 BE
4 ADMITTED.

5 BY THE COURT: ALL RIGHT.

6 ("PROJECT NARRATIVE & PRELIMINARY SCOPE OF WORK" ENTERED
7 INTO EVIDENCE AS PLAINTIFFS' EXHIBIT NO. 10)

8 Q ON THE SECOND PAGE, MR. JOHNSON, YOU LIST A NUMBER OF ITEMS
9 THAT MUST BE DONE TO RESTORE THE CREEK BACK TO THE ORIGINAL
10 CONDITION ON THE '91 PLAT?

11 A YES.

12 Q IT WAS HOW MANY ITEMS?

13 A ELEVEN ITEMS.

14 Q NOW, WOULD YOU, YOURSELF, DO THAT WORK?

15 A NO. I WOULD DO ONLY ITEM NUMBER 1.

16 Q WHAT DOES ITEM NUMBER ONE INCLUDE?

17 A JUST TO PREPARE KIND OF A FINAL DESIGN TO TAKE BIDS ON THE
18 SCOPE OF WORK ON ITEMS 2 THROUGH 11, AND ALSO TO OBTAIN WHATEVER
19 PERMITS ARE REQUIRED TO DO THIS IN THE FLOODPLAIN.

20 Q LET ME GET TO THAT, IS THIS AREA IN A FLOODPLAIN?

21 A YES, IT IS.

22 Q TO YOUR KNOWLEDGE AND UNDERSTANDING IS PERMITTING REQUIRED
23 TO DO ANY KIND OF WORK ON THE CREEK IN THIS AREA?

24 A YES, IT IS.

25 Q WOULD THAT INCLUDE PUTTING UP LIKE A FLOOD WALL?

1 A YES, SIR.

2 Q HAVE YOU OBTAINED PROPOSALS TO COMPLETE THE REST OF THE
3 ITEMS CONTAINED ON YOUR EXHIBIT NO. 10?

4 A YES.

5 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 11. IS THAT
6 THE PROPOSAL YOU OBTAINED?

7 A YES.

8 MR. THOMPSON: YOUR HONOR, I WOULD MOVE PLAINTIFFS' 11 BE
9 ADMITTED INTO EVIDENCE AT THIS TIME.

10 BY THE COURT: ALL RIGHT.

11 (RCS GRADING, INC. PROPOSAL ENTERED INTO EVIDENCE AS
12 PLAINTIFFS' EXHIBIT NO. 11)

13 Q WHO PREPARED THIS PROPOSAL FOR YOU?

14 A THIS WAS PREPARED BY RCS GRADING, INCORPORATED OF
15 GREENVILLE.

16 Q WHAT'S THE TOTAL AMOUNT OF THE PROPOSAL THEY PREPARED TO
17 RESTORE THE CREEK BACK TO THE CONDITION OF THE '91 PLAT?

18 A THE LUMP SUM TOTAL FOR ITEMS 2 THROUGH 11 IS \$77,475.00.

19 Q DID YOU HAVE AN AMOUNT THAT IT WOULD COST YOU TO PREPARE
20 ITEM 1?

21 A YES, \$9,000.00.

22 Q THE TOTAL TO DO THE WORK THAT YOU HAVE REFERENCED IS GOING
23 TO BE \$86,- -- LET ME PUT MY PAPERWORK UP HERE -- YOUR \$9,000.00
24 PLUS THIS \$77,000.00 IS GOING TO BE \$86,475.00; IS THAT CORRECT?

25 A YES, SIR.

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 WHICH, YOU KNOW, YOU CAN'T TAKE IT WITH YOU BUT I WOULD SAY
2 \$25,000.00.

3 MR. HECKMAN: NOTHING FURTHER AT THIS TIME.

4 BY THE COURT: YOUR WITNESS.

5 **CROSS-EXAMINATION BY MR. THOMPSON:**

6 Q NOW, MR. HUMPHRIES, YOU AGREE WITH ME THAT YOU BUILT THIS
7 RETAINING, DIVERSION WALL IN THE CREEK, RIGHT?

8 A IT'S NOT A---

9 MR. HECKMAN: I OBJECT TO THE USE OF THE WORD DIVERSION.

10 BY THE COURT: WHAT'S THE OBJECTION?

11 MR. HECKMAN: WITHDRAWN.

12 BY THE COURT: ALL RIGHT. GO AHEAD.

13 Q MR. HUMPHRIES, YOU AGREE WITH ME YOU BUILT THIS WALL IN THE
14 CREEK, RIGHT?

15 A TO START WITH, IT WAS A DEFERRING WALL AS YOU CALLED IT. I
16 PUT IT UP AGAINST WHAT THEY DUG OUT AGAINST MY PROPERTY.

17 Q YOU BUILT THIS WALL, RIGHT?

18 A YES, SIR.

19 Q YOU DID IT YOURSELF, CORRECT?

20 A YES, SIR.

21 Q OKAY. OVER TIME, YOU BACK FILLED THE WALL, DIDN'T YOU, SIR?

22 A OVER TIME WHAT?

23 Q OVER TIME, DID YOU BACK FILL THIS WALL?

24 A YES, SIR. IT TOOK ME ABOUT A YEAR WITH A WHEEL BARROW.

25 Q I SHOW YOU PICTURES OF -- THIS IS PLAINTIFFS' EXHIBIT 4,

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 THAT TOP PHOTOGRAPH, THAT'S THE PROPERTY BEHIND THE WALL, RIGHT,
2 SIR?

3 A YES.

4 Q IT LOOKS LIKE YOU'VE GOT GRASS GROWING, GOT THE TREES THERE,
5 RIGHT, SIR?

6 A HUH-HUH (AFFIRMATIVE).

7 Q NOW, THIS BOTTOM PICTURE, IS THAT WHERE THE STREAM BANK USED
8 TO BE, THE CREEK BED?

9 A NO, SIR. IT'S ALWAYS BEEN FILLED IN THERE.

10 Q THAT'S ALWAYS BEEN LIKE THAT?

11 A IT WASN'T WHEN THEY DUG IT OUT IN 2004.

12 Q SO, THEY DUG THAT PART OUT DOWN YONDER?

13 A YES, SIR.

14 Q YOU HAVE PHOTOGRAPHS OF THAT?

15 A YES, SIR.

16 Q THOSE ARE THE PHOTOGRAPHS--

17 A WE'VE GOT THEM SOMEWHERE.

18 Q --YOU SHOWED THE JUDGE A MINUTE AGO? NOW, MR. HUMPHRIES,
19 LET ME SHOW YOU, LOOKING AT PLAINTIFFS' EXHIBIT NO. 3, THE SECOND
20 PAGE, LOOK AT THAT BOTTOM PICTURE, SIR. THAT WALL IS AT AN
21 ANGLE, ISN'T IT?

22 A THAT PIECE OF PLYWOOD RIGHT THERE---

23 Q YES, SIR.

24 A THIS WALL -- THERE WAS DIRT RIGHT UNTIL THE BIG FLOOD COME
25 AND IT WASHED THE DIRT AND ALL OF THAT STUFF BEHIND IT.

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 ACTUALLY, UP HERE, WASHED THAT AWAY. SO, I WENT BACK AND
2 DIVERTED IT BACK THAT WAY.

3 Q BUT MY QUESTION, THAT PIECE OF PLYWOOD RIGHT THERE IS AT AN
4 ANGLE, CORRECT, SIR?

5 A YES, SIR.

6 Q SO, THE WATER COMES DOWN AND HITS THAT, IT PUSHES IT AWAY
7 FROM THAT WALL, RIGHT?

8 A I GUESS IT WOULD, YEAH.

9 Q THAT WAS YOUR INTENT, RIGHT, SIR?

10 A NO, SIR.

11 Q FOR THE WATER TO GET PUSHED AWAY---

12 A NO, SIR. I---

13 Q LET ME FINISH MY QUESTION, SIR. YOUR INTENT WAS TO PUSH THE
14 WATER -- KEEP THE WATER OFF YOUR PROPERTY AND PUSH IT AWAY,
15 RIGHT?

16 A NO, SIR, KEEP THE DIRT FROM FALLING OVER INTO THE CREEK.

17 Q OKAY. SO, YOUR PURPOSE WAS NOT TO KEEP THE WATER OFF YOUR
18 MANICURED PROPERTY BUT TO KEEP THE DIRT FROM FALLING IN?

19 A YES, SIR. THERE WAS A BUSH THERE RIGHT BEHIND THAT BOARD
20 THERE.

21 Q NOW, LET ME SHOW YOU PLAINTIFFS' EXHIBIT NO. 3, PAGE 8. IT
22 LOOKS LIKE A TREE THAT WAS RIGHT THERE, SIR, IN THAT AREA?

23 A YES, SIR.

24 Q WHAT KIND OF TREE IS THAT?

25 A PLUM TREE.

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 A YES, SIR.

2 Q THAT'S ALMOST RIGHT ACROSS FROM WHERE YOUR WALL IS; IS THAT
3 RIGHT, SIR?

4 A YES, SIR.

5 Q YOUR WALL KIND OF BUMPS OUT INTO THE CREEK A LITTLE BIT
6 THERE, DOESN'T IT, SIR?

7 A NO, SIR. THAT WAS THE FLOW OF THE CREEK. THEY PUT DIRT
8 FROM HERE TO THERE TO BUILD THIS UP. SO, THAT MADE THAT DO THAT
9 ON THE DIG.

10 Q SO, TONY GREEN OR FRANCES PITTMAN PUT DIRT BEHIND THAT WALL,
11 BUILT THAT WALL FOR YOU?

12 A NO, I DID.

13 Q YOU DID THAT; IS THAT RIGHT, SIR?

14 A (NO RESPONSE)

15 Q BUT YOU UNDERSTAND, SIR -- LET ME GO BACK. NOW, WHEN YOU
16 BOUGHT THIS PROPERTY, YOU DIDN'T HAVE A SURVEY DONE, CORRECT?

17 A THE BANK SAID I DIDN'T NEED IT BECAUSE IT WAS SURVEYED A
18 YEAR-AND-A-HALF BEFORE.

19 Q LET'S TALK ABOUT THAT FOR JUST A SECOND. THAT'S PLAINTIFFS'
20 EXHIBIT NO. 8, IS THAT RIGHT, SIR, THIS PLAT FROM DORA LEE HALL
21 IN JULY OF '91; IS THAT RIGHT?

22 A YES, SIR.

23 Q ALL RIGHT. NOW, I THINK YOUR COUNSEL ASKED YOU ABOUT THIS,
24 IN THIS TOP LINE IS THE BOUNDARY BETWEEN YOU AND WHAT IS NOW TONY
25 GREEN'S PROPERTY, CORRECT, SIR?

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 A YES.

2 Q ALL RIGHT. IT SAYS BEAVER DAM CREEK IS THE PROPERTY LINE;
3 IS THAT RIGHT?

4 A YES, SIR.

5 Q IT ALSO HAS MEASUREMENTS IN TERMS -- WHEN I SAY METES AND
6 BOUNDS, DO YOU KNOW WHAT I'M REFERRING TO, SIR?

7 A YES, SIR.

8 Q THAT'S THE ANGLES AND THE DISTANCES FROM POINT TO POINT TO
9 HELP SET THE BOUNDARIES FOR A PIECE OF PROPERTY, RIGHT?

10 A YES, SIR.

11 Q THE NORTH SIDE OF YOUR PROPERTY LINE HAS METES AND BOUNDS
12 MEASUREMENTS; IS THAT CORRECT?

13 A IF THE PLAT SHOWS IT, YEAH.

14 Q ALL RIGHT. IT SHOWS -- THERE'S TWO LEGS THAT ARE KIND OF
15 ABOVE THE CREEK; IS THAT RIGHT, SIR? IT HAS TWO SEPARATE
16 MEASUREMENTS, AND METES AND BOUNDS DEFINITIONS FOR EACH ONE OF
17 THOSE SEGMENTS?

18 A THAT'S WHAT IT SAYS.

19 Q NOW, Y'ALL BOUGHT THE PROPERTY FROM DORA LEE HALL; IS THAT
20 RIGHT?

21 A YES, SIR.

22 Q PLAINTIFFS' EXHIBIT 9, AS WE'VE ALREADY DISCUSSED, IS THE
23 DEED INTO MS. HALL; IS THAT CORRECT, SIR? IS THAT A YES?

24 A YES.

25 Q ALL RIGHT. THIS WHOLE PARAGRAPH IS A LEGAL DESCRIPTION.

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 ARE YOU FAMILIAR WITH THAT TERM? WHEN I USE "LEGAL DESCRIPTION",
2 DO YOU KNOW WHAT I'M TALKING ABOUT, SIR?

3 A YES.

4 Q WOULD YOU AGREE WITH ME THIS MIDDLE -- THIS WHOLE PARAGRAPH
5 IS THE LEGAL DESCRIPTION FOR THE PROPERTY; IS THAT CORRECT?

6 MR. HECKMAN: OBJECTION. IT'S CALLING FOR EXPERTISE THE
7 WITNESS DOES NOT HAVE.

8 BY THE COURT: IF HE HAS AN OPINION OR A BASIS TO HAVE THAT,
9 THEN HE CAN ANSWER IT. IF NOT, HE CAN SAY HE DOESN'T KNOW.

10 Q MR. HUMPHRIES, DO YOU KNOW IF THIS IS THE LEGAL DESCRIPTION
11 THAT'S CONTAINED IN THIS DEED?

12 A YES.

13 Q DOES THIS LEGAL DESCRIPTION CONTAIN LANGUAGE SUCH AS "266.5
14 FEET TO AN IRON PIN AT THE JOINT LINE"? IS THAT LANGUAGE
15 CONTAINED IN THIS LEGAL DESCRIPTION?

16 A YEAH.

17 Q NOW, IT DOES SAY, "THENCE WITH BEAVER DAM CREEK IS THE LINE"
18 AT ONE POINT, CORRECT?

19 A YES, SIR.

20 Q IT TALKS ABOUT AN IRON PIN IN THE CREEK, RIGHT? "IRON PIN
21 IN BEAVER DAM CREEK; THENCE WITH BEAVER DAM CREEK IS THE LINE";
22 IS THAT RIGHT, SIR?

23 A YES, SIR. THAT'S WHAT IT SAYS.

24 Q OKAY. THEN IT GOES ON TO SAY, YOU KNOW, "N. 72-33 E., 99.9
25 FEET TO AN IRON PIN, AND N. 57-42 E., 117.8 FEET TO AN IRON PIN."

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 DID I READ THAT CORRECTLY?

2 A YES, SIR.

3 Q SO, NOT ONLY DOES IT REFERENCE THE CREEK, BUT IT ALSO GIVES
4 YOU A METES AND BOUNDS DESCRIPTION FOR THAT PROPERTY LINE; IS
5 THAT CORRECT, SIR?

6 A YES, SIR.

7 Q AND IT REFERENCES IRON PINS, CORRECT, SIR? IS THAT CORRECT?

8 A YES, SIR.

9 Q SO, IN THEORY, YOU HAVE A DEFINITE LINE AS TO WHERE THAT
10 CREEK IS AT THAT POINT IN TIME; IS THAT RIGHT, SIR?

11 A YES, SIR, BUT MY DEED AND MY PLAT SAYS THE CREEK IS THE
12 LINE.

13 Q LET'S LOOK AT YOUR DEED THEN SINCE YOU'VE REFERENCED THAT.
14 THE DEED TO YOUR WIFE IS -- LET ME FIND IT HERE, GRAB THE RIGHT
15 ONE. NOW, THIS PROPERTY WAS DEEDED TO YOUR WIFE BY DORA LEE
16 HALL; IS THAT CORRECT, SIR?

17 A YES, SIR.

18 Q IS THIS THAT DEED, DEFENDANTS' EXHIBIT 2, THE DEED TO
19 VERONICA HUMPHRIES FROM DORA LEE HALL?

20 A YES, SIR.

21 Q CAN YOU TELL ME WHERE ON THIS DEED IT TALKS ABOUT THE
22 PROPERTY LINE BEING -- THE CREEK BEING THE PROPERTY LINE?

23 MR. HECKMAN: I OBJECT.

24 A IT SAYS---

25 BY THE COURT: HOLD ON, PLEASE, SIR.

SAMUEL DARRYL HUMPHRIES-CROSS BY MR. THOMPSON

1 MR. HECKMAN: THAT QUESTION WAS ASKED ON DIRECT AND
2 ANSWERED. WHEN I SHOWED HIM THAT DEED AND ASKED HIM ABOUT THE
3 LEGAL DESCRIPTION, HE READ PLAT BOOK 20-Y AT PAGE 97.

4 BY THE COURT: WELL, I THINK HE HAS A RIGHT TO SEE IF THE
5 ANSWER IS GOING TO BE CONSISTENT ON CROSS. SO, GO AHEAD.

6 A WHAT THE DEED SAYS IT'S THE PLAT AT 20-Y.

7 Q DOES YOUR DEED REFERENCE THE CREEK AS THE PROPERTY LINE?

8 A IT DON'T SAY IT ON THIS---

9 Q YOUR DEED DOES NOT SAY THAT, CORRECT?

10 A NOT ON THAT PARTICULAR DOCUMENT, NO.

11 Q ALL RIGHT. WHAT ABOUT THE DEED FROM YOUR WIFE TO YOU? DOES
12 IT SAY IN THERE ANYTHING ABOUT THE PROPERTY -- THE CREEK BEING
13 THE PROPERTY LINE?

14 A IT REFERS TO 20-Y, PAGE 97.

15 Q SO, YOU WOULD AGREE WITH ME THEN THAT YOUR PROPERTY -- THE
16 PROPERTY GIVEN TO YOU BY DORA LEE HALL IS THE SAME PROPERTY GIVEN
17 TO DORA LEE HALL BY KATIE EMERY, CORRECT?

18 A YES, SIR.

19 Q MR. HUMPHRIES, I'M A LITTLE CONFUSED ABOUT SOMETHING. YOU
20 SAID THAT THIS EXCAVATION WORK WAS DONE IN 2004; IS THAT RIGHT,
21 SIR?

22 A YES, SIR.

23 Q YOU SAID SHORTLY AFTER THAT THERE WAS THIS MASSIVE FLOOD; IS
24 THAT RIGHT, SIR?

25 A YES, SIR.

SAMUEL DARRYL HUMPHRIES-RE CROSS BY MR. THOMPSON
SAMUEL DARRYL HUMPHRIES-REDIRECT BY MR. HECKMAN

1 Q YOUR UNDERSTANDING IS BEAVER DAM CREEK IS THE LINE?

2 A YES, SIR.

3 MR. HECKMAN: ALL RIGHT. NOTHING FURTHER.

4 MR. THOMPSON: JUST ONE QUICK QUESTION, JUDGE.

5 BY THE COURT: SURE.

6 **RE CROSS EXAMINATION BY MR. THOMPSON:**

7 Q JUST TO KIND OF FOLLOW UP ON THAT, JUST TO FOLLOW UP, MR.
8 HUMPHRIES, IT'S YOUR CONTENTION THAT WHEREVER THE CREEK GOES, YOU
9 GET TO KEEP ALL OF THE PROPERTY ON YOUR SIDE; IS THAT RIGHT?

10 A YES, SIR.

11 MR. THOMPSON: OKAY. THAT'S ALL I HAVE, YOUR HONOR.

12 MR. HECKMAN: ONE FINAL REDIRECT.

13 **REDIRECT EXAMINATION BY MR. HECKMAN:**

14 Q MR. HUMPHRIES, DO YOU RECOGNIZE THESE PICTURES?

15 MR. THOMPSON: YOUR HONOR, I WOULD OBJECT. THAT WASN'T PART
16 OF MY LAST - RE CROSS.

17 BY THE COURT: HOW DOES THAT RELATE TO WHAT MR. THOMPSON
18 JUST ASKED?

19 MR. HECKMAN: REPEAT THE QUESTION.

20 MR. THOMPSON: IF I CAN. I THINK MY QUESTION TO THE WITNESS
21 WAS WHETHER HE BELIEVED THAT THAT MEANT HE GETS TO KEEP ALL OF
22 THE PROPERTY ON HIS SIDE OF THE CREEK IF THE CREEK MOVES. THAT
23 WAS THE ONLY QUESTION I JUST ASKED.

24 MR. HECKMAN: THE PICTURES SHOW THE NATURE OF THE CREEK
25 AFTER THE DIG WAS DONE IN 2010 WHILE WE WERE AT MEDIATION. HE

SAMUEL DARRYL HUMPHRIES-RECROSS BY MR. THOMPSON
SAMUEL DARRYL HUMPHRIES-REDIRECT BY MR. HECKMAN

1 Q YOUR UNDERSTANDING IS BEAVER DAM CREEK IS THE LINE?

2 A YES, SIR.

3 MR. HECKMAN: ALL RIGHT. NOTHING FURTHER.

4 MR. THOMPSON: JUST ONE QUICK QUESTION, JUDGE.

5 BY THE COURT: SURE.

6 **RECROSS EXAMINATION BY MR. THOMPSON:**

7 Q JUST TO KIND OF FOLLOW UP ON THAT, JUST TO FOLLOW UP, MR.
8 HUMPHRIES, IT'S YOUR CONTENTION THAT WHEREVER THE CREEK GOES, YOU
9 GET TO KEEP ALL OF THE PROPERTY ON YOUR SIDE; IS THAT RIGHT?

10 A YES, SIR.

11 MR. THOMPSON: OKAY. THAT'S ALL I HAVE, YOUR HONOR.

12 MR. HECKMAN: ONE FINAL REDIRECT.

13 **REDIRECT EXAMINATION BY MR. HECKMAN:**

14 Q MR. HUMPHRIES, DO YOU RECOGNIZE THESE PICTURES?

15 MR. THOMPSON: YOUR HONOR, I WOULD OBJECT. THAT WASN'T PART
16 OF MY LAST - RECROSS.

17 BY THE COURT: HOW DOES THAT RELATE TO WHAT MR. THOMPSON
18 JUST ASKED?

19 MR. HECKMAN: REPEAT THE QUESTION.

20 MR. THOMPSON: IF I CAN. I THINK MY QUESTION TO THE WITNESS
21 WAS WHETHER HE BELIEVED THAT THAT MEANT HE GETS TO KEEP ALL OF
22 THE PROPERTY ON HIS SIDE OF THE CREEK IF THE CREEK MOVES. THAT
23 WAS THE ONLY QUESTION I JUST ASKED.

24 MR. HECKMAN: THE PICTURES SHOW THE NATURE OF THE CREEK
25 AFTER THE DIG WAS DONE IN 2010 WHILE WE WERE AT MEDIATION. HE

BRYAN ALAN GOSNELL-CROSS BY MR. THOMPSON.

1 IMPERCEPTIBLE OVER TIME AND YOU CAN'T CHANGE IT, YES, THE LINE
2 MOVES WITH IT.

3 Q IF THE CHANGE IN THE COURSE OF THE CREEK IS MANMADE, THAT'S
4 A DIFFERENT STORY, CORRECT?

5 A THAT'S A DIFFERENT STORY. THAT'S EMULSION, EROSION, THE
6 LINE STAYS IN THE OLD CREEK RUT.

7 Q WHEN YOU DID YOUR SURVEY, DID YOU OBSERVE DAMAGE DONE TO THE
8 HUMPHRIES' SIDE OF THE BANK THAT APPEARED TO BE MANMADE?

9 A YES.

10 Q WHAT DID YOU SEE?

11 A WHEN I CAME OUT THERE, A BULLDOZER HAD BEEN IN THERE, OR A
12 TRACK HOE, OR SOMETHING AND JUST TOTALLY REWORKED THE WHOLE
13 CREEK. THIS JUT RIGHT HERE THAT YOU SEE HERE IN THIS CREEK
14 LOOKED LIKE IT HAD BEEN THERE TO DIVERT THE WATER TO TURN TOWARDS
15 THE HUMPHRIES' SIDE, AND THEY EXPLAINED TO ME WHAT ALL HAD WENT
16 ON. I THINK I BASICALLY TOLD THEM THEN THAT THAT WASN'T GOING TO
17 HOLD ANYWAY IN THE CREEK. THEN I WAS UP THERE JUST A FEW DAYS
18 AGO AND LOOKED AND IT HADN'T. IT HAD STRAIGHTENED BACK OUT.

19 MR. HECKMAN: NOTHING FURTHER AT THIS TIME.

20 BY THE COURT: YOUR WITNESS.

21 **CROSS-EXAMINATION BY MR. THOMPSON:**

22 Q MR. GOSNELL, HOW ARE YOU THIS MORNING, SIR?

23 A PRETTY GOOD.

24 Q LET ME JUST ASK YOU, WHEN YOU WENT OUT THERE TO SURVEY THE
25 HUMPHRIES' PROPERTY, DID YOU DO ANY -- DID YOU EXAMINE ANY PRIOR

1 PLATS OR SURVEYS?

2 A YES.

3 Q IS THAT ACTUALLY -- LET ME GET MY HANDS ON THE RIGHT ONE.

4 MR. GOSNELL, LET ME SHOW YOU PLAINTIFFS' EXHIBIT NO. 8, IS THAT A
5 PRIOR SURVEY FOR THE SAME PROPERTY?

6 A YES.

7 Q DID YOU USE THAT IN PART OF YOUR SURVEY OF THE HUMPHRIES'
8 PROPERTY IN 2010?

9 A YES.

10 Q HOW DID YOU USE THE SURVEY FROM 1991?

11 A THAT'S OUR JOB IS TO FOLLOW THE FOOTSTEPS OF THE SURVEYS
12 BEFORE US. WE GO OUT AND WE LOCATE OLD MONUMENTATION. IT SEEMS
13 LIKE I FOUND OLD MONUMENTATION AND FOUND THE REFERENCE IRON PINS
14 -- Y'ALL HAVE BEEN UP HERE TALKING ABOUT THE PINS IN THE CORNERS.
15 Y'ALL ARE WELL AWARE, THOSE ARE CALLED REFERENCE IRON PINS. THAT
16 JUST GIVES YOU ALIGNMENT, AND IT PROJECTS IT TO THE CENTER LINE
17 OF THE CREEK.

18 Q SO, MR. GOSNELL, WAS THERE A MEASUREMENT -- THIS IS --
19 DEFENDANTS' EXHIBIT 8 (SIC) IS GENERALLY NORTH FACING; IS THAT
20 CORRECT?

21 A YES.

22 Q IT'S AT THE TOP OF THE PAGE. THE SAME THING WITH YOUR
23 SURVEY, DEFENDANTS' 13; IS THAT RIGHT?

24 A YES.

25 Q OKAY. THE WESTERN BOUNDARY OF THE HUMPHRIES' PROPERTY IN

BRYAN ALAN GOSNELL-CROSS BY MR. THOMPSON

1 '91, YOU'RE TELLING ME---

2 A I LEFT MY GLASSES BACK THERE. CAN I GO GET THEM?

3 Q SURE. ABSOLUTELY, SIR.

4 A OR YOU CAN BRING THEM TO ME. EITHER WAY. NOW, WHAT WAS
5 YOUR QUESTION?

6 Q YES, SIR. ON THE WESTERN BOUNDARY IN THE '91 SURVEY, WHAT'S
7 THE DISTANCE, THE TOTAL LENGTH OF THAT WESTERN BOUNDARY LINE?

8 A 212.18.

9 Q ALL RIGHT. NOW, IN YOUR SURVEY, DEFENDANTS' 13, FROM 2010,
10 WHAT'S THE DISTANCE OF THAT?

11 A 215.3.

12 Q SO, ESSENTIALLY, THERE'S A CHANGE AT THIS POINT OF 3 FEET;
13 IS THAT RIGHT?

14 A CORRECT.

15 Q WHAT ABOUT -- LET'S LOOK AT THE EASTERN BOUNDARY LINE. IN
16 THE '91 SURVEY THAT'S PLAINTIFFS' EXHIBIT 8, WHAT IS THE LENGTH
17 OF THE EASTERN PROPERTY LINE?

18 A 166.

19 Q WHEN YOU DID IT IN 2010, WHAT DOES THE LENGTH SHOW?

20 A 172.

21 Q 172.5, ISN'T IT?

22 A YES.

23 Q SO, THAT'S A CHANGE OF 6½ FEET; IS THAT RIGHT, SIR? FROM
24 166 TO 172.5?

25 A ABOUT 6½ FEET.

BRYAN ALAN GOSNELL-CROSS BY MR. THOMPSON

1 Q SO, ESSENTIALLY, THE PROPERTY LINE HAS MOVED ANYWHERE FROM 3
2 FEET TO 6½ FEET FURTHER TOWARDS THE PROPERTY ON THE OTHER SIDE OF
3 THE CREEK; IS THAT RIGHT?

4 A CORRECT. MY THOUGHTS ON THAT---

5 Q I'M SURE MR. HECKMAN WILL ASK YOU YOUR THOUGHTS IN A MOMENT.
6 BUT DO YOU HAVE ANY KNOWLEDGE, SIR -- DID YOU TRY TO LOOK IN YOUR
7 SURVEY THE ORIGINAL LINE FROM '91 THAT WAS THE ORIGINAL BOUNDARY?

8 A DID I TRY TO RELOCATE IT?

9 Q DID YOU TRY AND FIND IT, TRY TO LOCATE IT?

10 A NO.

11 Q YOU WOULD AGREE THAT THE '91 SURVEY HAS METES AND BOUNDS ON
12 IT ON THE NORTHERN BOUNDARY; IS THAT CORRECT, SIR?

13 A YES.

14 Q AND YOU COULD, AS A SURVEYOR, GO OUT THERE AND ESTABLISH
15 THAT LINE, COULDN'T YOU, USING THOSE METES AND BOUNDS?

16 A I COULD.

17 Q SO, YOU WOULD AGREE WITH ME THAT THIS SURVEY DONE IN 1991
18 REFERENCES 1.0 ACRES OF PROPERTY; IS THAT CORRECT?

19 A YES.

20 Q NOW, YOUR PROPERTY ITSELF, YOU REFERENCE 1.02 ACRES; IS THAT
21 CORRECT?

22 A THAT'S CORRECT.

23 Q WOULD THAT BE AN INCREASE OF PROPERTY TO THE HUMPHRIES?

24 A TRUE.

25 Q DO YOU KNOW IF THEY PAID ANYTHING FOR THAT EXTRA LITTLE BIT

BRYAN ALAN GOSNELL-CROSS BY MR. THOMPSON

1 OF PROPERTY?

2 A I DON'T THINK -- IT'S NOT EXTRA PROPERTY. THIS SURVEY WAS
3 DONE IN '91. ITS ACCURACY IS TO THE NEAREST MINUTE AND TO THE
4 NEAREST TENTH OF A FOOT; WHEREAS, STANDARDS HAVE CHANGED. HERE
5 IN 2010, WE HAVE TO SHOW TO THE SECOND, WE HAVE TO SHOW TO THE
6 HUNDREDTH. IT'S JUST TIGHTER CALCULATIONS.

7 Q OKAY. BUT THERE'S STILL A 3 FEET, 6½ FEET STILL -- WE'RE
8 NOT TALKING ABOUT LIKE AN INCH OR TWO, RIGHT? WE'RE TALKING
9 ABOUT SEVERAL FEET; IS THAT CORRECT?

10 A RIGHT.

11 Q THAT WOULD INCREASE THE AMOUNT OF PROPERTY CONVEYED IN THE
12 HUMPHRIES' PIECE OF LAND; IS THAT RIGHT, SIR?

13 A YES.

14 Q JUST SO WE'RE CLEAR -- AND I APOLOGIZE, JUST FOR MY OWN
15 CLARIFICATION, THE '91 SURVEY DOES GIVE METES AND BOUNDS
16 MEASUREMENTS WHERE YOU COULD, IN FACT, GO MEASURE -- PUT A LINE
17 DOWN WITH THE ORIGINAL BOUNDARY; IS THAT CORRECT, SIR?

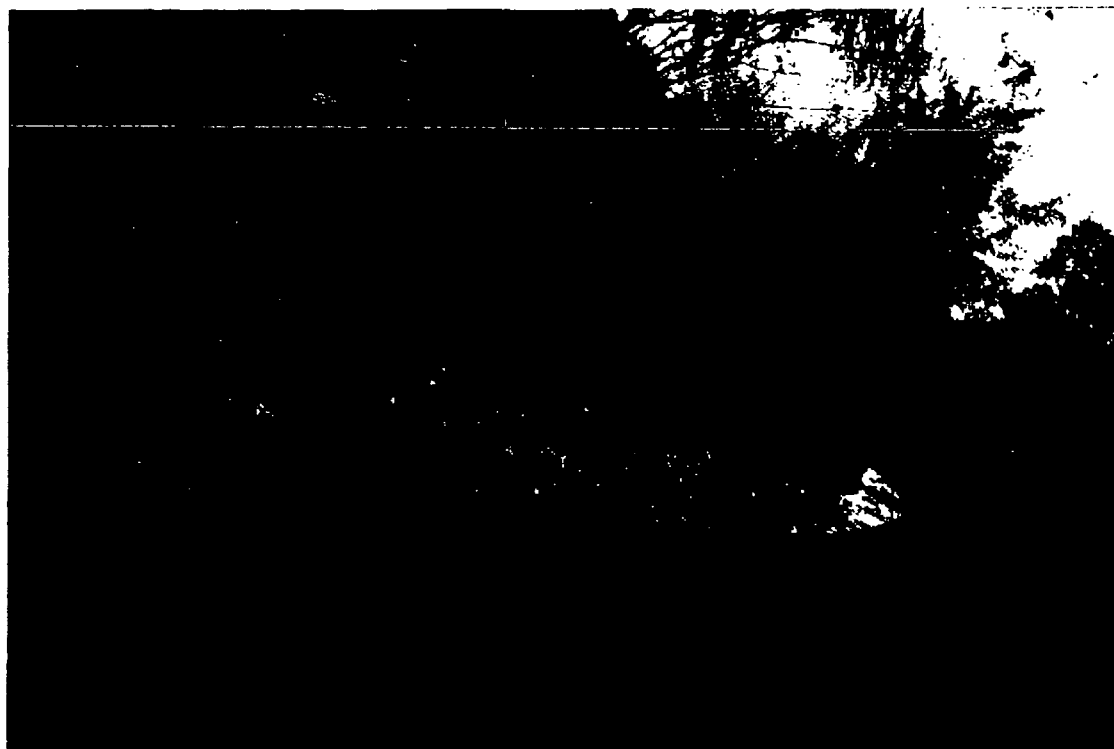
18 A NO.

19 Q WHY NOT?

20 A BECAUSE THE CREEK IS THE LINE. IT'S THE MONUMENT. THE
21 METES AND THE BOUNDS DESCRIPTIONS WOULD YIELD TO THE ACTUAL
22 MONUMENT.

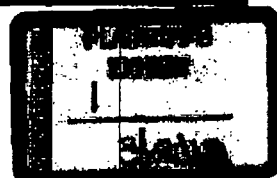
23 Q MY QUESTION TO YOU, SIR, IS IN THIS '91 SURVEY, PLAINTIFFS'
24 NO. 8, THERE ARE METES AND BOUNDS DESCRIPTIONS FOR TWO SEGMENTS
25 ON THE NORTHERN PROPERTY LINE OF THE HUMPHRIES' PROPERTY,

2003

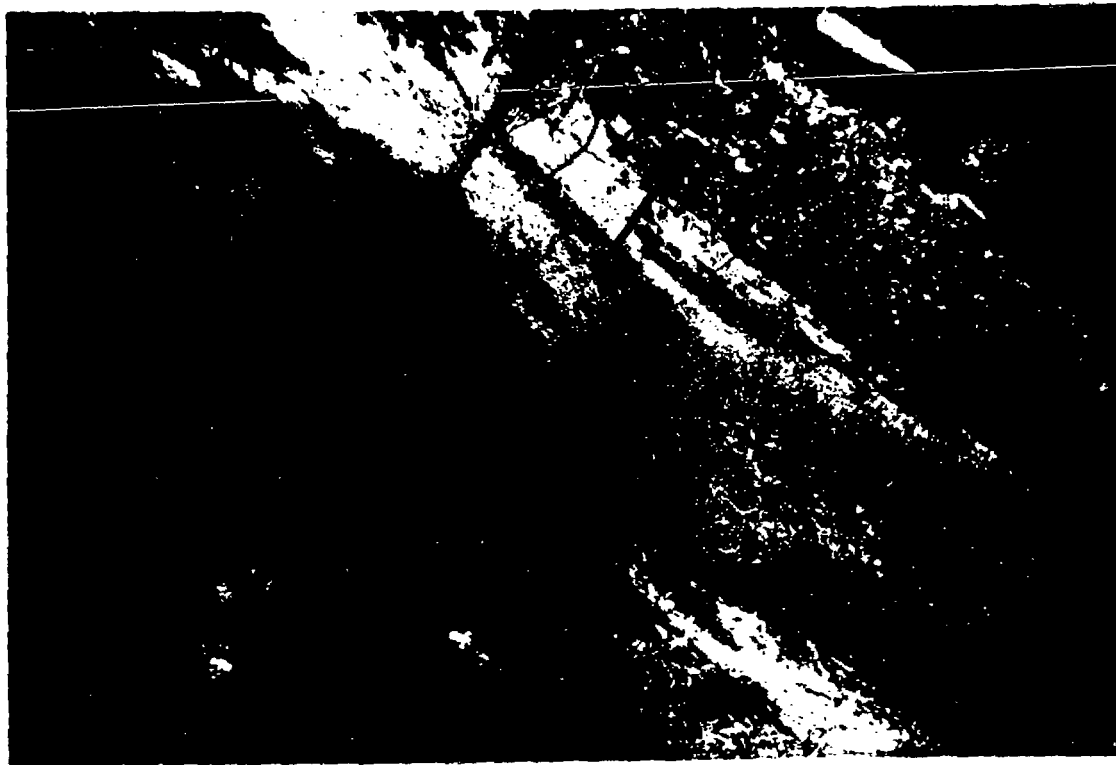


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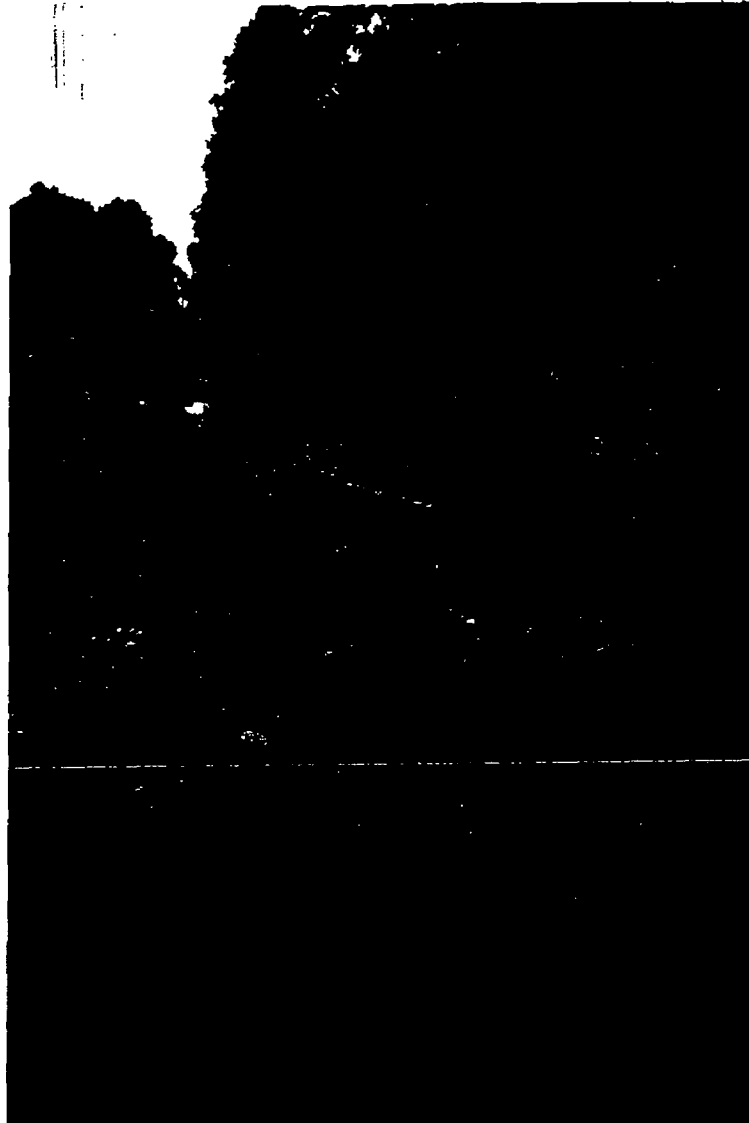
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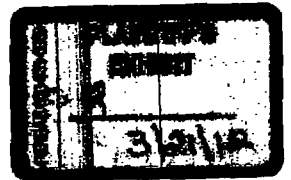
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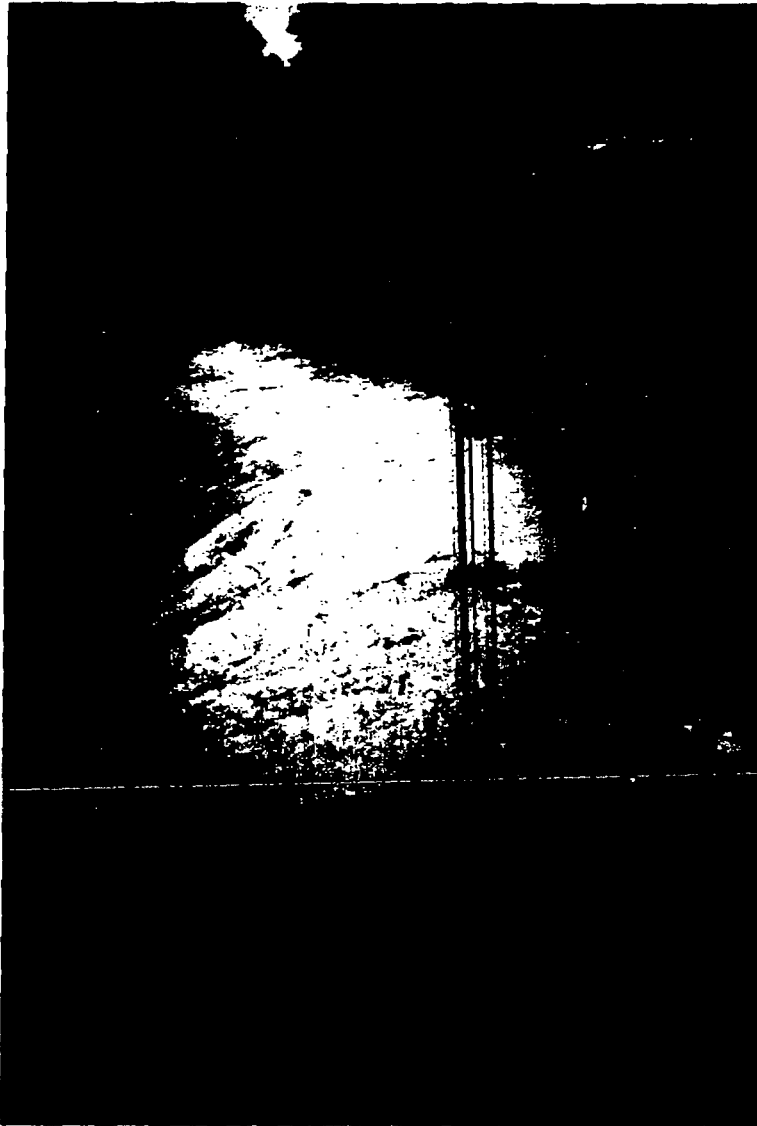
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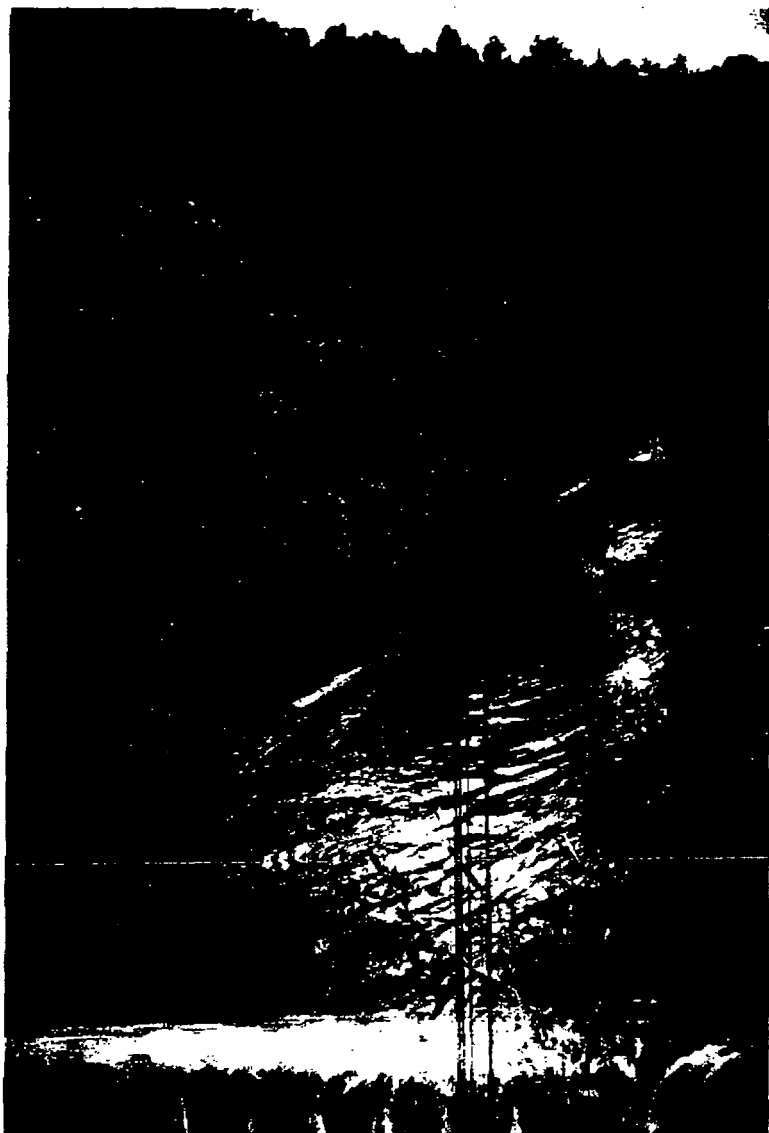
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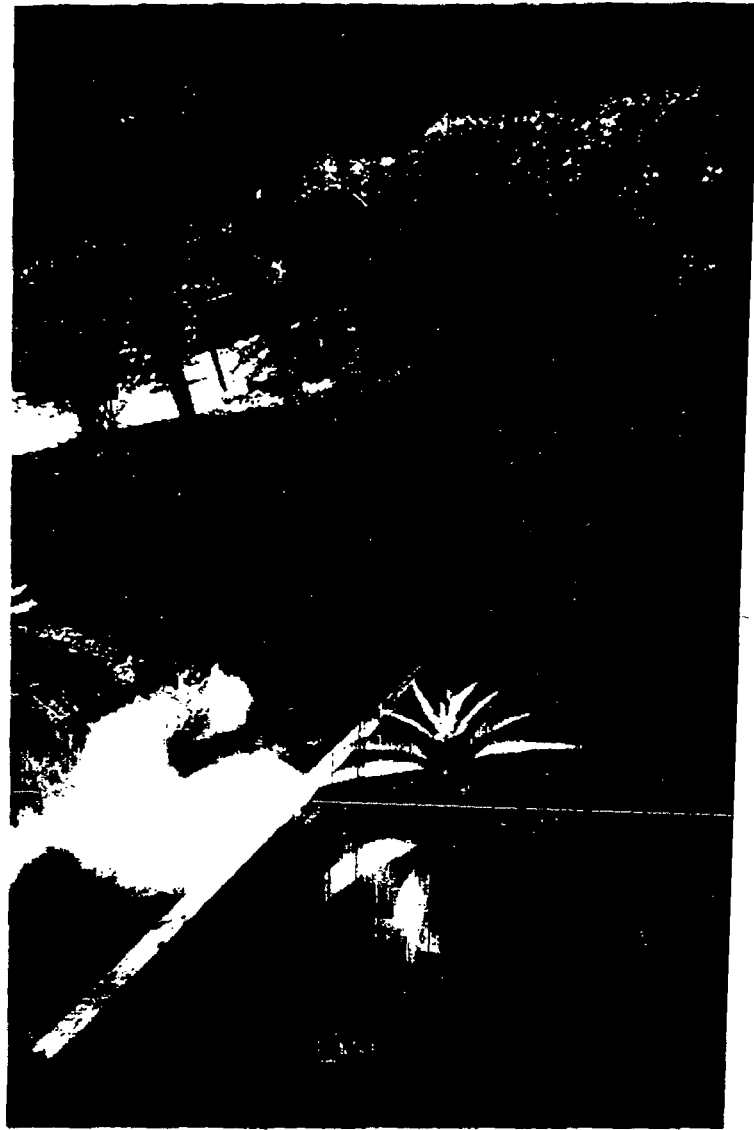
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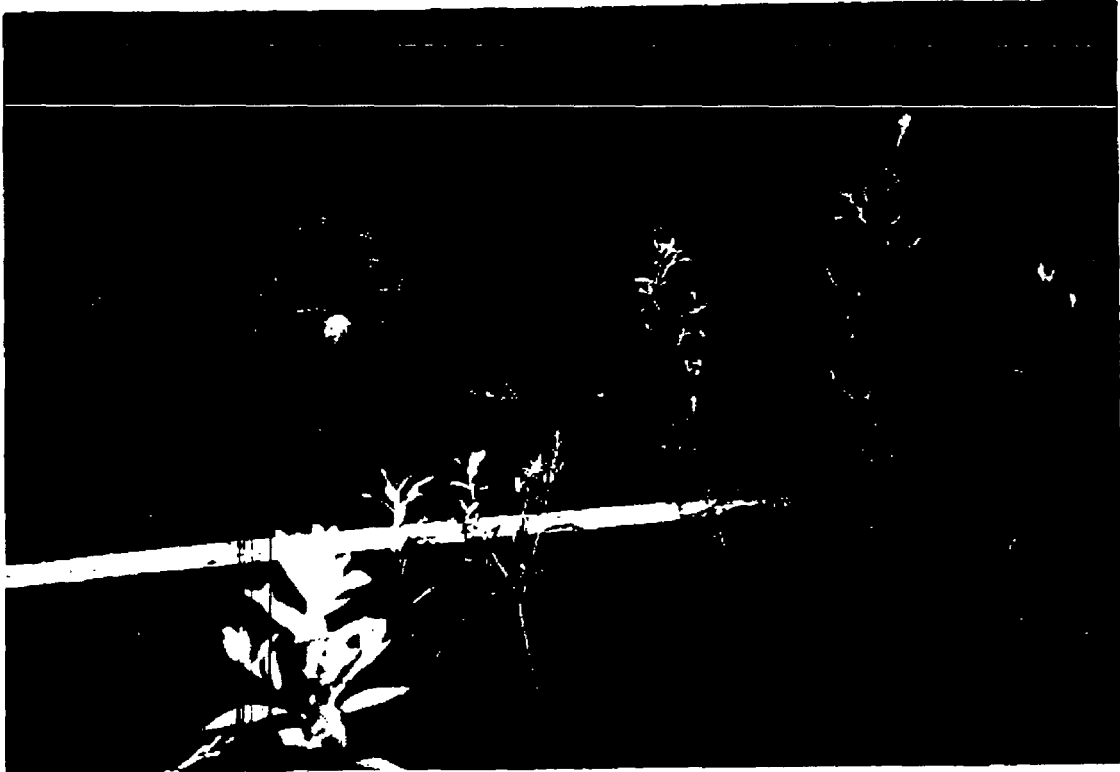
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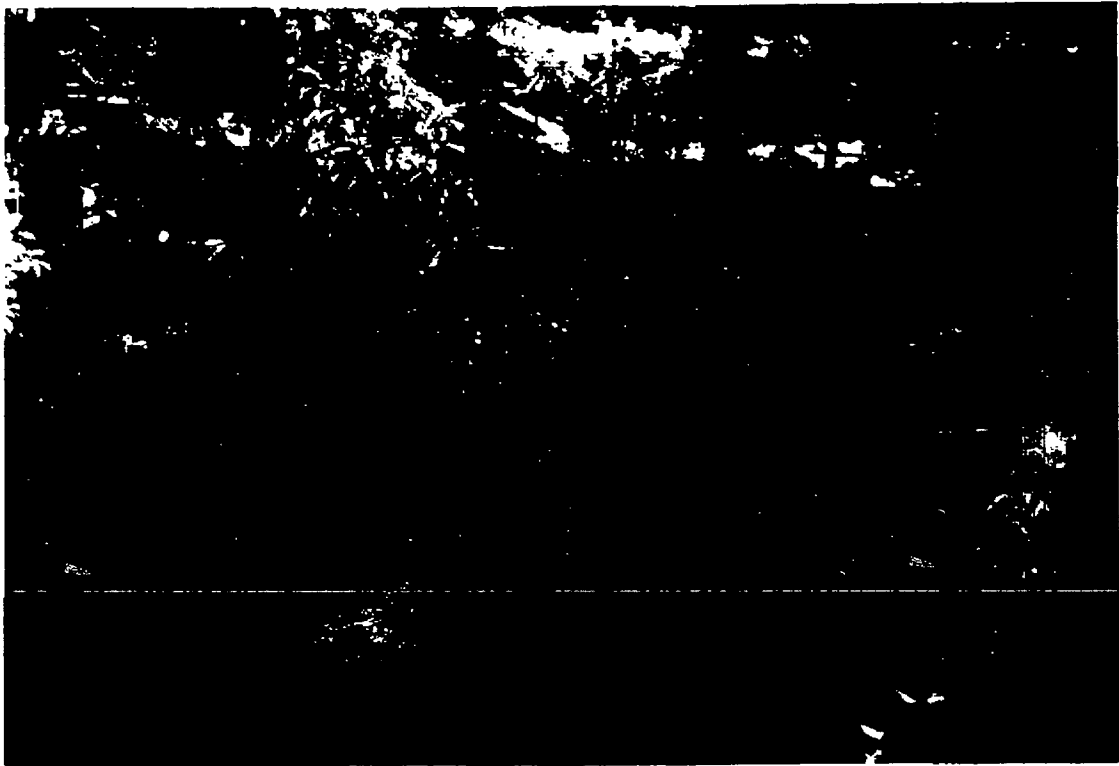
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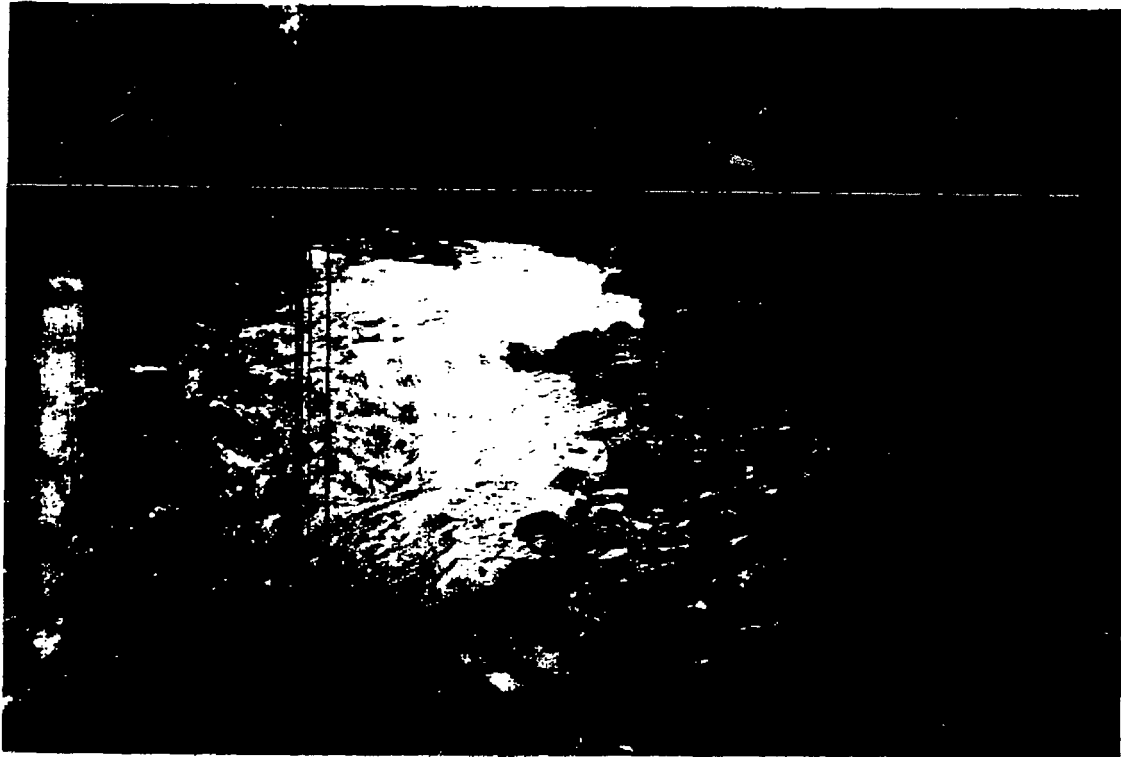
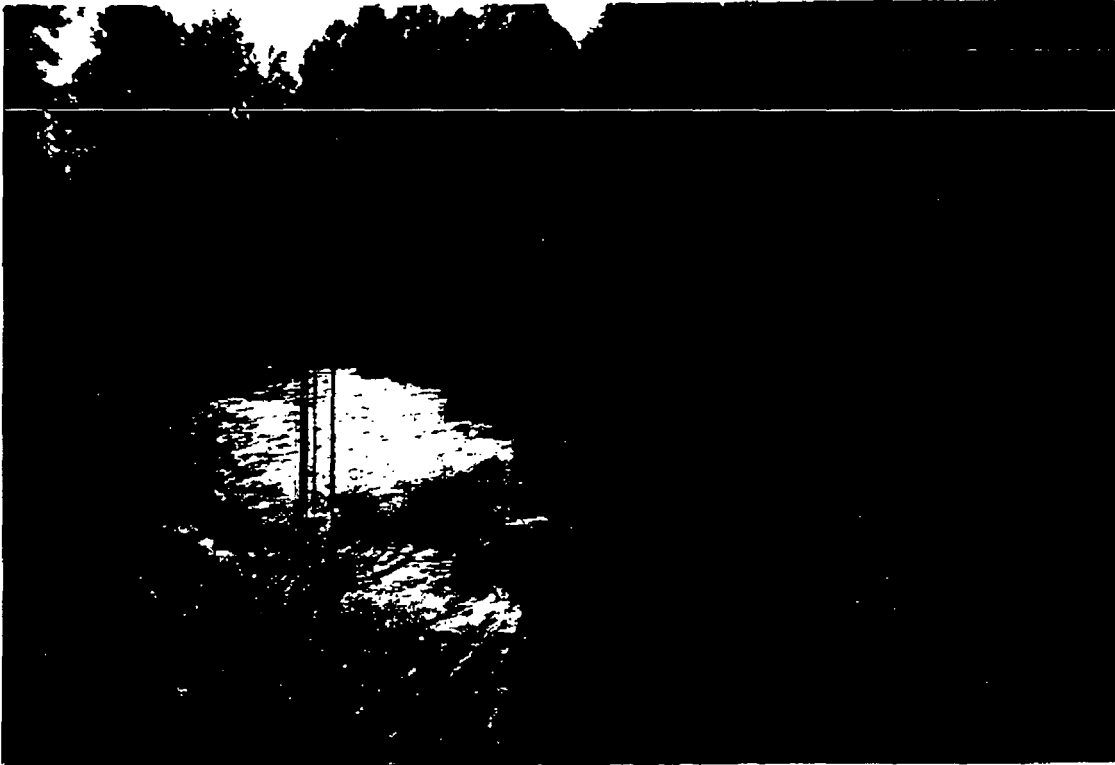
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July 2006



July 2006



July 2006



July 2006



March 2007



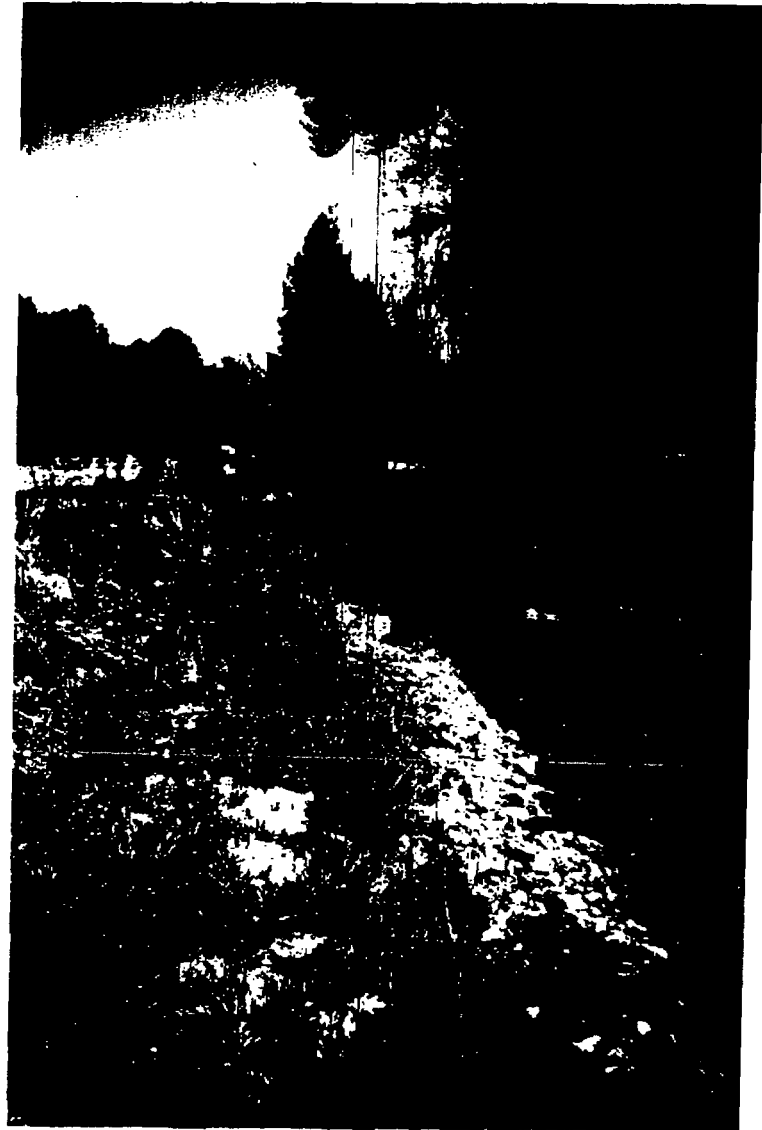
March 2007



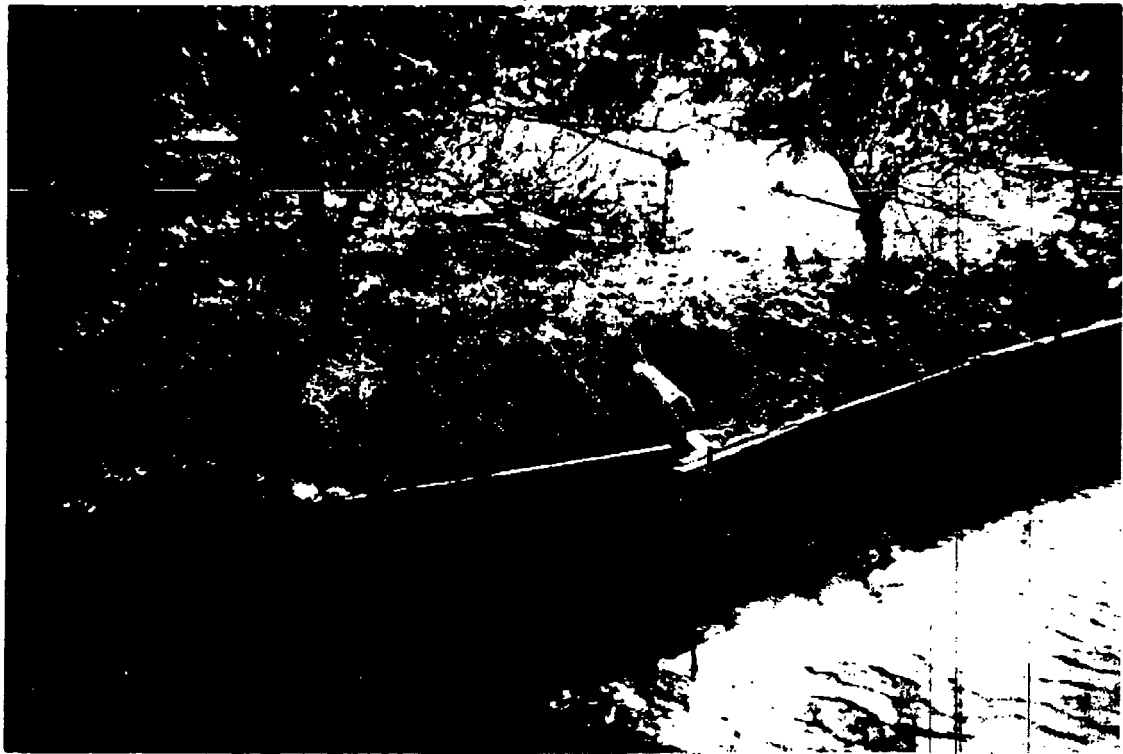
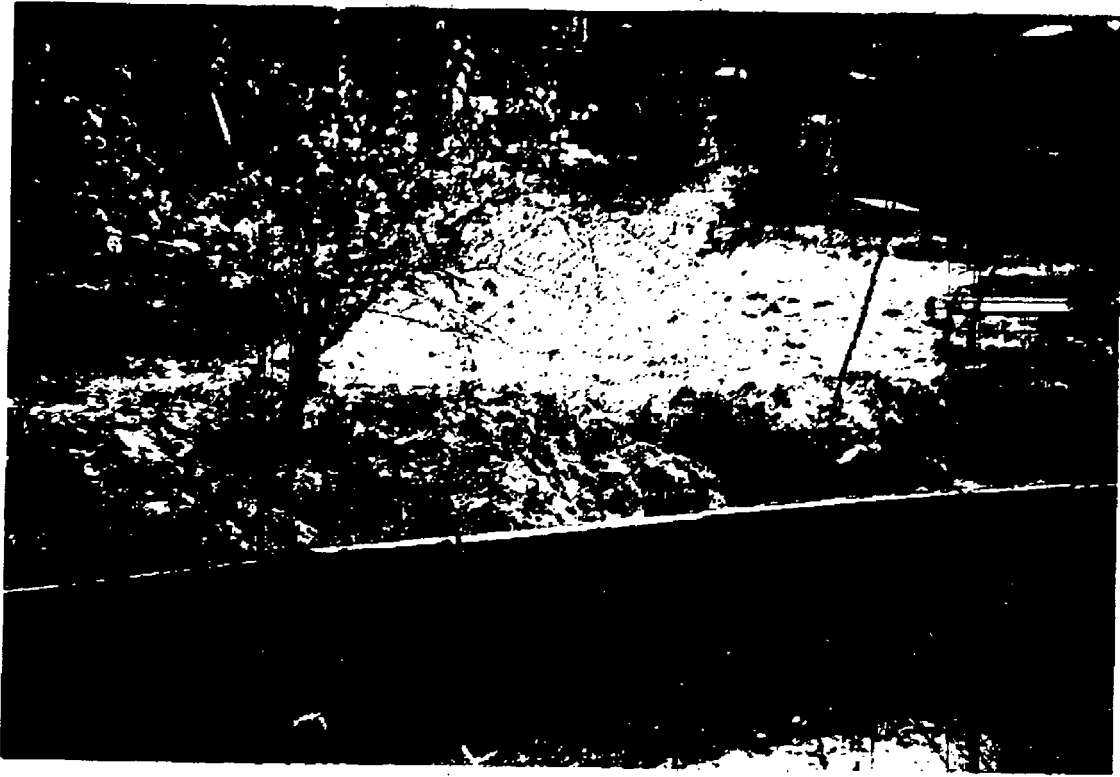
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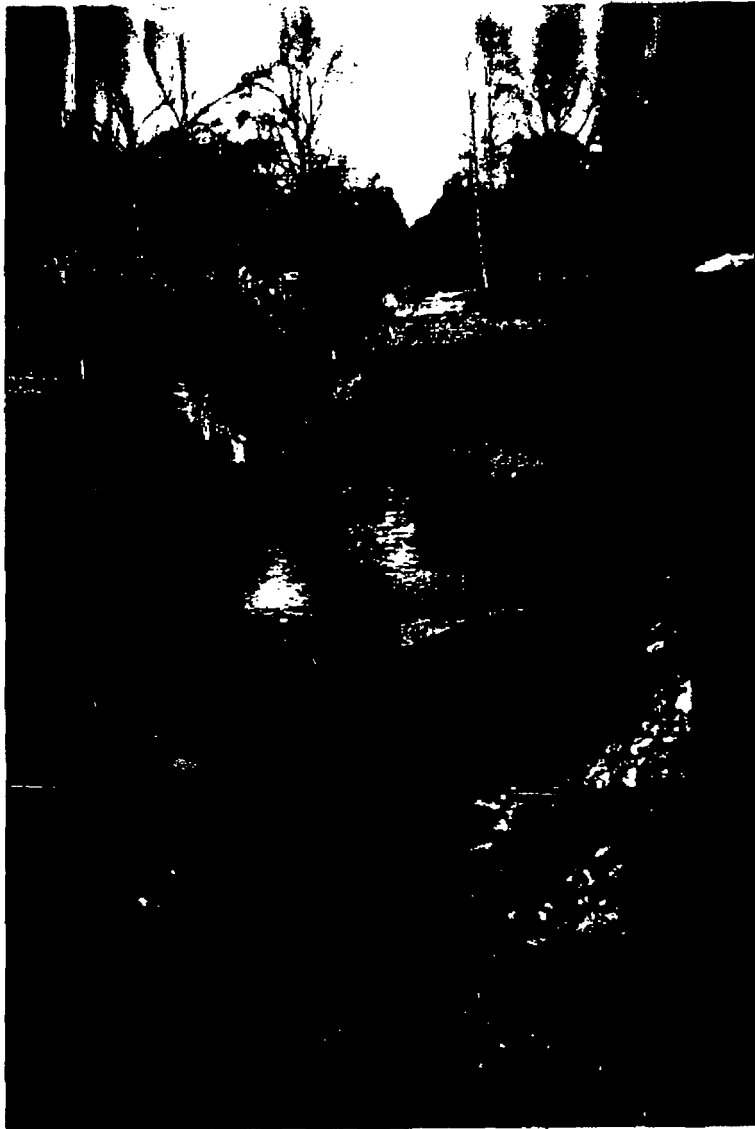
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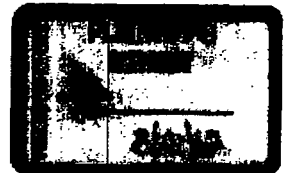
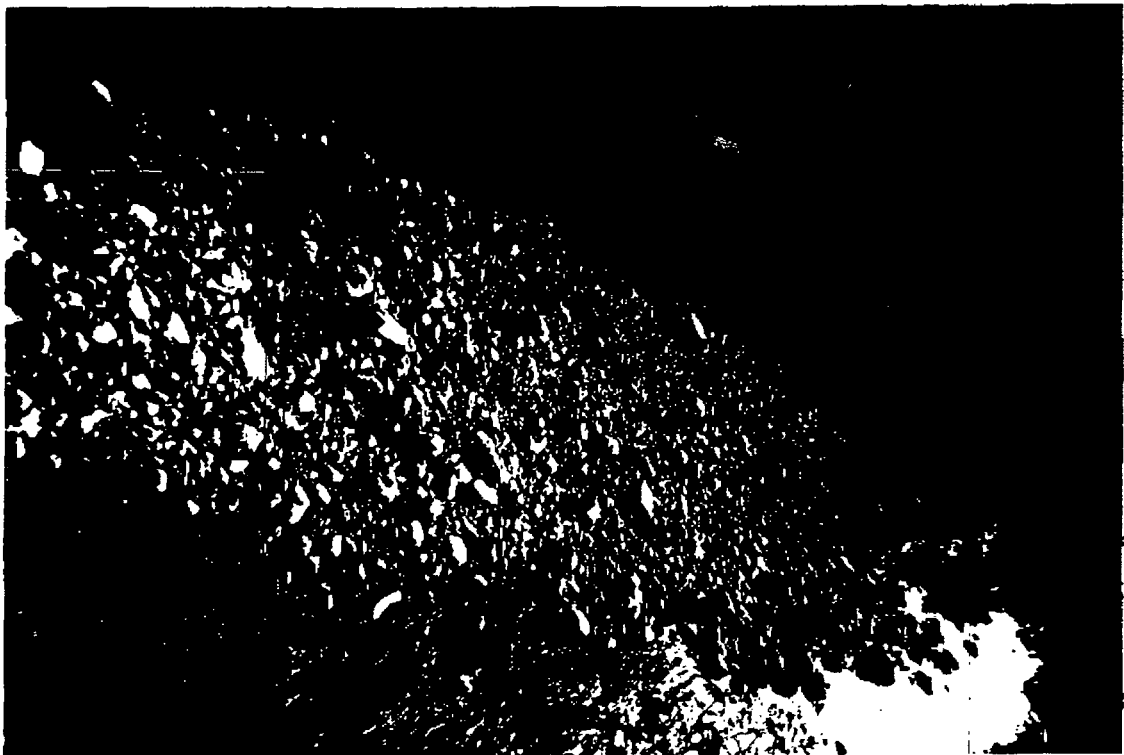
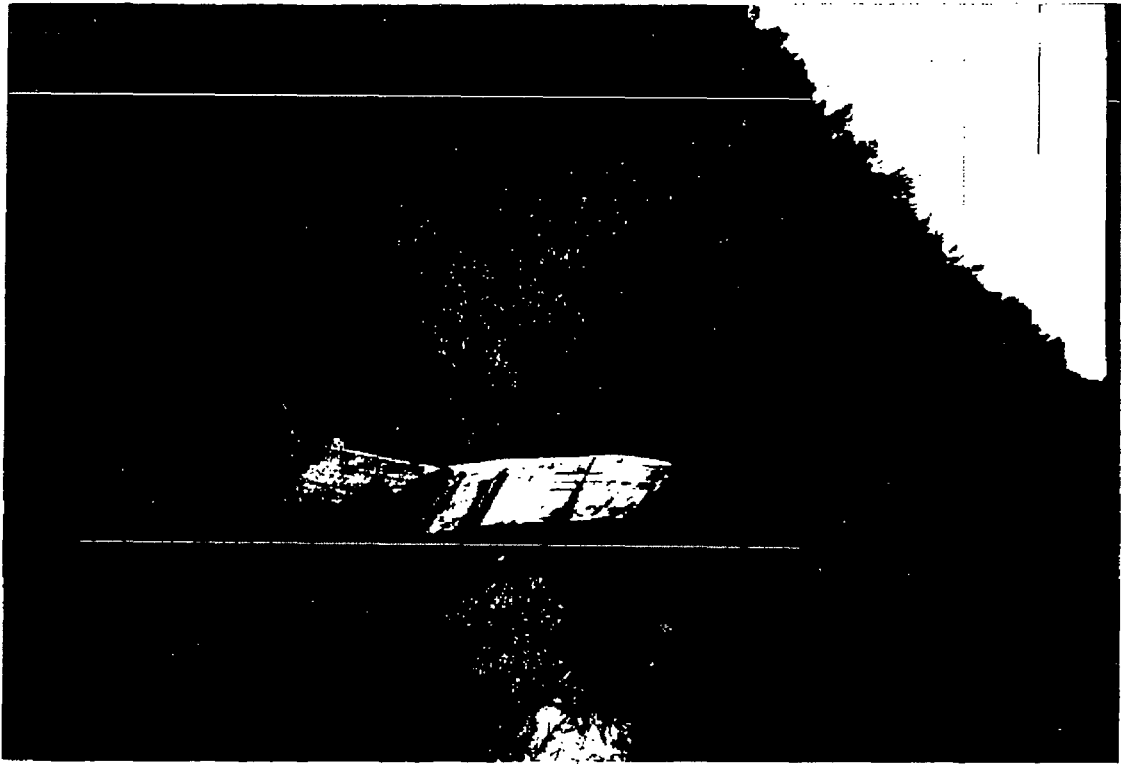
March 2007



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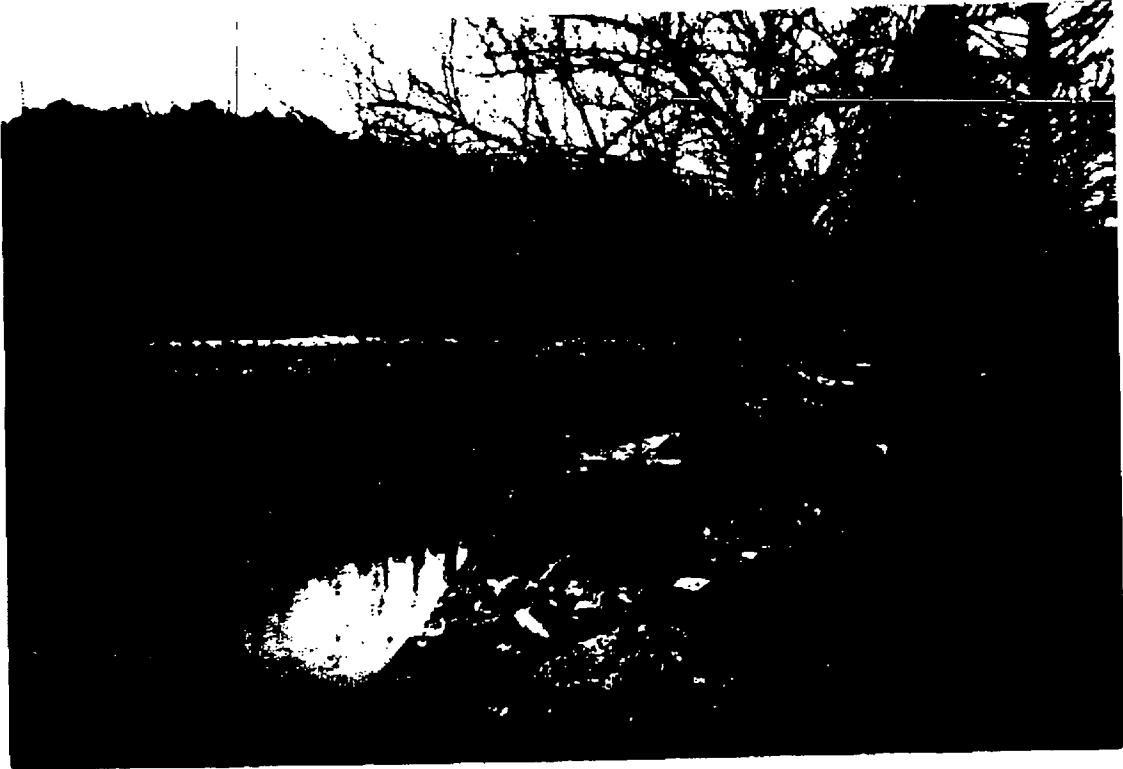
September 2007



September 2007



March 2010



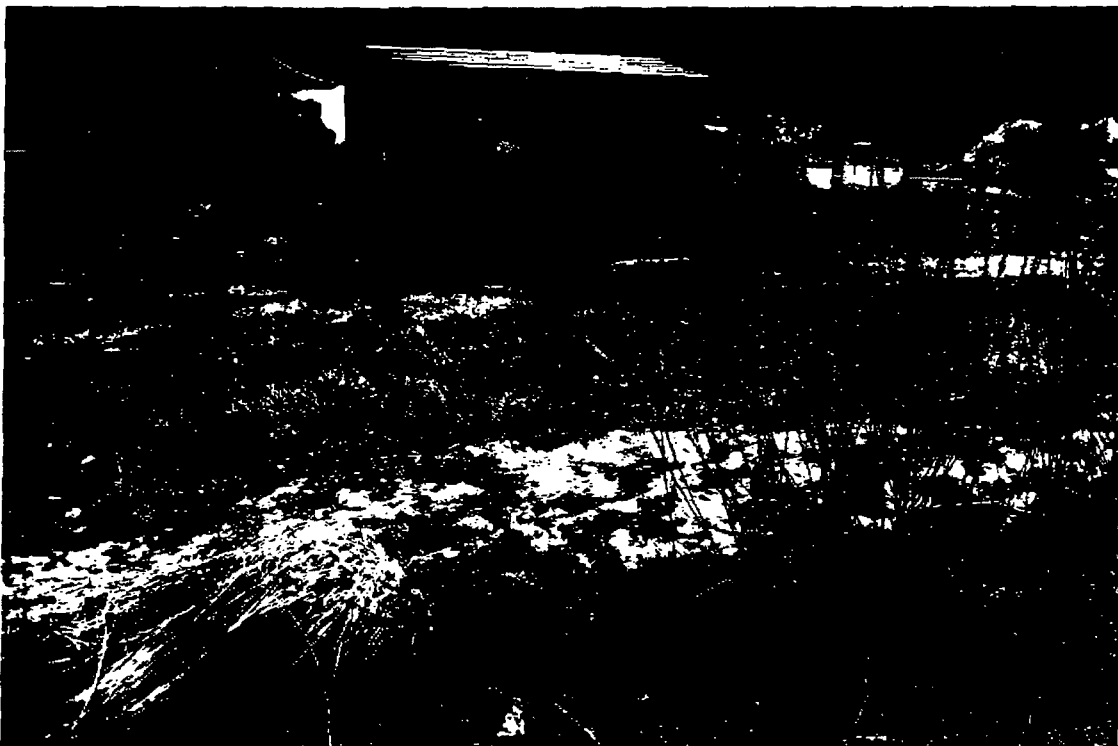
March 2010



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March 2010



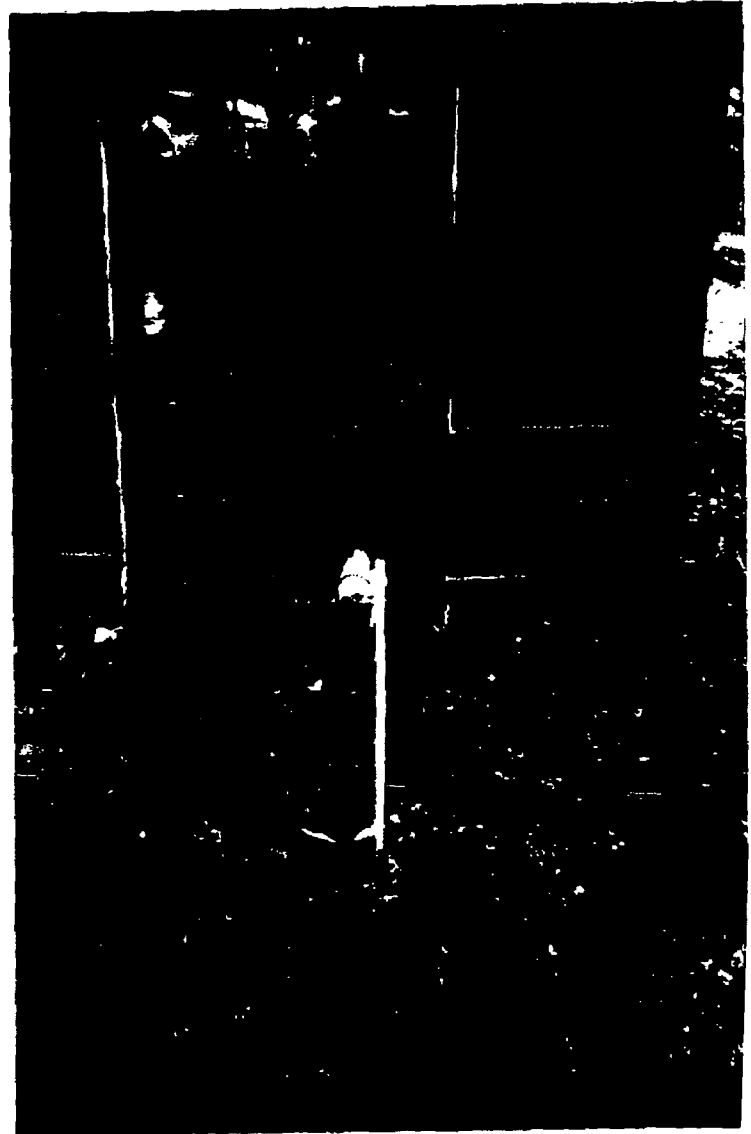
March 2010



March 2010



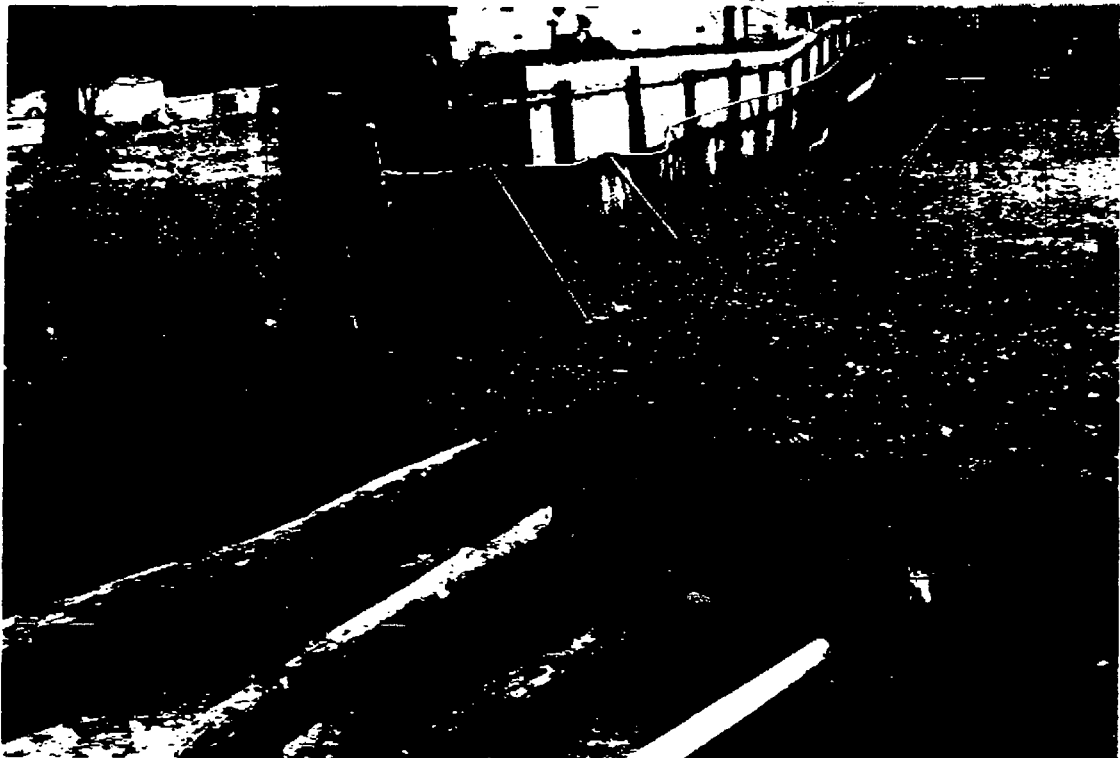
March 2010



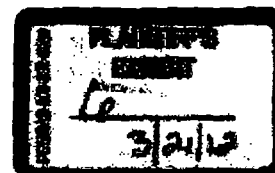
March 2010



March 2010



Time frame uncertain (post September 15, 2010)



NO TITLE EXAMINATION

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Grantee's address:
P.O. Box 305
Marietta, SC 29661

BOOK 1447 PAGE 928 ✓

KNOW ALL MEN BY THESE PRESENTS, that I, Katie Emery

FILED
GREENVILLE CO., S.C.
SEP 11 10 47 AM 1991

in consideration of Five Dollars --- (\$5.00) ---

the receipt of which is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, confirmed, ratified, approved, confirmed, and released unto Dora Lee Hall, her heirs and assigns, forever:

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as 1.0 acre on a plat of Survey for Dora Lee Hall dated July 23, 1991 prepared by Plumlee Surveying, recorded in Plat Book 204 at page 97, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin in Beaver Dam Road at the joint corner of property now or formerly of Katie Emery, said point being 0.8 mile, more or less from the intersection of Highway No. 25, and running thence with a line in Beaver Dam Road, S. 55-11 W., 266.5 feet to an iron pin at the joint corner of property now or formerly of J. C. Emery; thence with the joint line of J. C. Emery, N. 14-42 W., 212.8 feet to an iron pin in Beaver Dam Creek; thence with Beaver Dam Creek as the line, N. 72-33 E., 99.9 feet to an iron pin, and N. 57-42 E., 117.8 feet to an iron pin on the line of property now or formerly of Katie Emery; thence with the joint line of Katie Emery, S. 28-01 E., 166.1 feet to the point of beginning.

This is a portion of the property conveyed to the Grantor herein by deed of W. D. Barnett dated December 7, 1943, recorded March 27, 1945 in Deed Book 273 at page 386.

4-352-666.4-1-7.8 → 1.0 AC.

OUT OF 4-352-666.4-1-7

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining, to have and to hold all and singular the premises before mentioned unto the grantee(s) and the grantee(s)' heirs or successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor(s)' heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)' heirs or successors and against every person whatsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor(s)' hand(s) and seal(s) this 10 day of September, 19 91

SIGNED, sealed and delivered in the presence of:

P. J. McConnell
Linda D. Laws

Katie Emery (SEAL)
Katie Emery (SEAL)
(SEAL)
(SEAL)

STATE OF SOUTH CAROLINA }
COUNTY OF GREENVILLE }

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor(s)' act and deed, deliver the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 10 day of September 19 91.

P. J. McConnell (SEAL)
Notary Public for South Carolina

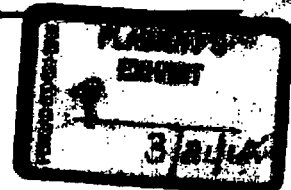
Linda D. Laws

My commission expires 8-21-96

46852

FILED FOR RECORD IN GREENVILLE
COUNTY SC RMC OFFICE AT 10:47 AM
09/11/91 RECORDED IN DEED
BOOK 1447, PAGE 0928
DOC # 91046852

19 91 SE 9 11 1120 M. No. 3 1100



CALIBER ENGINEERING CONSULTANTS LLC

Stream Relocation/Realignment & Stream Bank Stabilization Project

For

Tony R. Green & Francis Pittman

On Properties Located on Beaver Dam Rd.

Travelers Rest, SC

PROJECT NARRATIVE & PRELIMINARY SCOPE OF WORK

Tony R. Green and Francis Pittman (sister) own undeveloped and residential properties located at 598 & 612 Beaver Dam Rd. (SC Hwy 177), respectively, in north Greenville County, SC. The 16.85-acre Green tract includes tax map parcel no. 0666040100713. The 1.7-acre Pittman tract includes tax map parcel no. 0666040100700. Both tracts adjoin a 1.0-acre tract owned by Samuel D. Humphries. All three tracts are located in the FEMA Zone A floodplain for Beaverdam Creek, which flows besides each tract. The contributing drainage area of the watershed to these tracts is approximately 975 acres.

Mr. Humphries allegedly filled in the floodplain on his property, thereby relocating a section of Beaverdam Creek. He apparently did this without obtaining any of the required local, federal, or state permits for filling of floodplains or relocating waters of the state. He subsequently claimed as his own the additional property that in essence became his back yard as a direct result of his filling the floodplain and relocating the creek. This negatively impacted the Green and Pittman tracts in the following manner:

- The unnatural relocation of the creek changed the hydraulic characteristics of the creek and as a result significant stream bank erosion has occurred on both the Green & Pittman tracts.
- Mr. Humphries is encroaching onto Mr. Greens land and is apparently claiming it as his own.



Mr. Green has brought suit against Mr. Humphries and has requested that the Court confirm the legal property boundary between all tracts and award damages to remedy the situation and make Mr. Green and Ms. Pittman whole.

The remedy to this situation includes relocating and realigning the stream back to its 1993 location and straight-run alignment and stabilizing the re-constructed stream banks to minimize further erosion and sediment release to the creek. In summary, this project will include the following key elements:

<u>Scope Item</u>	<u>Description</u>
1.	Design/construction drawings, technical specifications, and engineering calculations as required to establish the appropriate remedial action and to obtain the necessary permits for construction.
2.	Mobilization of heavy construction equipment to the site necessary to perform the work.
3.	Construction of a temporary creek crossing to provide equipment access to the work area.
4.	Demolition and removal of structures within the disturbed area including a wooden shed bldg., several ornamental trees, remnants of a timber retaining wall, etc.
5.	Installation of temporary sediment and erosion controls including silt fencing, rock check dams, sediment traps, etc.
6.	Excavation of approximately 250 Cubic Yards (CY) of soil along the creek channel.
7.	Importing, installation, and compaction of approximately 600 CY of clean soil fill on the Green tract to re-establish the linear creek re-alignment and stream banks.
8.	Installation of approximately 900 Sq Yd of Hydrotex Enviromat Lining for permanent bank stabilization.
9.	Removal of the temporary creek crossing.
10.	Seeding and stabilization of all remaining disturbed areas.
11.	Demobilization of the heavy equipment from the site.

Total disturbed area of the project is approximately 0.2 acre. This work will require a Floodplain Development Permit by Greenville County and may require a US Army Corps of Engineers Nationwide Permit for filling in the floodplain.

COST SUMMARY

Mr. Green has brought suit against Mr. Humphries and has requested that the Court confirm the legal property boundary between all tracts and award damages to remedy the situation and make Mr. Green and Ms. Pittman whole.

The remedy to this situation includes relocating and realigning the stream back to its 1993 location and straight-run alignment and stabilizing the re-constructed stream banks to minimize further erosion and sediment release to the creek. In summary, this project will include the following key elements:

Scope Item Description

Caliber
Eng'g.
Fee
= \$9,000

RCS
Grading
Quote
= \$

1. Design/construction drawings, technical specifications, and engineering calculations as required to establish the appropriate remedial action and to obtain the necessary permits for construction.
2. Mobilization of heavy construction equipment to the site necessary to perform the work.
3. Construction of a temporary creek crossing to provide equipment access to the work area.
4. Demolition and removal of structures within the disturbed area including a wooden shed bldg., several ornamental trees, remnants of a timber retaining wall, etc.
5. Installation of temporary sediment and erosion controls including silt fencing, rock check dams, sediment traps, etc.
6. Excavation of approximately 250 Cubic Yards (CY) of soil along the creek channel.
7. Importing, installation, and compaction of approximately 600 CY of clean soil fill on the Green tract to re-establish the linear creek re-alignment and stream banks.
8. Installation of approximately 900 Sq Yd of Hydrotex Enviromat Lining for permanent bank stabilization.
9. Removal of the temporary creek crossing.
10. Seeding and stabilization of all remaining disturbed areas.
11. Demobilization of the heavy equipment from the site.

Total disturbed area of the project is approximately 0.2 acre. This work will require a Floodplain Development Permit by Greenville County and may require a US Army Corps of Engineers Nationwide Permit for filling in the floodplain.

AD 3/16/12

RCS Grading, Inc.

248 Adley Way
Greenville, SC 29607
864-801-3129

Proposal

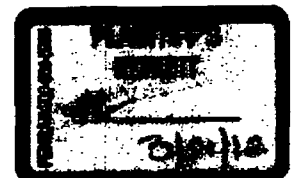
1 of 1 Pages

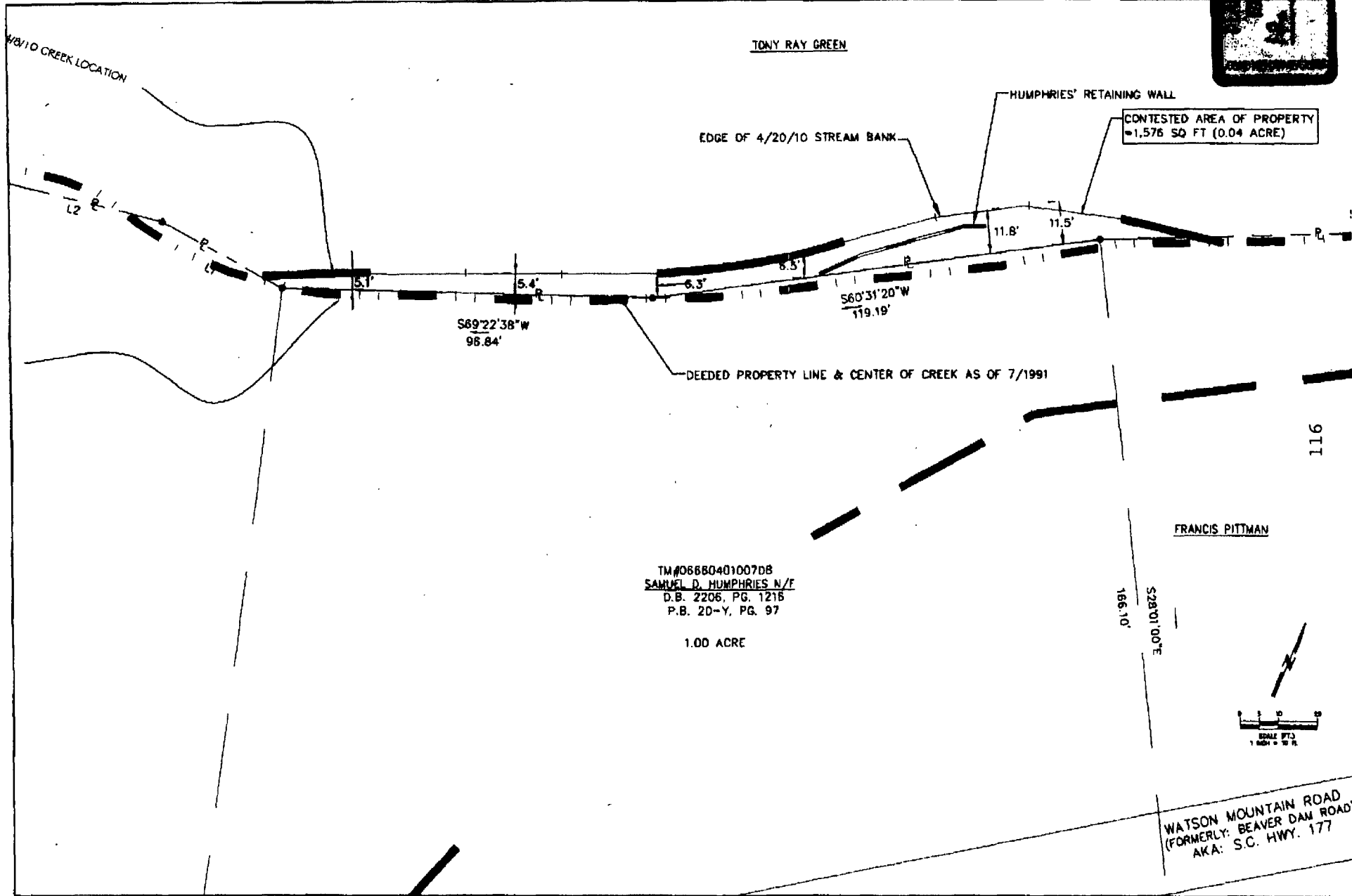
Attn: Alan Johnson
Company: Caliber Engineering
Address: PO Box 27171
City: Greenville, SC

Date: 3/15/2012
Job Name: Green Pittman - Beaver Dam Rd
Job Location: Travelers Rest, SC
Phone: 864-244-9238
Fax: 864-244-9576

Work to be done includes:

	Description	Line Item Cost
1	Design construction drawings, technical specifications, and engineering calculations as required to establish the appropriate remedial action and obtain the necessary permits for construction	By Others
2	Mobilization of heavy construction equipment to the site necessary to perform the work.	\$2,500.00
3	Construction of a temporary creek crossing to provide equipment access to the work area.	\$8,000.00
4	Demolition and removal of structures within the disturbed area including a wooden shed bldg., several ornamental trees, remnants of a timber retaining wall, ect.	\$3,600.00
5	Installation of temporary sediment and erosion controls including silt fence, rock check dams, sediment traps, ect.	\$10,200.00
6	Excavation of approximately 250 Cubic Yards (CY) of soil along the creek channel.	\$4,700.00
7	Importing, installation, and compaction of approximately 600 CY of clean soil fill on the Green tract to re-establish the linear creek re-alignment and stream banks.	\$9,400.00
8	Installation of approximately 525 Sq Yd of Hydrotex Enviromat Lining for permanent bank stabilization.	\$33,075.00
9	Removal of temporary creek crossing.	\$1,500.00
10	Seeding and stabilization of all remaining disturbed areas.	\$2,000.00
11	Demobilization of heavy equipment from the site.	\$2,500.00
	Lump Sum Total	\$77,475.00





TONY RAY GREEN

HUMPHRIES' RETAINING WALL

EDGE OF 4/20/10 STREAM BANK

CONTESTED AREA OF PROPERTY
= 1,576 SQ FT (0.04 ACRE)

4/8/10 CREEK LOCATION

DEEDED PROPERTY LINE & CENTER OF CREEK AS OF 7/1991

S69°22'38"W
98.84'

S60°31'20"W
119.19'

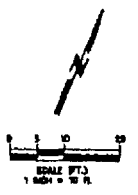
TN#06880401007D8
SAMUEL D. HUMPHRIES N/E
D.B. 2206, PG. 1216
P.B. 20-Y, PG. 97

1.00 ACRE

FRANCIS PITTMAN

116

S28°01'00"E
186.10'



WATSON MOUNTAIN ROAD
(FORMERLY: BEAVER DAM ROAD)
AKA: S.C. HWY. 177

STATE OF SOUTH CAROLINA }
COUNTY OF Greenville

FILED
GREENVILLE CO., S.C.

BOOK 1515 PAGE 154

KNOW ALL MEN BY THESE PRESENTS, that DORA LEE HALL

MAY 14 4 23 PM '93

DONNIE S. TANKERSLEY
R.M.C.

in consideration of Eight Thousand Five Hundred and No/100 (\$8,500.00) Dollars,
the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto
VERONICA L. HUMPHRIES, her heirs and assigns forever:

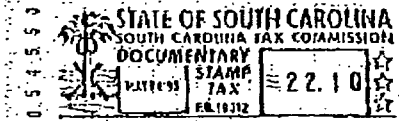
All that certain piece, parcel or lot of land situate, lying and being in
the State of South Carolina, County of Greenville, being shown and designated
as 1.0 acre on a plat of Survey for Dora Lee Hall dated July 23, 1991 prepared
by Plumlee Surveying, recorded in Plat Book 20-Y at Page 97, reference being
made to said plat for a complete metes and bounds description.

This property is conveyed subject to all restrictions, easements, rights of
way, setback lines, roadways and zoning ordinances, if any, of record, on
the recorded plat(s), or on the premises affecting said property.

This is the same property conveyed to Grantor by deed of Katie Emery recorded
September 11, 1991 at Book 1447, Page 928.

Grantee's Address: 606 Beaver Dam Road
Marietta, SC 29661

A-352-666.A-1-7,8



together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining,
to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s) heirs or successors and assigns, forever. And,
the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s) heirs or successors, executors and administrators to warrant and forever defend all
and singular said premises unto the grantee(s) and the grantee's(s) heirs or successors and against every person - homo oecum - lawfully claiming or to claim
the same or any part thereof.

WITNESS the grantor's(s) hand(s) and seal(s) this 13 day of May . 19 93

SIGNED, sealed and delivered in the presence of:

[Signature]
[Signature]

Dora Lee Hall (SEAL)
DORA LEE HALL (SEAL)
____ (SEAL)
____ (SEAL)

STATE OF SOUTH CAROLINA }
COUNTY OF Greenville

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s)
sign, seal and as the grantor's(s) act and deed, deliver the within written deed and that (s)he, with the other witness subscribed above, witnessed the
execution thereof.

SWORN to before me this 13 day of May . 19 93.

[Signature] (SEAL)
Notary Public for South Carolina

Bethany Brown

My commission expires 5-31-98

FILED FOR RECORD IN GREENVILLE
COUNTY SC RMC OFFICE AT 04:23 PM
05/14/93 RECORDED IN DEED
BOOK 1515 PAGE 0154
DOC # 93030539

30539

5-14 1508 3 1000

27

NO TITLE EXAMINATION

EXEMPT

BOOK 1911 PAGE 1774

Grantee's address: 221 Blakedale Circle
Greenwood, SC 29646

MAY 17 2000

STATE OF SOUTH CAROLINA
GREENVILLE COUNTY, SC

STATE OF SOUTH CAROLINA)

2000 MAY 17 P 2:40

COUNTY OF GREENVILLE)

TITLE TO REAL ESTATE

JUDY G. HIX
REGISTER OF DEEDS

KNOW ALL MEN BY THESE PRESENTS, that I, **LILLIE MAE BOENEKE**

in consideration of **ONE DOLLAR ----- (\$1.00)----- PLUS LOVE AND AFFECTION**

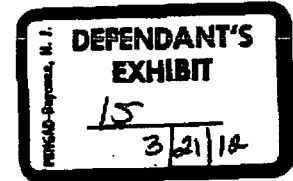
the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto

TONY RAY GREEN, SR., his heirs and assigns, forever:

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Greenville, being designated as 14.87 acres as shown on plat prepared for Ellen Emery and Lillie Mae Boeneke as prepared by Webb Surveying and Mapping Group dated March, 1993, and recorded in Plat Book 24-W at Page 9, May 6, 1993 RMC Office , Greenville County, South Carolina. Reference to said plat is hereby made for a metes and bounds description.

For derivation of title see deed from Ellen Emery Cool, formerly, Ellen Emery dated September 13, 1996, recorded September 23, 1996 in Deed Book 1653 at page 784.

382-666.4-1-7.13



Temple & Mann, Attorneys, have note examined the title, to the subject property and make no representation as to the status of said title.

This conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of the County and State aforesaid.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and

5-17 2470

1133
39147

the grantor's(s') heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s') heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s') hand(s) and seal(s) this 24 day of April, 2000.

SIGNED, Sealed and Delivered
in the presence of:

B.H.M. - J
Witness #1

Lillie Mae Boeneke
Lillie Mae Boeneke

Linda O Laws
Witness #2

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor's(s') act and deed, delivered the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this
24 day of April, 2000.

B.H.M. - J
Witness # 1

Linda O Laws (SEAL)
Notary Public for South Carolina
My Commission Expires: 1/14/2001

FILED FOR RECORD IN GREENVILLE
COUNTY SC F.L.O.D. OFFICE AT 02:40 PM
05 17 00 RECORDED IN DEED
BOOK 1911 PAGE 1774 THRU 1775
DOC # 2000039147

Judy A. King

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

C.A. NO. 2010-CP-23-4786

Tony Ray Green and Frances K. Pittman, Appellants,

vs.

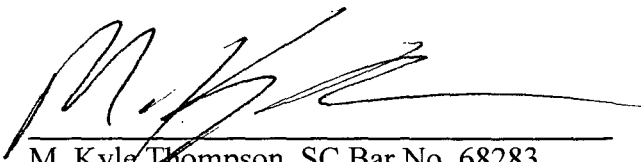
Samuel D. Humphries and Veronica L. Humphries, Respondents.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

January 2, 2013

CLAWSON AND STAUBES, LLC



M. Kyle Thompson, SC Bar No. 68283

CLAWSON & STAUBES, LLC

Attorney for Appellants

223 W. Stone Avenue

Greenville, South Carolina 29609

864-331-8940/FAX 864-232-2921

E-mail: kthompson@clawsonandstaubes.com

RECEIVED

JAN 03 2013

SC Court of Appeals