

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:

MR. HENRY R. STEVENSON, JR. DOCKET NO. CWA 06 2011 2709
AND PARKWOOD LAND CO.,

Respondents

EVIDENTIARY HEARING

U.S. Army Corps of Engineers
Jadwin Building
Conference Room 185
2000 Port Point Road
Galveston, Texas 77553

Wednesday, November 14, 2012

The above-entitled matter came on for
hearing, pursuant to Notice, at 9:00 a.m.

BEFORE:

PATRICK RANKIN, Regional Judicial Officer

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1-877-517-9367

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A P P E A R A N C E S

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1 would you like to make an opening or proceed with
2 your short, brief opening statement?
3 MR. MURDOCK: I'll be very brief.
4 **OPENING STATEMENT ON BEHALF OF THE COMPLAINANT**
5 MR. MURDOCK: Basically, we're here
6 today to show three primary things for the government
7 as jurisdiction has previously handled.
8 First, we're here to show that Texas
9 Regional Condition 2B applies. And how that applies
10 is that relevant to wetlands on-site, where Bald
11 Cypress, Tupelo, due to the vegetation on-site, Bald
12 Cypress trees and Tupelo trees.
13 Secondly, we're here to show that what I
14 term the south side fill or the fill on the southwest
15 portion of the site is wholly unrelated to the levee
16 maintenance. So even if the Regional Condition did
17 not apply, there would still be a violation.
18 And, third, we're here to show that Mr.
19 Stevenson, and to a lesser extent, Parkwood Land
20 Company, has an extensive history with the Corps,
21 which means not that he's a bad person or that or
22 we're here to go after him or go get him, but simply
23 that he should have known better about jurisdiction
24 and he had knowledge of how it works. Thank you.
25 JUDICIAL OFFICER RANKIN: Would you

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PROCEEDINGS

1 JUDICIAL OFFICER RANKIN: Good morning.
2 We're here this morning for an evidentiary hearing in
3 the matter of Mr. Henry Stevenson, Jr. and Parkwood
4 Land Company. A Class I Civil Penalty Action under
5 the Clean Water Act Section 309G.
6 With that, Mr. Murdock, would you like
7 to make an opening statement?
8 MR. MURDOCK: Very briefly, Your Honor.
9 JUDICIAL OFFICER: Okay. Go for it.
10 MR. KIBLER: Your Honor, before we do
11 opening statements, we do have witnesses in the room
12 and we had discussed that earlier. Ms. Aldridge is
13 present.
14 JUDICIAL OFFICER RANKIN: Well, Ms.
15 Aldridge, as is Mr. Stevenson, is the government's
16 non-legal representative. She may stay as can Mr.
17 Stevenson, your client.
18 MR. KIBLER: Okay. So she is
19 technically the representative of --
20 JUDICIAL OFFICER RANKIN: She is Mr.
21 Murdock's client.
22 MR. KIBLER: Okay. I'm okay with that
23 then.
24 JUDICIAL OFFICER RANKIN: Mr. Murdock,

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1 prefer to reserve your right to
2 MR. KIBLER: I'll reserve. Thank you.
3 JUDICIAL OFFICER RANKIN: Mr. Murdock,
4 call your first witness.
5 MR. MURDOCK: Your Honor, we call Mr.
6 John Davidson with the Corps of Engineers.
7 [Brief recess was taken to obtain the
8 witness.]
9 JUDICIAL OFFICER RANKIN: Be seated
10 right there, Mr. Davidson. Would you swear the
11 witness.
12 THE REPORTER: Raise your right hand for
13 me, please, sir.
14 MR. DAVIDSON: [Complies.]
15 THE REPORTER: Do you swear or affirm
16 the testimony you will give in this cause will be the
17 truth, the whole truth, and nothing but the truth?
18 MR. DAVIDSON: I do.
19 THE REPORTER: Your witness is sworn.
20 MR. MURDOCK: Thank you.
21 Whereupon,
22 **JOHN DAVIDSON,**
23 having been first duly sworn, was called as a witness
24 by the Complainant and testified upon his oath as
25 follows:

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DIRECT EXAMINATION

BY MR. MURDOCK:

Q. Good morning, Mr. Davidson.
A. Good morning.
Q. Could you state your name for the record.
A. John Preston Davidson, the II.
Q. And where are you employed?
A. The United States Army Corps of Engineers.
Q. And how long have you been with the Corps?
A. For 23 years.
Q. What do your job duties entail?
A. I am a technical expert and team lead for the compliance section, which means I assign work, review work. And our work is involved with investigating alleged unauthorized activities, inspecting departmental permits for compliance and determining jurisdiction for wetlands and other waters of the United States.
Q. And for how much of your time with the Corps have you worked with wetlands?
A. Approximately 16-and-a-half years.
Q. And for how long have you analyzed wetlands in east Texas?
A. For the whole time, 18-and-a-half years.
Q. Okay. Do you have any relevant education or

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Q. Mr. Davidson, I'm Chuck Kibler. I represent Mr. Stevenson and Parkwood Land Company.
A. Yes, sir.
Q. You say you have a bachelor of science in marine biology?
A. Yes, sir.
Q. Does a bachelor of science in marine biology include a curriculum of some sort regarding varieties of trees and botany or anything like that?
A. Botany, yes. We had a coastal plants ecology class.
Q. So how many classes did you take in that?
A. One.
Q. One? Okay. And from that class and from that training, would you be able to tell me a particular species of trees by looking at it?
A. Not from the college training but from my other training and work experience, yes.
Q. Well, please explain to the Court then how your other training or what that other training was that allowed you to be able to identify a particular species of tree?
A. Well, the marine biology degree, we did not study trees.
Q. Okay. Maybe I wasn't clear. You said that

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agrees to help you fulfill your job duties?
A. Yes. I have a bachelors of science in marine biology from Texas A&M in Galveston and also training through the Corps of Engineers.
Q. And are you a professional wetland scientist?
A. Yes.
Q. What does that mean?
A. That's a group from the Society of Wetland Scientist where you apply for a certification for a professional wetland scientist, which includes submitting your transcripts from college courses, your work experience and any teachings or classes you've taken outside of college for wetland training.
Q. All right. So what brought you to Mr. Stevenson and Parkwood Land Company's property in 2009?
JUDICIAL OFFICER RANKIN: Are you tendering Mr. Davidson as an expert, Mr. Murdock?
MR. MURDOCK: Yes, Your Honor.
JUDICIAL OFFICER RANKIN: Well, why don't we give Mr. Kibler a chance to ask a few questions first.
VOIR DIRE EXAMINATION
BY MR. KIBLER:

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there was other training that you had taken. And I'm assuming this protective wetland scientist --
A. Oh, yes.
Q. -- or training with the Corps of some type, that there was some other training that allowed you to be able to identify a particular species of tree. Can you tell us about that training?
A. Yes. I went to wetland training, Regulatory 4, which is wetland identification and delineation. And in those courses, we identified trees.
Q. Okay. What kind of trees?
A. I don't recall.
Q. Did you study just the trees that you would find in a wetland environment or did you study trees in general?
A. You studied trees in general because until you take a sample and get the three criteria of the wetland, you don't know if you're in the wetland or not. So you have to identify the vegetation in and outside a wetland.
Q. Are you able to identify a tree from an aerial picture and tell me what kind of tree that is?
A. Sometimes, yes.
Q. How so?
A. By the signatures on the aerial photo, the

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1 shading and the topography. Sometimes you can
2 identify tree species that way.

3 Q. Okay.

4 A. And aerial photos these days are getting so
5 good with the pixels that you can see a lot clearer.

6 Q. Okay. Tell me what you know about Bald
7 Tupelo Cypress trees.

8 A. Well, there are two different species. One
9 is a Bald Cypress and it is a -- both of them grow in
10 wetland swamps.

11 The other one is a gum tree and what
12 they do, Bald Cypress is identified by -- it has the
13 knees that come up out of the water to help it
14 exchange air and stabilize the tree from falling
15 over. It's very distinguishable.

16 It also has leaves similar to pine
17 leaves and they're deciduous, which means they fall
18 off every year and the bark is distinct on those.

19 The Tupelo trees, they are tall skinny
20 trees with a grayed bark and they come down at the
21 base and they have a round base, which also helps
22 them stabilize in the wet conditions. And it's also
23 suspected that helps with some oxygen exchange.

24 Q. And I really didn't want you to go that
25 deep, but that's fine. I appreciate your candor.

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1 citizen complaint from how you normally would?

2 A. No. We investigate 95 to 99 percent of
3 complaints.

4 Q. Was this your first interaction with Mr.
5 Stevenson?

6 A. No, sir. I've been interacting with Mr.
7 Stevenson for 15 to 20 years in various projects.

8 MR. MURDOCK: At this time, Your Honor,
9 we want to introduce what's been marked previously as
10 Complainant's Exhibit 45.

11 JUDICIAL OFFICER RANKIN: Which is?

12 MR. MURDOCK: It's a summary of the
13 regulatory files involving Mr. Henry (Sonny)
14 Stevenson, Jr. compiled by Mr. Davidson.

15 JUDICIAL OFFICER RANKIN: I think you
16 need to lay a bit more predicate before I'm going to
17 admit it. Who prepared it and by what methodology?

18 MR. MURDOCK: Do you want me to say it
19 or ask the witness?

20 JUDICIAL OFFICER RANKIN: I would ask
21 the witness were I you.

22 MR. MURDOCK: All right.

23 BY MR. MURDOCK:

24 Q. Mr. Davidson, did you create a document,
25 just a summary of the United States Army Corps of

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1 From an aerial photography perspective,
2 you said that one of these cypress trees looks very
3 much like a pine tree?

4 A. Not from an aerial photography but from
5 looking at it, yes.

6 Q. Can you tell the difference between a pine
7 tree and a cypress tree from an aerial photography --
8 from an aerial photograph?

9 A. Certainly in the wintertime because the pine
10 trees don't lose their leaves.

11 Q. How about in the summertime?

12 A. Summertime, it may be more difficult.

13 MR. KIBLER: I'll pass the witness.

14 JUDICIAL OFFICER RANKIN: I'll accept
15 him as an expert. Proceed, Mr. Murdock.

16 DIRECT EXAMINATION

17 BY MR. MURDOCK: [Resumed.]

18 Q. Okay. Moving on. What brought you to Mr.
19 Stevenson and Parkwood Lead Company's property in
20 September 2009?

21 A. We received a complaint. It was a letter
22 written by an individual, anonymously, that there was
23 dumping going on on the properties and that brought
24 us to the property.

25 Q. And did you react any differently to the

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1 Engineers Regulatory files involving Mr. Henry
2 Stevenson?

3 A. Yes.

4 Q. And what did you look at in order to create
5 this document?

6 A. We did a record search of our database and
7 came up with a list of all the files that involved
8 Mr. Stevenson. And what I did was research either
9 through the files or on the database and created a
10 summary of all of those files.

11 Q. And do you have personal knowledge of the
12 information you placed on that summary?

13 A. Yes.

14 MR. MURDOCK: Your Honor, at this point,
15 I wish to introduce Complainant's Exhibit 45.

16 JUDICIAL OFFICER RANKIN: Ask him if
17 that's it, that he prepared that? Show him the
18 document, Mr. Murdock.

19 MR. MURDOCK: May I approach?

20 JUDICIAL OFFICER RANKIN: Yes.

21 BY MR. MURDOCK:

22 Q. Is this the relevant document that you
23 prepared and created?

24 A. Yes.

25 MR. MURDOCK: At this time, Your Honor,

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1 we wish to introduce Complainant's Exhibit 45.
 2 MR. KIBLER: No objection.
 3 JUDICIAL OFFICER RANKIN: Without
 4 objection, it's admitted. Pass it over here and I'll
 give it to the court reporter.

6 MR. MURDOCK: Do you want a separate
 7 copy?

8 JUDICIAL OFFICER RANKIN: No. Proceed,
 9 Mr. Murdock.

10 [Complainant's Exhibit No. 45 admitted
 11 into evidence.]

12 BY MR. MURDOCK:

13 Q. So is this document, to the best of your
 14 knowledge, a fair and accurate representation of Mr.
 15 Stevenson's past dealings with the Corps of
 16 Engineers?

17 A. Yes.

18 Q. And so how would you compare Mr. Stevenson's
 19 level of knowledge and experience regarding the Corps
 20 and Section 404 of the Clean Water Act in comparison
 21 to the average person with whom you come into
 22 contact?

23 A. Mr. Stevenson, through his numerous
 24 interactions with the Corps, has a greater knowledge
 25 than the average person of the Corps's regulatory

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1 southwest corner and there's a large pile of concrete
 2 debris some dump trucks at the time.

3 And we -- walking towards the north, you
 4 could -- we GPS'd the backfill portion and laid it on
 5 the delineation that we had verified in 2007 for Mr.
 6 Stevenson and determined that he had filled
 7 approximately .78 acres of the Cypress Tupelo Swamp.

8 And it appeared he had filled it by
 9 pushing the concrete northward and it rolled over
 10 into the marsh. That was the first area.

11 And then if you walked farther up the
 12 west levee, walked forward to the north,
 13 approximately a quarter of the way up, there is what
 14 Mr. Stevenson calls a truck turnaround that is a .48-
 15 acre fill that was out into the swamp.

16 And then if you continue walking north,
 17 where the river cuts back to the east, there were
 18 several small piles of fill material on the inside of
 19 the levee. It was approximately .08 acre.

20 Q. All right. Did Mr. Stevenson or the
 21 Parkwood Land Company receive authorization from the
 22 Corps for the work you just walked through?

23 A. No.

24 Q. All right. What I'm looking at here, Mr.
 25 Davidson, is a Nationwide Permit 3 Authorization

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1 program, both Section 404 of the Clean Water Act and
 2 Section 10 of the Rivers and Harbors Act.

3 And just through conversations dealing
 4 with this particular property, it appears that Mr.
 5 Stevenson has researched regulations and guidance
 6 concerning those Acts.

7 Q. All right. Now, Mr. Davidson, I want to go
 8 back to your site visit, both -- well, going to the
 9 2009 site visit, is that the only time you visited
 10 the site?

11 A. No. I visited the site in September 2009
 12 and July of 2010.

13 Q. Let's walk through briefly some of the fill
 14 you found on-site starting with the southwestern
 15 portion of the fill.

16 Basically, what areas of fill did you see?
 17 We'll start with southwestern portion of the fill.

18 A. In both site visits?

19 Q. Yes, in both site visits?

20 A. As the tract is laid out, the south edge is
 21 on the north side of I 10 and the Neches River is on
 22 the west side of the track and it curves up around
 23 the north.

24 The fill in the southwest corner is
 25 right where there's an upland portion in the

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1 obtained by Mr. Stevenson and Parkwood Land Company.

2 Were you familiar with or did you help
 3 process that Nationwide Permit 3 Authorization?

4 A. I did not help process, but I am familiar
 5 with it.

6 Q. So in doing your site visit, did you review
 7 this plan by Mr. Stevenson?

8 A. Yes.

9 Q. All right.

10 MR. MURDOCK: Your Honor, I want to
 11 introduce into evidence Exhibit 31, but it's pages 17
 12 through 19, which is previously answered in the pre-
 13 hearing exchange.

14 MR. KIBLER: Which number?

15 MR. MURDOCK: 31. It's Exhibit 31.
 16 pages 17 through 19.

17 May I approach the witness?

18 JUDICIAL OFFICER RANKIN: Mr. Murdock,

19 you have ongoing permission to approach the witness
 20 when you need them to authenticate a document.

21 MR. MURDOCK: Thank you, Your Honor.

22 BY MR. MURDOCK:

23 Q. Mr. Davidson, can you authenticate that is
 24 both the sketch of the planned maintenance on the
 25 existing levee and the authorization under Nationwide

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1 Permit 3 given to Mr. Stevenson and Parkwood Land
2 Company?

3 A. Yes. It appears to be the plans without the
4 authorization letter.

5 Q. And so comparing then, these plans to the
6 fill we just walked through, in what ways did the
7 fill you outlined vary from the fill proposed in this
8 plan?

9 A. Under the Nationwide Permit 3, the Corps of
10 Engineers authorized Mr. Stevenson and Parkwood Land
11 Company to maintain the levee.

12 And in the plans, it clearly shows that
13 all the fill material on the river side of the levee
14 and is to replace the levee as it originally was
15 constructed.

16 On the inside of the levee, there is no
17 fill material that's allowed in this permit. And the
18 only thing in there is a future borrow area, which
19 was to be used to obtain material to repair the
20 levee.

21 Q. Can you explain exactly what is a "borrow
22 area"?

23 A. A borrow area is just an area where you
24 would take material with a backhoe or some type of
25 mechanized equipment and take it, borrow the

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1 Q. Okay. Let's move up to what you called on
2 Mr. Stevenson called the truck turnaround.

3 A. Okay.

4 Q. I have a photograph here taken by Ms.
5 Shivers. This one is from July 2010, so your second
6 site visit.

7 Did you accompany Ms. Shivers on the
8 second site visit?

9 A. Yes.

10 Q. And were you with her when she took
11 photographs of the site?

12 A. Yes.

13 MR. MURDOCK: Your Honor, I want to
14 introduce into evidence Complainant's Exhibit 25,
15 page 22.

16 BY MR. MURDOCK:

17 Q. Can you describe what you see in this
18 photograph?

19 A. This is the area that Mr. Stevenson called
20 the truck turnaround on the inside of the levee,
21 approximately a quarter of the way north of -- from
22 Interstate 10.

23 Q. And approximately how much fill was placed
24 in this truck turnaround?

25 A. Approximately .48 acre.

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1 material, and get it -- put it on the levee. They
2 call it a borrow area but you're actually taking the
3 material.

4 Q. So what you're saying is his authorization,
5 under Nationwide Permit 3, only allowed him to place
6 fill on the river side of the levee, not the wetland
7 side of the levee; is that correct?

8 A. Correct.

9 Q. Okay. So going back to the fill you found
10 on the southwest portion of the site that you
11 outlined earlier --

12 A. Yes.

13 Q. -- approximately how much fill was placed
14 there?

15 A. Approximately -- it covered .78 acres.

16 Q. And was this fill related to the maintenance
17 of the levee?

18 A. No. This was not even close to the levee.
19 The levee runs north and south in that area and this
20 fill was running east/west on the uplands by the
21 Interstate Highway 10.

22 Q. And so was this outside fill then
23 contemplated or approved under this Nationwide Permit
24 3?

25 A. No.

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1 Q. And was the construction of this truck
2 turnaround authorized under Nationwide Permit 3?

3 A. No.

4 Q. Why not?

5 A. Because it's not associated with the repair
6 of the levee. The Nationwide 3 was to repair the
7 levee. It did not authorize a truck turnaround.

8 In fact, if Mr. Stevenson needed an
9 access road or a truck turnaround, he may have been
10 able to obtain one through a Nationwide Permit 13 for
11 temporary access. But one was never requested nor
12 granted.

13 Q. But had the truck turnaround been associated
14 with the maintenance of the levee, could it have been
15 authorized under Nationwide Permit 3?

16 A. It would have had to have gone through a
17 Full Construction Notification, which would include
18 coordination with the resource agencies because it's
19 a Cypress Tupelo Swamp. And that's a Regional
20 Condition for the State of Texas for the Nationwide
21 permits.

22 Q. Well get a little more into that Cypress
23 Tupelo Swamp in just a minute, but sticking just
24 specifically to the truck turnaround, could this
25 qualify, in your experience, as a minor deviation

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1 from the plans which he gave you?

2 A. No. Minor deviations are mostly with

3 construction techniques, construction materials. But

4 constructing a .48 truck turnaround is not a minor

5 deviation. It's not for levee repair. That was what

6 was authorized was maintenance of the levee.

7 Q. But from time to time, permittees must be

8 able to have some changes to their submitted plans,

9 right?

10 A. Sometimes minor deviations are allowed,

11 correct.

12 Q. So what is the difference here? What

13 possibly would have been allowed in a case like this

14 or what's an example?

15 A. Minor deviation might be expanding of the

16 levee from 15-foot wide to 17-foot wide. I mean,

17 something that's minor, the impacts are minor.

18 The .48 acres is not a minor impact as

19 witnessed by the -- the Nationwide permits are for

20 minor impacts and they don't allow a .48 acre impact.

21 Q. All right. Under Nationwide Permit Regional

22 Condition for the State of Texas 2B, all Cypress

23 Tupelo Swamps require Pre-construction Notification,

24 correct.

25 A. Correct.

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1 Q. Mr. Davidson, what does this photograph

2 depict?

3 A. The top photograph depicts -- both

4 photographs depict the west levee, and the interior

5 levee is on the left-hand side in the photo.

6 On the right-hand side is the river and

7 in the background, you can see the I-10 bridge across

8 the Neches River.

9 Q. So looking at the trees here, what enables

10 you to identify them as Bald Cypress or Tupelo?

11 A. The trees in the foreground here are Tupelo.

12 They have the gray trunk that's skinny and then it

13 comes down to a enlarged base. And then in the

14 background, you can see the Cypress still have the

15 leaves on it. It's September, but you can see the

16 crown is distinct for the Cypress.

17 Q. And are Bald Cypress trees and Tupelo trees

18 or are Bald Cypress-Tupelo Swamps common in your

19 Corps district?

20 A. Not common. They were more common than they

21 are today. Around the turn of the century or before,

22 a lot of cypress trees were harvested for home

23 construction and it made a big impact on the stands.

24 Q. Does this site, does it represent your first

25 time identifying this type of tree?

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1 Q. So the wetlands on the site, does that

2 qualify as a Bald Cypress-Tupelo Swamp?

3 A. Yes.

4 Q. Why?

5 A. The dominant tree species are Bald Cypress

6 and Tupelo.

7 Q. And how do you know that? What gives you

8 the ability to say that?

9 A. I identified the trees on-site.

10 MR. MURDOCK: All right, Your Honor, we

11 want to --

12 BY MR. MURDOCK:

13 Q. Mr. Davidson, I'm looking at a photograph

14 here also taken by Ms. Kristen Shivers. However,

15 this one was taken in 2009.

16 And were you with Ms. Shivers during her

17 2009 site visit of this site?

18 A. Yes.

19 Q. Were you with her when she was taking the

20 relevant photographs of the site?

21 A. Yes.

22 MR. MURDOCK: Your Honor, at this point,

23 I want to introduce Complainant's 25. This is on

24 page 12.

25 BY MR. MURDOCK:

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1 A. No, no. I've been to 15 to 20 Cypress-

2 Tupelo Swamps for projects ranging from pipelines to

3 -- Mr. Stevenson had another one in a Cypress swamp

4 before this.

5 Q. You began to touch on it, but why are Bald

6 Cypress-Tupelo Swamps given any special protection?

7 A. It's a unique habitat. They're very slow

8 growing habitats. They provide -- they're flooded

9 for a majority of the year and they provide good

10 habitat for the aquatic animals.

11 They also provide part-time habitat for

12 vertebrates but most of them can't live in there

13 full-time because of flooding. But they are slow

14 growing and they were impacted for the timber

15 industry previously.

16 Q. Was there any other vegetation on-site,

17 which was indicative or typical for a Bald Cypress

18 Tupelo Swamp?

19 A. Yeah. There was -- there were cattails on

20 site. I can't remember a lot of the herbaceous

21 plants.

22 Q. And how confident are you of the

23 identification of these trees and vegetation?

24 A. A hundred percent.

25 Q. All right. To take a step back, what does

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1 it matter that this is a Bald Cypress-Tupelo Swamp or
2 more specifically to the point, what does it matter
3 that Mr. Stevenson and Parkwood Land Company did not
4 receive Pre-construction Notification?

5 A. Well, if they didn't receive Pre
6 construction Notification, then they didn't receive
7 authorization to discharge fill material into the
8 Cypress-Tupelo Swamp. The only thing they received
9 authorization for was to maintain the levee itself as
10 is indicated by the project plans.

11 Q. So in your opinion, pre construction
12 application would have been required in this case?

13 A. Yes.

14 Q. But Mr. Stevenson, and Parkwood Land Company
15 did, as we demonstrated, alert you of their plans to
16 maintain the levee. Why was that insufficient?

17 A. In their plans, they did not plan or propose
18 to fill any Tupelo Cypress Swamp. What they
19 proposed, as is indicated on the plans, is they
20 proposed to maintain the levee, the levee itself.
21 There was no fill on the inside of the levee. All
22 the fill was on the outside of the levee, the river
23 side.

24 Q. All right. So how did this case end up with
25 the Environmental Protection Agency?

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1 JUDICIAL OFFICER RANKIN: Okay.

2 MR. KIBLER: I'm not going to let them
3 pass as --

4 JUDICIAL OFFICER RANKIN: Perhaps we
5 should back up and let Mr. Murdock offer them.

6 MR. KIBLER: Well, I tell you what
7 BY MR. KIBLER:

8 Q. Mr. Davidson, those pictures that you have in
9 front of you, are they a fair and accurate depiction
10 of what the site looked like at the date you appeared
11 on-site?

12 A. Yes.

13 Q. What else did you have there?

14 A. The Permit drawing.

15 Q. Okay. We're going to talk about the permit
16 here in a second.

17 A. Okay.

18 Q. So I'll supplement the permit with the
19 remainder of the pages that weren't provided.

20 But let's start first, Mr. Davidson,
21 with Nationwide Permit Regional Condition for the
22 State of Texas.

23 You referred to that earlier, correct?

24 A. Yes.

25 Q. And you weren't in here when Mr. Murdock

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1 A. We have a Memorandum of Agreement between
2 the U.S. EPA and the Army Corps of Engineers. And
3 under that Memorandum of Agreement, if a violator is
4 a repeat violator or a flagrant violator, then it is
5 referred to the EPA for resolution. And Mr.
6 Stevenson fit both repeat and flagrant violator.

7 Q. What makes him a flagrant violator?

8 A. A flagrant violator is when you have
9 previous knowledge of the laws and regulations. And
10 Mr. Stevenson, through his issued permits, issued
11 after-the-fact permits, unauthorized activities and
12 numerous jurisdictional determinations, is familiar
13 with Section 404 of the Clean Water Act and Section
14 10 of the Rivers and Harbors Act.

15 MR. MURDOCK: Thank you. No further
16 questions.

CROSS-EXAMINATION

18 BY MR. KIBLER:

19 Q. Mr. Davidson, where do I start? Let's start
20 --

21 MR. KIBLER: By the way, Your Honor, and
22 I'm not going to be a stickler here. The materials
23 that have been offered as exhibits here, photographs,
24 I'm not going to have any objection to them. I'm
25 going to go ahead and let them

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1 said one of the things he wanted -- one of the three
2 things they wanted to prove today was 2B -- I think
3 it's 1B actually, but 2B. The Complainants were
4 going to prove that it was Bald-Tupelo Swamp and
5 that's a -- tell me, what does this all mean?

6 Explain it to me like I'm a two-year-old
7 here. Tell me what's the significance of whether it
8 is or it isn't a Bald-Tupelo Cypress Swamp?

9 A. Well, in the Regional Conditions, there's
10 two types of wetlands that require a Pre-construction
11 Notification and it lists the Nationwide Permits.

12 And if you're applying for one and you hit
13 one of those two wetlands, one of the wetlands is a
14 pitcher plant bog and the other type of wetland is a
15 Cypress-Tupelo Swamp.

16 And both of those are rare habitats or
17 unique habitats, valuable habitats that the resource
18 agencies and the Corps of Engineers want to know and
19 have an extra say before they authorize impacts on
20 these areas.

21 Q. Okay. Let me show you what I've been
22 provided, and it's marked as Complainant's Exhibit
23 No. 42.

24 In Section 1B there what we're talking
25 about here in that document?

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1 A. Yes, sir.

2 Q. Is that a fair copy of what the Nationwide

3 Permit Regional Conditions for the State of Texas as

4 as of March 2002?

5 A. It appears to be.

6 MR. KIBLER: Your Honor, I'd ask that

7 that be Respondent's Exhibit 1.

8 MR. MURDOCK: Can you repeat that?

9 MR. KIBLER: I'm asking that the Court

10 admit your Complainant's Exhibit No. 40.

11 MR. MURDOCK: No objection.

12 BY MR. KIBLER:

13 Q. You hang onto that, Mr. Davidson. 1B, read

14 the first line for me.

15 A. 1B?

16 Q. Yes, sir.

17 A. "Bald Cypress-Tupelo Swamps: While

18 comprised predominately of --

19 Q. Okay. Stop right there. "Predominately."

20 Can you provide the Court today a tree count of the

21 number of Bald Tupelo Cypress trees that are located

22 on Mr. Stevenson's 77 acres plot?

23 A. No, sir.

24 Q. How many of them are there?

25 A. I don't know the number but the predominates

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1 there?

2 A. On the levee or in the swamp?

3 Q. Both?

4 A. I believe on the levee, there were maybe

5 some Chinese Tallow. There may have been a couple in

6 the swamp, but I don't recall.

7 Q. Were there any regular old pine trees like

8 we see in southeast Texas that we cut down every day

9 and take to pulp mills or lumber factories?

10 A. I don't recall.

11 Q. Take a look at that picture that Mr. Murdock

12 showed you. Do you see any other varieties of trees

13 in that photo?

14 A. I see predominately Cypress and Tupelo.

15 Q. That wasn't my question. My question is:

16 Do you see any other varieties of trees in that

17 photograph?

18 A. I can't identify any other variety of trees

19 in the top photograph, which is one that we were

20 looking at.

21 Q. Well, we talked earlier, when we were

22 talking about your background, are you able to

23 identify other trees that are not related to swamp

24 varieties?

25 A. Yes.

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1 are -- there's Bald Cypress and Tupelo. Those are

2 the dominant tree species there.

3 Q. So if there's two there, is that enough to

4 make it predominate?

5 A. Two out of how many?

6 Q. Of how many trees are there.

7 A. Predominate? Two, possibly not.

8 Q. Okay. How many would it have to be to meet

9 the "predominance" factor?

10 A. It's not specified here.

11 Q. It's not specified? So what we've got here

12 is a pretty -- we've got a rule, but it's really kind

13 of vague; would you agree to that?

14 A. No. I would think if you have an area where

15 your dominance is Bald Cypress and Tupelo then you're

16 going to fit predominately Bald Cypress and Tupelo

17 Swamp.

18 Q. So if you don't have a tree count of how

19 many Cypress trees --

20 A. No, sir.

21 Q. -- are on Mr. Stevenson's property, can you

22 tell me how many other variety of trees are out

23 there?

24 A. No, sir.

25 Q. Did you see other varieties of trees out

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1 Q. Okay. But you're looking at that photo and

2 you can't see any other variety of tree?

3 A. No, sir.

4 Q. You've testified that Mr. Stevenson has

5 greater than normal "greater than normal" is what

6 I think I wrote down. Greater than normal amount of

7 information than Joe Schedlap on the street; is that

8 right?

9 A. Yes, sir.

10 Q. Okay.

11 A. He's been dealing with us for 20 years.

12 Q. Okay. And do you know if Mr. Stevenson can

13 identify a cypress tree from a pine tree?

14 A. He's pointed one out to me before so, yes.

15 Q. So he knows what a cypress tree looks like?

16 A. Appears to, yes.

17 Q. Does he know what you know, that there's a

18 specific regulation for the State of Texas regarding

19 Bald Tupelo Cypress trees? Does he know that?

20 A. I don't know.

21 Q. Did you ever tell him that?

22 A. Not that I recall.

23 Q. Did anyone at the Corp ever put him on

24 notice and say, hey, Sonny -- I'm going to use his

25 normal name, what everybody would call him, hey,

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1 Sonny, you might have a problem here because you've
2 got a -- you may meet this specific condition that's
3 outlined in this document that you have in front of
4 you.

5 Did anybody ever do that, to your
6 knowledge?

7 A. I don't believe there was a need to because
8 he was applying to repair the levee and the levee has
9 no Bald Cypress or Tupelo trees on it.

10 Q. Okay. Well, let's go there then.

11 MR. KIBLER: Your Honor, I can't
12 remember. Did my exhibit get admitted or not?

13 JUDICIAL OFFICER RANKIN: No. You were
14 asking to wait until you finished.

15 MR. KIBLER: Well, I ask that it be
16 admitted now.

17 MR. MURDOCK: No objection.

18 JUDICIAL OFFICER RANKIN: Okay. Tell me
19 Melody what the number is.

20 MR. KIBLER: Respondent's 1.
21 [Respondent's Exhibit No. 1 admitted
22 into evidence.]

23 JUDICIAL OFFICER RANKIN: Okay. While
24 we're at it, unless you plan to cross in addition on
25 Mr. Murdock's exhibits, why don't we get them in at

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1 I'm going to show you another document
2 that I believe -- hang on a second. I need
3 Complainant's 31.

4 This you identified as part of the
5 permit, correct?

6 A. The plans.

7 Q. The plans? Okay. Let me show you this
8 document. Have you ever seen that document before?

9 A. Yes, sir.

10 Q. What is that document?

11 A. This is the authorization letter for the
12 Nationwide Permit 3.

13 Q. Is that the front part of what's been shown
14 to you as Complainant's No. 31?

15 A. Yes, sir.

16 Q. I didn't bring but one copy of that thing.
17 I forgot about it. Let me --

18 JUDICIAL OFFICER RANKIN: I think maybe
19 Mr. Jaynes can make a copy. You can get it admitted
20 and we'll get a stamp on it and he can run it through
21 a Xerox machine.

22 MR. KIBLER: Well, Your Honor, based on
23 his testimony, this is a document that's the other
24 half of Complainant's No. 31.

25 I move that that be entered as

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1 the same time.

2 MR. KIBLER: Go ahead. That's fine.

3 JUDICIAL OFFICER RANKIN: And you'll
4 have to tell Melody again, Mr. Murdock, what the
5 numbers are.

6 THE REPORTER: I have them. I have 45
7 admitted. I don't have 31 and 35.

8 MR. MURDOCK: Your Honor, at this time,
9 I move to admit these exhibits into evidence.

10 MR. KIBLER: No objection, Your Honor.
11 JUDICIAL OFFICER RANKIN: Do you know
12 what numbers they are?

13 MR. MURDOCK: Your Honor, at this time,
14 I move to insert as evidence, Complainant's 31, 35A
15 and 35B.

16 JUDICIAL OFFICER RANKIN: Okay. They
17 are admitted.

18 [Complainant's Exhibit No. 31 admitted
19 into evidence.]

20 [Complainant's Exhibit Nos. 35A and 35B
21 admitted into evidence.]

22 BY MR. KIBLER:

23 Q. Okay. Mr. Davidson, now we've got the
24 paperwork straight. As they say, nothing is ever
25 finished until the paperwork is finished.

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1 Respondent's No. 2.

2 MR. MURDOCK: No objection.

3 JUDICIAL OFFICER RANKIN: It's admitted.
4 I think it's already in the record. I'll point out
5 to you that your pre-hearing exchanges, other than
6 the most recent one, but your initial pre-hearing
7 exchanges that were relied upon and Mr. Murdock's two
8 motions which are related to determination are
9 already a part of the record in this matter.

10 MR. KIBLER: I would thank so, Your
11 Honor.

12 JUDICIAL OFFICER RANKIN: One reason why
13 I need such a big damn briefcase.

14 MR. KIBLER: Your Honor, can we take a
15 brief recess and let Mr. Jaynes make a copy of this?

16 JUDICIAL OFFICER RANKIN: I've no
17 objection at all to that. Let's do it.

18 [Brief recess was taken.]

19 JUDICIAL OFFICER RANKIN: Let's proceed.

20 BY MR. KIBLER:

21 Q. Mr. Davidson, I'm going to hand you back
22 that document we've had copied now. I'm not sure if
23 we got what I had asked so I'm going to ask it real
24 quick.

25 What is that document?

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1 A. This is the Nationwide Permit 3
2 authorization for the levee maintenance.
3 Q. Is that the first half of what has been
4 submitted as Complainant's No. 31?
5 A. Yes.
6 MR. KIBLER: Your Honor, I offer that to
7 be Respondent's 2.
8 MR. MURDOCK: No objection.
9 JUDICIAL OFFICER RANKIN: It's admitted.
10 [Respondent's Exhibit No. 2 admitted
11 into evidence.]
12 BY MR. KIBLER:
13 Q. Now, we've got that formality out of the
14 way. I'll have to see if we can talk about this
15 document.
16 Now, you described this document but let
17 me take -- this is the document that Sonny Stevenson
18 would have received and Parkwood Land Company would
19 have received saying you get to fix your levee; is
20 that true?
21 A. Yes.
22 Q. Now, in the first paragraph of that letter,
23 there's a sentence about three quarters of the way in
24 that starts with "Since..." Do you see that?
25 A. Yes, sir.

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1 Nationwide Permit 3 and we consider it previously
2 authorized.
3 Q. Okay. So in layman's terms, if it was there
4 before, so therefore, you can fix it?
5 A. Correct.
6 Q. Is that pretty much what that says?
7 A. Correct. If it was previously authorized,
8 you may maintain it under Nationwide Permit 3.
9 Q. Okay. So it was the Corps's intention to
10 inform Mr. Stevenson that his levee was
11 grandfathered?
12 A. Meaning it was built prior to 1968 or the
13 fill was prior to 1974. Yes, it was grandfathered.
14 Q. But just the levee is what you're saying?
15 A. Correct.
16 Q. Okay. Is it possible that a layman, like
17 Mr. Stevenson, could believe that when you say
18 "grandfathered," that applies more than to the levee?
19 A. If you read the sentence, it states "levee."
20 Q. The next sentence, can you read that to us,
21 that second paragraph?
22 A. "Nationwide Permit 3 authorizes the repair
23 of a previously-authorized currently-serviceable
24 structure or fill provided the structure or fill is
25 not put to a different use than that for which it was

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1 Q. Can you read that for us?
2 A. "Since the levee was built prior to the
3 inception of Section 404 of the Clean Water Act and
4 Section 13 of the Rivers and Harbors Act of 1899 plus
5 the fact jurisdictional activities that have occurred
6 prior to July 19, 1977 are authorized, grandfathered,
7 by the Nationwide Permit, the levee is considered to
8 be previously authorized and can be repaired pursuant
9 to Nationwide Permit 3."
10 Q. Okay. Long sentence, lots of commas, lots
11 of because and therefore. Can you explain that to
12 us, what that sentence means?
13 A. Yes. In the 1986 regulations, 33 CFR
14 329.330 and part 330, it had a statement that if you
15 had structures constructed prior to 1968 or a fill
16 discharge prior to 1974, then it was grandfathered,
17 meaning it didn't need additional authorization.
18 The original structure or fill was
19 authorized. And then since it was -- one of the
20 requirements of Nationwide Permit 3 is it's
21 maintenance. So whatever you're maintaining must
22 have been previously authorized.
23 And all that's saying is that since it
24 was previously authorized by that condition in the
25 1986 regulations, then you can repair it under

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1 originally constructed."
2 Q. That second sentence is the one I'm really
3 interested in.
4 A. "Minor deviations due to changes in
5 construction techniques, materials or the like are
6 authorized."
7 Q. What does that mean? What does that last
8 sentence mean?
9 A. It means if you have a minor deviation in
10 construction, say the levee wasn't originally soil
11 and you're going to put it back with concrete rip-rap
12 or if you have a construction technique that's new
13 and wasn't used previously, then you would be able to
14 use that.
15 Q. Are you supposed to interpret that from that
16 letter? Well, let me ask you this.
17 Were you ever on-site prior to
18 investigating an infraction?
19 A. I don't recall. I may have been because we
20 verified a delineation on that site but I don't
21 recall if I was or not.
22 Q. Okay. You discussed an infraction, which
23 you said was .75 acres of fill on the southwest
24 corner of the levee previously, right?
25 A. Yes, sir.

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1 Q. Let's talk about that spot.

2 Are you able to provide any testimony in
3 court today about how wide that levee was prior to
4 your investigation of Mr. Stevenson's alleged
violation?

6 A. Well, there is no levee there.

7 Q. You said it was upland also?

8 A. Yes.

9 Q. What does that mean?

10 A. It means it doesn't meet the three criteria
11 of a wetland which is dominance of hydrophytic
12 vegetation; wetland hydrology; and hydric soils.

13 Q. And you say there's no levee there?

14 A. No. It's a pile of concrete, rip-rap, a lot
15 of stuff that's been dumped there.

16 Q. At the time of your visit?

17 A. Yes. Yes, sir.

18 Q. Because I'll submit to you that it looks a
19 little different than the last time you were there.
20 We'll get to that with later witnesses. Okay.

21 So we can describe this and have a
22 visual picture of this, when you drive onto the site,
23 right --

24 A. Uh-huh.

25 Q. -- and you go up to what looks to be like a

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1 around the levee, until it was so steep that I
2 couldn't walk anymore.

3 And then what Ms. Chivers did is lay
4 that GPS line down on an aerial photo where we
5 already had -- the aerial photo is a background. And
6 when we laid it down on that with the delineation
7 line that we had verified with Mr. Stevenson in 2007,
8 that's how we calculated the .78 acre on the GIS
9 program. But I don't know the dimensions.

10 Q. Okay. Not exactly what I asked but okay.
11 We'll work with it.

12 You can't tell us how wide it is? The
13 alleged infraction, you can't tell me how wide that
14 fall is?

15 A. No, not off the top of my head.

16 Q. You can't tell me how long it is?

17 A. No, sir.

18 Q. Is it safe -- can we agree that it's very
19 narrow and very long?

20 A. Yes, sir.

21 Q. But we don't know how wide?

22 A. I would have to look back at the exhibits.
23 But, no, sir.

24 Q. And having never been on the site prior to
25 the alleged infraction, could you provide this court

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1 ramp, kind of, that leads to the levee, correct?

2 A. Yes.

3 Q. So you're saying that that ramp-up is not a
4 levee?

5 A. Yes. Correct. It is not a levee.

6 Q. It's not a levee? So as you drive up on
7 there, in the southwest corner, as you look to your
8 left, what's over there?

9 A. I believe there's a building.

10 Q. Okay. Do you know who owns that building --

11 A. No.

12 Q. -- and the associated property?

13 A. No.

14 Q. Do you know where the property line is?

15 A. No.

16 Q. When you look to your right, what do you
17 see?

18 A. At the time of my site visit, there was a
19 huge pile of concrete, rip-rap, gravel. And, I
20 believe, there was such trucks over to the right.

21 Q. Okay. And this .78 acres -- I have to keep
22 looking back because my memory is not good. This .78
23 acres, can you describe the dimensions of it?

24 A. What I did, I took a GPS backpack unit. I
25 walked as close as I could to the edge, all the way

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1 and testimony today about the ability of that ramp
2 that you're not calling a levee -- I'll just call it
3 the ramp, how about that? Can we agree to that?

4 A. Sure. Sure.

5 Q. You have to drive up to it to get up on the
6 levee, right?

7 A. Sure. It may have been a levee in the past,
8 but it is huge now.

9 Q. Okay. And can you provide any testimony
10 today about what that ramp looked like prior to the
11 alleged infraction?

12 A. Not eyewitness, only through aerial
13 photographs.

14 Q. Well, from your aerial photographs, could
15 you tell me whether you could drive a dump truck up
16 it?

17 A. You're talking about the back side?

18 Q. I'm talking about the southwest corner when
19 you first come on the property --

20 A. Yes, you could --

21 Q. -- before any fill was introduced, could you
22 drive a dump truck up that?

23 A. Well, I'm confused about "before any fill
24 was introduced" because I think fill has been added
25 in that area for a long time. It may not have been

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1 in wetlands but it may have been on uplands. So I
2 guess I'm confused on --

3 Q. Well, all right. Before the alleged
4 violation? How about that? I'm trying to be as
5 specific as I can, and it's difficult I know because
6 we're talking about a piece of land and I don't even
7 have a picture.

8 What I'm asking you is: Before the
9 alleged violation, was that structure big enough,
10 wide enough, strong enough to handle a dump truck
11 full of dirt?

12 A. I don't recall.

13 Q. Is it big enough, wide enough and strong
14 enough to hold a trackhoe?

15 A. Currently?

16 Q. No. Before the infraction?

17 A. I don't recall.

18 Q. Before the infraction, was it big enough,
19 wide enough and strong enough to hold a bulldozer?

20 A. I don't know.

21 Q. When the permit was issued by the Corps of
22 Engineers, did you anticipate Mr. Stevenson utilizing
23 dump trucks, trackhoes and bulldozers to repair his
24 levee?

25 A. As far as I know. I didn't process the

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1 make the Model-T, would you agree that at the time it
2 was made, it was probably made with shovels and
3 wheelbarrows?

4 A. It's a possibility.

5 Q. Okay. So when they built the original levee
6 a hundred years ago, not withstanding any erosion
7 that would have occurred over a hundred years, do you
8 think they would have, in 1917, do you think they
9 would have made a levee big enough, wide enough and
10 strong enough to handle a trackhoe, bulldozer or dump
11 truck?

12 A. They could have. It might not have been
13 their intention, but it's possible.

14 Q. Let's go back to the document.

15 "Minor deviations due to changes in
16 construction techniques, materials or the like are
17 authorized."

18 Do you think a minor deviation in
19 construction techniques would include utilization of
20 bulldozers, trackhoes and dump trucks over the way it
21 was probably constructed back in the 19-teens?

22 A. Yes.

23 Q. You think that would be a minor deviation in
24 construction technique?

25 A. Yes.

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1 permit.

2 Q. Okay.

3 A. As far as I know. I don't know if he stated
4 what equipment he was going to use to repair the
5 levee.

6 Q. Okay. Did you guys think he was going to go
7 out there with a shovel and a wheelbarrow?

8 A. It's possible. That's one way. But, I
9 mean, that was not something that was evaluated on
10 the permit application as far as I know. Again, I
11 didn't evaluate the permit.

12 Q. I am going somewhere with this.

13 A. I agree.

14 Q. I'll get there eventually.

15 A. I agree.

16 Q. I'll get there eventually. The levee was
17 built a hundred years ago. Do you agree with that?

18 A. I don't know when. I've seen -- it may have
19 been built in 1911. I'm not sure.

20 Q. If I provided you documents that said that
21 it was built in the 19-teens, like World War I era,
22 would that surprise you?

23 A. Not especially.

24 Q. Okay. And since that would have been the
25 time that Henry Ford was just figuring out how to

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1 Q. Okay. So by your own admission then, Mr.
2 Stevenson would be able to utilize those types of
3 equipment in the repair of his levee?

4 A. Yes.

5 Q. Would the permit that's issued thereby
6 authorize him to make improvements to the levee so
7 it's big enough, wide enough and strong enough in
8 order to complete the levee repairs?

9 A. Could you repeat the question, please?

10 Q. Yeah. You've agreed with me that the
11 construction techniques utilizing mechanized
12 machinery to repair this -- you agreed with me that
13 that's a minor deviation in changes in construction
14 techniques? You agreed to that, right?

15 A. Yes.

16 Q. The permit also authorized him to strengthen
17 his levee wider to the point where he could utilize
18 those types of equipment?

19 A. Yes. I mean, it's already proposed to be 15
20 feet wide at the top on the crown so, yes, 15 feet
21 should be sufficient to supply those construction
22 equipment.

23 Q. When you build a levee, you're going to
24 build a pile of dirt. That's really what a levee is,
25 right?

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1 A. Or other material, yes.

2 Q. Pile of something?

3 A. Yes.

4 Q. And you're going to build it so it's 15 feet
at the top?

5 A. Yes, sir.

6 Q. How wide does that gotta be at the bottom?

7 A. It depends on what slope you have. Most of
8 the time the Corps of Engineers levees, I know we
9 use a 3-to-1 slope, but it also depends on the height
10 of the levee.

11 Q. So a 15-foot top of a levee could produce
12 what, 45-foot worth of width at the bottom at 3-to-1?

13 A. Yes.

14 Q. Okay.

15 A. And that's what the plans show, 45-feet at
16 the toe.

17 Q. We're going to look at that in a second.
18 So my question is: On the ramp in the
19 southwest corner, where this .78 acres of allegation
20 is located, alleged violation is located, if it's not
21 45-foot at the bottom and 15-foot at the top, is he
22 authorized under Nationwide 3 to make it so?

23 A. See that's where I'm confused because the
24 .78 acres is not associated with any levee. It's

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1 He'd bring material in and I don't know if he would
2 ship it to other places, but it was a huge pile of
3 material.

4 Q. How much material would you estimate that
5 Mr. Stevenson would need to repair his levee?

6 A. I would have to pull out a pencil and paper
7 and calculate with dimensions.

8 Q. Would it be bigger or smaller than the pile
9 you saw at your visit?

10 A. I don't know. I don't know how many cubic
11 yards. I could not estimate the number of cubic
12 yards in a pile of material.

13 Q. And I'm not trying to put you on the spot
14 here. I'm trying to get your opinion. Let me ask you
15 this.

16 Do you disagree that Mr. Stevenson could
17 have stored that material or staged that material
18 there to be used in other parts of the levee, in this
19 levee repair, under this permit that was issued to
20 him?

21 A. He could have been doing that.

22 Q. Now, let's go back real quickly to this
23 "it's not a levee or it is a levee."

24 When you stand on what we're calling the
25 ramp right now, okay, in that southwest corner where

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1 associated with a huge pile of material that's been
2 dumped there over time. And when you stand at the
3 bottom of that pile and you're looking up, it's gotta
4 be 20, 30-foot tall.

5 Q. At the time of your visit, was Mr. Stevenson
6 completed with his repair of the levee?

7 A. Appeared to be. But as I recall, he said he
8 was having trouble in some spots and he was going to
9 go back and police it, if you will, at times.

10 Q. Is it possible or did he relate to you on
11 your visit that day that that pile of material you
12 saw there was for utilization on other parts of
13 repair on the levee?

14 A. No, sir.

15 Q. He didn't say that?

16 A. No, sir. I don't recall if he did.

17 Q. If that pile of material is not there
18 anymore, based on other witnesses that came and
19 looked at the site after you did, would you doubt
20 that they were utilized for repairs in other areas?

21 Would you have any reason to doubt that?

22 A. He could haul the material anywhere. I
23 don't know what he was doing with the material.

24 Q. Okay.

25 A. To me, it looked just like a stone yard.

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1 this .78 acres is --

2 A. Yes, sir.

3 Q. -- and I said if you look to your left and
4 you said there's a building down there.

5 It's a little ways away from the ramp,
6 correct?

7 A. I believe. It's been awhile since I've been
8 down there.

9 Q. It's at least a 100 feet?

10 A. I don't know.

11 Q. Would you say it's more or less than a 100
12 feet? 33 yards? 40 yards?

13 A. I don't know. I wasn't paying attention to
14 the building when we were going on the tract.

15 Q. If I submitted to you that as you look to
16 the left, on the ramp, there's a property line that
17 belongs to that building and that other property
18 owner. Would you disagree with that?

19 A. No, sir.

20 Q. So since that property belongs to somebody
21 else and if Mr. Stevenson needed to widen the ramp in
22 order to handle the machinery that we discussed just
23 a few minutes ago, he's going to put that on the
24 right-hand side as you go up the ramp rather than on
25 the left-hand side and encroach on his neighbor.

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1 Would you agree with that? Would that
 2 be a smart decision?
 3 A. Yes.
 4 Q. When you look to your left, where that other
 5 property is, is that level with where you are or
 6 downhill from where you are?
 7 A. From what I recall, it was slightly
 8 downhill.
 9 Q. And when you look to the right, past the
 10 area where the violation was alleged to have
 11 occurred, is that uphill or downhill?
 12 A. Well, past the alleged .78 acres is all
 13 Cypress Turple Swamp, so that would be down.
 14 Q. Okay. So when we stand on the ramp, we're
 15 looking downhill to our left and downhill to our
 16 right, true?
 17 A. Well, when you're on the ramp, you look
 18 uphill until you get past the material and then it
 19 goes steep slope down to the swamp.
 20 Q. And it's downhill to the left, too?
 21 A. Slightly, yes.
 22 Q. So my question is: If a levee is a pile of
 23 dirt or other materials designed to keep natural
 24 water out, why is that ramp not a part of the levee?
 25 A. Well, the levee generally has a trapezoidal

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1 it's unrecognizable.
 2 Q. Let's look at the other part, what is marked
 3 as Complainant's B1. I'll just kind of peer over
 4 your shoulder if the Court will let me do this.
 5 This is showing a cross section of
 6 "Inset A," right?
 7 A. Yes, sir.
 8 Q. This one is showing a cross section on
 9 "Inset B," correct?
 10 A. Yes, sir.
 11 Q. And both on these -- and I'm going to call
 12 them "inboard and outboard." Tell me if I'm using
 13 the wrong terminology. I'm not that smart a guy.
 14 I'm going to use the term "outboard" to
 15 mean the side facing the river, and I'm going to use
 16 "inboard" to talk about the part on the inside of
 17 where you're saying there's a cypress swamp.
 18 A. Okay.
 19 Q. Fair enough?
 20 A. Yes, sir.
 21 Q. On both of those, does there show a
 22 dimension of -- what is the dimension on the inside
 23 of the levee at that point, I guess, is what I need
 24 to ask?
 25 A. Well, I'm -- well, the dimension on the

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1 shape and you can have a pile of material that's a
 2 mound and it's going to go down on both sides but
 3 that's not a levee. I mean, it depends on the
 4 purpose that it was constructed and the shape.
 5 And the reason I say it doesn't appear
 6 to be a levee there because there's no river or
 7 anything that is between the swamp and river or
 8 anything.
 9 Q. Okay. So, in your opinion, in order for it
 10 to qualify for a levee, there needs to be water right
 11 there, adjacent, touching the side of the levee?
 12 A. No, sir.
 13 Q. So how far away does the water need to be?
 14 A. There doesn't have to be water. What I was
 15 saying is on the north/south levee where he's been
 16 repairing, there's a river on the side. And it's
 17 plain. You can see the levee easy. You can see the
 18 shape, everything.
 19 When you come out the southwest corner,
 20 you don't see -- you see a big pile of stuff. You
 21 don't see a levee. You don't see a levee shape. You
 22 don't see anything like that.
 23 And as I said earlier, there may have
 24 been a levee a long time ago. But if there was, I
 25 mean, there's been so much material dumped on it now,

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1 drawing?
 2 Q. On the drawing, yes?
 3 A. Okay. The dimensions on the drawing is the
 4 levee crown is 15 feet. The slope on the inside or
 5 inboard, according to your language, is 15 feet. And
 6 after that, there is a two-to-five-foot shelf that
 7 appears.
 8 Q. Two-and-a-half foot shelf?
 9 A. Two-to-five foot.
 10 Q. Two-to-five foot shelf? And that is both
 11 for Inset A and Inset B, correct?
 12 A. Yes, sir.
 13 Q. I'm going to show you something else.
 14 Have you ever seen that document, that
 15 report?
 16 A. I believe it was submitted for the
 17 Nationwide Permit 3 but I can't confirm.
 18 Q. My question was: Have you ever seen it
 19 before?
 20 A. I've seen at least some exhibits from it. I
 21 don't recall if I have or not.
 22 Q. You said it appears to be the application on
 23 behalf of Parkwood Land Company for a Nationwide 3
 24 permit?
 25 A. Yes, sir.

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1 Q. Do you agree with that?

2 A. Yes, sir.

3 Q. Okay. Without you having ever seen that
4 believe, it's kind of hard for me to get it in. But
5 let me direct your attention to something in here.

6 Can you read the first sentence of
7 and this is going to be page 4 of 5 in the Project
8 Description?

9 A. Sure. "Reconstruction of the levee will
10 take place similar to how historical data depicts
11 that the original levee was constructed."

12 Q. Okay. Keep on going.

13 A. "The Permittee proposes to locate the new
14 levee approximately 10 feet behind the new Ordinary
15 Highwater Mark by pulling the remaining portions of
16 the existing levee back away from the shoreline."

17 Q. Okay. So is the proposal different than the
18 permit that was issued?

19 A. Appears to be, yes.

20 Q. Why?

21 A. Because as in the permit you had me read,
22 the proposal stated they were going to move the levee
23 10 feet back. But if you look at the proposed
24 drawings, the levee is still in its place and the
25 filling waterward or riverward from the existing

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1 Stevenson in 2007 where that line was GPS'd and we
2 have that information, yes.

3 Q. Okay.

4 A. But on the ground?

5 Q. Yes. Somebody come in on the ground and say
6 "This is where this is"?

7 A. Yes. We had a project manager verify the
8 delineation.

9 Q. Okay. Who did that work?

10 A. Mr. Dwayne Johnson.

11 Q. Is Mr. Johnson still with the Corps?

12 A. Yes, sir.

13 Q. To your knowledge, has Mr. Johnson's
14 delineation of where the original line was, has that
15 been submitted as evidence here, to your knowledge?

16 A. I believe so. And it's --

17 Q. If you put yourself in my shoes for a second
18 and say, okay, you're going to tell me I filled in
19 .78 acres, right?

20 You ought to be able to tell me where
21 the original line was, where the new line is and tell
22 me the width, length and breadth of my violation.
23 wouldn't you think?

24 A. Yes, sir.

25 Q. Can you do that?

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Henry Stevenson Hearing 11/14/12

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1 remaining portion of the levee.

2 And I don't see any previous levee on
3 the drawing that says it was moved 10 feet this way
4 or that way.

5 Q. Let's go back to that southwest corner. I
6 can't turn it loose. I'm like a dog with a an old
7 bone, I can't let it go.

8 The area that was filled in, that .78
9 acres, was it flagged?

10 A. How flagged?

11 Q. Somebody went on the ground and put flags
12 down and said this is where that fill goes? Did
13 anybody do that?

14 A. I'm confused by your question. Are you
15 asking me was the fill that has been discharged in
16 there now flagged, that line, or was the original
17 line flagged?

18 Q. My question is -- I think I already asked
19 you could tell me where the original line was. I
20 think you told me, "no." Is that true?

21 A. The original line of --

22 Q. Yes, sir. The original line before the
23 alleged violation of fill? Are you able to testify
24 today and tell us where that line was?

25 A. Well, we verified a deviation for Mr.

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1 A. And as I said before, Ms. Shivers took the
2 GPS line that I walked along that bottom while Mr.
3 Stevenson was there. She laid that over the
4 delineation line that we verified in 2007 for Mr.
5 Stevenson and that polygon on the GIS program is how
6 we calculated the .78 acre.

7 Now, we can go back to the program and
8 we can get dimensions, length and width. I mean,
9 it's not a square. I mean, it's not a rectangle but
10 it's similar, you know, a rectangle. Like you said,
11 it's skinny and long.

12 But, yes, we have an original line that
13 we verified in 2007. We also have the GPS where we
14 went in 2010. We overlaid those two lines and that's
15 the polygon that calculates the .78 acre.

16 Q. Do you have any thoughts as to why Mr.
17 Stevenson would have put the fill in that location?

18 A. No, sir.

19 Q. So you don't know whether he put that there
20 in order to handle the heavier machinery that we
21 talked about earlier or not?

22 A. I doubt it because there's no trucks driving
23 on that side. That's way away from where you drive
24 in, the ramp that you've been talking about.

25 You come in to the north, you veer a

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1 little bit to the west and then you get to where the
2 levee is and then you go to the north/northeast.

3 Q. Right.

4 A. And all that material, the new fill, the .70
5 acres, is quite a ways to the right when you're on
6 that driveway, if you will.

7 Q. Can you give us an estimate of how far
8 "quite a ways" is?

9 A. A couple hundred feet maybe.

10 Q. For the sake of argument, let's say that
11 that fill is added there to incorporate the use of
12 this machinery that we talked about earlier, okay.

13 Will you grant me that much for this
14 next question?

15 A. Okay.

16 Q. Would that, if that was the purpose of it,
17 fall within the Nationwide Permit that says "Minor
18 deviations due to changes in construction techniques,
19 materials or the like are authorized."

20 If it was put there in order to handle
21 the machinery that we talked about earlier, would
22 that be authorized under Nationwide 3?

23 A. The Nationwide 3 was not issued --

24 Nationwide 3 was issued for maintenance of the levee.
25 And, yes, you can use your dump trucks or whatever.

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1 A. It depends on how wide -- I mean, how wide
2 you're going to widen it. I mean, if you're going
3 out two feet, as I discussed earlier, that's a minor
4 deviation. If you're going out 50 feet, that is not
5 a minor deviation.

6 Q. Well, I tried to ask you earlier about the
7 width of that southwest part and you couldn't tell me
8 the width of it. You just said it was skinny and
9 long.

10 A. The unauthorized fill is, correct. But the
11 upland is huge there. I mean, it's tremendous there.
12 That's a large area.

13 That's the biggest upland he has on that
14 79-acre tract is right there in the southwest corner.
15 And it's because he's been putting material there for
16 years.

17 Q. So if you're going to fix a levee and you're
18 going to bring material in to fix that levee, do you
19 stage that material somewhere?

20 A. It depends on your method and your room. I
21 mean, certainly someone could come in and dump a load
22 of rocks, dirt, whatever. The dump truck leaves,
23 the bulldozer comes, pushes it, backs up.

24 You get another truck in there. You
25 back it up, you dump it. Bulldozer comes in and

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1 That's not a restriction.

2 Nationwide 3, the purpose is not to
3 stabilize the levee for vehicle traffic. The only
4 purpose in Nationwide 3 is to maintain the levee back
5 to where -- I assume the purpose is to keep the water
6 out of the swamp. So authorizing or saying
7 Nationwide 3 authorized additional fill to support
8 the equipment. I would say "no."

9 Q. Okay. So the answer to my question is: If
10 it was placed to handle minor deviations due to
11 construction techniques, which you've already agreed
12 that the machinery is authorized, right? You've
13 already agreed to that.

14 So my question becomes, and I think your
15 answer is "no," that if it was put there to utilize
16 that mechanized equipment, then it is not covered
17 under Nationwide 3? Is that true or false? Is it
18 covered or not?

19 A. No, not --

20 Q. If my levee is not wide enough and strong
21 enough to handle the trackhoe that I need to put up
22 there to put the dirt on the levee, can I widen that
23 under Nationwide No. 3 in order to accept that and
24 have that be as part of the minor deviation due to
25 construction techniques, materials or the like?

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1 pushes it out a little farther and then you can work
2 your way down the levee. That's an acceptable
3 technique.

4 Q. Let's go to the -- let's go up a little bit
5 north and talk about the truck turn.

6 A. Okay.

7 Q. You walked that -- I'm leaving the ramp and
8 I'm coming -- I've turned back north, okay. The
9 Neches River is on my left?

10 A. Yes.

11 Q. What you're calling a swamp is on my right?

12 A. Yes.

13 Q. All right. And we go up and there's a truck
14 turnaround, right?

15 A. That's what Mr. Stevenson calls it.

16 Q. I think you said it was .45 acres?

17 A. Yes.

18 Q. How wide is the levee? As I'm leaving -- as
19 I make that turn north, from there to the truck
20 turnaround, how wide is that levee?

21 A. I don't recall.

22 Q. More or less than 12 foot?

23 A. I'd say more.

24 Q. How much more?

25 A. I don't know.

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1 Q. Could I drive two dump trucks down it at the
2 same time?

3 A. Probably not, no.

4 Q. Could I drive a trackhoe down it?

5 A. I would think so.

6 Q. But it would be close, wouldn't it?

7 A. I would think it could be driven down there.

8 Q. I've driven and operated a trackhoe,
9 contrary to what everybody in this room will probably
10 believe, I have operated a trackhoe in my life. I'm
11 going to tell you it's real close.

12 Now, if I mess up, backing my dump truck
13 down the levee to dump my load further up north, I'm
14 liable to end up in the Neches River, aren't I?

15 A. A possibility.

16 Q. In fact, I think -- and we're going to talk
17 about that in a few minutes.

18 You were actually called out to talk
19 about a buried dump truck at one point?

20 A. Yes.

21 Q. Is that true? Stuck?

22 A. In the river? I don't believe -- I don't
23 recall the exact allegation, but, yes, it was a dump
24 truck involved in the river.

25 Q. Under Nationwide No. 3, again, talking to

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1 Nationwide Permit 33 that he could apply for and
2 obtain to get access to do his construction.

3 The truck turnaround is not part of the
4 maintenance levee.

5 Q. So when you came out and visited, was Mr.
6 Stevenson there when you came out and visited?

7 A. Yes.

8 Q. Did you tell him, you know, this truck
9 turnaround is not authorized but you can file for a
10 permit under Nationwide 33? Did you tell him that?

11 A. No, sir. Because if you have an
12 unauthorized activity, the first thing we try to get
13 you to do is restore the unauthorized activity and
14 then he could apply for a permit clean.

15 Otherwise, you have to go through an
16 after-the-fact permit -- an after-the-fact statement
17 of findings decision, terms of agreement, permit
18 application. It's a long process.

19 But, no, I didn't tell him he could
20 apply for a Nationwide 33. What we discussed was him
21 removing the violation and restoring the violation
22 and removing.

23 Q. But he was hit was a Stop Work Order before
24 he ever got a chance to remove it, is that true?

25 A. A Cease and Desist Order to not discharge

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1 this minor deviations due to the changes in
2 construction techniques, et cetera, you already said,
3 you know, it's acceptable to utilize that equipment.

4 If he puts in a temporary truck
5 turnaround so that he can safely get a backhoe, dump
6 trucks and the other things so he doesn't have to
7 back a dump truck all the way down that levee, and
8 we're talking, what, three quarters of a mile in
9 places?

10 A. It's a long ways.

11 Q. So it's a long way to back a dump truck up,
12 right?

13 A. Yes.

14 Q. And if I mess up, I end up in the river,
15 right?

16 A. Could.

17 Q. If I put in a truck turnaround for safety
18 purposes on a temporary basis, is that covered under
19 Nationwide No. 3?

20 A. No, sir.

21 Q. Why not?

22 A. Because the Nationwide Permit 3 is to
23 maintain the levee. If Mr. Stevenson needed a
24 temporary road or a temporary access to that, then
25 there's another Nationwide Permit for that,

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1 any further fill material into it. It did not
2 prevent him from restoring the violation.

3 Q. Okay. Did anybody at the Corps explain that
4 to him?

5 A. No. And I don't believe he asked either.

6 Q. Let's talk about -- Mr. Davidson, excuse me
7 just a second. I have to find it. I had it out a
8 minute ago. Here it is. I've got to see what
9 exhibit it is so I can talk to it. Hang on just a
10 second.

11 It is Complainant's No. 45. Can you
12 pull that out for me?

13 A. Yes, sir.

14 Q. Now, you put this together, correct?

15 A. Yes, sir.

16 Q. You, personally?

17 A. Yes, sir.

18 Q. Went back and researched the files?

19 A. Yes, sir.

20 Q. So every activity that Mr. Stevenson would
21 have had, either as himself or as a member of any
22 kind of entity, any corporation, limited partnership,
23 et cetera, et cetera, et cetera, ends up on this
24 report you made, correct?

25 A. Yes, sir. Mr. Stevenson, ACR, LP and

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1 Parkwood Land Company.

2 Q. And those are the only three that show up in
3 this report?

4 A. I believe so.

5 Q. The very first one, let's look at that one.

6 'Request on 11 January 1991 to construct
7 an 80 acre sand pit and access road in Vidor, Texas.
8 Corps of Engineers notified by letter dated 10 April
9 '91 that the sand pit did not require a DA permit and
10 the access road was authorized under Nationwide
11 Permit 14 provided a culvert is installed."

12 Is that fair and accurate of what
13 happened?

14 A. Yes.

15 Q. So in '91, either Mr. Stevenson, Parkwood
16 Land or ACR, LP said, hey, I've got this piece of
17 property over here. Do I need a permit? And you
18 guys said, no, you're fine there as long as you put a
19 culvert there, correct?

20 A. Well, we said the sand pit does not require
21 a permit but the access required a Nationwide Permit
22 14 and it was authorized by 14 provided he put a
23 culvert in there to allow water flow.

24 Q. Okay. Is this the kind of action you like
25 to see at the Corps of Engineers?

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1 wetland delineation on 33..." Oh, I missed a part.

2 "...the wetlands were never surveyed by
3 Mr. Stevenson as requested."

4 A. Correct.

5 Q. And so, therefore, since he didn't survey
6 it, the file was closed?

7 A. Correct.

8 Q. So would this be a favorable or an
9 unfavorable action as it reflects on Mr. Stevenson?

10 A. Favorable if he had provided the delineation
11 or the survey.

12 Q. Is it certainly every person's right to say,
13 gee, I thought I was going to do something with that
14 piece of land and it's not economically feasible for
15 me to do that and just allow the file to be closed?

16 A. Yes.

17 Q. Would this be a favorable or unfavorable
18 action as it reflects upon Mr. Stevenson?

19 A. Favorable.

20 Q. Okay. In fact, I don't want to spend the
21 Court's time to go through all of these. I'm going
22 to go through the ones that I think you're going to
23 tell me are unfavorable.

24 But out of these four pages of stuff,
25 are most of them favorable or unfavorable?

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1 A. I don't know if we would like to see or not
2 to see any action. What we do is evaluate what's
3 requested of us.

4 Q. Well, if I'm a guy with a piece of land,
5 would you rather me go in there and just do what I
6 want to in a wetland or would you rather me come to
7 you and say, hey, I might have a problem here. Do I
8 need to do something?

9 A. We would rather -- if people are unsure, we
10 would rather they consult with the Corps.

11 Q. So on this first entry, would you consider
12 this to be something that would look favorably upon
13 Mr. Stevenson or look unfavorably?

14 A. Certainly. Favorably.

15 Q. Okay. The second one: "Request dated 3 May
16 '99 from Mr. Stevenson for a wetland delineation on a
17 43-acre tract..."

18 By "wetland delineation," he's asking
19 you to tell me what's wetland and what's not; is that
20 right?

21 A. Correct.

22 Q. So he asked you. And, in fact, you,
23 personally, delineated the wetland tract, right?

24 A. Yes.

25 Q. And it says that "Mr. Stevenson submitted a

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1 A. I did not evaluate them that way or count
2 which ones were violations or ...

3 Q. Well, you put this thing together. You tell
4 me which one is the worst violation. You tell me
5 what's the worst thing Mr. Stevenson, ACR, LP or
6 Parkwood Land Company ever did in the eyes of the
7 Court?

8 I think I know where you're going, but
9 you tell me.

10 A. Give me a minute, please.

11 Q. How about Williams Construction?

12 A. Well, that's certainly -- I'm thinking of
13 that one. I don't know if there's one that tops that
14 one or not.

15 Q. I think your report says that Williams
16 Brothers Construction paid \$20,000 and ACR, LP paid
17 \$20,000 in fines for infractions?

18 A. Yes, sir.

19 Q. Let me ask you a hypothetical question.

20 You've got a house, Mr. Davidson, that
21 you have no use for but you don't want to sell it,
22 you don't want to get rid of it. So you decide
23 you're going to lease it to me.

24 A. Okay.

25 Q. Okay. So I lease it from you. We sign a

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1 lease that says I'm going to pay you "x" amount of
2 dollars every month to have the right to utilize that
3 property. And I go in and I possess it, right.

4 But I'm not the nice guy that you
5 thought I was. I went into that house and I made a
6 methamphetamine shop and I started cooking meth and
7 the DA got on me and they came in and they nailed me.
8 Should you go to jail? Should you be charged?

9 A. I'm not familiar with criminal law so I
10 don't know the stipulations, but I know .

11 Q. Well, you're a citizen, right? Tell me
12 whether you think that's fair or not?

13 A. You still possess the house but you're not
14 cooking the drugs, so I'd say, in my opinion, it
15 would not be fair.

16 Q. Okay. And the Williams Brothers
17 Construction infraction -- are you aware that ACR, LP
18 had a signed lease with Williams Brothers
19 Construction to lease that property for Williams
20 Brothers a use for whatever they were going to do
21 with it? I think they were going to put a Hot Dog
22 Plant in there or something.

23 Are you aware that ACR, LP had leased it
24 to Williams Brothers?

25 A. Yes.

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1 Q. It I told you the lease that was signed
2 between ACR, LP and Williams Brothers Construction
3 stated specifically that Williams Brothers
4 Construction, for whatever purpose they wanted to put
5 that land to, was required to get any governmental
6 permits that were required for them to do whatever
7 they needed to do on that property, would that
8 surprise you?

9 A. No.

10 Q. So why do you think ACR, LP paid \$20,000 in
11 fines?

12 A. Because they were a responsible party for
13 the violation as a property owner.

14 Q. Has it ever been your experience, and you've
15 been with the Corps what, 21 years?

16 A. Twenty-two.

17 Q. Twenty-two years. Has it ever been your
18 experience that a violator will pay the fine or pay a
19 fine because it is far less expensive to pay the fine
20 than to hire legal representation to fight the Corps
21 of Engineers?

22 A. Yes.

23 Q. Does that happen more or not very often?

24 A. I don't know.

25 Q. Do you think ACR, LP paid the \$20,000 fine

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1 Q. But still the Corps of Engineers held ACR,
2 LP responsible?

3 A. Yes. The Corps of Engineers holds the
4 property owner and the contractor or other affected
5 party responsible. In fact, in that aspect, Mr.
6 Stevenson was on a bulldozer at one time pushing dirt
7 around on that property.

8 Q. Okay. That's fine. My question is -- my
9 question comes down to ACR, LP paid a \$20,000 fine.
10 That's Sonny Stevenson, right?

11 A. Yes, sir.

12 Q. And do you know the ownership interest of
13 ACR, LP?

14 A. I believe there's four primary owners.

15 Q. Of which, Mr. Stevenson is one?

16 A. Correct.

17 Q. Do you know his percentage of ownership?

18 A. No, sir.

19 Q. If I told you it was far less than being a
20 half interest, would you be surprised?

21 A. No.

22 Q. So ACR, LP, not Sonny Stevenson, paid you
23 \$20,000 because of the infraction of Williams
24 Brothers Construction?

25 A. ACR, yes.

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1 because they felt responsible or do you think they
2 paid the \$20,000 fine because the guys down in
3 Houston at Fulbright & Jaworski were going to charge
4 them a lot more than that to fight it?

5 A. I don't know why they paid the fine.

6 Q. Okay. Fair enough.

7 I looked through here, and from what I'm
8 going to call the Williams Brothers incident

9 A. Yes, sir.

10 Q. -- there are several entries in here
11 regarding the Williams Brothers incident, correct?

12 You put a lot of time in writing it and
13 I put a lot of time in reading it. I'm going to tell
14 you that there are no less than six entries in here
15 about that one incident. Would you agree or
16 disagree?

17 A. If you could point them out, I might agree
18 with you.

19 Q. Okay. Hang on. The one that we've been
20 talking about ends at the bottom of page 1, which is
21 "formally 1-4415."

22 A. Yes, sir.

23 Q. Would you agree that the next entry, 1-4345,
24 is also the same parcel of property in regards to the
25 same penalty?

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1 A. Yes. But I don't see Williams Brothers on
2 there.

3 Q. But it is the same parcel of property.
4 correct?

5 A. Yes.

6 Q. And the I-14242, right below that, is the
7 same parcel of property that we've been talking
8 about, correct?

9 A. No, sir.

10 Q. It's not?

11 A. That's on the south of I-10.

12 Q. Okay. And then how about DA Permit 21287,
13 the next one down?

14 A. That's also on the south of I-10. Those two
15 are the same properties.

16 Q. So those two go together? Okay. I guess
17 what I want to do and I don't want to waste the
18 Court's time and bore the Court here, but we've got
19 four pages of stuff here.

20 How many times has Mr. Stevenson, over
21 the course -- since '91 until today, how many times
22 has he run averse of the Corps of Engineers rather
23 than simply ask for a delineation or ask you to give
24 your opinion on what he can do or what he can't do on
25 the property?

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1 in some materials and he was allowed to have an
2 after-the-fact permit, true?

3 A. Correct. The second one is at the bottom of
4 the page, which we just discussed with Williams
5 Brothers and ACR for the hot mix plant and the borrow
6 area.

7 Q. Okay.

8 A. The third one is on the second page and it
9 is filled with 1.2 acres of adjacent wetlands at I-10
10 and Tiger Creek.

11 Q. Can you tell me which one that is?

12 A. It's formally I-4345 on the second page.

13 Q. Okay.

14 A. And then I believe the rest are associated
15 with this action that we're discussing today.

16 Q. Now, my question becomes -- the second one
17 that you pointed out -- actually, it's the third one
18 because the first one would have been in March of '99
19 and then the Williams Brothers incident and now this
20 third one, which is on the second page, I-4345?

21 A. Yes, sir.

22 Q. I have Complainant's Exhibit 43 from their
23 pre-hearing exchange. I spent a lot of hours going
24 through that.

25 And I'm assuming that that information

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1 I mean, four pages makes him look like a
2 real bad man. But when we get down to it, how many
3 times has he run aful of the Corps of Engineers
4 regarding wetland policy?

5 JUDICIAL OFFICER RANKIN: If I could
6 suggest a little modification of that. Let's talk
7 about the last couple of paragraphs on these pages
8 that relate to the alleged violation at issue today.

9 MR. KIBLER: Thank you, Your Honor. I
10 probably should have put that little caveat in there
11 myself.

12 THE WITNESS: It appears three, not
13 counting the cases

14 BY MR. KIBLER:

15 Q. Can you just summarize the three for me,
16 where he has been a bad actor, I guess, is the way to
17 say that?

18 A. The first one was in 1999 when he filled 1.6
19 acre of Bald Cypress and Red Maple forested wetlands.
20 I believe this is what he refers to as the Bonner
21 turnaround.

22 Q. Can you tell which page --

23 A. Oh, that's the third one down on the first
24 page.

25 Q. Third down, first page? Okay. So he filled

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1 that's in that big stack of stuff, for lack of a
2 better term, supports your summary?

3 A. Yes.

4 Q. If I told you that Mr. Stevenson and ACR, LP
5 and Parkwood Land has paid one \$20,000 fine, and
6 that's what he's going to testify to, but your entry
7 here for I-4345 says that they paid another \$20,000
8 penalty.

9 So according to your records, has he
10 paid once or has he paid twice?

11 A. It appears, according to my records, he's
12 paid twice.

13 Q. Okay. Now, we may need to take a break
14 while you do it, but I would appreciate it if you
15 would look in that stack of stuff that I was provided
16 14 days ago and point it out to me and show me where.

17 Because it does not appear from my hours
18 of porviewing through the materials there that he's
19 paid more than one fine of \$20,000 and it was paid by
20 ACR, LP on the Williams Brothers's incident.

21 MR. KIBLER: And I would like for us, if
22 we can, take a break while he does this because this
23 may take awhile.

24 JUDICIAL OFFICER RANKIN: We'll take a
25 recess until Mr. Davidson finishes his investigation.

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1 MR. KIBLER: I appreciate it. Thank
2 you, YOUR HONOR.
3 [Brief recess was taken.]
4 BY MR. KIBLER:
5 Q. Mr. Davidson, we took a short break to allow
6 you an opportunity to look through Complainant's
7 Exhibit 46.
8 And the question that was posed before
9 we left, to the best I can recollect is: Can you
10 show me in that documentation in there that ACR, LP,
11 Conroy Stevenson or Parkwood Land paid more than one
12 \$20,000 fine to the Corps for violations of wetland
13 policy?
14 Have you been able to look through that
15 and find something?
16 A. Yes, sir. If you look at the Settlement
17 Agreement between the United States of America and
18 ACR, LP --
19 Q. Okay.
20 A. -- it states in civil penalty, ACR shall pay
21 a civil penalty of \$20,000 pursuant to Section 404 of
22 the Clean Water Act to address the alleged violation
23 of the CWA.
24 Q. And how is that not the Williams Brothers's
25 incident? Because I think we'll agree that ACR, LP

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1 A. Yes, sir.
2 Q. What is the date of your settlement?
3 A. The settlement -- this one?
4 Q. Yes, sir. The one you read me from
5 Complainant's Exhibit 46.
6 A. Let's see. It was signed in '04.
7 Q. And who signed on behalf of ACR, LP?
8 A. Andrew Dunn.
9 Q. Do you know if Mr. Stevenson was a member of
10 ACR, LP in 2004?
11 A. I would have to look back through the record
12 but I don't recall.
13 Q. Okay. I want to take 46 back from you. It
14 was in that big stack of stuff. I don't want to
15 enter that.
16 A. It's still in the order.
17 Q. I appreciate that. That's how it was given
18 to me, so I don't know if that means anything or not.
19 JUDICIAL OFFICER RANKIN: Well, you may
20 not want to now, but I think it might have been a
21 good idea to put in, at least, the document he was
22 referencing and testifying to as testimony.
23 MR. KIBLER: Can you find it?
24 THE WITNESS: I think I found it right
25 there. It's page --

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1 paid \$20,000 in the Williams Brothers's incident.
2 How is that --
3 A. And it also has -- the Williams Brothers --
4 I don't believe they were required to purchase the 5
5 credits from the Wetlands Mitigation Replacement Bank
6 in which this I-4345 states that ACR has purchased 5
7 credits from the Wetlands Mitigation Replacement of
8 Southeast Texas as compensation.
9 And it says: "Given that the
10 requirements of the signed settlement agreement have
11 been successfully completed that the impacts are
12 authorized by Nationwide Permit 32."
13 Q. Okay.
14 A. And it also --
15 Q. Let's go back to your -- real quickly, back
16 to your summary. Starting at the bottom of page 1
17 and right up on top of page 2 there, it appears that
18 looking at the top of page 2 it says both parties
19 paid the penalties.
20 And then it says: "The wetland
21 restoration effort was not successful and a 19-acre
22 preservation of bottomland hardwood wetlands was
23 substituted for the restoration effort. The 19-acre
24 preservation was executed on 10 August 2011. The
25 case was closed on 22 August 2011."

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1 BY MR. KIBLER:
2 Q. Go ahead. Tell me what pages they are.
3 A. 69, 70, 71 and 72, 73 of 171. So pages 69
4 through 73 of 171.
5 Q. Okay. I will take on the EPA's burden here.
6 The Settlement Agreement that you have reviewed, is
7 that a fair and accurate representation of a document
8 that the EPA or Corps of Engineers would normally use
9 in the course of settling a penalty action?
10 A. The Corps of Engineers, yes.
11 Q. Okay. So it would be something that the
12 Corps of Engineers would use solely?
13 A. I'm not sure what the EPA would use.
14 Q. And this a penalty agreement between the
15 Corps and ACR, LP?
16 A. Yes, sir.
17 Q. This is a document that would be used in the
18 normal course of business at the Corps of Engineers?
19 A. Yes.
20 Q. Okay.
21 MR. KIBLER: I'll have this submitted, I
22 guess, as Complainant's exhibit because that's really
23 who it goes for. But I'll tell you what,
24 Respondent's Exhibit 3, I think, I'm up to.
25 MR. MORENOCK: No objection.

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1 MR. KIBLER: I'm sorry. Was it --
 2 JUDICIAL OFFICER RANKIN: It's admitted.
 3 MR. KIBLER: I kind of thought it was.
 4 JUDICIAL OFFICER RANKIN: I doubt it
 will play a big role in this, but it's admitted.
 6 [Respondent's Exhibit No. 3 admitted
 7 into evidence.]
 8 BY MR. KIBLER:
 9 Q. Mr. Davidson, when you came up with this
 10 four pages of materials involving Mr. Stevenson, does
 11 it matter to the Corps whether it's ACR, LP or
 12 Parkwood Land or Sonny Stevenson?
 13 A. In what way?
 14 Q. Well, if I asked you to do one on Mr. Dunn,
 15 that you just said signed on behalf of ACR, LP for
 16 that last exhibit we just had, if you did one on Mr.
 17 Dunn, would all the ACR, LP entries show up as well?
 18 A. Yes, sir, they should.
 19 Q. So the Corps would enter in the individual
 20 names who are the shareholders of a particular entity
 21 into their database?
 22 A. That's the way it should be done, yes.
 23 Q. Okay. So if Xerox made an infraction, are
 24 you guys going to go pull all the stockholders?
 25 A. No, sir.

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1 bank account, right?
 2 A. That's my guess.
 3 Q. Okay. So if ACR, LP is in violation of the
 4 wetlands policy, why is Mr. Stevenson's name attached
 5 to that?
 6 A. Because he's part of ACR.
 7 Q. Okay. But we just said Xerox did it, then
 8 you wouldn't be able to go get all those
 9 shareholders, right?
 10 A. Yeah. But Mr. Stevenson - most of the
 11 times I've dealt with him, Mr. Stevenson never
 12 represented himself as ACR. I've always dealt with
 13 Sonny. So Sonny would talk to me as an individual.
 14 A lot of times, I never ever knew he was associated
 15 with ACR.
 16 I never even knew about ACR until this
 17 Williams Brothers violation came up, you know. So I
 18 always thought it was Mr. Stevenson because I was
 19 never told different.
 20 Q. Let's go back to that first negative impact
 21 entry that you talked about. It's the third entry on
 22 the first page of your summary.
 23 "...filled in approximately 1.6 acres of
 24 bald cypress, red maple forested wetlands without a
 25 DA permit in violation of 404. Warning letter was

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1 Q. So when an entity does something -- and we
 2 know this entity is this fictional thing that we
 3 create in the law, but it is it's own thing. Do you
 4 agree with that?
 5 A. On "thing," please elaborate.
 6 Q. It is it's own person. A person for all
 7 intent and purposes as we look at it under the law.
 8 A. The ACR, from what I know, is an entity
 9 comprised of four individuals.
 10 Q. Is it a corporation, limited partnership, a
 11 limited liability company?
 12 A. It's a LP, ACR, LP.
 13 Q. Limited partnership? Okay. I'm going to
 14 get off your expert track, but just tell me what you
 15 know as an individual.
 16 When you go get a corporation or a
 17 limited partnership or one of those kinds of things,
 18 why do you go do that? Why do you go to trouble and
 19 expense to do that?
 20 A. I can only guess. But my guess would be to
 21 protect the individuals.
 22 Q. Okay. It protects individuals from
 23 liability and those kinds of things. If ACR, LP has
 24 a delivery truck and they have an accident on the
 25 freeway, they're not going to come after Andy Dunn's

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1 sent on 7 April '99," right?
 2 A. Yes.
 3 Q. "Stated purpose was to construct a building
 4 site and road. Mr. Stevenson was allowed to apply
 5 for an after-the-fact permit."
 6 A. Yes.
 7 Q. True?
 8 A. Yes.
 9 Q. How often are after-the-fact permits
 10 granted?
 11 A. I don't know the percentage but not all of
 12 them are granted.
 13 Q. Why would you grant one? Do you like them
 14 or --
 15 A. No, but --
 16 Q. -- is there some kind of criteria for
 17 granting one and not granting one? I mean --
 18 A. Because we would grant a permit based on the
 19 objections from the resource agencies. We have to
 20 coordinate with the resource agencies. Most of the
 21 time, a permit is issued when the impacts from the
 22 wetlands have been compensated.
 23 Q. Okay.
 24 A. If sufficient compensation was proposed by
 25 the applicant, then we could, based on no other

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3 objections: endangered species, historical
4 properties, and the other numerous factors that go
5 along with the permit. sufficient compensation was
6 proposed. then we could grant the after-the-fact
7 permit.

8 Q. So in this case, when an after-the-fact was
9 granted, is it because he offered up some other
10 acreage in mitigation or is it just we didn't think
11 it was that bad of an impact?

12 A. Well, in this particular case, he placed 7.9
13 acres of wetland into a conservation easement to
14 compensate for the impacts.

15 Q. Okay. So he went in and he filled in a
16 place and you came to him and said, hey, you weren't
17 supposed to do that, right?

18 A. Yes.

19 Q. In plain English. So he said, okay, what do
20 I do now? And you said, well, we'll offer this
21 mitigation to you and he offered up -- what did you
22 say, 7.91 acres?

23 A. 7.9.

24 Q. 7.9 acres. So he offered 7.9 acres for the
25 1.6 acres that he filled in according to the
violation, correct?

A. Yes.

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1 that you had over here and we agree to that and it's
2 all done and good, am I a good guy or a bad guy?

3 A. Well, the Corps wouldn't say provide this
4 much mitigation. The Permittee proposes what they're
5 going to provide to compensate for it.

6 But if you obtain an after-the-fact
7 permit, I don't evaluate you as a good or a bad guy.
8 What I evaluate you as a person that had unauthorized
9 activity. They went through the process and they
10 obtained a permit to retain that.

11 Q. Okay. Well, I guess it all boils down to
12 this and I can throw this document away. We've been
13 chewing on this thing for a while.

14 We've got four pages, some of which is
15 entries about the thing we're here about today, which
16 takes up, like, the last page.

17 The Complainant's, the Corps of
18 Engineers and the Environmental Protection Agency,
19 are arguing today that this Court should fine Mr.
20 Stevenson quite a sum of money.

21 And what their number one leg their
22 standing on is this four pages of summary that you've
23 got saying that Mr. Stevenson has a long history of
24 violations.

And after we've gone through this and

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1 Q. Are you happy with him or mad with him at
2 this point?

3 A. I'm not happy or mad with anyone. I mean,
4 that's just part of work.

5 Q. I'm sorry. I'm using my colloquialisms. Is
6 his a -- I mean, if somebody does something and
7 didn't -- if a guy fills in some land and

8 Mr. Davidson, I've got a spot in the
9 back of my yard that holds water every time it rains.
10 I don't know if that a wetland and sure as heck don't
11 want to ask today for you to delineate it.

12 But if I went and put a load of dirt in
13 it and you came up -- excuse me, the Corps came to me
14 and said to me, Mr. Kibler, you have messed up. You
15 have infringed on .0001 acres of land in that spot in
16 the back of your yard.

17 If I didn't know I was doing something
18 wrong or had no indication putting four wheelbarrow
19 loads of dirt in that wet spot right there, if I
20 didn't know I was violating the Clean Water Act or
21 any other regulation, but afterwards, you said, well,
22 you know, Kibler, it's really not that big an impact.
23 The other agencies said it's not that bad.

24 If you will mitigate these certain other
25 -- you know, 1.5 acres to make up for the .0001 acres

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1 we've beat this and chewed on it and whatnot, does he
2 have a long history of violations?

3 A. If you're talking about timewise, it's been
4 since 1999. But as you've stated or you've brought
5 out, he's had four or five violations. But I think
6 what this shows is his long history and this confirms
7 that he is a repeat and flagrant violator of the
8 Clean Water Act.

9 Q. A repeat and flagrant violator? I asked you
10 to point out to me the violations. You pointed out
11 three to me.

12 A. Oh huh. And that's repeat. Repeat is more
13 than one.

14 Q. Okay. And in the first instance, he made a
15 mistake and you mitigated and gave him an after the
16 fact permit, right?

17 A. Yes. He received an after-the-fact permit.

18 Q. The second one was the Williams Brothers
19 incident, is that right? Is that true?

20 A. Yes, sir.

21 Q. And we talked about that and that was a
22 situation where ACR, LP had leased the property to
23 Williams Brothers but ACR, LP was held just as
24 liable. The DA would have taken you to jail to,
25 right? That is pretty much what we talked about in a

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1 hypothetical?

2 And the last one, what happened to the
3 last one? Why don't you tell me. It's the second one
4 actually, the first full entry on page 2, formally
5 1-4345.

6 A. We received a report that Mr. Stevenson was
7 land clearing and filled floodplain along the Tiger
8 Creek by 1.10 in Vidon. We determined that ACR, LP
9 filled 1.21 acres of adjacent wetlands without a
10 permit and then they received a Nationwide Permit 32
11 by purchasing 5 credits and completing the conditions
12 of their settlement agreement.

13 Q. Now, in that entry, it says this is the same
14 property associated with Permit 21790, right, which
15 is found in the fourth entry on the first page?

16 Correct?

17 A. Correct.

18 Q. Now, in that instance, in 21790, a permit
19 was issued, right?

20 A. And after the fact permit to retain the 1.58
21 -- the 1.68 acres.

22 Q. And the 7.9 acres in mitigation, right?

23 A. Yes.

24 Q. These numbers sound a lot alike, don't they?
25 Is this a double entry or a single entry?

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1 machinery; is that true?

2 A. Mr. Stevenson never strengthened the levee
3 for the purpose of his equipment. I mean --

4 Q. Okay. Well, I said in this --

5 A. -- in the southwest corner.

6 Q. I said we disagree, correct?

7 A. Yes, we disagree.

8 Q. I'm just saying if he -- because he's going
9 to testify. Eventually, we'll get into -- if I can
10 shut up and let this thing move on.

11 He's going to get up there and testify
12 that he did it to widen and strengthen the levee so
13 that it would handle the trackhoe and the heavy
14 equipment.

15 If he did that, you say -- I want to
16 make sure we're clear. You say that that's not
17 covered under Nationwide 3 under that -- doggone it,
18 I don't have it in front of my anymore, the minor
19 deviations due to et cetera, et cetera, that
20 paragraph of the permit letter.

21 A. Well, what I stated is widening it two feet
22 may have fit into that minor deviation, but going out
23 50 feet or 20 feet does not.

24 Q. Wait a minute. When I asked you for the
25 dimensions on this fill, you told me it was narrow

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Henry Stevenson Hearing 11/14/12

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Henry Stevenson Hearing 11/14/12

100

1 A. They're not identical.

2 Q. Okay.

3 A. They're two different file numbers, two
4 different files.

5 Q. I'll go back and hit some highlights here
6 because I like to keep things clear.

7 We started off talking about cypress
8 trees. You told me there are some out there, but you
9 couldn't give me a count. But you would say that in
10 meeting the Regional Guideline that it is
11 predominately cypress; is that true?

12 A. Cypress Tapelo, yes.

13 Q. But you can't tell me how many trees were
14 there and you can't tell me how many varieties or
15 species of anything else, right?

16 A. No, sir. We did not do a tree count.

17 Q. We talked extensively about the southwest
18 corner of the ramp. You did agree with me that the
19 utilization of mechanized machinery to do the repairs
20 on the levee would have fallen under Nationwide 3,
21 correct?

22 A. Yes.

23 Q. But we disagree, I guess, that Nationwide 3
24 would cover the widening and strengthening of the
25 levee to the point where you could actually use that

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1 and long.

2 A. Yes.

3 Q. I think we said somewhere -- forgive me, I'm
4 not going to try to put words in your mouth. It was
5 a few feet?

6 A. No. I never said that.

7 Q. How wide is this fill?

8 A. I don't know. I stated if we go back to the
9 GIS program, we can calculate that but I have no idea
10 of how wide or how long it is.

11 Q. Is the fill 50-foot wide?

12 A. I don't know.

13 Q. Well, if it's 50-wide and we said it was
14 really long, that's going to be way more than .78
15 acres. I mean, how wide is this room?

16 .78 acres. I'll argue with you that .78
17 acres is probably three times the size of this room,
18 maybe four. I do land and property so I do pretty
19 good at eyeballing it.

20 So if this is a narrow long strip of
21 fill that is the alleged violation, it's not going to
22 be 50-foot wide. Can we agree to that?

23 A. No, sir. Because I don't know what the
24 dimensions are on the GIS program.

25 Q. Okay. We went through the authorization

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1 letter. You gave me your opinion on that. Oh, I
2 didn't ask this.

3 On the trees, on the cypress trees, if
4 they get too much water, will they die?

5 A. Cypress trees are adapted to live in
6 standing water for long periods of time. That's why
7 they have the knees come out to support and it's
8 believed for oxygen exchange.

9 Now, they do need to dry out to
10 germinate the next generation, but they're adapted to
11 living in standing water.

12 Q. My question becomes: Can they die from
13 being in too much water?

14 A. I've not heard of it. I don't know.

15 Q. Are cypress trees that are predominately on
16 Mr. Stevenson's or Parkwood Land Company's land
17 there, are they dead or alive?

18 A. As we saw in the picture, in Exhibit 25 A or
19 A, I believe they have leaves on them.

20 Q. So the ones in the picture --

21 A. They were alive in September of 2009.

22 Q. Okay. And the ones in that picture are
23 alive. Did you see any dead ones?

24 A. I don't recall.

25 Q. Would it matter if they're alive or dead?

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1 Q. Do you remember the fill that was authorized
2 under their permit?

3 A. No.

4 Q. Do you know if that fill, authorized by the
5 Corps of Engineers, stopped up the drain on Parkwood
6 Land Company's property?

7 A. No. Mr. Stevenson had complained about
8 that, but I'm not sure -- you know, I didn't
9 investigate his whole levee because their property is
10 beside it.

11 Q. In fact, they share a southeast corner,
12 correct?

13 A. I know his home is adjacent to Mr.
14 Stevenson's 79-acre tract.

15 Q. Is it possible that the Corps of Engineers
16 issued a permit to Mr. Stevenson -- and I keep
17 calling it Mr. Stevenson's land, but it's not, is it?
18 It is really in the name of Parkwood Land Company; is
19 that right?

20 A. I don't know who owns the property.

21 Q. Is it possible that the Corps of Engineers
22 issued a permit to Parkwood Land Company's eastern
23 neighbor that allowed them to fill in the only
24 natural drain to the Parkwood Land Company property?

25 A. It's possible.

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1 A. For?

2 Q. For the purposes of Nationwide Permit
3 Supplementary 1B that we talked about for Texas?

4 If they're there, but they're dead, does
5 it matter?

6 A. It doesn't specify live or dead, but what
7 you do is look at normal circumstances. Under normal
8 circumstances, they would be alive if a one-time
9 event killed them.

10 Q. Back in 1999, Bomec Contractors, which is
11 the adjacent property owners to the east of this
12 particular parcel, I believe you investigated a
13 potential violation. Do you remember that?

14 A. I don't recall.

15 Q. Reading a memorandum here, "An individual
16 reported by telephone 15 March '99, that the road
17 material was placed -- road material placed was
18 filling wetlands. A site visit was conducted 21
19 March '99. I talked to Ronnie Stickler of Bomec.
20 Mr. Stickler stated they had a permit to fill the
21 wetlands and showed me a copy. The work was
22 authorized by DA Permit 21497 issued 21 January '99,"
23 signed by John Davidson.

24 Do you remember doing that?

25 A. I don't recall but, obviously, I did.

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1 Q. Prior to that '99 Bomec permit and their
2 work, had you ever visited Parkwood Land Company's
3 property?

4 A. The 79-acre tract that's the subject?

5 Q. Yes.

6 A. Not that I recall.

7 Q. So you couldn't tell me it looks the way it
8 looks today or not?

9 A. No, sir.

10 MR. KIBLER: I will pass the witness,
11 Your Honor.

12 JUDICIAL OFFICER RANKIN: Any re cross?

13 MR. MURDOCK: No further questions, Your
14 Honor.

15 JUDICIAL OFFICER RANKIN: Okay. I have
16 a couple of questions myself here.

17 The first one: Do you know the purpose
18 of the reasonable condition requiring a pre
19 application or a pre-construction notification for
20 Cypress Tupelo Gum Swamps under Nationwide Permit 37?

21 What's the purpose of that, if you know?

22 THE WITNESS: I believe the purpose is
23 because it's a unique habitat, just like the pitcher
24 plant bogs, that they want additional coordination
25 under the Nationwide Permit Program.

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1 The Nationwide Permit Program is for
2 minor impacts. And so it seems they've determined
3 that it impacts the Tupelo Cypress Swamps or pitcher
4 bogs could be more than minor, so coordination with
5 the resource agencies was put on all the Nationwide's
6 for Texas.

7 JUDICIAL OFFICER RANKIN: Okay. When
8 somebody, and I believe Mr. Kibler already mentioned
9 this, but I want to make sure.

10 When somebody does provide a Nationwide
11 Permit pre-notification, do you know whether anybody
12 in the Corps, and I know you didn't work on this one,
13 look at that notification for, say, technical
14 feasibility to perform the work?

15 I mean, this is a federal organization
16 with engineers in it.

17 THE WITNESS: I believe what you're
18 asking -- all the project managers, when they receive
19 a Nationwide Permit Application, should check to make
20 sure it's not a bald cypress or pitcher plant bog or
21 any of these other conditions to where it would
22 trigger additional coordination or work.

23 JUDICIAL OFFICER RANKIN: No. That
24 wasn't really my question.

25 My question is: When somebody submits a

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1 project on the Neckes adjacent to this property?

2 THE WITNESS: There was, but I'm not
3 sure if it's current.

4 JUDICIAL OFFICER RANKIN: Okay. I
5 certainly have no questions. Mr. Davidson, you can
6 step down. Thank you very much for your testimony.

7 THE WITNESS: Thank you.

8 [Witness excused.]

9 JUDICIAL OFFICER RANKIN: Okay. Mr.
10 Murdock, call your next witness.

11 MR. MURDOCK: Your Honor, at this time,
12 I call Ms. Kristen Shivers of the Corps of Engineers.

13 JUDICIAL OFFICER RANKIN: We're off the
14 record.

15 [Brief recess was taken to obtain the
16 next witness.]

17 JUDICIAL OFFICER RANKIN: Okay. Back on
18 the record.

19 State your name, please.

20 MS. SHIVERS: Kristen Shivers.

21 JUDICIAL OFFICER RANKIN: And swear
22 her in, please.

23 THE REPORTER: Raise your right hand,
24 please, ma'am.

25 MS. SHIVERS: [Complies.]

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1 drawing like that one that Mr. Stevenson submitted,
2 does anybody take a look at it to see whether that
3 work could be performed? You know, for instance,
4 there's a borrow area on the drawing.

5 Does an engineer look at that and say,
6 well, I wonder how somebody is going to get the dirt
7 from that borrow area over here to the levee without
8 constructing a road? Do you know?

9 THE WITNESS: No. We don't. Like, we
10 don't look at the engineering structure, say, of a
11 bulkhead. We don't make sure that, hey, it's got
12 sufficient tiebacks or anything to be structurally
13 sound. So we don't look at the engineering aspect of
14 the permit plans.

15 JUDICIAL OFFICER RANKIN: So nobody
16 would check for the technical feasibility of what the
17 Corps has been notified of?

18 THE WITNESS: No, sir.

19 JUDICIAL OFFICER RANKIN: I'm not saying
20 they should, I'm just asking.

21 THE WITNESS: No, sir.

22 JUDICIAL OFFICER RANKIN: I have one
23 final question and this is just to make sure I
24 understand the settings on this.

25 Is there an authorized navigation

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1 THE REPORTER: Do you swear or affirm
2 the testimony you're about to give in this cause will
3 be the truth, the whole truth, and nothing but the
4 truth?

5 MS. SHIVERS: Yes.

6 THE REPORTER: All right, sir.

7 JUDICIAL OFFICER RANKIN: Proceed, Mr.
8 Murdock.

9 MR. MURDOCK: Thank you.

10 Whereupon,

11 KRISTEN SHIVERS
12 having been first duly sworn, was called as a witness
13 by the Complainant and testified upon her oath as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. MURDOCK:

17 Q. Can you state your name for the record.

18 A. Kristen Shivers.

19 Q. And where are you employed?

20 A. U.S. Army Corps of Engineers, Galveston
21 District.

22 Q. And how long have you been with the Army
23 Corps of Engineers?

24 A. Five years.

25 Q. And what do your job duties entail?

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1 A. I have sub parts to everything that I do. I
 2 investigate compliance with permitted -- with the
 3 Corps of Engineer permits and authorizations. I
 4 investigate unauthorized activities.

THE REPORTER: I'm sorry, ma'am. I
 6 can't hear you. Can you speak louder?

THE WITNESS: I investigate unauthorized
 8 activities. I identify and delineate wetlands all
 9 under the guise or under the legal authority of the
 10 Corps under Section 404 of the Clean Water Act and
 11 Section 10 of the Rivers and Harbors Act.

Q. All right. And how much of your time with
 12 the Corps have you spent working with wetlands?

A. All of them.

Q. And in so doing, do you regularly conduct
 14 site visits?

A. Yes.

Q. And how much of your time with the Corps
 16 have you worked in East Texas, for example?

A. About three years.

Q. And do you have any relevant education or
 18 degrees that help you fulfill your job
 19 responsibilities?

A. I do. I have an undergraduate and double
 21 major in marine biology and biomedical science. And
 22 my masters degree is in marine resource management.

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Q. And do have any relevance on-the-job
 3 training, Ms. Shivers?

A. I do. I've had training through the Corps
 5 of Engineers, several classes. For example, wetlands
 6 identification and delineation, wetlands development
 7 and restoration and general regulatory classes.

Q. Okay. What brought you to Mr. Stevenson and
 9 Parkwood Land Company's site in September of 2005?

A. We received a self-reported alleged
 11 unauthorized activity from Mr. Stevenson stating that
 12 he may have dumped several dump truckloads into the
 13 Neches River.

Q. How did you react to that? How did you
 15 respond?

A. We scheduled a site visit. Coordinated with
 17 Mr. Stevenson and scheduled a site visit with him.

Q. And is that typically how you respond to
 19 similar self reporting?

A. Yes.

Q. Okay. When you came to the site, did you
 21 find -- were there wetlands at the property?

A. Yes.

Q. And did you see any fill?

A. I did.

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Q. Okay. How many other times did you visit
 2 the site?

A. I visited the site two additional times.

Q. So starting with the second visit, what
 4 brought you to the site the second time?

A. We received an anonymous complaint that
 6 additional fill material was being discharged into
 7 wetlands.

Q. And what brought you to visit the site the
 9 third time?

A. The third time, I accompanied Ms. Barbato
 11 Aldridge, of the EPA, on-site while she did her
 12 investigation.

Q. Okay. So rather than go through each site,
 14 each visit one by one, can you go through each area
 15 of fill you witnessed? You can describe how it
 16 varies, the different site visits.

Looking right now at the aerial
 18 photograph -- I'll show it to you.

Ms. Shivers, did you create this aerial
 20 photograph?

A. I did.

Q. How did you create it?

A. It is a Google Earth Area Imagery Background.
 24 On top of that are several GIS data layers. The

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1 yellow and the green line are wetland delineation
 2 lines either determining where the uplands and
 3 wetlands boundary are from a previous delineation
 4 conducted on the site.

The red line is the extent of the fill
 6 mapped out on a July 2010 site visit. And the blue
 7 polygons are the extent of fill as it differs from
 8 the yellow and the green line, the wetland boundary
 9 line.

Q. And one more time, how did you originally
 11 get this aerial photograph?

A. The aerial photograph comes from Google
 13 Earth.

Q. So to the best of your knowledge, this is a
 15 fair and accurate representation of the site from an
 16 aerial point of view?

A. Yes. At the time the photograph was taken.

Q. Okay.

MR. MURDOCK: All right. Your Honor, at
 20 this time, I move to insert this into evidence,
 21 Complainant's Exhibit 47.

MR. KIBLER: No objection.

JUDICIAL OFFICER RANKIN: It's admitted.
 24 Are you going to ask her more questions about it?

MR. MURDOCK: Yes, sir.

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1 JUDICIAL OFFICER RANKIN: Why don't we
2 just stamp it and hand it back to her then. I'm
3 sorry, we could have waited until we finished that
4 one.

While you're all here, are we going to
5 use any of these other exhibits that you entered in
6 connection to Mr. Davidson's testimony?

7 MR. MURDOCK: 15-A, yes.

8 JUDICIAL OFFICER RANKIN: Why don't we
9 get these down to Melody and have her put them in the
10 record.

11 MR. MURDOCK: Okay.

12 JUDICIAL OFFICER RANKIN: Let's
13 proceed.

14 [Complainant's Exhibit No. 47 admitted
15 into evidence.]

16 BY MR. MURDOCK:

17 Q. All right, Ms. Shivers, looking at this
18 aerial photograph, can you start by walking us
19 through the various areas of fill starting at the
20 southwest corner of the site?

21 A. The southwest corner of the site depicts
22 unauthorized fill material discharged into
23 jurisdictional wetlands that was unrelated to the
24 maintenance of the levee.
25

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1 wear on your back with an antenna. And you can walk
2 normally, walk around the area of the fill or
3 whatever you're mapping out.

4 In this case, Mr. Davidson walked along
5 the edge of the fill as much as he could and as
6 safely as he could until the terrain got too
7 treacherous to continue.

8 Q. All right. And given that this fill was
9 unrelated to the maintenance of the levee, in your
10 opinion, could it have been authorized under
11 Nationwide Permit 3?

12 A. It could have. It would have required
13 notification to the Corps of Engineers to go through
14 the pre-construction application process.

15 Q. Kristen, I'm going to show you a photograph
16 that was taken by Ms. Aldridge during the December
17 2010 site visit.

18 Were you with Ms. Aldridge when she took
19 that photograph?

20 A. Yes.

21 Q. And is it a fair and accurate depiction of
22 what you saw at the site at that time?

23 A. Yes.

24 MR. MURDOCK: All right. Your Honor, at
25 this point, I move to insert Complainant's Exhibit 8

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1 The approximate amount of fill was 0.78
2 acres. The fill material consisted of concrete,
3 rebar, sheet metal, some general debris, asphalt.

4 Q. All right. When did you first see this
5 southwest fill?

6 A. This fill was first noted in the July 2010
7 site visit.

8 Q. And why didn't you see it in your first site
9 visit?

10 A. It wasn't as extensive or did not encroach
11 upon the wetlands as much in the September 2009 site
12 visit.

13 Q. Okay. And you mentioned that it's unrelated
14 to the maintenance of the levee in your opinion.

15 Why do you say that?

16 A. It's not connected to the levee. I mean,
17 the levee runs, you know, around the perimeter of the
18 property. It didn't appear to have anything to do
19 with the levee.

20 Q. All right. When was this specific fill
21 mapped out?

22 A. It was mapped out in July of 2010 by Mr.
23 Davidson.

24 Q. What's the process for mapping out fill?

25 A. We have a GPS backpack equipment that you

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1 as evidence.

2 MR. KIBLER: Can I look at it?

3 MR. MURDOCK: Yes.

4 MR. KIBLER: Sure. No objection, Your
5 Honor.

6 JUDICIAL OFFICER RANKIN: We'll receive
7 it into evidence but keep tabs of your numbers so
8 that Ms. Wright over here can enter it properly.
9 Proceed.

10 [Complainant's Exhibit No. 8 admitted
11 into evidence.]

12 BY MR. MURDOCK:

13 Q. All right, Ms. Shivers, what does this photo
14 depict?

15 A. It depicts the fill material on the south
16 side of the property as it encroaches upon a wetland.

17 Q. All right. So this is a depiction then of
18 the south-side fill or from the southwest portion of
19 the site that you just talked about?

20 A. Yes.

21 Q. All right. Now, continuing walking up the
22 property, what was the next area of fill you saw?

23 A. The next area of unauthorized discharge that
24 we noted was an area that Mr. Stevenson labeled as a
25 truck turnaround. The approximate size was 0.48

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1 acres, I believe.

2 Q. All right. At this point, Ms. Shivers, I'm
3 going to refer to the photograph previously entered
4 into the record as Complainant's Exhibit 35-A. It's
5 on the table right there before you.

6 A. Okay.

7 Q. First, looking at this photograph, which of
8 these photographs best depicts the truck turnaround?

9 A. 35-A or B? 35-A doesn't depict the truck
10 turnaround.

11 Q. Sorry about that. 35-B, Complainant's
12 Exhibit 35-B. Does this photograph accurately depict
13 the truck turnaround?

14 A. It did when I saw it in July of 2010.

15 Q. So what do you see in this photograph? Can
16 you just explain what you saw in this photograph and
17 what you saw on the site visit?

18 A. Well, when we got to the site, I noted, in
19 July of 2010, that this truck turnaround had greatly
20 expanded in size since someone had been there in
21 September of 2009.

22 The makeup of it consisted of concrete,
23 rip-rap, asphalt, pipe, rebar, sheet metal, brick.
24 And, again, as the fill was on the south side, it was
25 encroaching onto the wetlands.

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1 Q. Moving on past the truck turnaround, was
2 there any other fill on the site that you saw on any
3 of your site visits?

4 A. I did. Going back to the Exhibit 47, if you
5 continue on north to the north part of the levee that
6 runs east or west, there were other small piles of
7 fill on the inside of the levee that, again, were not
8 authorized. The size was way above the acre.

9 Q. All right. Had Mr. Stevenson or Parkwood
10 Land Company receive, to your knowledge,
11 authorization from the Corps of Engineers for any of
12 the work you just pointed out?

13 A. No.

14 Q. But they did have Nationwide Permit
15 authorization, right?

16 A. They received a Nationwide Permit
17 authorization to conduct maintenance or levee repair
18 on the levee. However, all of the fill material as
19 depicted on the submitted plans was shown on the
20 outside of the levee, nothing on the inside of the
21 levee was shown or authorized.

22 Q. Okay. Just to clarify, the fill we were
23 talking about, is that on the river side? The fill
24 that we just discussed, is that on the river side of
25 the levee or is that on the wetlands/swamp side of

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1 Q. How much fill was placed onto the wetlands
2 on this truck turnaround?

3 A. Approximately 0.48 acres.

4 Q. And you mentioned that this accurately
5 depicts it for the July 2010 visit.

6 And you saying then there was a
7 difference between that and the December 2010 visit
8 in the truck turnaround, how it appeared?

9 A. From July 2010 to December 2010, it appeared
10 that no change had occurred. But from September 2009
11 to July 2010, the size had increased.

12 Q. All right. And in your experience, could a
13 truck turnaround of this sort qualify as a minor
14 deviation?

15 A. I wouldn't think so, no.

16 Q. Why not?

17 A. Minor deviations would normally be, like, a
18 change in the construction material or something of
19 that nature.

20 Also using, like, looking at the
21 Nationwide Permit as a whole, there's a small limit
22 on the amount of fill that can be authorized under
23 Nationwide Permits. And the amount of fill that the
24 truck turnaround had exceeded that, but, no, I
25 wouldn't consider it a minor deviation.

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1 the levee?

2 A. The unauthorized fill occurred on the inside
3 of the levee towards the wetlands, in the wetlands.

4 Q. Okay. When you gave us the numbers, the
5 acreage of the fill, is that acreage the acreage on
6 the inside of the levee or on the outside of the
7 levee?

8 A. On the inside of the levee.

9 THE REPORTER: I'm sorry?

10 THE WITNESS: On the inside of the
11 levee.

12 BY MR. MURDOCK:

13 Q. Ms. Shivers, I'll show you another
14 photograph taken by Ms. Aldridge's December 2010
15 visit. Is it at the site?

16 A. Yes. It appears to be.

17 Q. Were you with Ms. Aldridge when she took
18 this photograph?

19 A. Yes.

20 Q. Is this photograph, to the best of your
21 knowledge, a fair and accurate representation of this
22 portion of the site from your visit in December of
23 2010?

24 A. It appears to have been taken during the
25 December 2010 site visit.

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1 Q. But is it a fair and accurate representation
2 of the site?

3 A. Yes. Yes, it is.

4 MR. MURDOCK: Your Honor, at this time,
5 I move to insert into evidence Complainant's Exhibit
6 15.

7 MR. KIBLER: No objection.

8 JUDICIAL OFFICER RANKIN: It's admitted.

9 Mr. Murdock, why don't you come up here
10 and approach the witness and walk that over there and
11 get it identified for the record.

12 I'm getting tired of being a go-between
13 up here. I'm beginning to regret the way we laid it
14 out. It'd be nicer to have Ms. Wright over here next
15 to the witness stand where she could keep track of it
16 easier.

17 MR. MURDOCK: I'll be more than happy to
18 walk these over.

19 [Complainant's Exhibit No. 15 admitted
20 into evidence.]

21 BY MR. MURDOCK:

22 Q. What does this photo depict?

23 A. It appears that it might depict a portion of
24 the area known as the duck turnaround.

25 Q. Can you tell by -- one second. Can you tell

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1 BY MR. MURDOCK:

2 Q. In this photograph taken by Ms. Aldridge on
3 your December 2010 site visit, were you with Ms.
4 Aldridge at the time she took this photograph?

5 A. Yes.

6 Q. To the best of your knowledge, is this
7 photograph a fair and accurate depiction of the site,
8 that portion of the site, as it stood at the time?

9 A. Yes.

10 MR. MURDOCK: Your Honor, at this point,
11 I move to insert Complainant's Exhibit 13 into
12 evidence.

13 MR. KIBLER: No objection.

14 MR. MURDOCK: I will gladly walk it
15 over.

16 JUDICIAL OFFICER RANKIN: Thank you.
17 It's admitted as soon as you walked it over there.

18 [Complainant's Exhibit No. 13 admitted
19 into evidence.]

20 BY MR. MURDOCK:

21 Q. That photograph has a better -- it's closer
22 in range that enables you to identify it.

23 Can you identify, not the conclusion of
24 whether or not this qualifies as a Cypress Tupelo
25 Swamp, but can you identify any of the trees or

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1 from that distance what sort of trees or vegetation
2 are depicted in the photograph?

3 A. I see

4 MR. KIBLER: Your Honor, I'm going
5 object if this is going to be expert testimony. Ms.
6 Shivers has not been submitted as an expert witness
7 in this case regarding Tupelo type of -- Bald Tupelo
8 Cypress trees.

9 JUDICIAL OFFICER RANKIN: I think she
10 can answer the question as to whether she knows what
11 type of tree something is without being an expert.
12 I'm not --

13 I think probably you're correct in so
14 far as I think if she testified that this was a
15 Cypress Tupelo Gum Swamp per se, which required pre-
16 notification of the permit, she would have to qualify
17 as an expert and she was not listed as such in the
18 pre-hearing exchange so I'd exclude that.

19 MR. MURDOCK: For purposes of this
20 photograph, I'm actually going to withdraw that
21 question.

22 JUDICIAL OFFICER RANKIN: Okay.

23 MR. MURDOCK: Your point is noted. One
24 last photograph for Ms. Shivers to answer into
25 evidence.

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1 vegetation in that photograph?

2 A. I see cattails. I see Tupelo tree and I see
3 Cypress trees.

4 Q. All right. How are you able to identify
5 those particular vegetation, what features or
6 characteristics of them enable you to make that
7 identification?

8 A. Tupelo trees have a fairly distinct trunk
9 that is fluted and buttressed. Cypress trees have
10 ridges around them and they also have pneumatic roots
11 or knees as an adaptation of living in water.

12 Q. Do you have any experience in your work at
13 identifying these sorts of trees?

14 For example, is this the only time,
15 working at your site visits, that you've seen these
16 kinds of trees or needed to make that kind of
17 identification?

18 A. No. I have encountered these trees before.

19 Q. Are these type of trees and various types of
20 vegetational trees common in this area of Texas?

21 A. They are common in this area of Texas, yes.

22 Q. To your understanding, why are wetlands
23 containing Bald Cypress and Tupelo trees treated any
24 differently by the Corps?

25 A. They have been identified as a unique

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1 Q. Have you walked this whole 77-acre parcel?

2 A. I've walked the majority of the perimeter of

3 the levee.

4 Q. Would you be able to tell me what the

5 predominate species of tree is in that 77-acre

6 parcel?

7 A. Not offhand.

8 Q. You haven't done a tree count, have you?

9 A. No, sir.

10 Q. Mr. Davidson testified this morning that he

11 didn't do a tree count. So we can't say that it's 20

12 percent this and 50 percent that or 30 percent the

13 other? I think that's a 100 percent. Yeah, lawyers

14 and math.

15 You can't do that, can you?

16 A. I do know that there was a produced

17 delineation conducted by Mr. Stevenson's

18 environmental consultant that did take data points

19 and did count the trees or

20 Q. Do you know what the results of that were?

21 A. I'm sorry?

22 Q. Do you know what the results of that were?

23 A. That there were wetlands on the property.

24 That was the end result of the delineation.

25 Q. What I'm really looking for here, is there a

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1 boundary line.

2 Q. Upland/wetland boundary line?

3 A. From the previously verified delineation.

4 Q. Okay. And who did that delineation?

5 A. I believe it was Mr. Stevenson's consultant.

6 Q. GTI? Does that sound right?

7 A. That sounds right, yes.

8 Q. What's the yellow line?

9 A. The yellow line is the original

10 upland/wetland boundary line.

11 Q. So green and yellow, if they were perfect,

12 would be on top of each other, but they're not. It's

13 a minor deviation.

14 Is that what you're saying about the

15 green and yellow lines or here?

16 A. Yes.

17 Q. And the red?

18 A. The red is GPS data taken by Mr. Davidson on

19 July of 2010, in July of 2010.

20 Q. And that represents what?

21 A. On the south side, it represents the extent

22 of the fill material. And on the truck turnaround,

23 it does the same thing. There were some areas where

24 the equipment lost signal and some areas of

25 unintentionally recorded data.

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1 report that you can name or any work that you or Mr.

2 Davidson or anybody at the Corps has done than can

3 say that this property is predominately this variety

4 of tree or that variety of tree or anything like

5 that?

6 Is there anything that you can point to?

7 A. I don't recall at this time.

8 Q. Okay. Then I'll get off of trees. What

9 number does that one say?

10 A. C-47.

11 Q. So let's look at Complainant's 47. You said

12 it real fast and I usually write real fast but I

13 didn't write fast enough this time.

14 Tell me what each line is. Green is

15 what?

16 A. The green line is a "best-fit" line based

17 off the - I'm not sure when the delineation was

18 conducted for the property. It's kind of smoothing

19 out the corners and rough edges to get a better

20 approximate line.

21 Q. So the green line is the property line?

22 A. I don't know what the property line is.

23 Q. Okay. I'm trying to figure out what's the

24 green line?

25 A. The green line is the upland/wetland

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1 Q. So red is bad, right?

2 A. Red shows the extent of the fill material.

3 Q. Okay. Let's look at the northern tip of

4 this photo.

5 A. Okay.

6 Q. You just finished telling us that the green

7 and yellow lines were two different delineations that

8 delineated the boundary from the upland and swamp?

9 A. No, sir.

10 Q. Okay. Then you've got to educate me again

11 because I'm obviously not very smart.

12 A. The yellow lines and the green lines weren't

13 two different delineations. It was the same

14 delineation.

15 Q. But that shows -- that line is upland on one

16 side; swamp on the other? Is that what you're

17 saying?

18 A. Upland, yes. It shows the upland/wetland

19 boundary.

20 Q. My question becomes: At that northern

21 point, there is red on the northern side of the green

22 and yellow lines so how is that an encroachment, at

23 that point, into wetland?

24 A. Within the administrative record, it

25 explains the red lines at the north. It was

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1 unintentionally recorded data where the machine was
2 on and Mr. Davidson was walking and just
3 unintentionally recorded where he was walking.

4 Q. So we're not here to punish Mr. Stevenson
5 about anything up on the northern tip of this
6 property; is that true?

7 I can reask the question or try to
8 clarify it if you don't understand it.

9 A. Can you repeat it.

10 Q. And I'm not trying to trick you here.
11 Truly, I'm really not.

12 The red that shows up on the north --
13 because realize the Court is going to look at this
14 and say, well, look at these red areas. That's where
15 he's a bad boy, right?

16 My question becomes: Do they even need
17 to worry about this stuff in the red up on the north
18 or was that arbitrary information or arbitrary data
19 that was inadvertently put into the photo?

20 A. The blue polygons, which are somewhat
21 difficult to distinguish because of the quality of
22 the color, are the areas of unauthorized discharge.

23 Q. Is there unauthorized discharge up at the
24 north where the red is?

25 A. Yes.

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1 something else. I think I made my point there.

2 You testified earlier -- let's start
3 with the 1B that you talked about earlier. Sorry,
4 not 1 B. You made reference to it.

5 Minor deviations, under the Nationwide
6 No. 3, minor deviations due to construction
7 techniques, materials or something else, right or the
8 like? Is that the line?

9 I can get the Nationwide Permit and read
10 it to you if you want me to.

11 A. The Nationwide conditions, you know, are
12 spelled out within the Nationwide Permit Regulation.

13 Q. Okay. I'll show you what's been marked as
14 Respondent's Exhibit No. 2.

15 Mr. Davidson has testified that that is
16 part of the permit letter that was provided to Mr.
17 Stevenson and Parkwood Land Company.

18 Would you agree with that?

19 A. I would.

20 Q. And the second paragraph, last sentence
21 states: "Minor deviations due to changes in
22 construction techniques, materials or the like are
23 authorized." Do you see that?

24 A. I see it.

25 Q. And you already made an opinion today as a

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1 Q. And my question becomes: If the red is the
2 area that you depicted as improper discharge of fill,
3 then why is the improper discharge of fill, which is
4 noted in red, on the north side of the delineation
5 boundary that you already told us about?

6 A. In the administrative record, it explains --
7 and I think I explained it again, that the red line
8 was, in this instance up in here, is unintentionally
9 recorded data. It does not outline the area of
10 unauthorized discharge up in the north section of --

11 Q. So what makes me think that if you messed up
12 -- basically, you're saying, oops, we messed up,
13 right?

14 A. No. It doesn't change the nature of the
15 extent of fill.

16 Q. Okay. You're going to make me go back again
17 and revisit this.

18 The red up on the north is it proper?
19 Is it supposed to be on this photo, where it is?

20 A. It's where data was unintentionally
21 recorded.

22 Q. Okay. So if you unintentionally recorded
23 data, does that mean you messed up?

24 A. No. It just means that there's --

25 Q. Okay. That's fine. We'll move on to

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1 witness, what when asked, that the truck turnaround
2 and the other fill areas that were denoted on the
3 picture we were just looking at, that they weren't
4 minor.

5 In fact, I think -- I wrote it down.
6 You said a small amount of fill is okay. But what
7 Mr. Stevenson and Parkwood Land Company had had been
8 too much. Is that true or not?

9 I don't want to put words in your mouth.
10 You tell me.

11 A. I don't recall my exact wording.

12 Q. Okay. How far out did the truck turnaround
13 go?

14 A. I don't know the length and width
15 dimensions.

16 Q. But you guys got it on a map. Why don't we
17 have dimensions?

18 I mean, you can tell me it's .48 acres
19 but you can't tell me or wide it is and Mr. Davidson
20 couldn't either.

21 Why don't we have dimensions?

22 A. The units of fill that the Corps of
23 Engineers looks at is based upon either cubic yards
24 or acreage.

25 Q. How do you calculate acreage if we don't

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1 have a width and a length?

2 A. We use a GPS equipment in conjunction with
3 the --

4 Q. This is the same GPS equipment that had
unintentional data on the map that we didn't mess up,
6 is that right?

7 A. When we recorded the area --

8 Q. Please answer my question. Is that true or
9 not?

10 A. I'm sorry? Can you repeat the question?

11 Q. This is the same GPS that -- let me back up
12 and ask it better.

13 We utilized GPS equipment and the GPS
14 equipment, once we do our little walk around and turn
15 the equipment on and it talks to satellites and does
16 all that stuff, it will tell us, magically, how many
17 acres that is, true?

18 A. No, not magically tell us.

19 Q. I'm sorry. Will it tell us -- if I turn the
20 machine on and I walk around this room, will it tell
21 me how many acres are in this room?

22 A. You would have to hook up the equipment to a
23 computer and process the data.

24 Q. Okay. But through the process of putting on
25 the backpack, whatever that thing is, walk around and

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1 Q. Okay. I'm going to stop there. We use a
2 computer program, we do some stuff on the computer
3 that tells us how many acres are there, true?

4 A. Yes.

5 Q. Going back to the "Minor deviations due to
6 changes in construction techniques, materials or the
7 like are authorized." What does that mean?

8 A. It means what it says. "Minor
9 deviations..."

10 Q. Okay. Well, I think that you were asked by
11 Mr. Murdock, and I don't want to go back in the
12 record and do that. I don't want to play that game.

13 Mr. Murdock asked you is the fill that
14 Mr. Stevenson and Parkwood Land Company allegedly
15 violated, is that a minor deviation? And you said,
16 "no," right?

17 Do you agree with that that you said
18 "no"? And he said "Why not"? And you said, "It's
19 not a minor deviation. A small amount of fill is
20 okay." Is that what you testified to?

21 A. I believe so. I don't recall my exact
22 words.

23 Q. So tell me, since we calculated acreage, how
24 many acres is acceptable and how many acres is
25 unacceptable under the minor deviation standard that

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1 talk to satellites and come back and plug it in a
2 computer, it's going to tell me how many acres that
3 is, true?

4 And, obviously, the follow-up question
5 is: Is that how you came to say that the truck
6 turnaround is a violation of .48 acres?

7 A. I used the baseline data that we had from
8 the first delineation, that line, the data that we
9 recorded in July of 2010 and calculated the area
10 within those two lines.

11 Q. Okay. So you used the line that was there
12 before

13 A. Un-huh.

14 Q. -- and a line that you identified as the
15 outer edge of the encroachment, if you want to call
16 it that, that you got from the GPS material, true?

17 Am I following you along?

18 A. Yes.

19 Q. So how do we calculate acreage?

20 A. You -- well, you use either -- there's a
21 couple of programs, either ARC Map or you can use
22 Google Earth.

23 You don't necessarily have to have a
24 background in each but it helps put it into context.
25 You use a measuring tool within the program.

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1 we're talking about in Nationwide 3? How much is too
2 much?

3 A. It's determined on a case by case basis.

4 Q. So whenever the Corps of Engineers decides
5 that they want to charge you, they can?

6 A. The Corps of Engineers does have
7 discretionary authority to initiate enforcement
8 actions.

9 Q. Okay. I don't disagree with that at all.
10 Obviously, we're here today. You've certainly got
11 the authority.

12 My question becomes: At what point does
13 the Corps pull the trigger and say, you know what,
14 we're just going to charge you?

15 We're going to say you're a violator and
16 we're going to put you -- because if this line,
17 "Minor deviations due to changes in construction
18 techniques, materials or the like are authorized,"
19 and your testimony here today is that some amount of
20 acreage is okay and past that point is not okay.

21 But you can't tell me where that line is
22 and you can't tell him where that line is or anybody
23 else out there that's trying to work with Nationwide
24 3.

25 Then I'm trying to figure out where

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1 they're supposed to know where that line is. Can you
2 tell me?

3 A. The line in the letter refers to repair of
4 the levee.

5 Q. Okay. I went through this with Mr.
6 Davidson. I'm not going to do the long version.
7 I'll do the short version with you.

8 Do you have any idea whether that levee,
9 prior to any work being done under the Nationwide 3
10 that was issued, do you have any idea whether it was
11 capable of handling trackhoes, backhoes, bulldozers
12 or dump trucks?

13 A. Can you rephrase the question?

14 Q. Prior to any work being done by Parkwood
15 Land Company and Mr. Stevenson under the Nationwide 3
16 Permit that was issued to them, do you have any
17 testimony today about whether that levee could handle
18 the weight and width and size of trackhoes, backhoes,
19 bulldozers or dump trucks?

20 A. I'm not a construction expert.

21 Q. Okay. We called this place a truck
22 turnaround, at one place, a violation.

23 In fact, I was out there with you. We
24 walked down it. Can you back a dump truck down that
25 levee?

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1 White's stuff.

2 Have you ever seen that picture of the
3 property?

4 A. No, I don't believe so.

5 Q. Do you think in 1947, based on the picture
6 depicted there, that there was a levee around the
7 entire property?

8 A. It's possible.

9 Q. You said the first time that you went out to
10 see the property, that it was a self-reported
11 incident where Mr. Stevenson called in and said that
12 he had dumped some loads in the Neches River; is that
13 right?

14 A. Not entirely.

15 Q. Okay. Fix me. I only wrote down some quick
16 notes. Tell me what you said.

17 A. If I remember correctly, I believe that Mr.
18 Stevenson came in with a meeting with our evaluation
19 section and was discussing proposals on things that
20 he wanted to do.

21 And within that meeting, from my
22 understanding of what was written down, you know, on
23 the alleged Unauthorized Activity Report, was that
24 Mr. Stevenson, himself, stated that he might have
25 dumped concrete material into the Neches River.

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1 A. I've never driven a dump truck.

2 Q. Can you back your automobile down that levee
3 without ending up in the Neches River?

4 A. I think I could.

5 Q. What do you drive?

6 A. A vehicle.

7 Q. What kind of car?

8 A. A Ford Explorer.

9 Q. A Ford Explorer? Okay. Well, it's not a
10 Kia or something. I mean, you do drive something of
11 some size. I'll give you that.

12 During your work on this project, did
13 you ever see the 1947 maps of the property? Did you
14 run across those, look at those?

15 A. I don't recall.

16 Q. Well, I really can't bring this in as
17 evidence because I can't. But I can show it to you.
18 Pre-construction work -- have you ever seen this?
19 Have you ever seen that thing?

20 A. I'm not sure. I don't recall.

21 Q. Okay. In fact, I'll submit to you that it's
22 GTI Environmental, Inc. who was hired by Mr.
23 Stevenson and Parkwood Land Company to give a Pre-
24 construction Notification. In that, and I really
25 don't care about what you think about GTI or Mr.

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1 Q. And so, therefore, you went out to look?

2 A. Yes.

3 Q. Did you find any concrete material in the
4 Neches River?

5 A. No, we did not.

6 Q. Because if you had, would he have been a
7 violator?

8 A. It depends on the circumstances.

9 Q. If he had had a Nationwide 3, would he have
10 been a violator?

11 A. Again, it depends on the circumstances and
12 what we would have found.

13 Q. Mr. Davidson testified earlier that Mr.
14 Stevenson wouldn't be in trouble here, wouldn't be
15 here today if he had put all his fill on the outside
16 part of the levee; is that true?

17 A. Can you repeat the question?

18 Q. Mr. Davidson pretty much testified earlier,
19 and feel free to object if I'm improperly condensing
20 his testimony, but if Mr. Stevenson and Parkwood Land
21 Company had of put their fill on the outside of the
22 levee, he said he wouldn't have been a violator.

23 Do you agree or disagree with that?

24 A. If Mr. Stevenson had complied with the
25 project plans that were authorized

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1 Q. Which authorized to put the fill where? If
2 we're going to fix a levee, where are we going to put
3 fill?
4 A. His project plans depicted discharging fill
5 material on the river side of the levee.
6 Q. Okay. Well, that's what I asked. So if he
7 had dumped it on the river side of the levee, he's
8 not in trouble, is that true?
9 A. If it were in efforts to reconstruct or
10 repair or rehabilitate the levee.
11 Q. But because he made a truck turnaround that
12 included fill on the inside of the levee, then he's a
13 violator, is that true?
14 A. Mr. Stevenson discharged the material into
15 wetlands without Corps authorization.
16 Q. You understand that is that we've been
17 talking about and the swamp, the Tupelo Cypress Swamp
18 thing, has a term that says it must be
19 "predominately." Have you seen that?
20 A. I don't recall the exact language.
21 Q. I'll show you. It's right there on top.
22 I'll show you what's been marked as
23 Respondent's No. 1.
24 JUDICIAL OFFICER RANKIN: I'm going to
25 interject here. I'm not sure where this is heading

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1 yet but, again, that "predominately" is part of
2 testifying as an expert on whether or not this is a
3 Bald Cypress Tupelo Swamp as described in the
4 Regional Conditions, the Nationwide Permit 3.
5 I sustained your objection. She's not
6 qualified -- she's not been --
7 MR. KIBLER: That's fine, Your Honor.
8 I'll move on.
9 JUDICIAL OFFICER RANKIN: Okay.
10 MR. KIBLER: I know when to quit and
11 run.
12 BY MR. KIBLER:
13 Q. Just one more time. If he had put a little
14 fill on the inside, is it covered under the Minor
15 Deviation under Nationwide 3?
16 A. Only the fill material that was authorized
17 as shown to be placed on the outside of the levee.
18 Q. Okay. But that's not consistent with what
19 you said earlier, so I'm trying to get some
20 consistency here.
21 If he puts a little bit of fill on the
22 inside, is he covered under Nationwide 3 under the
23 Minor Deviations?
24 A. It would depend on the extent of the fill.
25 Q. Okay. And when I say a little bit of fill,

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1 you can't tell me how much is too much, can you?
2 A. The Corps determines things of that nature
3 on a case by case basis.
4 MR. KIBLER: I'll pass the witness, Your
5 Honor.
6 JUDICIAL OFFICER RANKIN: Any redirect?
7 MR. MURDOCK: No further questions, Your
8 Honor.
9 JUDICIAL OFFICER RANKIN: In that case,
10 I think our lunches have arrived and this will be an
11 opportune time to take a recess. We're adjourned.
12 [Witness excused.]
13 [Lunch recess taken from 12:20 p.m. to
14 1:04 p.m.]
15 THE REPORTER: All right, sir, you're on
16 the record at 1:34.
17 JUDICIAL OFFICER RANKIN: Mr. Murdock,
18 proceed.
19 MR. MURDOCK: Your Honor, at this time,
20 I call up Ms. Barbara Aldridge. She needs to be
21 sworn in.
22 JUDICIAL OFFICER RANKIN: Oh, good idea.
23 Swear her in, please.
24 THE REPORTER: Raise your right hand,
25 please, ma'am.

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1 MS. ALDRIDGE: [Complies.]
2 THE REPORTER: Do you swear or affirm
3 the testimony you will give in this cause will be the
4 truth, the whole truth and nothing but the truth?
5 MS. ALDRIDGE: I do.
6 JUDICIAL OFFICER RANKIN: Ms. Aldridge,
7 you might want to pull one of those microphones over
8 a little closer.
9 Whereupon,
10 BARBARA ALDRIDGE
11 having been first duly sworn, was called as a witness
12 by the Complainant and testified upon her oath as
13 follows:
14 DIRECT EXAMINATION
15 BY MR. MURDOCK:
16 Q. Can you state your name for the record?
17 A. Barbara J. Aldridge.
18 Q. And where are you employed?
19 A. I work for EPA in Region 6, the office in
20 Dallas, Texas.
21 Q. And how long have you been with EPA?
22 A. I've been with EPA since 1993.
23 Q. And what are your job responsibilities,
24 specifically with regard to the wetlands program?
25 A. With the wetlands program, I do public

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1 notice reviews. So when the Corps of Engineers does
2 a public notice for a Section 404 permit, I review
3 those. I've done those for Galveston District as
4 well as New Orleans and Vicksburg Districts. And we
5 write comment letters on those public notices for 404
6 permits.

7 I also do 404 enforcement. So I develop
8 -- I'm assigned as an inspector and an enforcement
9 officer for certain wetland enforcement cases to
10 develop them, develop them and do site inspections.

11 And I also do -- I handle enforcement data
12 in one of our data systems for all the enforcement
13 inspections and enforcement actions.

14 Q. All right. And do you have any relevant
15 education or on-the-job training or other training,
16 which helps you fulfill these job duties you just
17 laid out?

18 A. Yes. I'm a credentialed inspector and have
19 been since about 1998. And to hold a inspector
20 credential, you have to have the required training
21 and that has to be current and mine is. So I've have
22 a number of training sessions. In particular, four
23 towards general environmental enforcement as well as
24 wetland enforcement.

25 I've also taken some classes, for

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1 Q. And what was the purpose of a site visit?

2 A. The purpose was three-fold basically. It
3 was for me to do a wetlands inspection and take
4 photographs and do some on-the-ground observations.

5 And the other one was just to kind of
6 verify and confirm the information that the Corps of
7 Engineers had passed to us in their referral package.

8 And also the third purpose was to
9 discuss EPA's role in the enforcement process with
10 Mr. Stevenson and Mr. Kibler at the site.

11 Q. And how did what you saw at the site compare
12 to the Corps of Engineers's referral package?

13 A. It comported with what the information that
14 the Corps had given us, their observations, their
15 photographs and so on. It just -- what I saw at the
16 site -- there is nothing in their report or referral
17 that contradicted what I saw at the site. It was a
18 good -- it appeared to me to be a good basis from
19 which to work.

20 Q. So at the site, you saw fill in various
21 parts of the wetlands?

22 A. Yes.

23 MR. MURDOCK: Okay. At this point, I
24 want to have the witness look at what was previously
25 entered into evidence as Complainant's Exhibit 47.

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1 example, the jurisdictional determination class with
2 the Corps of Engineers. I've had some plant ID field
3 trips and done some other inspections with senior
4 inspectors and just had a number of general wetland
5 classes.

6 Q. How did you become involved with this
7 dispute regarding Mr. Stevenson and Parkwood Land
8 Company?

9 A. Well, the section chief of the wetland
10 section received a Corps of Engineers referral on
11 this case in October of 2010. And at that time, I
12 was assigned as the enforcement officer inspector for
13 that case.

14 Q. And as part of that assignment, did you
15 conduct a site visit?

16 A. Yes, I did.

17 Q. And when was that?

18 A. December 9th of 2010.

19 Q. And did anyone accompany you on that site
20 visit?

21 A. Yes. I arranged to meet Ms. Kristen Shivers
22 there. She was accompanied by -- I'm drawing a blank
23 on her name. Diana -- another woman from the Corps
24 of Engineer's office, and we met Mr. Stevenson and
25 Mr. Kibler at the site.

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1 It's the aerial photograph.

2 BY MR. MURDOCK:

3 Q. I'm going to put these in front of you and
4 as they come up, I'll come up and select it.

5 A. Okay.

6 Q. So looking at Complainant's Exhibit 47, what
7 do you see?

8 A. This was part of the Corps's referral
9 package to us. And it's a Google Earth aerial that
10 has some information overlaid on it. And Ms. Shivers
11 went over this at some length earlier, but it
12 depicts, as I understand it, the areas of fill,
13 unauthorized fill at the site.

14 Q. Could you indicate for the Court -- just
15 walk us through each area of fill that you witnessed
16 starting with the southwest portion of the site?

17 A. Okay. We entered the southwest area of the
18 site and basically walked along from that area,
19 walked along on the levee.

20 And we went as far north as -- if you
21 look at the top of the aerial, the red areas there,
22 we walked up about as far as that area and back.

23 Q. So starting with the southwest portion, what
24 was the first bit of fill you found?

25 A. The first area of fill is this area located

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1 in the lower left-hand corner of the aerial that was
2 appeared to be fill that was pushed into the
3 internal area of the wetlands, so the forested
4 wetlands there.

And it was fill that was comprised of
6 dirt and it looked like chunks of cement, rock,
7 rebar, wire and it appeared to be general kind of
8 construction debris material.

9 Q. And just to clarify, was this fill on the
10 wetlands side of the levee or on the river side of
11 the levee?

12 A. It was definitely towards the wetland, the
13 wet part on the interior.

14 Q. Okay. I now want you to take a look at what
15 was previously entered in as Complainant's Exhibit 8.

16 A. (Complics.)

17 Q. Okay, Ms. Aldridge, looking at Complainant's
18 Exhibit 8, what do you see?

19 A. This is a photograph that I took that day we
20 were at the site. And this is in that area, the
21 first area of fill that we came to.

22 And this shows clearly the fill
23 comprising of dirt and chunks of cement and asphalt
24 and so forth that's pushed into the wet area. And it
25 definitely looked like wetland fill to me.

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1 A. Yes.

2 Q. Okay. Now I'm going to show you
3 Complainant's Exhibit 15 previously entered into
4 evidence.

5 A. Okay. 15?

6 Q. Yes. What is depicted in this photograph?

7 A. This is in the truck turnaround area and it
8 clearly shows tracks from mechanized equipment and it
9 shows similar kinds of chunks that look like to be
10 asphalt, chunks of rock, cement, et cetera.

11 And it is pushed into the wet area, into
12 the forested wetland on the interior of the property.

13 Q. And did you take this photograph?

14 A. Yes, I did.

15 Q. And is this photograph a fair and accurate
16 representation of what you saw at the site?

17 A. Yes.

18 Q. All right. Mercifully, I only have one more
19 photograph to show you. This is Complainant's
20 Exhibit 10.

21 A. Okay.

22 Q. Ms. Aldridge, what do you see in this
23 photograph? Before that, did you take this
24 photograph?

25 A. Yes, I did take this.

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1 Q. And did you take this photograph?

2 A. Yes, I did.

3 Q. Is it a fair and accurate representation of
4 what you saw at the site?

5 A. Yes.

6 Q. All right. Let's move on. As you're
7 walking up the site, what was the next large area of
8 fill you found?

9 A. The next area was the area we're talking --
10 we're referring to as the truck turnaround. And
11 that's indicated here in the aerial as the second
12 area, walking north on the levee. It's got the red
13 area around it.

14 Q. And what did you see at the truck
15 turnaround? What did it look like? Can you explain
16 it a little bit?

17 A. It definitely looked like an area where
18 heavy equipment had been used. And there was debris,
19 again, similar type debris as in the first area, so
20 dirt, chunks of cement and so forth that had been
21 pushed into the wet area.

22 And I noticed there were definite tracks
23 of equipment and that this area fill was encroaching
24 into the wet area on the interior of the property.

25 Q. So on the wetlands side?

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1 Q. And is it a fair and accurate representation
2 of that portion of the site?

3 A. Yes.

4 Q. Now, why did you take this particular
5 photograph?

6 A. I took this one because I thought it was a
7 good example that showed the features of the type of
8 vegetation you would see in a forested wetland of
9 this sort. The buttressed tree trunks is typical of
10 the type of wetland vegetation you would see as
11 evident here.

12 There's standing water here, there's
13 cattails here. And it was a good shot, to me, of a
14 typical forested wetland that you might find in this
15 part of the country.

16 Q. Ms. Aldridge, you're not a botanist, are
17 you?

18 A. No.

19 Q. So how were you able to identify this
20 vegetation?

21 A. Again, it's just from the training that I've
22 had and the exposure that I've had to wetland program,
23 that this type of vegetation and this type of tree is
24 very typical of that that you would find in a
25 wetland.

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1 And, again, the features is what brought
2 this out to me, the buttressed tree trunks, the
3 cypress knees that you see kind of -- about in the
4 center of the picture. These are just -- This is
5 just a real nice example, to me, of what forested
6 wetland look like.

7 MR. KIBLER: Your Honor, I'm going to
8 object to that. It sounds like it's expert testimony
9 and she's not an expert on this particular area.

10 JUDICIAL OFFICER RANKIN: Would you like
11 to respond, Mr. Murdock?

12 MR. MURDOCK: Yeah. I'll say she didn't
13 make any sort of conclusion about the type of wetland
14 it is. Obviously, we're talking about Bald Cypress
15 Tupelo Swamp. So I would say it was not expert.

16 JUDICIAL OFFICER RANKIN: I think she
17 just testified that this was typical of a forested
18 wetland.

19 I'm going to sustain the objection
20 because it seems to me that she was getting ready to
21 testify or you were getting ready to ask her whether
22 this was a Cypress Tupelo Gum Swamp or as they say in
23 this district, the Bald Cypress Tupelo Swamp.

24 I don't think it will affect the outcome
25 of the case a whole lot but without listing her as an

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1 trees?

2 Did it come after this case was referred
3 by the Corps?

4 A. Some. I had some experience before I had
5 this case, as I mentioned, doing site visits and
6 inspections with other enforcement officers,
7 inspectors. And I'd had some training in wetland
8 delineation and plant ID.

9 Q. So is it fair to say then that you've had
10 some ability or experience in identifying this plant
11 life before preparing yourself for this litigation?

12 A. Yes.

13 Q. All right. Moving on, do you have personal
14 knowledge of the Clean Water Act complaint that was
15 filed against Mr. Stevenson and Parkwood Land
16 Company?

17 A. Yes, I do.

18 Q. What was your involvement with that
19 complaint?

20 A. The attorney and I worked together to draft
21 the complaint and have it filed.

22 Q. Did you calculate the penalty in the
23 complaint?

24 A. Yes. I was involved in the calculation of
25 the penalty. I did not do it by myself.

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1 expert in the pre-hearing exchange. I think we're not
2 going to let her testify to that. She can certainly
3 testify to what kind of tree she sees in a picture,
4 if she knows.

5 You know, I can pick out Cypress and
6 Tupelo Gum myself in those pictures. And I imagine
7 about anybody in this room could do that, but, no, as
8 to whether this is a Cypress Tupelo Swamp as
9 stipulated in the Regional Conditions, no, not
10 without having her previously identified as an
11 expert.

12 MR. MURDOCK: All right. Understood.

13 BY MR. MURDOCK:

14 Q. Ms. Aldridge, can you identify any of the
15 specific vegetation in that photograph?

16 A. Cattails and what appear to me to be Cypress
17 trees.

18 Q. And you kind of said before of why they
19 appear to be Cypress trees. Can you just outline
20 that again?

21 A. Again, just their appearance. The sort of
22 ridged buttress tree trunks. And in the center of
23 the picture, the cypress knees.

24 Q. And how did you gain the knowledge or
25 understanding or experience identifying these Cypress

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1 Q. Can you explain for us, how was it done?

2 A. The process that we follow when we come up
3 with a penalty for a case is we first off, we follow
4 the December 2001 EPA Guidance on how to do penalties
5 for Clean Water Act violations. So we have that,
6 which sets out a general framework.

7 And the process in our office is the
8 assigned inspector or enforcement officer, and in
9 this case, myself, and the attorney that's assigned
10 to the site and a senior enforcement officer in the
11 wetlands section, Tom Nystrom, get together.

12 And we just sit down and get together at
13 a meeting with the Guidance and with the worksheet
14 and we discuss the particulars of the case. And we
15 go through each of the factors, and we assign a
16 number to those factors and we develop the penalty in
17 that way.

18 Q. In what ways does your Agency ensure that
19 calculated penalties are consistent with the penalty
20 policy you mentioned?

21 A. Well, the penalty policy itself is a
22 framework, again, to help ensure some consistency.
23 And Mr. Nystrom, sitting in as part of the
24 enforcement team, also serves sort of as a
25 consistency check because he's very experienced in

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1 these and he's done a number of these. So that's
2 kind of how we ensure consistency.

3 But within that, there is also
4 flexibility and enforcement discretion that the
5 Agency and the enforcement team can exercise within
6 this framework.

7 Q. And is that discretion -- who decides that
8 you have discretion? Is that part of the Guidance or
9 is that part of the penalty policy or is that
10 something that --

11 A. No. It speaks to that in the penalty
12 policy, even though it's laid out as a framework for
13 how do you assess a penalty, is that the enforcement
14 team is given flexibility as to how they apply the
15 particulars of each case.

16 Q. Okay, Ms. Aldridge. I'll show you a
17 document.

18 Can you tell me what this is? What this
19 document is you're looking at?

20 A. This is our Penalty Calculation worksheet
21 that we used for this particular case.

22 Q. Did you create this document?

23 A. Yes.

24 Q. And is this an accurate depiction of the
25 document as it was created in the normal course of

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1 down the list when this list is derived directly from
2 the policy as well as the statute. And we just went
3 down the line and discussed each factor, as a group,
4 and assigned it a number.

5 Q. It looks like, by looking at this penalty
6 calculation though, certain factors had higher
7 numbers in them, which then made a higher penalty.

8 Why did you focus on these specific
9 factors?

10 A. Well, again, it's the particulars of the
11 case. So, for example, we looked at duration of
12 violation. We gave that a 4. At the time this was
13 done, that was three years of violation and counting.

14 On Degree of Culpability, we gave that a
15 5 because of the history of Mr. Stevenson and his
16 familiarity with the Clean Water Act 404 provisions
17 and the process.

18 Also that plays into the Compliance
19 History and the Need for Deterrence. We gave a
20 relatively higher number because this was visible to
21 the community. We noted that it came in as a
22 citizen, as an anonymous citizen complaint. So,
23 obviously, somebody out there in the community, this
24 was visible to them.

25 And just the location of the property

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1 business?

2 A. Yes.

3 MR. MURDOCK: Your Honor, at this time,
4 I move to insert into evidence Complainant's Exhibit
5 50.

6 MR. MURDOCK: While there's some serious
7 lack of foundation there, Your Honor, I will pass
8 objecting and let it come in.

9 JUDICIAL OFFICER RANKIN: I believe it's
10 already in the record in connection with one of Mr.
11 Murdock's prior motions for accelerated determination
12 in any event.

13 This is the one where we crossed out and
14 remembered?

15 MR. MURDOCK: Yeah.

16 JUDICIAL OFFICER RANKIN: Okay. Proceed.
17 [Complainant's Exhibit No. 50 admitted
18 into evidence.]

19 BY MR. MURDOCK:

20 Q. So what was the proposed penalty for the SPA
21 seeking today at the hearing?

22 A. \$32,500.

23 Q. And what factor did you look at to reach
24 that number?

25 A. Well, we looked at all the factors. We went

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1 there right on the river and across from Beaumont.
2 There was some visibility there.

3 Q. And as the Judge referenced, a couple of
4 these numbers are crossed out and new numbers were
5 put in. Specifically, looking at Degree of
6 Culpability and the Need for Deterrence.

7 Why did that happen and when did that
8 happen?

9 A. Well, again, that was -- this is a worksheet
10 and it's being done as we're sitting around as a team
11 and discussing the factors, each of the factors, and
12 how we would weight them.

13 So probably my first take, was that
14 first number that got crossed out during the
15 discussion with the attorney and with Mr. Nystrom,
16 and we just came up with a general consensus that
17 that was a more appropriate number.

18 Q. So this change, your crossing out of the
19 number, that would have happened at what point? When
20 your team came to an agreement on the number
21 initially?

22 A. Yes. During the team meeting discussion.
23 We were actually sitting there and discussing each
24 point and making the changes on the sheet.

25 Q. And in determining that you felt Mr.

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1 Stevenson and Parkwood Land Company had a high degree
2 of culpability or a 6 out of 20 higher than some of
3 your other factors, why did you feel that way?
4 A. Just looking at the history and involvement
5 that he had with the 404 program that he had since
6 1991 -- was the first instance. We looked a lot at
7 the data sheet that the Corps had included with their
8 referral, which kind of summarized the listing with
9 all his interactions with the 404 program.
10 And if you read the penalty policy, it
11 talks about knowledge and -- I mean, culpability is
12 not just the history of violations. It's the whole
13 history. It's the big picture. So you're looking at
14 the violator's knowledge of the program and not just
15 strictly violations.
16 Q. So then, if you'll indulge me with a brief
17 hypothetical, if you were, for example, to fill
18 wetlands, but you had never had a prior violation,
19 would your culpability be higher due to your
20 knowledge of the wetlands program?
21 A. Me, personally?
22 Q. Yes.
23 A. Yes. Probably so.
24 Q. Why do you say that?
25 A. Because I had prior knowledge of the program

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1 and the process and that if you have wetlands or you
2 think you have wetlands and you want to fill it, that
3 you need to discuss it with the Corps of Engineers
4 before proceeding.
5 So, yes, for myself, definitely. I
6 would be more culpable because I have personal
7 knowledge of the process.
8 Q. All right.
9 MR. MERDOCK: I'll pass the witness.
10 **CROSS-EXAMINATION**
11 BY MR. KIBLER:
12 Q. Ms. Aldridge, we've met before?
13 A. Yes, we have.
14 Q. Okay. I'm just going to talk about
15 penalties. I could care less what you think about
16 trees and fill or anything else. I think we've beat
17 that horse to death.
18 A. Okay.
19 Q. Let's talk about penalties.
20 As I understand, in calculating a
21 penalty -- and by the way, I'm reading from your
22 Declaration:
23 "In calculating a penalty, Section
24 309(a)(4) of the Act, 23 U.S.C., Section 1319(g)(3),
25 requires that EPA take into account 1) the nature,

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1 circumstances, extent and gravity of the violation,
2 and, with respect to the violator, 2) ability to pay,
3 3) any prior history of violations, 4) the degree of
4 culpability, 5) economic benefit or savings, if any,
5 resulting from the violation, and 6) such matters --
6 excuse me, such other matters as justice may
7 require."
8 Is that true? You declared it; you
9 signed it; you swore to it?
10 A. Yes. That's out of the policy.
11 Q. Who made this form?
12 A. Who made the form?
13 Q. Sure.
14 A. Are you talking about the form itself?
15 Q. Yes, ma'am. If this is what you're going to
16 use for a worksheet to calculate, I'd like to know
17 who made it? Who came up with this form?
18 A. I don't know.
19 Q. How long have you been using it?
20 A. That I don't know either.
21 Q. Okay. Do you believe this form incorporates
22 all of those factors that I just brought -- just read
23 from your Declaration?
24 A. Yes.
25 Q. So let's knock off a couple right off the

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1 bar.
2 Down towards the bottom of the worksheet
3 under No. 4: Inability to Pay. That would be No. 2
4 of the Guidelines, provided for the Guidelines,
5 right?
6 A. Uh-huh.
7 Q. The group has "N/A."
8 A. Correct.
9 Q. In your Declaration, you state -- hold on --
10 just a second.
11 In 16 of your Declaration, it says: "As
12 to the statutory factor (2) ability to pay:
13 Respondents have not indicated an issue of inability
14 to pay the penalty, and therefore EPA did not reduce
15 the penalty based upon this statutory factor."
16 A. Correct.
17 Q. So in order for an alleged violator to get a
18 reduced or lower penalty, they would have to tell you
19 they can't pay?
20 A. Correct. For that factor to be applied, we
21 would have to know they have an issue about an
22 ability to pay.
23 Q. Did he know he was supposed to tell you
24 that?
25 A. I don't know.

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1 Q. Did you ask for any financials on Parkwood
2 Land Company?

3 A. No.

4 Q. Did you ask for any financials on Mr.
5 Stevenson?

6 A. No.

7 Q. Did we follow the guideline of "Ability to
8 Pay" in calculating this penalty?

9 A. I'm sorry. Can you rephrase the question?

10 Q. Did you follow the guideline of Ability to
11 Pay when calculating this penalty?

12 A. Yes.

13 Q. Okay. Let's talk about "economic benefit."
14 Where is economic benefit on this paper,
15 on this worksheet?

16 A. It's on the top.

17 Q. Number 1?

18 A. Yes.

19 Q. Okay. I don't see any numbers in there.

20 A. No. We did not put any. This scenario is a
21 scenario if the site had been restored, which it was
22 not. It was assuming restoration. So we assumed
23 economic benefit is not applicable here.

24 Q. Okay. Now, I'll tell you I had to go do a
25 little research myself on this. But the information

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1 process, he's had -- you know, he has to hire a
2 consultant. He has to pay the fees.

3 And this other one has done the project
4 without that, then he's saved that money. That's the
5 economic benefit that he's received.

6 Q. Now, if Mr. Stevenson spent \$10,000 or more
7 on STI's delineation and application for his
8 Nationwide No. 3 Permit, how does he get credit for
9 it on this worksheet?

10 A. He didn't get credit for it.

11 Q. If he did, how would that be credited? How
12 would that work in this worksheet?

13 A. I don't know.

14 Q. You don't know? Who would know?

15 A. I don't know. I haven't done a worksheet
16 where we applied the economic benefit.

17 Q. Okay. Fair enough. And as always, whenever
18 somebody is under oath, I say "I don't know" is a
19 perfectly fine answer. If you don't know, you don't
20 know. Can't get something out of --

21 Let's go to the Degree of Culpability
22 and Compliance History of the Violator.

23 Tell me how those two factors are
24 different.

25 A. It's kind of a fine line. But as I

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1 that I found, talking about economic benefit or
2 savings, if any, resulting from the violation, as I
3 understand that, but you tell me if I'm wrong, is the
4 impact economically to the violator?

5 For instance, if Mr. Stevenson and
6 Parkwood Land Company came and filled in this piece
7 of property and built a multi million dollar casino
8 and was making a ton of money off it, then his
9 penalty would be bigger because he had an economic
10 benefit from the fill-in or for filling wetlands.

11 Am I not right or am I way off base?

12 A. Well, the economic benefit speaks to a
13 violator who doesn't follow the process. They get --
14 if they saved money that somebody else down the road
15 had to spend in order to go through the permit
16 process.

17 Q. So we do have two different ideas of what
18 this --

19 A. I think so. Because the economic benefit is
20 kinda -- sort of meant, as I understand it, to level
21 the playing field so that one applicant doesn't have
22 an advantage over another applicant.

23 Well, if this man goes out and fills a
24 wetland without going through the process to build
25 whatever project and this one goes through the

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1 understand it, Degree of Culpability -- okay, let me
2 start with Compliance History first.

3 So Compliance History, somebody who has
4 got a history of applying or JDA, violations,
5 whatever that is and that's their history of
6 involvement.

7 Culpability, to me, speaks more to what
8 did they know and when did they know it and what
9 degree of -- how should I put it, what degree of
10 control they may have had over it. So Culpability is
11 a little bit broader than Compliance History.

12 To me, Compliance History is kind of a
13 linear thing but Culpability is kind of a broader
14 function.

15 Q. Okay. Let me take them one at a time.
16 Compliance History, are we looking at
17 every time I had an interaction with the Corps over a
18 wetland or are we only looking at infractions?

19 A. Probably both. But I think we were looking
20 at the overall picture of Compliance History.

21 Q. You just told me the overall picture was
22 Culpability. I'm asking specifically about -- I'm
23 sorry, I've got to pull my specks up.

24 A. Okay.

25 Q. I'm specifically looking at Compliance

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1 History under "B," the third factor there,
2 "Compliance History of the Violator."
3 And you have a 6 in there and next to
4 it, you have "long history since '91 with the Corps."

A. Yes.

Q. So my question is: Does my client or
5 anybody else get dinged or get a higher factor there
6 because they went and asked for a delineation or they
7 went and asked -- and I think you were sitting here
8 earlier when Mr. Davidson testified and he said
9 that's a good thing when they come and ask for a
10 delineation. We want them to come and ask.
11

So is he getting, because of 1991, he
12 came and asked, is he getting penalized for that now
13 at the penalty calculation phase?
14

A. No.

Q. Even though we wrote next to it, "Long
15 history since 1991 with the Corps?"
16

A. Well, it just speaks to a long term -- I
17 mean, it's what it says. It's a Compliance History.
18

Q. Okay. So in 1991 -- and we can go pull out
19 those things if we need to, but in 1991, Mr.
20 Stevenson or one of his companies or one of his
21 entities that he was a part of, asked for a
22 delineation on a parcel of property and Mr. Davidson
23

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1 That's the first time that Mr.
2 Stevenson's name or one of his entities will pop up
3 in the Corps' database. Do you agree to that?
4

A. Yes.

Q. And then the next entry is what?

A. 1999.

Q. So eight years later, something else
5 happens.
6

My question is: Does he get a 6 -- does
7 he get a 6 because he came and asked for permission
8 in '91?
9

If you had never heard of him until '99,
10 would he have gotten a 4?
11

A. I don't know. If I could say that at the
12 time we did the penalty calculation, this document,
13 Exhibit 45, had not been created yet.
14

Q. So how did you know about his long -- excuse
15 me, what did you write? "His long history since '91
16 with the Corps." How did you know about that?
17

A. In the Corps referral package that they sent
18 us in October of 2010, it had a one-page report from
19 their database, which was essentially a summary of
20 this summary that's been entered into evidence.
21

It was part of our first pre-hearing
22 exchange. I believe it's the last page of their
23

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1 did the delineation and said, you're good. I think
2 it was a sand pit.

And the sand pit doesn't require a
3 permit but your access road can be covered under
4 Permit No. whatever, I don't know what it was, as
5 long as you put a culvert in.
6

Are you telling me that his actions or
7 the actions of his entity in 1991 doesn't drive that
8 number up higher than what it would have been if you
9 had never heard his name until '99?
10

A. I'm sorry. Can you rephrase that question.
11 That was kind of --
12

Q. Okay. Maybe this will help. I need to see
13 that. You just happened to have it on top.
14 Complainant's No. 45. I think they're in -- we're
15 determined that they are in mostly chronological
16 order.
17

The very first entry there that Mr.
18 Davidson testified about was what we just finished
19 saying.
20

A. Uh-hh.

Q. "I'm going to build a sand pit. Am I okay?"
21 And Mr. Davidson says, no, you don't need a permit
22 for that but for your access road, you need a Permit
23 33, 34, I think, if you put a culvert.
24

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1 referral package and that's a summary of all of the
2 interactions, all of the JD requests, the violations,
3 the ACPs, et cetera, from 1991 to the present of Mr.
4 Stevenson.
5

Q. And I have to ask. Do you get credit for
6 doing the right thing or are you just thrown and
7 lumped in under this particular category because of
8 your interaction?
9

A. Well, again, it's the whole record. And
10 that's why this is probably a 6 and not a 15 or a 20.
11

Q. Can you tell me what the word is written in
12 the Notes/Assumptions section next to the 6 and
13 Degree of Culpability?
14

A. Check guidance.

Q. Check guidance? What does that mean?

A. It was just a note to compare to the
15 Guidance, the wording in the Guidance.
16

Q. So it was originally a 12 and you dropped it
17 to a 6 after you checked the Guidance?
18

A. I think it was a note to myself to go and
19 look at the Guidance again.
20

Q. Okay. Now, you've heard -- you've been here
21 for most of the testimony today but you haven't heard
22 Mr. Stevenson speak yet, but you obviously had a
23 chance to talk with him on your visit out there.
24

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A. Uh-huh.

Q. I know I heard him, on more than one occasion, tell you -- and I'm sure he'll tell you here in a little bit when we get done with you and he gets an opportunity to testify, that he will believe that the work that he did on-site was within the Nationwide No. 3. That's what -- I'm going to tell you. I'm not lying to you. That's what he's going to say, okay.

A. I understand.

Q. If he did it and he truly believed he was within what he was authorized to do under Nationwide No. 3, is he as culpable as if he didn't care?

A. I can't speculate on what he would have thought.

Q. I'm not asking you what he would have thought. I'm asking you what you would have thought, if given the fact, if we accept the fact, okay. Just bear with me.

If you accept the fact that he believed he was within Nationwide No. 3 when he made his truck turn around and did the other stuff that you came out and saw, is he more or less culpable than as if he didn't care?

A. If he -- so if I understand this, if he

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extent and gravity of the violation.' That's number one of the six areas.

Where can I find that on this worksheet?

Is that going to be up in the "A Factors"?

A. ...nature, extent --

Q. ...the nature, circumstances, extent and gravity of the violation."

A. Some of that is in the "A Factors" and the gravity, preliminary gravity, is a formula on line 2.

Q. Well, I think the "B factors" there include Culpability, Compliance History and Need for Deterrence, which are three other factors that are given in this section, in the statute?

A. Uh-huh, yes.

Q. Okay. So Harm to Human Health or Welfare, Extent of Aquatic Environmental Impact.' Is that true? Is that what that 'E n-v' is I'm reading?

A. Environmental impact, yes.

Q. "Severity of Impacts to Aquatic Environment; Unique/Severity of Affected Resource; Secondary or Off-Site Impacts.' And the last one of those would be "Duration of Violation."

Are we agreeing or are you telling me, or whatever, that that section of the worksheet is intended to comply with the "nature, circumstances,

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truly believed that he was within the limits of the Nationwide Permit --

Q. Yes.

A. -- when he did that fill --

Q. Yes.

A. -- would he be considered less culpable?

Q. Would he have gotten a 5?

A. Are we speaking to the Culpability Factor or the Compliance History Factor here?

Q. Culpability.

A. I don't know.

Q. Fair enough. No. 6 of the Guidelines say "such other matters as justice may require."

Now, I don't see anywhere on this thing that incorporates that, do you?

A. No.

Q. On his worksheet?

A. No. We didn't apply anything.

Q. So I'm assuming that we didn't have any other "such matters that justice may require"?

A. That's correct. And I believe that's in my declaration also that that didn't apply.

Q. I believe that's correct. I just wanted to make sure.

Okay. "...the nature, circumstances,

extent and gravity of the violation"?

A. Yes.

Q. Now, at some point, Parkwood Land Company and Mr. Stevenson was given a Stop Order, a Cease and Desist Order, right?

A. From the Corps, they received a "Cease and Desists Order," yes.

Q. When was that?

A. I don't recall.

Q. So why is he getting a 4 for violation when he's told to cease and desist and not do anything on the property?

A. Because a violation is considered to still be occurring if it hasn't been restored.

Q. So if he's under a order by the Corps of Engineers not to -- don't do that, don't touch that anymore, then how is he supposed to comply?

What is he supposed to do? Is he supposed to go in there and dig it out, which would restore and violate the Cease and Desist Order by the Corps or is he supposed to get a 4?

I think it's a 4, yeah, or does he get a 4 on his worksheet and get a higher penalty because he didn't comply?

Which one is he supposed to do?

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1 A. Can you reask the question?

2 Q. Okay. We agree that he got a Cease and

3 Desist Order from the Corps. Don't do that anymore,

4 right?

5 A. I wouldn't characterize it as "don't do that

6 anymore." It's stop what you're doing right now.

7 Q. Okay. Stop what you're doing right now. So

8 he stopped in compliance with the Cease and Desist

9 Order. Because he stopped, the length or duration of

10 the violation gets bigger.

11 So what would you have -- what would you

12 have done if you're Parkwood Land Company and Mr.

13 Stevenson?

14 Do you violate the Cease and Desist

15 Order and dig it out and restore it so that you get a

16 lower penalty or do you follow the Cease and Desist

17 Order and get a higher penalty because you've got a

18 longer duration?

19 Which one is he supposed to do?

20 A. Well, it would be up to him as to which one

21 he did, but in the statute --

22 Q. Would we agree that there's no way to win

23 that?

24 A. No.

25 Q. We agree or we don't agree?

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1 those different amounts and pick a multiplier. So

2 once we've done the numbers up here, then we take

3 where it says "Section 2, Preliminary Gravity," the

4 formula is A + B times the Multiplier. So in this

5 case, we took our number times the multiplier and --

6 Q. I'm with you with what you did with the

7 multiplier. My question is: Did you throw darts;

8 did you flip a coin; did you lick your finger? How

9 did you pick one of the multipliers?

10 A. Again, that was a discussion among the

11 enforcement team about which multiplier. There's

12 flexibility there about which multiplier made sense

13 for this particular case.

14 Q. Okay. You mentioned somebody named

15 "Nystrom"?

16 A. Tom Nystrom, yes.

17 Q. What is or who is Mr. Nystrom?

18 A. Mr. Nystrom is an employee in the wetland

19 section. He's a senior employee and he's the

20 enforcement coordinator for the section.

21 So our process, as I mentioned, is to --

22 the site team will meet with him as part of the site

23 team and we have the discussion over the penalty

24 calculation. He's got a lot of experience since he's

25 been with EPA and the wetlands group for a long time.

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1 A. I don't agree.

2 Q. You don't agree that there's a no-win

3 situation there?

4 A. No. EPA issued him an Order to Restore,

5 which was appealed, which you appealed, to the

6 Environmental Appeals Board. So we gave him that

7 opportunity to restore.

8 Q. The Environmental Appeals Board said that we

9 didn't have an Order to appeal yet, right?

10 A. I don't know.

11 Q. So let me go back real quick and summarize.

12 Economic Benefit at the top was not

13 included whatsoever in the calculation even though we

14 -- well, let me ask you.

15 Do you think there's any economic

16 benefit to the work that Mr. Stevenson did? Did he

17 make money by doing this, by making a violation?

18 A. I don't know.

19 Q. Okay. By the way, "Set Multiplier," what is

20 that?

21 A. We're given the option to apply a

22 multiplier, which will come into play in Section 2

23 where it says "A + B Times M," so times your

24 multiplier.

25 We're given the flexibility to look at

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1 And, again, one of his job duties is to

2 act as kind of a consistency check and be the

3 enforcement coordinator for the wetlands group.

4 Q. Did he pick the set multiplier?

5 A. Again, that was reached in a consensual

6 discussion with the whole team?

7 Q. And my question is: What methodology did

8 you use to pick that?

9 A. Again, it was just -- it was particular to

10 the case. We just had a discussion about which --

11 what was appropriate for this particular case and --

12 Q. How do you determine that? I mean, if we go

13 with the 500, we come out with a way different

14 number, right?

15 A. Yes, correct. I mean, this is the

16 multiplier that you use. And, again, the team -- the

17 site team, and under the policy, the site team is

18 given this framework but there's a lot of flexibility

19 in the framework.

20 So I don't remember all the particulars

21 of the conversation that we had as a site team, but

22 we settled on -- you either go with 500 or you go

23 with a 1500 or 3X -- I'm sorry, the 1500 or the 3X to

24 10X range.

25 So you can see there's a great deal of

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1 flexibility in there. And it's sort of --

2 Q. And it appears arbitrary. Pardon me for
3 saying so but do you see why I would say that?

4 A. I understand that it may look kind of
5 arbitrary but that's the flex --

6 Q. Tell me why it's not arbitrary? Explain to
7 me why it's not arbitrary?

8 A. Because, again, we take into account all
9 these different factors and we go down the list. We
10 have a general discussion and we reach a consensus as
11 to --

12 Q. Well, you can't say -- you can't say we've
13 got these factors down here and we used that to come
14 up with a multiplier because you've got -- it's the
15 chicken and the egg, right?

16 You've got to come up with a multiplier
17 before you go to the factors?

18 A. Not necessarily.

19 Q. Okay.

20 A. You don't necessarily --

21 Q. You've already identified several areas that
22 are, or at least I'd like to think that I've
23 identified several areas that we have some issues
24 with, for instance, the Compliance History.

25 He gets a 6 in your calculation thing

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1 A. Well, you could change any of these numbers
2 and come up with more or less.

3 Q. And that's exactly what I was getting at
4 before. You can change any of those numbers and make
5 it higher, too, can't you?

6 A. That's correct.

7 Q. What made \$32,500 so magical? Why were we
8 trying to get to that figure?

9 A. 32,500 is the Class I maximum.

10 Q. I'm sorry. I didn't hear you.

11 A. 32,500 is the Class I penalty, maximum.

12 Q. Oh, so we wanted to make sure that we stayed
13 under the Class I but we had the maximum penalty for
14 a Class I, is that what you're telling me?

15 I think in scientific terms, they call
16 that outcome determinative thinking. We need to get
17 to 32,500 so how we scrub these numbers up here at
18 the top to get to 32,500; is that true?

19 A. I don't recall.

20 MR. KIBLER: I'll pass the witness.

21 MR. MURDOCK: No further questions.

22 JUDICIAL OFFICER RANKIN: I'm going to
23 have one. First of all, I don't remember and hope
24 that one of you do.

25 Is there actually a copy of the Cease

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1 here simply because in 1991 he asked for a
2 delineation.

3 He didn't do anything wrong. He did the
4 right thing, but the long history since '91 and he
5 gets a 6 instead of a 2 or a 4 or whatever it's going
6 to be.

7 So we look at that and so the chicken
8 and the egg, the doo-loop problem we have here is
9 that if we've got trash at the bottom, then we get
10 trash at the top in the Set Multiplier. Would you
11 agree with that?

12 A. No.

13 Q. No? Okay. No economic benefit was done as
14 far as I can see. Set Multiplier appears to be
15 arbitrary.

16 I don't want to testify. Hang on a
17 second, I want to get something. I want to make sure
18 I've got it clear. Duration of the Violation, we
19 talked about that. Degree of Culpability, Compliance
20 History.

21 Let me ask you this. If some of these
22 areas that you and I have discussed were changed to
23 "moderately," do you agree or disagree with me that
24 that \$32,500 figure would be less than \$10,000
25 easily?

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1 and Desist Order the Corps issued in the record?

2 MR. MURDOCK: I'm fairly sure there is.

3 JUDICIAL OFFICER RANKIN: Well, if we're
4 going to have an assumption here that it ordered him
5 not to remove fill from the area rather than it
6 ordered him not to discharge any more, I think it
7 ought to be in the record. So I'm going to ask that
8 the record be supplemented here.

9 And I have one follow-up question myself
10 for the witness. Is there any advantage to being a
11 Class I Penalty Proceeding as opposed to a Class II
12 Penalty Proceeding? And if so, what is it?

13 THE WITNESS: Advantage to EPA or to the
14 violator?

15 JUDICIAL OFFICER RANKIN: And I think I
16 agree with it. I think I kind of referred to it in
17 one of my decisions here recently that your penalty
18 calculation does very much appear to be outcome
19 determinative whether it was you or Mr. Nystrom or
20 both that thought that up.

21 It's pretty clear, to me, that you all
22 thought, to start off with, that Mr. Stevenson was
23 more culpable than you ended up thinking. And it
24 would be as if you used your attorney's analogy. So
25 it would be like your culpability as a trained EPA

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1 Compliance Officer.
 2 And if you went out there and discharged
 3 an amount of fill, a similar amount of fill, towards
 4 a jurisdictional wetland, your culpability would be
 5 quite higher than Mr. Stevenson's regardless of how
 6 many prior contacts he's had with the Corps because
 7 -- well, because you are essentially an officer of
 8 the law here.
 9 And it's like the cop going down and
 10 holding up the candy store down on the corner.
 11 You're supposed to be held to a higher standard.
 12 So you're originally -- it looked to me,
 13 from looking at these penalty calculations, and we've
 14 been through this several times before, but you
 15 originally thought Mr. Stevenson was so culpable that
 16 you would need at least a Class II penalty to be
 17 assessed against him but then reduced it to below
 18 \$32,500.
 19 Whether this was your idea or Mr.
 20 Nystrom's to assure that you would be in a Class I
 21 penalty forum rather than a Class II where it
 22 wouldn't be just me sitting up here but an
 23 Administrative Law Judge.
 24 Now, it's puzzled me, however, that why
 25 that outcome would be beneficial. I can't see that

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1 I'm all that much easier on folks than an
 2 Administrative Law Judge.
 3 What would the advantage be to EPA to
 4 have a Class I Penalty Proceeding rather than Class
 5 II? Is there any?
 6 THE WITNESS: The advantage would an
 7 outcome of a quicker settlement.
 8 JUDICIAL OFFICER RANKIN: Well, that
 9 sure hasn't happened in this case.
 10 THE WITNESS: No, it hasn't.
 11 JUDICIAL OFFICER RANKIN: Thank you.
 12 That's my only question.
 13 THE WITNESS: To me, that would be --
 14 the desired outcome would be settlement.
 15 JUDICIAL OFFICER RANKIN: I think that
 16 was -- if you were making predictions about this
 17 case, you missed on that one.
 18 Okay. I think that's everything.
 19 [Witness excused.]
 20 MR. STEVENSON: Your Honor, can I go
 21 take a shot of insulin?
 22 JUDICIAL OFFICER RANKIN: I think you're
 23 going to be up here in a minute and your own attorney
 24 can ask you that.
 25 MR. MURDOCK: To answer your question,

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1 the Cease and Resist Order is already in the record
 2 as Complainant's Exhibit 36.
 3 THE REPORTER: It's marked as R-36.
 4 JUDICIAL OFFICER RANKIN: I thank you.
 5 Mr. Murdock, that's what I needed to know. Okay.
 6 [Respondent Exhibit No. R 36 admitted
 7 into evidence.]
 8 MR. KIBLER: Can we take a short recess.
 9 Your Honor?
 10 JUDICIAL OFFICER RANKIN: I think that's
 11 a mighty fine idea.
 12 THE REPORTER: You're off the record at
 13 2:01.
 14 [Brief recess was taken to obtain the
 15 next witness.]
 16 THE REPORTER: You're on the record,
 17 sir, at 2:14.
 18 JUDICIAL OFFICER RANKIN: Okay. Mr.
 19 Murdock, does that complete your case?
 20 MR. MURDOCK: Yes, it does, Your Honor.
 21 JUDICIAL OFFICER RANKIN: Would you like
 22 to make an opening statement before you call your
 23 witness?
 24 MR. KIBLER: No, Your Honor, but I
 25 reserve my right to close though.

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1 JUDICIAL OFFICER RANKIN: Okay.
 2 MR. KIBLER: I call my first witness,
 3 Mr. Henry Stevenson.
 4 JUDICIAL OFFICER RANKIN: Mr. Stevenson,
 5 swear the witness, please.
 6 THE REPORTER: Raise your right hand,
 7 please, sir.
 8 MR. STEVENSON: [Complies.]
 9 THE REPORTER: Do you swear or affirm
 10 the testimony you will give in this cause will be the
 11 truth, the whole truth, and nothing but the truth?
 12 MR. STEVENSON: Yes.
 13 Whereupon,
 14 HENRY (SONNY) STEVENSON,
 15 having been first duly sworn, was called as a witness
 16 by the Respondent and testified upon his oath as
 17 follows:
 18 DIRECT EXAMINATION
 19 BY MR. KIBLER:
 20 Q. State your name for the record, please, sir.
 21 A. My given name is Henry R. Stevenson, Jr.,
 22 AKA, Sonny Stevenson.
 23 Q. AKA, everybody calls you Sonny, right?
 24 A. Just about. My friends.
 25 Q. You're here as one of the Respondents in

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1 this thing today. Do you own a company?
 2 Excuse me. Are you part of a
 3 corporation called Parkwood Land Company?
 4 A. Yes, sir.
 5 Q. Are you a member, partner or otherwise
 6 involved in any other corporations or companies?
 7 A. Yes.
 8 Q. What are they?
 9 A. ACR, LP and the other one is a minor
 10 company. Let me think. I just can't remember but
 11 it's a small part of ACR. I can't of the name.
 12 Q. It's a sub corp or sub entity of ACR, LP?
 13 A. It's 10 percent of ACR, LP and my mind just
 14 went blank.
 15 Q. What kind of business does ACR, LP do?
 16 A. We're a property holder and we lease out
 17 land for, like, sand pits, royalty purposes, asphalt
 18 plants and et cetera.
 19 Q. Do you have timberland as well?
 20 A. Yes, sir.
 21 Q. Do you cut timber on that property, on those
 22 properties?
 23 A. Occasionally.
 24 Q. Okay
 25 A. No Cypress though.

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1 A. No.
 2 Q. Okay. Now, Parkwood is a corporation?
 3 A. Correct.
 4 Q. Who is the president?
 5 A. Me.
 6 Q. Are there any other persons who are officers
 7 or shareholders or officers of Parkwood Land Company?
 8 A. No.
 9 Q. Is the property that we're here about today,
 10 is that the only property that Parkwood Land
 11 Corporation, company or corporation, owns?
 12 A. No.
 13 Q. Okay. How many other parcels does Parkwood
 14 own?
 15 A. Probably about two.
 16 Q. Two others?
 17 A. Possibly three own a little of the piece on
 18 this, but two.
 19 Q. And you heard Mr. Davidson's testimony this
 20 morning, right?
 21 A. Yes.
 22 Q. Has Parkwood Land Company ever been in
 23 violation of any EPA violations or been in violation
 24 of any EPA rules or regulations other than the event
 25 we're here for now?

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1 Q. Okay. When we cut timber in east Texas,
 2 we're talking about sawmill pine, right?
 3 A. Yes, sir.
 4 Q. How about Parkwood Land? What does Parkwood
 5 Land own?
 6 A. Parkwood Land Company is a land company.
 7 Q. Now, you're one of four in ACR, LP?
 8 A. Yes, sir.
 9 Q. Is that correct?
 10 A. Correct.
 11 Q. Are they equal partnerships?
 12 A. Correct.
 13 Q. So you're a quarter owner of that particular
 14 entity?
 15 A. Yes.
 16 Q. Okay. Does that also make you a quarter
 17 interest or holder of that minor company that's a sub
 18 entity of ACR, LP?
 19 A. Yeah. I believe it's Acre Land, Inc. I
 20 might be wrong. Yeah, that's right.
 21 Q. Acre Land? Does Acre Land, Inc. --
 22 A. And I might be wrong on that.
 23 Q. Okay. Well, for purposes of our argument
 24 today, does Acre Land, Inc. specify or specialize in
 25 any particular type of land?

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1 A. In its 10-years deal, no. That's a first.
 2 Q. Parkwood has been around for 10 years?
 3 A. Yes, sir.
 4 Q. How about ACR, LP?
 5 A. Twenty-two, twenty-three years roughly.
 6 Q. Okay. How long have you been a part of ACR,
 7 LP?
 8 A. Roughly 23 years.
 9 Q. Since it started?
 10 A. Yeah.
 11 Q. Because there are four of you in ACR, LP,
 12 are there land deals or instances where you're not
 13 involved with a particular parcel of land?
 14 I mean, do you guys divide and conquer
 15 or do you-all share everything and share alike?
 16 A. Yeah. We're truly share and share alike.
 17 Q. Is it possible that something occurred on
 18 one of your parcels or property and you not know
 19 about it?
 20 A. It's possible.
 21 Q. Is it possible that ACR, LP could have been
 22 cited for violation of \$20,000 and paid by Mr. Dunn,
 23 your partner, and you never know about that?
 24 A. I knew about that.
 25 Q. You knew about that. And you heard Mr.

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1 Davidson's testimony this morning and his
2 commentaries or his summary.

3 He has it that ACR, LP paid two
4 penalties for fines. Is that your recollection?

5 A. No, sir. My recollection is that I paid
6 one.

7 Q. And you say "1"?

8 A. Well, ACR, LP.

9 Q. Paid one?

10 A. It's always ACR, LP. I don't --

11 Q. Let me talk to you about that for a second.
12 The Williams Brothers issue. Tell me
13 about that. What happened?

14 A. Those are fellows that are working on the
15 Interstate. They wanted to lease some property from
16 us to put an asphalt plant in. I forgot the acreage,
17 20 or 30 acres, something like that.

18 And one of my other partners kind of
19 handled the contract but I'm aware of what goes down.
20 And we leased it to them to put an asphalt plant on
21 it.

22 Q. Okay. As part of the lease provisions, were
23 they required to get whatever permits they needed to
24 get or whatever?

25 A. If my memory serves me right, that was a

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1 part of the lease that we put down on there that if
2 there was any permits, whether it be state, federal
3 or et cetera, that if they needed to be got to do
4 their job, that that was their job to do that, not
5 ACR. It was theirs to do it.

6 Q. And they came and violated the EPA -- excuse
7 me, they had a Corps violation, the U.S. Corps of
8 Engineers, right?

9 A. They was alleged a violation, yeah.

10 Q. And you were both penalized, both ACR, LP
11 and Williams Brothers, correct?

12 A. That's correct.

13 Q. How much fine did you pay?

14 A. The fine, if I'm not mistaken, was \$70,000.
15 And I think we had to get some credits.

16 Q. Did you have to pay for the credits as well?

17 A. Yes, sir.

18 Q. That's part of the mitigation?

19 A. Yeah. We tried our best to try to get them
20 not to take us in because we didn't have nothing to
21 do with it, but they're always right.

22 Q. Now, you hired a -- ACR, LP hired a law firm
23 out of Houston that has a reputation for both being
24 very professional and charging a high hourly rate; is
25 that true?

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1 A. Like to have bankrupted us.

2 Q. Who did you hire?

3 A. They're higher than you.

4 Q. I'm sorry?

5 A. I thought you said who is higher?

6 Q. No, no, no.

7 A. I'm sorry.

8 Q. Who did you hire? Who did ACR, LP hire to
9 represent them?

10 A. It was a young lady by the name of Katie.

11 Q. What firm was she with?

12 A. Jaworski or something like that.

13 Q. Fulbright and Jaworski?

14 A. It was a top firm there in Houston. I can't
15 exactly remember the name.

16 Q. And so the decision made by you four
17 partners to pay the \$20,000 fine and provide the
18 mitigation requirements, was that because you felt
19 like you were culpable?

20 A. No. The fact is, part of the deal is we put
21 on there that we weren't guilty. We didn't do
22 nothing wrong but not because we were culpable.
23 We just felt like it, you know -- I
24 don't want -- it was just -- I mean, when you get
25 caught with these guys, you're guilty.

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1 So the best thing you can do is try to
2 make the best deal you can and don't go bankrupt and
3 do your job and that's what we did.

4 Q. So it would have cost you more than \$20,000
5 and some mitigation credits to try to defend yourself
6 if you hadn't agreed to the settlement; is that true?

7 A. That's what we thought.

8 Q. Okay. That's the only time you can remember
9 ACR, LP paying a fine of any type for a violation?

10 A. For a fine. That's the only one I know we
11 did, the first one on the mitigation.

12 Q. You had another violation that Mr. Davidson
13 talked about that you filled in some wetlands and you
14 acquired an after-the fact permit?

15 A. The first one, yes, sir.

16 Q. The very first one. Why did you do that?
17 Why did you fill in wetlands?

18 A. Well, I --

19 Q. Did you know you were filling in wetlands?

20 A. No. In 1991, I didn't have no clue. It was
21 right out on the highway, on IH 10. And it was
22 oilwell pipelines went through there and it had done
23 been cleared, completely cleared.

24 And we was -- just went in there and
25 scooped it off. I didn't have a clue about that but

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1 I learned.

2 Q. So the more involvement you had, the more

3 you learned about, well, I'd better ask rather than

4 do; is that true?

5 A. Well, that's true. Mr. Davidson come out

6 there, not to keep adding on, but he come out there

7 and done some soil samples. And I was with him.

8 And he said this is a site -- what's the

9 word for it? Inconclusive. And I said, well, John,

10 it's probably because it's not wetland. But anyhow,

11 where do I sign?

12 Q. So you got an after-the fact permit?

13 A. Yeah. I offered 7 or 8 times the ratio.

14 Q. And there was a problem after you gave that

15 mitigation land or tried to give up that mitigation

16 land?

17 A. I tried to give it and everybody come out

18 there, a whole busload of folks. And I showed them

19 the site and they said it was too little. They

20 didn't want it. Nobody. Wildlife, you name them.

21 They was all there and I laid it all out. I thought

22 it was a --

23 Q. Did all of them agree -- did some of them

24 agree -- let me see how to say this because you've

25 told me and I've got to get it out of you.

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1 Q. So you get an after-the-fact permit, true?

2 A. Correct.

3 Q. You mitigate 7.9 acres? I think that sounds

4 right.

5 A. I forgot the credits we bought, but we went

6 and bought them and paid cash for them.

7 Q. First of all, you mitigated a certain amount

8 of acreage --

9 A. I offered it.

10 Q. And nobody would take it?

11 A. No.

12 Q. So then, you had to go back to the Corps and

13 buy some credits from Mr. Arnaud?

14 A. Yeah. We had to remake a deal, yeah.

15 Q. So you got another hit?

16 A. Yes, sir.

17 Q. You heard Ms. Aldridge testify just a little

18 while ago that the more times you get hits, the

19 higher number you're going to get on your fine. You

20 know that, right?

21 A. I didn't know that. I didn't have a clue.

22 I know now. It don't pay to get hits.

23 Q. I want you to look at that document and tell

24 me what you think it is. Let me do this right.

25 Have you seen that document before?

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1 Did some of them say they wouldn't take

2 it because it wasn't a wetland?

3 A. I don't believe. I can't remember exactly

4 why.

5 Q. Okay.

6 A. I'm just trying to tell you. They wouldn't

7 take it. They didn't want it. It was too small.

8 Q. So you had to go do something else?

9 A. Yeah. I had to go buy a bunch of credits

10 from Eddie Arnaud because they wouldn't take that.

11 That was our land.

12 Q. Which caused you to have another entry in

13 your list of contacts with the Corps, correct?

14 A. They call it -- here at the Corps, they call

15 it a hit.

16 Q. So you had a hit. You filled in some

17 wetlands that you didn't know were wetlands, true?

18 A. Right.

19 Q. A complaint comes in. Mr. Davidson comes

20 and looks at it, correct?

21 A. Right.

22 Q. Runs some soil samples and says it's

23 inconclusive but we're still calling it wetlands,

24 true?

25 A. Yeah. You don't win no arguments.

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1 A. To the best of my ability, the Cease and

2 Desist, I do recognize that part of it.

3 Q. Okay. That's your Cease and Desist Order

4 from the Corps of Engineers, right?

5 A. Yes, sir.

6 Q. Okay. You've seen it before and you

7 received it?

8 A. Yeah. I can tell you this, I seen that

9 Cease and Desist real quick.

10 Q. It's in bold, isn't it?

11 A. Yeah.

12 Q. In fact, I'll tell you what. Read me that

13 paragraph that is bolded. It's the last sentence of

14 the second paragraph.

15 A. Read what?

16 Q. Read it to me.

17 A. "...unauthorized discharge of fill materials

18 into"

19 Q. No, no Hang on. Read the last sentence.

20 A. I'm about half deaf too, so you-all be --

21 Q. I want you to read that sentence starting

22 right there, "Therefore..."

23 A. "Therefore, I issue this cease and desist

24 order to halt any further unauthorized activity in

25 waters of the United States."

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1 Q. What does that mean to you?

2 A. Well, it means to me to stop. Don't do

3 nothing no more here. Quit.

4 Q. Did you do that?

5 A. Believe me, I did.

6 Q. And you haven't touched it since, have you?

7 A. No. I have walked on it.

8 Q. But you haven't -- hang on. You haven't had

9 any unauthorized activity in waters of the United

10 States, have you?

11 A. Not after I got this letter.

12 Q. You heard Ms. Aldridge say --

13 A. But I'm not saying I done anything to any

14 waters of the U.S. But I'm saying I had done nothing

15 after I got this.

16 Q. Okay. You heard Ms. Aldridge testify

17 earlier that because you didn't go in there and

18 remove this fill that they are at issue, that you get

19 a higher penalty. Did you hear that?

20 A. Yeah, I did hear that.

21 Q. Let me come over here and find it. I'll

22 show you what's marked as Respondent's No. 2. It's

23 your Nationwide Permit letter.

24 You've obviously seen that before.

25 right?

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1 do that?

2 A. Because my friends here at the Corps said

3 that's the best way to do it. You get it done a lot

4 quicker.

5 Q. So if you had to wait on them, you'd still

6 be waiting but if you go pay GTI to do it, you can

7 get a delineation quicker?

8 A. It might have been better if I'd never got

9 it done, but that's correct. That goes along with

10 the hire. That's the way to do business up here.

11 Q. And GTI did the delineation, right?

12 A. That's correct.

13 Q. GTI did a Pre-construction Notification for

14 Nationwide Permit 3 so that you could get that letter

15 that you've got in front of you, correct?

16 A. That's what David Roth, with the Corps of

17 Engineers, told my engineer that's what he wanted us

18 to do it. And that's the way he did it.

19 Q. In your Pre-construction Notification, does

20 it say that if any dirt that needs to be added to

21 repair the levee goes on the inside or on the outside

22 of the levee?

23 A. Well, the letter doesn't say, doesn't say --

24 Q. I'm not talking about the letter. I'm not

25 talking about the letter.

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1 A. Yes. Yes, sir.

2 Q. Okay. While you're at it, let's find that

3 one, too, while we're talking about it. That way, I

4 won't have to get up.

5 A. There was also more, too.

6 Q. I know there was more. Let's also look at

7 Complainant's No. 47.

8 A. Okay.

9 Q. Now, you put fill in on the property,

10 correct?

11 A. Some contractors that I let come in there

12 and put the concrete in. I didn't do it personally.

13 Q. How did they know where to put the fill?

14 A. There really wasn't just one or two and I

15 showed them the area, where my upland was. Showed

16 them the flagging.

17 Q. Who put the flagging down?

18 A. Jimmy White.

19 Q. Who is Jimmy White?

20 A. Jimmy White was the feller I hired to go out

21 there to do the delineation with GTI.

22 Q. So your "Identification and Delineation of

23 Waters of the United States" packet that was done?

24 A. Yeah.

25 Q. Why did you pay \$10,000 for Jimmy White to

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1 A. Okay.

2 Q. In the project description -- how about if I

3 do it this way.

4 In the project description, it says:

5 "Reconstruction of the levee will take place similar

6 to how historical data depicts how the original levee

7 was constructed. The Permittee proposes to locate

8 the new levee approximately 10 feet behind the new

9 ORWM by pulling the remaining portions of the

10 existing levee back away from the shoreline."

11 A. Right.

12 Q. That's what you and Jimmy White and GTI

13 talked about, true?

14 A. Yes, sir. That's what we talked about it.

15 And under instructions from David Roth, we delivered

16 that to them. He did.

17 Q. So from the get-go. And, obviously, you've

18 heard the other testimony that says if you had put

19 the fill in the river, on the river side, that you

20 wouldn't be in violation. But if you put it on the

21 inside that you are in violation?

22 A. That's what I hear.

23 Q. Okay. But that's not what the Pre-

24 construction Notification to the Corps provided; is

25 that true?

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1 A. That's correct. And along with the letter,
2 I didn't interpret it to that.
3 Q. Well, we'll get to the letter in a minute.
4 So you made a Pre-construction
5 Notification that says here's what I'm going to do?
6 A. Right.
7 Q. That letter is what you got as your
8 Nationwide No. 3, true?
9 A. That's what I -- Ms. Aldridge said it was a
10 letter that got turned into a permit.
11 Q. Okay. You didn't actually get a signed 8-by
12 10 colored glossy or anything like that with a permit
13 on it, right?
14 A. No. This is all I ever got and it's not
15 complete, but go ahead.
16 Q. It's got a couple of attachments to it.
17 correct?
18 A. Yeah, a couple of exhibits, I believe.
19 Q. A couple of exhibits. Okay. Let me talk
20 about those exhibits.
21 I'll show what's been marked as
22 Complaint's No. 31. Do those look like the
23 attachments to that letter?
24 A. I believe so. When we first submitted it,
25 we had some different ones a little bit. It varied.

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1 Did you ever go on and go back to
2 college or anything else? Are you okay? I didn't
3 mean to say something wrong. I didn't mean to upset
4 you.
5 JUDICIAL OFFICER RANKIN: Would you like
6 a brief recess?
7 MR. KIBLER: Can I have a brief recess?
8 JUDICIAL OFFICER RANKIN: Absolutely.
9 MR. KIBLER: Thank you. Off the record.
10 [Brief recess was taken.]
11 JUDICIAL OFFICER RANKIN: And if you
12 need another break, Mr. Stevenson, just let us know.
13 THE WITNESS: Thank you.
14 JUDICIAL OFFICER RANKIN: Proceed, Mr.
15 Murdock.
16 MR. KIBLER: That would be Kibler.
17 JUDICIAL OFFICER RANKIN: I'm sorry. I
18 don't know where I'm at.
19 MR. KIBLER: I'm a lawyer. They all
20 look the same.
21 MR. MURDOCK: If you insist.
22 JUDICIAL OFFICER RANKIN: It's easy to
23 get confused at our age.
24 MR. KIBLER: I understand.
25 BY MR. KIBLER:

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1 To the best of my ability, I think this
2 is one that was with this. I'm not a hundred percent
3 sure. I think it is.
4 Q. Now, there's a couple of ways you're
5 defending yourself here today, Mr. Stevenson. I
6 don't think there's anyway to get around it so
7 there's two ways you've got to say it, so I'm going
8 to get you to say it.
9 One, is you don't believe that you have
10 violated anything, do you?
11 A. No.
12 Q. You think that the work that you have done
13 is in compliance with the Pre-construction
14 Notification that you filed with the Corps; is that
15 true?
16 A. That's how I answered the Corps exactly. I
17 followed the instruction laid out here to the best of
18 my ability.
19 Q. Maybe it's a good time to ask you this. How
20 far did you get in school?
21 A. 12th grade. I graduated.
22 Q. You've got a high school diploma?
23 A. Yes, sir.
24 Q. Went and served in Viet Nam in the Navy,
25 correct?

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1 Q. Sonny, are you okay? Are you ready to go
2 forward?
3 A. Yes, sir.
4 Q. Okay. I need to talk about your educational
5 background just a little bit, okay?
6 A. Okay.
7 Q. You graduated from high school and went to
8 the Navy. Did you go on to college or do anything
9 typical like vocational training or anything like
10 that?
11 A. A little. Two or three months schooling in
12 the Navy.
13 Q. Have you ever had any specialized training
14 in reading blueprints or any kind of engineer
15 material, some of that stuff that we've been throwing
16 around on the tables today?
17 A. No.
18 Q. In fact, that's why you hired GTI to put
19 together this Delineation and this Pre-construction
20 Notification package to the Corps, right?
21 A. That's correct.
22 Q. That's above your pay grade, right?
23 A. That's correct. I wished I had known in the
24 first time but I didn't know.
25 Q. Okay. So it's no secret here that the two

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1 defenses that you're trying to make to this Court.

2 One. I sent a Pre-construction
3 Notification that says I'm going to put dirt on the
4 inside and that's what you did, right?

5 A. I followed to the best of my ability, yes.
6 Followed the letter, yes.

7 Q. Look at Complainant's 31.

8 A. [Complies.]

9 Q. Do those diagrams match the diagrams that
10 are in your Pre-construction Notification?

11 A. They're a little different?

12 Q. How so?

13 A. Well, these, when I first submitted them, I
14 didn't want to put nothing in over here.

15 Q. Why not?

16 A. Because I'd have to dig that whole place up.
17 These guys is an engineer. They should have known
18 that. You can't put dirt in the river.

19 Q. If you put dirt in the river, what happens?

20 A. It goes down the river. Then the taxpayers
21 have got to pump it back out. But you don't argue,
22 you just do what you're told.

23 Q. The second issue. We have talked that issue
24 at length about the phrase in that letter, the letter
25 itself, about minor modifications, right?

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1 A. And that was the guideline we were going by.

2 Q. And that flagging was supposed to mark the
3 delineation that he did from upland and wetland; is
4 that true?

5 A. That's correct.

6 Q. So he put flagging down so you would know
7 what was upland, what was wetland?

8 A. That's correct.

9 Q. And the contractors came in and put fill-in
10 to the flagging, true?

11 A. Yeah, yeah.

12 Q. To the best of your knowledge?

13 A. Well, we were trying our hardest to be sure
14 we didn't go past no flagging.

15 Q. Now the reason for putting this fill in is
16 so your dozers, your trackhoes, dump trucks, could
17 all safely negotiate the levee and also you could
18 have a staging area for materials that would be
19 needed further down the levee; is that true?

20 A. That's true.

21 Q. When Mr. Davidson says there was a big pile
22 of stuff, is that big pile of stuff still there?

23 A. Yeah, it's still there.

24 Q. Is it?

25 A. Yeah. We were in the process - that pile

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1 What did that mean to you, minor
2 modifications?

3 A. Well, it's pretty obvious that me and the
4 Corps looks at it different. I thought minor changes
5 was what I did.

6 Q. Let's look at this one.

7 A. Yeah.

8 Q. I forget what number it is. Got that
9 picture out. What number is on that?

10 A. C-47.

11 Q. C-47? That's Complainant's No. 47?

12 A. Yeah.

13 Q. Looking down in the southwest corner where
14 that degraded red area is in there, did you put fill
15 in there?

16 A. No, I didn't.

17 Q. Well, did your contractor put fill in there?

18 A. Well, to tell you the truth, we had
19 flaggings there.

20 Q. And I was going to ask you that. The
21 flagging was there, placed by Jimmy White at GT1, you
22 said; is that correct?

23 A. That's correct.

24 Q. That's the same guy that did all this work
25 for you?

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1 got built two or three times. We would bring in
2 materials and then we would take them down the levee.

3 And when we got down there, we had to
4 make a small turnaround so we could get our truck
5 back. It was so dangerous. My son liked to have --

6 Q. Tell us what happened to your son.

7 Do you need another break?

8 A. No. I apologize.

9 Q. What happened to your son?

10 A. I wanted him to back down there.

11 Q. You wanted him to back down there because he
12 couldn't get down there and turn around, right?

13 A. Right.

14 Q. So he backed down there with that dump truck
15 and what happened?

16 A. He liked to have went in the river.

17 Q. Liked to have went into the river? Was he
18 injured?

19 A. I'm sorry.

20 Q. Was he injured?

21 A. No.

22 Q. What happened to the dump truck?

23 A. He -- he did what all we told him to do. He
24 froze. And I went down there with the trackhoe and
25 we got the bulldozer down there and we hooked him on

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1 it and pulled him out.
 2 Q. Was he injured? Was the dump truck damaged
 3 beyond the ability to
 4 A. It didn't hurt it.
 5 Q. But it was close to going in the river, both
 6 of them, right?
 7 A. The good Lord saved him.
 8 Q. Well, let me ask you something. You and
 9 Jimmy White, with CFI, who wrote these Identification
 10 and Delineation Waters of the U.S. and your Pre-
 11 construction Notification, you guys had talked about
 12 putting truck turnarounds in on the levee while you
 13 were fixing it, right?
 14 A. I told Mr. White that I had to have
 15 turnarounds.
 16 Q. How many turnarounds did you tell him you
 17 wanted?
 18 A. Two or three.
 19 Q. I want you to look at Complainant's 31 and
 20 flip it to the second page for me, this one here.
 21 A. Okay. [Complies.]
 22 Q. It's the one that's got a big black outline
 23 of your property and it has Insert A, Insert B. Do
 24 you see those?
 25 A. Right

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1 down the southwest corner down in there and the fill-
 2 in for the truck turnaround, did you feel that you
 3 were complying with Nationwide No. 3 as it states:
 4 "Minor deviations due to construction techniques,
 5 materials or the like are authorized"?
 6 A. Yes.
 7 Q. Did you intend to have the truck turnaround
 8 there permanent?
 9 A. Well, to tell you, we really didn't discuss
 10 that. I really don't -- I just don't know if it was
 11 meant to be kept because I'm not that familiar with
 12 them things in the Nationwide No. 3.
 13 I just told him that I need some
 14 turnarounds. And he said he would tell that to David
 15 and that's what I thought happened.
 16 Q. Both Mr. Davidson and Ms. Shivers's
 17 testified, and you got to hear their testimony today?
 18 A. Yeah.
 19 Q. And they said had you needed these, you
 20 could have qualified under a Nationwide. I think 33
 21 or 34, a different permit.
 22 Did you know that you could apply for a
 23 different permit to have those put in?
 24 A. No, I really didn't. I didn't think I had
 25 to.

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1 Q. What do those depict? What were those to
 2 you?
 3 A. Turnarounds.
 4 Q. Is that where you -- because you had told
 5 Jimmy White, I want turnarounds?
 6 A. I told Jimmy White that I need two or three
 7 down there because we couldn't back down down there.
 8 Q. Is the turnaround that you're being alleged
 9 to have violated the Clean Water Act today, is that
 10 right there where Insert "A" is?
 11 A. Yeah.
 12 Q. Pretty much where it is?
 13 A. Yeah.
 14 Q. So when you saw that, you saw that as those
 15 are where my turnarounds are supposed to be?
 16 A. I never even questioned it because I thought
 17 he relayed it. I didn't do no negotiating with the
 18 Corps. My engineer did.
 19 Q. Jimmy White did the negotiations?
 20 A. I told him what I wanted to do and he done
 21 it. And there's a little short story that goes with
 22 it but we got this and I got it. And then I've been
 23 trying to follow it ever since until the day I got
 24 the Stop Order.
 25 Q. When you put the fill-in there for the

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1 Q. Did anybody from the Corps, in all their
 2 visits I mean, I think Ms. Shivers said she made
 3 three visits and Mr. Davidson said he made two
 4 visits. I think Ms. Aldridge made a visit.
 5 Has any of those people, who made visits
 6 to you say, well, you know what, Sonny, all you had
 7 to do was file a Nationwide 33 or 34 permit and you'd
 8 be all right?
 9 Did anybody ever tell you that?
 10 A. Not for the two years. Nobody ever even
 11 talked to me. And nobody never said nothing like
 12 that, period. I didn't know I had to. I thought I
 13 had it right here. I really didn't think about it.
 14 Q. Parkwood Land Company? What's the balance
 15 of Parkwood Land Company right now?
 16 A. I just put -- I just put a few thousand
 17 dollars in there.
 18 Q. When you say "you" put it in there?
 19 A. Parkwood is broke.
 20 Q. Parkwood is broke?
 21 A. I've been paying out of my pocket to help
 22 it.
 23 Q. So Parkwood hasn't made a dime?
 24 A. We haven't been able to have no cash flow
 25 there.

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1 Q. Okay. So Parkwood Land Company or
2 corporation or incorporated would not survive if not
3 for cash influx from you personally, from your
4 personal bank account into that, correct?
5 A. Generally, every 30 days.
6 Q. Okay. And that every 30 days is why?
7 A. Because it don't make no money.
8 Q. Well, what's the significance about 30 days?
9 A. Well --
10 Q. Are you waiting on some money from somewhere
11 else?
12 A. Yeah. It's my disability.
13 Q. You're what? Come on now, bear with me.
14 We're almost done. It's your disability from the
15 military? Is that a "yes"? You have to say "yes."
16 Say "yes."
17 A. Yes.
18 Q. Okay.
19 MR. KIBLER: Sorry, if I'm instructing
20 him. I don't mean to.
21 JUDICIAL OFFICER RANKIN: That's okay.
22 MR. KIBLER: I didn't realize how that
23 would look on the record after I said it. I'm not
24 trying to tell him what to say. I'm trying to tell
25 him that he has to say "yes."

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1 A. Roughly.
2 Q. Roughly? Do you have any idea of what that
3 land would be if it was sold?
4 A. Not very much the way the market is going.
5 This property right here --
6 MR. KIBLER: You'll have to speak up so
7 she can hear you.
8 THE WITNESS: I'm sorry. No, I don't
9 really know that answer. I really don't. It's a lot
10 less now since this, on this tract, I can assure you.
11 BY MR. MURDOCK:
12 Q. All right. Did you ever submit or Parkwood
13 Land Company ever submit information to EPA regarding
14 its inability to pay?
15 A. Nobody has ever asked me that I'm aware.
16 Q. But was any information submitted to the EPA
17 regarding Parkwood Land Company's financial straits?
18 A. No.
19 Q. Okay. I'll just have you look real briefly
20 at Complainant's 45, not go line by line through
21 this.
22 A. 45?
23 Q. This one right here.
24 A. Okay.
25 Q. That's the document Ms. Davidson compiled --

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1 THE WITNESS: I apologize you all. If
2 you'll give me time, I'll answer every damn thing you
3 ask.
4 JUDICIAL OFFICER RANKIN: One of us
5 probably should have stepped in there and asked that
6 the record reflect that the witness nodded his head
7 affirmatively, I think.
8 MR. KIBLER: Your Honor, I think I'm
9 going to pass the witness.
10 JUDICIAL OFFICER RANKIN: Mr. Murdock?
11 Assuming I got your name right this time.
12 MR. MURDOCK: You did, Your Honor.
13 Correctly enunciated and everything.
14 CROSS-EXAMINATION
15 BY MR. MURDOCK:
16 Q. All right, Mr. Stevenson, it's been good to
17 meet you today. Hopefully, we don't have to run into
18 each other too often. But just a few questions for
19 you. We won't be here too long.
20 First, how much land does Parkwood Land
21 Company own?
22 A. I think approximately a 188 acres right
23 there and another possibly 150 acres.
24 Q. So do you mean a 150 plus a 188 so 338 or do
25 you mean --

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1 A. Right.
2 Q. -- as we've all been here and witnessed and
3 discussed.
4 Have you reviewed this document since it
5 was created?
6 A. I think I did. Well, I'm not dead sure.
7 Q. And except for -- and I understand there's a
8 dispute with whether you paid \$20,000. You say that
9 you did not pay two \$20,000 or your company did not
10 pay two \$20,000 fines, it's just the one?
11 But other than that dispute, is there
12 any dispute or questioning about the facts and events
13 that are in that document?
14 A. Yeah. It seemed to me like there's a
15 double-dip in here. I think Mr. Davidson got
16 something a little mixed up. I think he's mixed up
17 about the same site.
18 Q. Right.
19 A. Other than that, I would have to really read
20 this stuff to be sure. I heard you all discussing it
21 awhile ago.
22 If you want to reask the question, I'll
23 try to answer it. Did I answer it or not?
24 Q. I think you did. So your contention is that
25 he, Mr. Davidson, essentially double dipped with a

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1 \$20,000 fine because there's only one?

2 A. Well, we paid one and I think Williams
3 Brothers paid one if I'm not -- I can't remember. I
4 know ACP, LE paid a \$20,000 fine and I think we got 5
credits.

6 Q. Okay. But other than that specific
7 difference of opinion of what happened, you don't
8 have any other specific things where you say what Mr.
9 Davidson wrote in that document is wrong or that he
10 mischaracterized your interaction or your company's
11 interaction?

12 A. Well, I think he -- me, personally, Henry R.
13 Stevenson, Jr., has never ever been charged as an
14 individual violation. Never. Contractor did some of
15 this. I have never.

16 Parkwood Land Company only one time.
17 This is all ACP stuff and Parkwood. And I have
18 explained that I am a part owner, but I have never
19 been charged, to the best of my ability,
20 individually, for any charge like this.

21 Q. But you have, even if not as yourself, but
22 in your role as a owner or part owner of companies,
23 you have had extensive interaction with the Corps,
24 right?

25 A. I've been in on hiring the engineers to go

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1 these highway contractors. They was taking up the
2 concrete in the freeway.

3 Q. Right.

4 A. And they needed a place to put it. And I
5 needed it to shore my levee, to fix my levee. So I
6 thought, the good Lord was smiling on me.

7 And they would bring it in and I would
8 load it up and take it down there. I was lucky
9 because about the time I'd dig it all out, they'd
10 bring me some more. So that's what we were doing.

11 Q. So you're saying the highway company or the
12 actual people who put in the fill on the site that
13 we're talking about here?

14 A. They had their own dozers and their own dump
15 trucks and everything. They brought it in. I didn't
16 do it. I had equipment when I was working on my
17 levee, Parkwood did.

18 Q. So the actual maintenance of the levee was
19 done by Parkwood?

20 A. Yeah, mainly me. I'm a one-man show.

21 Q. But the fill that wasn't related to the
22 maintenance of the levee was put in by the highway
23 company?

24 A. Well, they come down there on that first
25 turnaround and they dumped the dirt in there. And I

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1 do this type of work. We all four, when we sit down
2 and do this stuff, we hire engineers so we stay out
3 of trouble.

4 Q. Right.

5 A. And plus, we've been led to believe that's
6 the best way to get it done the quickest and
7 accepted. It's very costly. I don't know if I'm
8 supposed to, but we did it. I think the Corps is
9 supposed to do it.

10 Q. And talking about these engineers, you're
11 referring to Mr. Jimmy -- or James White of GTI
12 Environmental that we previously discussed?

13 A. Yeah. He's an ex-SEAL. I haven't seen him
14 in two or three years. That company went broke.

15 Q. But the Parkwood Land Company hired him,
16 correct? GTI Environmental hired him to do this
17 work?

18 A. He was an employee. He may have been a
19 partner. I'm not sure. But we hired him to do that.

20 Q. And did Parkwood Land Company also hire the
21 contractors to put in the fill?

22 A. No.

23 Q. So who hired the contractors to put in the
24 fill?

25 A. We -- as I mentioned before, we had some of

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1 was working mainly on the levee itself, trying to fix
2 the levee.

3 They would -- there was about a year's
4 time that I was in the hospital. I nearly got killed
5 in a wreck. And, like I say, I was a one-man show.
6 I couldn't be there.

7 And then guys were real responsible
8 people. I told them where the flagging was and they
9 really did a good job.

10 And there was about a year there that I
11 was laid up. I couldn't think straight. I can't
12 think now. But we did the best we could, and I
13 wasn't there all the time.

14 Q. Right. I don't know if this is helpful, but
15 I'm going to show you Complainant's Exhibit 47, the
16 aerial photograph.

17 A. This one?

18 Q. Yeah, this one. I just wanted to clarify
19 for myself and everyone else.

20 The fill that was put in by the highway
21 company, that you didn't do yourself -- I guess first
22 question is: You obviously told them they could come
23 on your land, right?

24 A. Repeat.

25 Q. For the highway company that placed the fill

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1 on your property, you gave them permission to come on
2 your land, correct?

3 A. That's correct.

4 Q. And you gave them permission to deposit the
5 materials?

6 A. At that particular site, it was upland. It
7 had been used for that since 1947 as a disposal site.
8 And right there at that site, it was just laid out
9 with stream with bricks and concrete and et
10 cetera.

11 And they brought the stuff in there
12 we brought it in there and we raised it up and made a
13 little road so we could get our equipment back there.

14 Q. The truck turnaround?

15 A. Yes, sir.

16 Q. What we've been calling the truck
17 turnaround?

18 A. Well, it was to go around and do the whole
19 levee.

20 Q. Okay.

21 A. And we -- so as the material would come in,
22 I'd go back up and I'd get some equipment and load it
23 up and go down there and put it on the levee. And we
24 did that off and on.

25 And for two years, I never ever seen

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1 was some minor change and this and that. If I did do
2 anything out of this, I thought it was covered.

3 But I didn't get crazy like everybody
4 says I was. Apparently, I say what I did was below
5 minor.

6 Q. So when did you stop -- you mentioned that
7 when the Cease and Desist Order came, you stopped?

8 A. Yes, sir.

9 Q. Did you stop before that or did you stop in-
10 putting in fill as a result of this Cease and Desist
11 letter?

12 A. Well, I was up here at the Corps of
13 Engineers. Maybe you can tell me, answer it for me.

14 I come up and was meeting with Jeff
15 Finsky and Bruce Bennett on permitting that site. I
16 had been in the process of permitting that site. And
17 we were discussing and I turned in all the documents
18 of what we would offer for the trade, et cetera.

19 We was going through the process. I met
20 with that feller right there a dozen times on that
21 same site. [Indicating Mr. Jaynes.]

22 We discussed a million things. How to
23 go about it, what to do because I'm not no expert. I
24 was doing that one myself.

25 We did that and here comes John Davidson

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1 anybody from the Corps of Engineers. To this day, I
2 don't even know why they come and visit me.

3 I was permitting the sucker when they
4 come and give me the Cease and Desist. I don't know
5 why they showed up.

6 Q. Okay. As you're saying, it's been your
7 belief, and as your attorney said, you were
8 authorized to input the fill that you put onto your
9 property? That's your belief?

10 A. I thought I was to fix the levee. That
11 according to that letter -- because I answered it
12 when I got my complaint from the Corps of Engineers.
13 I put in there that how we proceeded, how we got
14 where we was at.

15 And according to that letter, I haven't
16 done nothing wrong. And that hasn't changed. I was
17 following the letter and the instructions of my
18 engineers and they put it me, and I was doing the
19 best I could.

20 Nobody gave me no meetings, showed me
21 how to do nothing. Nobody showed me how to interpret
22 that letter.

23 Q. Right.

24 A. They just said go and do it. And you've got
25 a few minor -- some stuff laid out here that there

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1 in there and sits down, uninvited, sits down and
2 tells me that I'm fixing to get charged for filling
3 in some wetlands.

4 So I get another hit by going ahead and
5 canceling that. Because I've got too much on my
6 plate now. So I canceled that permit request to go
7 to the island.

8 And David come in and said, you can't
9 believe all the reports they've got on you, on this
10 deal. The EPA, everybody but the Boy Scouts
11 complained about me making a road to that island.

12 So I really stepped into it. I don't
13 know what hit me. I guess I got another hit by
14 stopping it. So I told him to cancel it and I would
15 take up this situation, and that's what I've been
16 doing ever since.

17 Q. Do you happen to know the date, roughly? I
18 don't need an exact date but a month and year when
19 you stopped putting in new fill?

20 For example, there's earlier testimony
21 that between the July 10 well, between September
22 2009, at the time the Corps came and looked at your
23 site, and the July 2010 time they looked at your site

24 I think it was Ms. Shivers who said that

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1 she thought the truck turnaround, what's she's termed
 2 the truck turnaround area, was more extensive than
 3 what it was before?
 4 A. Well, she told Ms. -- Have I got it right,
 5 Ms. Aldridge? Your name?
 6 MS. ALDRIDGE: Yes.
 7 THE WITNESS: Well, we got down there
 8 and she and John were down there the time before that
 9 and they GPS'd that site, okay.
 10 So we get back down there with Ms.
 11 Aldridge there and my attorney. I seen her get Ms.
 12 Aldridge off to the side and started telling her
 13 where I added to all this thing.
 14 Well, why don't you go down there and
 15 GPS it and see what it is. I hadn't touched that
 16 place since the day I got that Cease and Desist.
 17 So go and get that sorry machine they
 18 had that you can't depend on nohow and see if I've
 19 done what she told Ms. Aldridge I did. I didn't
 20 touch that place and it wasn't added to.
 21 Q. So you're saying after the Cease and Desist,
 22 which was August 2010, you didn't add anything else?
 23 A. No. No, sir.
 24 Q. But before that, you were adding what you
 25 viewed as authorized discharges, right? I mean, to

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1 is sent to Parkwood Land Company and Mr. Robert Edgar
 2 gets it, it's his job then to file it and pass it on
 3 to you?
 4 A. Well, if it come to him, he did pass it to
 5 me.
 6 Q. Okay. Do you recognize this document or
 7 have you seen it before?
 8 A. Give me a second and let me read it. Okay.
 9 Q. Do you recognize the document?
 10 A. Yeah. I'm fairly sure I read it.
 11 Q. Can you say the date on the document?
 12 A. It says May the 25th of 2007. Have I got
 13 that right?
 14 Q. I don't think so.
 15 A. This letter is a reference to your letter.
 16 Oh, you're talking about the one that come up here?
 17 Q. Right. Tell me the date where it's stamped.
 18 A. Yeah. This is one we apparently -- this was
 19 sent to us in '08, 2008, okay.
 20 Q. And can you read just one sentence, the
 21 first sentence in the third paragraph? It starts:
 22 "The placement..."
 23 A. Say it one more time.
 24 Q. The first sentence in the third paragraph.
 25 It starts: "The placement..."

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1 stabilize the site, et cetera?
 2 A. I was working on the levee.
 3 Q. Right. You were working on the levee in the
 4 area of your property?
 5 A. Yeah. And the highway people would
 6 occasionally come in and dump some concrete.
 7 Q. And you didn't think that would be a
 8 violation because you thought the Nationwide Permit
 9 for maintenance of your levee applied, right?
 10 A. Well, these spots here where that turnaround
 11 is, I thought this was my turnaround. So why would I
 12 be concerned if I thought I wasn't doing anything
 13 wrong.
 14 Q. I have some documents for you to look at.
 15 This document is addressed to Mr. Robert Edgar,
 16 Parkwood Land Company.
 17 A. Oh-huh.
 18 Q. Who is Mr. Robert Edgar?
 19 A. He's my bookkeeper.
 20 Q. Okay. He's your bookkeeper? So when Mr.
 21 Edgar receives letters on behalf of Parkwood Land
 22 Company, is it fair to assume, since you're the sole
 23 owner, that you get the letters?
 24 A. I still don't --
 25 Q. Sure. Let's walk through this. If a letter

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1 A. Okay, okay.
 2 Q. Just the one sentence.
 3 A. Do you want me to read it?
 4 Q. Yes, please.
 5 A. "The placement of additional dredged
 6 material within the leveed area is not a maintenance
 7 activity, and as such is not authorized by Nationwide
 8 Permit 3. An individual DA permit is required..."
 9 Q. That's okay.
 10 A. Huh?
 11 Q. That's okay. Just the first sentence is
 12 fine.
 13 A. Well, I read that and probably what threw me
 14 off right here was that I wasn't putting no dredge
 15 material in there. They were hauling concrete in.
 16 That kind of threw me off but anyway, I read it.
 17 Q. In other words, you did receive this letter
 18 before you stopped the --
 19 A. Well -- what's the date of the Cease and
 20 Desist?
 21 Q. August 2010. I can get the exact date for
 22 you. It's August 2010.
 23 A. Well, we were into this, obviously, before
 24 we got the Cease and Desist. Is that answering what
 25 you said?

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1 Q. Yes. And did you continue, as you said,
2 putting in concrete, is that right, the concrete to
3 your property?

4 A. On the levee and at our storage sites. And
5 on this truck turnaround. They would do it there.

6 And in this deal, as you might notice
7 here, it's got borrow pits. Well, these borrow pits
8 were coming all the way up there toward where that
9 was at.

10 We would dig the material out and try to
11 fix the river. We put it in the river, a little bit
12 there and that didn't work. So we put it on the
13 levee.

14 And then we come back and put. I
15 thought I was really doing real well here. They'd
16 bring the concrete back and we'd fill the hole back
17 up and then I'd move over and I'd dig another one.

18 Because it don't say in here how wide,
19 these future borrow pits. And we were getting our
20 dirt out of them. It doesn't say how wide or how
21 long. We just doing -- if I hadn't got the concrete
22 in, I'd probably dug them borrow pits a little wider,
23 but we didn't.

24 You know, the dirt wasn't working worth
25 a flip to tell you the truth. Concrete is the only

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1 Q. Do you recognize that document?

2 A. Not readily, but probably did read it.

3 Q. Who is it signed by, the cover letter?

4 A. It's me.

5 Q. So Henry R. Stevenson, Jr.?

6 A. I can't exactly remember but if I signed it,
7 I assure you, I probably read it.

8 Q. I'm sure. It's just for the record, et
9 cetera.

10 Can you tell by looking at this, what's
11 the plan of this letter?

12 Who is it addressed to?

13 A. I guess it's addressed to John Davidson.

14 Q. And can you tell, by looking at this
15 document, why you sent it or what the purpose of this
16 document is?

17 A. Well, we, as you know or should know, we
18 appealed their decision. Do you know that?

19 Q. Yes.

20 A. And we, according to this letter under 33,
21 which it doesn't mention, I get a little bit out of
22 line now. I ain't no lawyer. You-all can shut me
23 down anytime you want to.

24 Under 33.3, as I read it, it's part of
25 this. That's what this was describing. We showed

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1 way I've been able to build the road. A good road,
2 you know. I did use some of the dirt.

3 MR. MURDOCK: Your Honor, at this point,
4 I'm going to move to insert Complainant's 43, which
5 is the letter we were just discussing into the
6 record.

7 MR. KIBLER: I have no objection, Your
8 Honor.

9 THE WITNESS: Well, is that this one?

10 MR. MURDOCK: Sure. That's the one.

11 I'll get it stamped.

12 JUDICIAL OFFICER RANKIN: It's admitted.

13 [Complainant's Exhibit No. 43 admitted
14 into evidence.]

15 BY MR. MURDOCK:

16 Q. I promise this walk down memory lane won't
17 continue forever, but I have one more document for
18 you to look at.

19 Have you seen this document before, Mr.
20 Stevenson? If you need a minute to read it, that's
21 fine.

22 A. Okay. Is there more to it?

23 Q. Just start at the front of the letter is
24 fine.

25 A. Okay.

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1 proof that this was a disposal site in 1947. And Mr.
2 Gilmore in our appeal, he agreed with us.

3 And what we were trying to say is, we
4 were agreeing to disagree. We're agreeing to
5 disagree. We felt like it was a jurisdictional
6 problem. We feel like it should have been
7 grandfathered or isolated.

8 But we didn't -- we went through the
9 system and we appealed it at the same time as we were
10 doing our job. And that's exactly what we did.

11 Now, we were having a hard time at the
12 start of this getting this permit to do this job. A
13 lot of song and dance. So I'm not sure -- let me see
14 here. You asked me what we were trying to tell you --
15 all?

16 Q. Yeah, the Corps of Engineers?

17 A. Well, we was saying that -- this is '86. We
18 hadn't got our permit yet.

19 Q. Right.

20 A. And this place here was dragging their feet
21 for four months. And we'd repeatedly tell them that
22 we'd done had three people got killed down there.
23 Them trees were falling off in the water.

24 I've got plenty of pictures. Trees were
25 falling off in the water. A man and two little girls.

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1 they got killed on the land just north of me that I
2 own now.

3 We pleaded with the Corps to let us go
4 to work. That this levee was going to get breached
5 and this stuff was going to come in the river and the
6 taxpayers were going to have to pump it out. I
7 wanted to fix my levee.

8 We went through you-all's process. We
9 did everything that told to us to do. And month
10 after month after month, phone call after phone call,
11 please, let us go to work.

12 Q. All right. So --

13 A. This is what this consist of.

14 Q. And so in order to get something done, you
15 hired -- this is, again, James White?

16 A. James White. And he come to the Corps and
17 Mr. John -- I mean, Mr. David Roth, I guess he got
18 fired after this letter. I'm not sure. But he s the
19 one who told us to do it, Nationwide No. 3, and I
20 paid for it.

21 Q. So in this attached, and I'm looking on page
22 3 of this letter. This is your cover letter in which
23 you introduce to the Corps to say you're submitting
24 an Identification and Delineation of Waters of the
25 United States Done by GFI Environmental and Parkwood

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1 about before because he was hired by Parkwood Land
2 Company and you hired him to do this on your behalf
3 and to submit this report?

4 A. We hired him to come up here and ask the
5 Corps what we had to do to fix our levee.

6 Q. Okay. I'm going to read just one quick

7 A. Which one?

8 Q. It's on page 7.

9 A. You know, I might have misspoke. This is
10 the one to get the original. The other one come
11 along. I misread that.

12 Q. So just to clarify for the record, this was
13 a request for the original jurisdictional
14 determination?

15 A. That's right.

16 Q. Okay.

17 A. To the best of my memory. I'm sorry if I
18 got carried away.

19 Q. That's all right. We're looking at page 7
20 here. It's under the title "Site Description." This
21 will give us some context of what we're talking about
22 here.

23 Can you read this paragraph? On page 7,
24 it is the second full paragraph from the --

25 A. Okay. Do you want me to read it?

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1 land?

2 A. I'm glad you brought that up. I'm glad you
3 brought this up here. I'll show you what kind of
4 amateurs we was.

5 When we got Jimmy White to come out here
6 and delineate this.

7 It was one delay after the next. We got
8 all the way to appeals for this after we complained.
9 We didn't agree. And we did it real nicely. We
10 followed the deal.

11 Then when they get up there, I think his
12 name is Mr. Jim Gilmore, he called me up and he sent
13 us a letter and he said we can't process this because
14 you don't have a authorized JD. And I said what in
15 the world are you talking about? I already got you a
16 JD.

17 He said, you can't appeal a regular JD.
18 You've got to go back to the Corps and get you a
19 authorized one. Another three or four months.

20 Q. So as you were doing this and trying to get
21 the Corps to move

22 A. The levee was continuing falling in. And it
23 was bad news.

24 Q. And you hired -- and just to be clear, Mr.
25 White did this report, which your counsel has spoken

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1 Q. Yeah. Just read it.

2 A. Can I read it to myself or do you want me to
3 read it --

4 Q. Read it out loud for the record, please.

5 A. Okay. Are you trying to see if I can read?
6 We can have a little humor here.

7 "Cypress Trees, swamp Tupelo, Drummond's
8 rattle bush..." I'm not going to get into these fancy
9 names. I'll let Mr. Aldridge talk about that.

10 "...swamp smart-weed now dominate the
11 central portion of the site." Cypress trees and
12 swamp Tupelo, okay. "Vegetation along the base and
13 up to the peak of the levee is dominated by mature
14 loblolly pine, sweet gum, American holly and yaupon."

15 And you left out pine trees.

16 Q. Okay. Just to clarify the words he uses,
17 after talking about Cypress trees, is swamp Tupelo,
18 Drummond's rattle bush and swamp smart-weed now
19 dominate the central portion of the site?

20 A. Well, I might add here it says Cypress
21 trees. It doesn't say what kind. And it says "swamp
22 Tupelo." It don't say what kind, it just says swamp
23 Tupelo.

24 Q. But it does say "dominate," right?

25 A. Well, let me see here. "Cypress trees,

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1 swamp Tupelo, Drummond's rattie bush and swamp smart-
2 weed now dominate the central portion of the site."

3 He never went out there. I don't know
4 how he said that. I guess he used an aerial. Nobody
5 ever went in the inside of the -- no soil samples, no
6 nothing, okay. Anything else?

7 Q. But this was submitted -- going back to the
8 cover letter, page 1.

9 A. Which page?

10 Q. This one. I'm trying to organize this.

11 A. You're doing a better job than me.

12 Q. I'm still not doing that well. Okay. Here
13 we go, page 1 again.

14 So the initial cover letter sheet --

15 A. By the way, the stuff that we discussed, I
16 assume was in that --

17 Q. Yes.

18 A. -- Deviation Report.

19 Q. You're right. What this is here is -- it
20 just does not have the more voluminous attachments.
21 This is the shorter version of, basically, the
22 executive summary and the cover letter.

23 This was all submitted under the title
24 -- on behalf of Parkwood Lane Company, correct?

25 A. Let me get up here. It addresses me, Mr.

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1 into evidence.)

2 BY MR. MURDOCK:

3 Q. Okay. I know you said you're not an
4 engineer, in your mind, but if I ask you something
5 you don't know the answer to, it's fine to just say
6 "I don't know, I'm not an engineer."

7 But would it have been possible to have
8 repaired the levee from the river side?

9 A. Well, I can give you, in hindsight --

10 Q. That's fine.

11 A. There's no way the clay would stick. It
12 would go right in the river. We couldn't. So I went
13 to concrete.

14 And I will assume that you probably read
15 the back side of this thing right here, where my
16 buddies up here at the Corps said if you put it in
17 the river right here, we might make you take it back
18 out. I may not be smartest apple on the tree, but
19 that got my attention.

20 So the best thing to do is step back,
21 kind of like this. This is a 10-foot, and we
22 couldn't get dirt to even stick there. It would fall
23 off. So we had to get a real -- maybe 90 percent
24 concrete to hold right there to even get our trucks
25 and equipment down it to start fixing the levee.

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1 Sonny R. Stevenson, Jr. And then the first letter,
2 he's talking about me personally here. And here,
3 this letter is Parkwood Land Company.

4 Q. Okay.

5 MR. MURDOCK: Your Honor, at this time,
6 I move to insert Complainant's Exhibit 44 into the
7 record.

8 MR. KIBLER: No objection.

9 JUDICIAL OFFICER RANKIN: I'd like to
10 look at it myself first.

11 THE WITNESS: Yes, sir. This one here?

12 JUDICIAL OFFICER RANKIN: I'm
13 anticipating no problems but I'd like to see what
14 we've been talking about.

15 THE WITNESS: I might have to read
16 through it a couple times myself.

17 MR. MURDOCK: Page 7 in the part quoted,
18 Your Honor.

19 JUDICIAL OFFICER RANKIN: All right.

20 Certainly.

21 MR. MURDOCK: I'm sorry. I forgot to
22 pass that over.

23 JUDICIAL OFFICER RANKIN: It's admitted
24 into evidence.

25 [Complainant's Exhibit No. 44 admitted

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1 And to answer your question, J. to this
2 day, don't know why these Corps of Engineers want me
3 to put that in that river. But you don't argue with
4 the Corps. You do what they say. And I tried. It
5 didn't work.

6 Q. Do you think it would be possible for a
7 barge to transport the concrete needed to maintain
8 the levee, to move it across the Naches River and
9 bring it to your site from the river side?

10 A. Maybe Exxon Mobil can, but Parkwood couldn't.

11 Q. Okay. But you're not ruling out then that
12 someone -- it could be technologically feasible even
13 if not economically feasible?

14 A. Yeah. It's a river. You can go up and down
15 it with a boat.

16 C. And my understanding might be wrong, but am
17 I right that this staging area that we refer to
18 sometimes is on the other side of the river from your
19 property?

20 A. Well, this whole levee is adjacent to a
21 river as this exhibit shows. I don't know what
22 you're trying to lead me into saying, but there's a
23 river.

24 Q. No, no, I get that. Okay. I understand why
25 it's confusing because we've referred to the

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1 southwest portion as a staging area, too.
 2 But the staging area -- just tell me if
 3 I'm wrong. That's fine.
 4 A. Okay.
 5 Q. Was there staging area from the highway --
 6 as you mentioned the highway -- I don't remember the
 7 terms, the highway company, highway department?
 8 A. Bringing the concrete in.
 9 Q. Yeah, bringing the concrete in. Where did
 10 that concrete come from?
 11 A. IH 10.
 12 Q. Okay. And that's just across the river,
 13 right?
 14 A. IH 10 goes all the way through there.
 15 Q. Gotcha.
 16 A. It goes through -- it starts in Florida and
 17 ends up in Los Angeles. It's 850 miles across Texas.
 18 You're halfway to California when you get to El Paso.
 19 Now, I know I'm just 12th grade, but... anything
 20 else?
 21 Q. I told you to tell me if I was wrong.
 22 A. I'm just throwing a little humor in here to
 23 a very serious situation. So forgive me. Go ahead.
 24 Q. Nothing to forgive. Okay. Almost done
 25 here. Home stretch.

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1 Did you receive an Administrative Order
 2 from the EPA in January 2011?
 3 A. Saying what? Are you talking about Cease
 4 and Desist?
 5 Q. Well, the Cease and Desist was -- as we
 6 said, the Cease and Desist was from the Corps of
 7 Engineers in August 2010.
 8 A. Okay.
 9 Q. Did you receive an Administrative Order from
 10 the EPA, basically asking you or saying you had to,
 11 within 30 days, submit a Restoration Plan?
 12 Did you receive an Administrative Order?
 13 A. Okay. Let me think. I got a -- and I have
 14 everything you all sent me. Chuck's got it or I got
 15 it.
 16 That Administrative Order -- the first I
 17 remember is that I think Ms. Aldridge sent me one and
 18 it described something there about you're being
 19 charged, et cetera, et cetera.
 20 And one way you can resolve it is to
 21 pull the material back out and start over. Is that
 22 the one you're talking about?
 23 Q. That sounds right.
 24 A. Okay. Then I'll go further on on there.
 25 And then Ms. Aldridge stated on there that she still

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1 reserved the right to fine me. So by that time, I
 2 had a Stop Work Order from the County.
 3 So I was in what you call the proverbial
 4 Catch 22. So you-all stopped me. They stopped me.
 5 So Sonny, being a law-abiding citizen, I didn't do
 6 nothing.
 7 Q. So the County ordered you to not --
 8 A. It's called a Floodway Prevention Order.
 9 That's another one I didn't know nothing about.
 10 Q. They ordered you to not touch, essentially
 11 not touch what you had done in the fill on the
 12 property?
 13 A. Basically, I had to go do construction.
 14 There was nobody at the Corps of Engineers, nobody
 15 else ever told me about -- nobody ever told me about
 16 a Floodway Prevention Order. It's serious business.
 17 Q. And this Floodway Prevention Order is what
 18 you got from the County?
 19 A. From the County, yeah. And they gave me a
 20 Stop Work Order, too. So I got one from both of you
 21 all. Well, not from you but...
 22 Q. Would this Order have prevented you from
 23 removing the fill?
 24 A. They -- as I interpret that Stop Work Order,
 25 don't do nothing. Now that means -- I really gambled

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1 a little bit. I did walk down there a few times with
 2 these ladies and all.
 3 But I took it as cease and desist.
 4 Theirs says Stop Work Order, Stop something. You
 5 all's says Cease and Desist. The best of my
 6 interpretation of that is stop. Don't do nothing no
 7 more. Don't add to; don't take away.
 8 Q. So you may have answered this question, but
 9 why didn't you submit a Restoration Order -- a
 10 restoration Plan to the EPA as a result of the
 11 Administrative Order?
 12 A. Well, let me think on that one.
 13 Q. Sure.
 14 A. The first thing is I didn't think I had done
 15 nothing wrong. That's primary. When I get a
 16 speeding ticket and I'm speeding, I usually pay it.
 17 When I get accused by the Corps or whoever,
 18 EPA, if I didn't do nothing wrong, I usually don't
 19 pay.
 20 I ain't never got nothing this serious
 21 in my life. But when I'm right -- that's why I'm
 22 sitting here in this chair. That's why I didn't do
 23 it.
 24 And then she throws it in there that she
 25 might go ahead and just fine me after you go through

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1 that song and dance. Have you ever been involved in
 2 a restoration? You usually go broke. You usually go
 3 broke and two divorces. You never satisfy these
 4 people. I tried it at the Williams Brothers site.
 5 They try to make trees grow on upland. It
 6 wouldn't work. We've done it every time, time after
 7 time after time. And then John goes down there and
 8 makes me put a dam up and flood it and they still
 9 wouldn't grow. So it's a no-win game, my friend.
 10 You can't please these guys.
 11 And when I'm right, I stand my ground.
 12 We've got one or two constitutions in this building
 13 and one is sitting right behind me. When you're
 14 right, you don't raise a white flag.
 15 You do your best to convince somebody to
 16 listen to you. And that's what I've done. I've
 17 followed the law to the best of my ability.
 18 And I usually don't -- I ain't gonna
 19 start doing restoration or doing nothing when I
 20 didn't think I did nothing wrong. Now, I'll go on if
 21 you want me to, but I hope that's enough.
 22 MR. MURDOCK: No further questions.
 23 JUDICIAL OFFICER RANKIN: Okay.
 24 MR. KIBLER: A couple of redirect, Your
 25 Honor. I won't waste our time here.

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1 A. Well, I guess it means inside the levee.
 2 I'm not sure.
 3 Q. Is it smaller than that?
 4 A. Well, all we delineate --
 5 Q. Do you know?
 6 A. No, I don't know. All he delineate was
 7 around the levee.
 8 Q. 'I don't know is a perfectly fine answer. I
 9 told Ms. Aldridge that. I'll take that from you.
 10 Look at that one and tell me what it is.
 11 A. Okay. I got it.
 12 Q. What number is that?
 13 A. No. C 47.
 14 Q. Look at Complainant's No. 47. So the Court
 15 will understand what you were doing, you said that
 16 you were here at the Corps of Engineers having a
 17 meeting.
 18 Who were you having a meeting with?
 19 A. I was having a meeting with Jeff Pinsky and
 20 Bruce Bennett.
 21 Q. And the subject of that meeting was putting
 22 a road
 23 A. To the island, right here. [Indicating.]
 24 Q. -- the island. So --
 25 A. And permitting this site.

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1 REDIRECT EXAMINATION
 2 BY MR. KIBLER:
 3 Q. Which one is this one?
 4 A. I hope you can keep up with it. I moved
 5 some of them.
 6 Q. I want you to look at the one in your hand.
 7 That's Complainant's 44.
 8 A. Okay.
 9 Q. Jimmy White ever walk out in the middle of
 10 that property?
 11 A. No, not that I was aware.
 12 Q. Did Jimmy White ever do a tree count on that
 13 property?
 14 A. No. You would have had to have a boat.
 15 It's flooded. Not that I'm aware of, no.
 16 Q. Do you have any idea of how he came to
 17 state, utilize the word "dominate" in the center of
 18 the property?
 19 A. Probably that's what the Corps wanted him to
 20 say.
 21 Q. "Cypress trees, swamp tupelo, Drummond's
 22 rattie brush or bush and swamp smart-weed now
 23 dominate the central portion of this site."
 24 Do you have any idea of what Jimmy White
 25 means when he says the central portion?

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1 Q. Okay. So the Court will understand, you
 2 were trying to build a road over to this Oxhew Island
 3 that's over here to the east of your property, right?
 4 A. Right. To restore the erosion.
 5 Q. And you were talking to Mr. Pinsky and other
 6 people here at the Corps to do that --
 7 A. Yeah.
 8 Q. -- when Mr. Davidson came in and said they
 9 were going to charge you for violations under your
 10 current Nationwide 3 that you were working under on
 11 this site, right?
 12 A. That's right. I never had a clue that was
 13 coming.
 14 Q. Were they working with you to put this road
 15 in over to that island?
 16 A. Jeff Pinsky and the other little feller. I
 17 can't -- Novelsky (phonetic) or something like that.
 18 We all come down there. They couldn't get there so I
 19 go get them both. I bring them over there and they
 20 delineated about an acre.
 21 And it was for me to build a road to get
 22 over there to my island over here. I own it, too,
 23 personally. Well, it's eroding, too, and trees are
 24 falling in and so cetera. And I just wanted to get
 25 over there and fix it. And we did. We were doing

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1 That. I went through the process.

2 And when I got a phone call from Jeff,
3 he said everybody from the EPA and some guy in Dallas
4 who probably ain't there no more --

5 Q. You were here, you were having a meeting
6 with the Corps to try to delineate --

7 A. No. Permit.

8 Q. -- or try to permit and have a road put over
9 there?

10 A. Yeah. The site in here

11 Q. Is it your hope that one day -- because
12 obviously one of the things we haven't said, and I
13 think all of us have been involved in the case so
14 long that we know, this piece of land is a spit from
15 the Interstate 10, right?

16 A. It's the last of the Mohicans.

17 Q. Well, it's right there. I mean, I-10 would
18 be the bottom of that photograph, would it not?

19 A. The IH-10 Bridge, that's it. And that's
20 what we was trying --

21 Q. The Neches River is right there, correct?

22 A. Yeah.

23 Q. There are plans to, in the next few -- in
24 very short order, in the next few years, I guess.

25 A. They're down there right now.

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1 MR. KIBLER: Yes, Your Honor.

2 BY MR. KIBLER:

3 Q. Could you make economic value of your
4 property if it were not encumbered by the regulations
5 that you currently are encumbered by?

6 A. Definitely.

7 Q. Is it your hope that one day you will be
8 able to utilize your property to economic benefit?

9 A. I was trying to do that, yeah.

10 MR. KIBLER: Your Honor, I will pass the
11 witness.

12 MR. MURDOCK: I pass.

13 JUDICIAL OFFICER RANKIN: I have one
14 thing I think to add to what Mr. Kibler asked.

15 This site that you were in negotiations
16 with the Corps to permit, if I remember correctly
17 from the record, it's been awhile since I've looked
18 at this part, that would have been involving about 10
19 acres of wetland to build a bridge across to the
20 Oxbow cutoff there?

21 THE WITNESS: Yes. It and one acre.

22 JUDICIAL OFFICER RANKIN: One acre?
23 Okay.

24 THE WITNESS: One acre. And I forget --
25 can't remember how much -- whether it was all of this

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1 Q. They're down there working already. They
2 are going to demolish the current I-10 Bridge,
3 correct?

4 A. And I was going to get the concrete. Was.

5 Q. And they wanted to pay you money to stage
6 that concrete there, right?

7 A. If I would have been bold enough to ask them
8 but I was afraid that if I was to get them, I
9 couldn't charge them.

10 Q. At any rate, you could make economic use of
11 this property had you been able to use it or utilize
12 it in any way you wanted to, correct?

13 MR. MURDOCK: I object. Leading.

14 BY MR. KIBLER:

15 Q. Did you utilize the property to economic
16 benefit if you didn't --

17 JUDICIAL OFFICER RANKIN: I haven't
18 ruled on the objection.

19 MR. KIBLER: Oh, I'm sorry. I thought
20 you did. I'm sorry. I'll reword the question.

21 JUDICIAL OFFICER RANKIN: You are
22 leading, you know, and as much as we all would like
23 to finish this up, I'm going to -- unless it becomes
24 it absolutely necessary, I'm going to sustain it at
25 this time.

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1 but I offered 90 acres of trade.

2 JUDICIAL OFFICER RANKIN: Was that the
3 only one you were dealing with at the time?

4 THE WITNESS: He combined both of them
5 together. In other words, Jeff Pinsky and I found
6 the letter in a box, and he recommended that I put
7 them together and do them both at the same time.

8 Do this site and the road to the island
9 at the same time so we made one number. And that's
10 what we were negotiating to at that time when the
11 hammer dropped on me.

12 JUDICIAL OFFICER RANKIN: Now, Jimmy
13 White with GTI, this is something else I've been
14 wondering about for a while.

15 He was employed by GTI. Am I correct on
16 that?

17 THE WITNESS: We hired Jimmy. We hired
18 Jimmy White to do the Nationwide No. 3 and the
19 original delineation. I was doing this little one-
20 acre deal myself.

21 JUDICIAL OFFICER RANKIN: But Jimmy
22 White worked for GTI and he's the guy who flagged the
23 property

24 THE WITNESS: Yes. He come out and did
25 the delineation.

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1 JUDICIAL OFFICER RANKIN: along the
2 boundary line. I've been wondering a long time where
3 these flags came from.

4 THE WITNESS: The Corps didn't do it.
5 My man did it.

6 JUDICIAL OFFICER RANKIN: Okay. Was
7 there 10 feet between those flags and the inside base
8 of that levee?

9 THE WITNESS: Well, of the front piece?
10 Well, up here, this is if you get the report, the
11 delineation line is way on up in here. They got
12 see, I don't know how to scale. The delineation --

13 JUDICIAL OFFICER RANKIN: I don't
14 either.

15 THE WITNESS: -- it goes all up in here.
16 The fact is, I thought this site was upland, okay,
17 and it goes all the way around it.

18 My man went up and tested it on the high
19 ground. He didn't go out here. And so what we -- I
20 had eight-and-a-half upland, including this, this and
21 this little piece through here. (Indicating.)

22 And I'm sorry. I've already done forgot
23 the question. I'm sorry.

24 JUDICIAL OFFICER RANKIN: The question,
25 Mr. Stevenson, was whether, in most places at least,

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1 10 feet between the inside bottom of that levee and
2 those flags that Jimmy White put out there, 10 feet
3 or more?

4 THE WITNESS: Up here, around here,
5 there was a big oak tree right here with a flag on
6 it, (indicating.) and I took a picture. That was
7 probably, from the levee itself, out maybe 30 feet.

8 Where all the way around this right here
9 -- right here, it was maybe 75 feet. (Indicating.)
10 Okay.

11 JUDICIAL OFFICER RANKIN: Yes.

12 THE WITNESS: Sir?

13 JUDICIAL OFFICER RANKIN: The answer is
14 "yes." There was at least 10 feet from the base of
15 the levee out to flags?

16 THE WITNESS: I would have to say that
17 it was further than that at the narrowest place.

18 JUDICIAL OFFICER RANKIN: Was there at
19 least 10 foot?

20 THE WITNESS: Oh. Well, I'm not very
21 good at answering. Yes, there was.

22 JUDICIAL OFFICER RANKIN: All right.

23 THE WITNESS: I apologize. My wife will
24 back me up on that.

25 JUDICIAL OFFICER RANKIN: Unless

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1 somebody wants to go further on this, I think you can
2 step down, Mr. Stevenson.

3 (Witness excused.)

4 I have some other business to do with
5 the lawyers. I think this notebook, the file-bound
6 document there is probably the Pre-Construction
7 Notification and we've been pulling pieces out of and
8 such.

9 MR. KIBLER: It is.

10 JUDICIAL OFFICER RANKIN: And I believe
11 you said, Mr. Kibler, that we couldn't have it for
12 the file here for our records.

13 I'm wondering, at least to the extent a
14 portion of it suggest that they wanted to move this
15 levee 10 feet farther away from the river, or at
16 least extend it out 10 feet farther from the river.

17 Could we, at least, have that part of it
18 copied?

19 MR. KIBLER: Your Honor, you can have
20 the whole thing if I thought it would be admissible.
21 I didn't put this in my pre-exchange because until I
22 got the materials from the Complainant, this document
23 didn't make much difference.

24 JUDICIAL OFFICER RANKIN: I think we can
25 get it in as rebuttal testimony myself --

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1 MR. KIBLER: I'll be happy to prove it
2 up.

3 JUDICIAL OFFICER RANKIN: -- since we
4 are having a lot of testimony on --

5 MR. KIBLER: Your Honor, can we put him
6 back on the stand for just a second. I'll be happy
7 to prove --

8 JUDICIAL OFFICER RANKIN: Unless Mr.
9 Murdock has something to say about it.

10 MR. MURDOCK: Sure. You can put him on
11 for that purpose.

12 JUDICIAL OFFICER RANKIN: Okay.

13 Whereupon,

14 HENRY (SONNY) STEVENSON
15 having been previously sworn, was recalled as a
16 rebuttal witness by the Respondent and testified upon
17 his oath as follows:

18 DIRECT EXAMINATION

19 BY MR. KIBLER:

20 Q. Mr. Stevenson, have you ever seen that
21 document, that report?

22 A. This is the original delineation on the
23 project, on the site.

24 Q. All right. And who did that work?

25 A. STI.

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1 Q. And who signed it as a representative of
2 GTI?
3 A. I'd have to turn through here, but Jimmy
4 White did it.
5 Q. Okay.
6 A. He was the man.
7 Q. And did your company, did Parkwood Land
8 Company hire Jimmy White to produce this report?
9 A. Yes. And I can tell you how much.
10 Q. I didn't ask you that. I asked you if you
11 hired him to do it? Did you hire him to do it?
12 A. Yeah.
13 Q. Is this the report that he submitted on your
14 behalf to the Corps of Engineers? Is that true?
15 A. As best I -- yeah.
16 MR. KIBLER: Your Honor, I'd like to
17 have the Identification and Delineation of Waters of
18 the United States entered as evidence as Respondent's
19 4.
20 JUDICIAL OFFICER RANKIN: Do we have an
21 objection?
22 MR. MURDOCK: The only issue I have is I
23 haven't had to chance to -- is this entirely in the
24 record?
25 JUDICIAL OFFICER RANKIN: I don't

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1 believe it is in the record other than little pieces
2 of it. I think that the map that the Corps and you,
3 Mr. Murdock, have relied on in this matter to show
4 that the fill was all supposed to be placed on the
5 outside of the levee, unless I'm mistaken, it came
6 out of that report.
7 MR. KIBLER: It is.
8 JUDICIAL OFFICER RANKIN: But the way
9 you all received -- the way Ms. Aldridge received it,
10 was just part of it that came in along, of course,
11 with the referral package.
12 The same way that Ms. Aldridge based, at
13 least to some extent, her decisions on culpability in
14 this matter from the Corps's referral package, which
15 did not have a full description of those items but
16 just numbered them, okay.
17 So little pieces of this thing are in
18 the record. But in context, I think that if there
19 are conflicts or there is a conflict between what
20 that map says and what another part of the report
21 says, I think it should be in the record as rebuttal
22 testimony since you relied on the map.
23 MR. MURDOCK: Okay. I don't have an
24 objection to that as rebuttal testimony. That's
25 fine.

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1 MR. KIBLER: Your Honor, I ask that it
2 be admitted. Is it admitted?
3 JUDICIAL OFFICER RANKIN: Yes. It's
4 definitely admitted. I requested that it be
5 admitted.
6 [Respondent's Exhibit No. 4 admitted
7 into evidence.]
8 MR. KIBLER: I thought so. I've got
9 another one. Your Honor, real quick.
10 JUDICIAL OFFICER RANKIN: What's this
11 one now?
12 MR. KIBLER: This is the Pre-
13 construction Notification.
14 JUDICIAL OFFICER RANKIN: I thought
15 that's what --
16 MR. KIBLER: No. That was the
17 delineation.
18 JUDICIAL OFFICER RANKIN: Oh, okay.
19 MR. KIBLER: There are bits and pieces
20 of both of these.
21 THE WITNESS: And you covered it real
22 well, too, both of them.
23 BY MR. MURDOCK:
24 Q. Have you seen that document before?
25 A. Yes, I sure have.

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1 Q. What is it?
2 A. It's the permit that David Noth required us
3 to do through Jimmy White, and I paid him for it,
4 Nationwide No. 3, to fix the levee.
5 Q. Okay. This is GTI filing an application for
6 a Nationwide No. 3 to the Corps of Engineers on your
7 behalf; is that true?
8 A. Yes.
9 Q. Is this the document that he produced for
10 you?
11 A. That's correct. All -- everything.
12 MR. KIBLER: Your Honor, I ask that the
13 Pre-construction Notification for a Nationwide Permit
14 No. 3 provided by GTI on behalf of Parkwood Land be
15 submitted as evidence.
16 JUDICIAL OFFICER RANKIN: I thought that
17 was what we were just talking about.
18 MR. KIBLER: There are actually two
19 document and bits and pieces of both of them are
20 mixed up in their materials.
21 JUDICIAL OFFICER RANKIN: In the
22 referral?
23 MR. KIBLER: Yes. In fact, a lot of it
24 ended up in the 200-plus pages that we got 14 days
25 ago that I objected about because I couldn't --

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1 That's what I was saying when we had that
2 conversation, you ordered that both sides submit on
3 November 1st.

4 And I said, well, how am I supposed to
5 know what he's going to give me and go back and go in
6 my little puddle of tricks and come out with. I
7 don't know what he's going to give me.

8 So I didn't have these submitted as pre
9 because they didn't -- they weren't worth anything
10 until some of the materials that he submitted on
11 October 31. And now, I don't have time to submit
12 them.

13 JUDICIAL OFFICER RANKIN: Well, let's
14 see if Mr. Murdock has any objection.

15 MR. MURDOCK: No objection.

16 JUDICIAL OFFICER RANKIN: No objection,
17 then it's admitted.

18 MR. KIBLER: Thank you, Your Honor.

19 [Respondent's Exhibit No. 5 admitted
20 into evidence.]

21 THE WITNESS: Mr. Murdock, are these all
22 yours?

23 MR. MURDOCK: They're all hers.

24 MR. KIBLER: Your Honor, I'll take this
25 opportunity to shut up.

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1 JUDICIAL OFFICER RANKIN: Let's suggest
2 -- and this may be a little unorthodox, let's let Mr.
3 Murdock give his closing statement first. And if
4 there's anything you feel like you've got to respond
5 to -- I mean, Mr. Kibler give it first and then if
6 Mr. Murdock wants to respond, then we'll let him take
7 a shot at it.

8 MR. KIBLER: That works for me, Your
9 Honor.

10 CLOSING STATEMENT ON BEHALF OF THE RESPONDENT

11 MR. KIBLER: Where to begin? We have a
12 process here that's in place whereby an average
13 citizen who owns a piece of real property must
14 intuitively, "I'm not exactly sure, but at some
15 point, "I think that might be a wetland," and,
16 therefore, I'd better ask for a delineation.

17 I made a reference with Mr. Davidson
18 about the wet spot in the back of my yard, which if
19 you read about the breach of the Clean Water Act,
20 it's a little fuzzy as to whether that puddle in the
21 back of my yard, whenever it rains, is covered by the
22 Clean Water Act. And, therefore, part of my property
23 is regulated by the Corps of Engineers.

24 My client owns or is part owner of
25 entities, which own properties in southeast Texas --

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1 JUDICIAL OFFICER RANKIN: I think I
2 heard you suggesting that you wanted to do a closing
3 argument?

4 MR. KIBLER: Very quickly.

5 JUDICIAL OFFICER RANKIN: And I guess
6 Mr. Murdock will have that as well. Is anybody
7 requesting to file a post hearing brief or
8 memorandum? Would you like to? I mean, I don't
9 care.

10 MR. KIBLER: I don't want to, Your
11 Honor.

12 MR. MURDOCK: No, thank you, Your Honor.

13 JUDICIAL OFFICER RANKIN: What?

14 MR. MURDOCK: No, thank you.

15 JUDICIAL OFFICER RANKIN: Okay. Then
16 we will hear -- let's let Mr. Murdock go first.

17 THE WITNESS: Can I step down, Your
18 Honor?

19 JUDICIAL OFFICER RANKIN: You may
20 certainly step down, Mr. Stevenson. Thank you for
21 your testimony.

22 [Witness excused.]

23 MR. MURDOCK: Your Honor, in light of
24 the fact that I gave an opening statement, I'm going
25 to forego closing statement.

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1 and, gee, we don't have any water in southeast Texas.
2 It's dry as a bone.

3 And as a owner of these entities, he
4 has, over time, had contacts with the Corps of
5 Engineers because he doesn't want to be in trouble.
6 And there have been times that he's been in trouble
7 where he probably should have asked.

8 But when he made a mistake, he got an
9 after-the-fact. He did the things. He did the
10 mitigation that he was supposed to do.

11 And on this particular piece of property
12 that we're here on today, he paid a lot of money to
13 an engineering firm to do what he didn't know how to
14 do himself.

15 And they delineated it themselves or
16 provided a delineation report, which we just entered,
17 because the Corps didn't have time to do it and he
18 wanted to work.

19 And they provided a Pre-construction
20 Notice to the Corps. And in the Pre construction
21 Notice, it says something different than what Mr.
22 Stevenson intended or thought was what he was
23 supposed to be able to do.

24 At this point, and I don't want to bad
25 mouth the Corps. I know they do a great job and they

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1 have a lot on their plate, but when we are a
2 regulatory agency that says "yes," you can do that or
3 "no," you can't, but then we don't come back and say
4 on our site visits, oh, by the way, you're messing up
here but you can file this other permit for that. We
6 don't say that.

7 I think we've heard three witnesses for
8 the Complainants say, "but he could have applied for
9 Nationwide 13 or 4," or he could have done this or he
10 could have done that.

11 This has been more about how do we stick
12 Mr. Stevenson and Parkwood Land Company with a really
13 large fine.

14 Well, let's start with the red that
15 showed up on the Complainant's 47. I forget, but I
16 think it's probably Complainant's 47 in the record.

17 Ms. Shivers says that that was erroneous
18 data that was put into the system. She says that the
19 green area is the line between upland and wetland.

20 And when I asked her, well, why is the red
21 line on the north side of the green line? Well,
22 that's erroneous information, so that's not really a
23 violation. And her answer: Yes, it is. And I never
24 really could get that straight with her.

25 If the violated area or the area that

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1 Because after Mr. Davidson and I got
2 finished talking, this four pages that's been
3 submitted that basically says that Sonny Stevenson is
4 a bad player.

5 That's really what this -- this was not
6 meant to be -- to say that he did things specifically
7 wrong or how bad he was or how egregious his crimes
8 against humanity were, it was meant to put four pages
9 of stuff in front of the Court to say that Sonny
10 Stevenson is a repeat offender and he's been there
11 over and over again.

12 And when it comes down to it, when you
13 listen to Mr. Davidson's testimony -- he didn't give
14 it up willingly. I had to pull it out of him. There
15 are only three entries in there that he says are
16 things that he did wrong.

17 One of those was an after-the-fact
18 permit when Mr. Stevenson and, actually, it wasn't
19 even Mr. Stevenson personally. It was -- ACR, LP
20 made a violation. And they got an after-the-fact
21 permit and mitigated a bunch of land.

22 To say that Mr. Stevenson is a bad
23 player because he asked for delineation or to say
24 that Mr. Stevenson is a bad player because he asked
25 for something from the Corps, I think, is inherently

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1 they claim is a violation -- it's relatively small in
2 the grand scheme of things, but I need to point it
3 out.

4 If we're going to be a regulatory agency
5 that's going to go out here and say you messed up and
6 this is what you did, but I can't tell you how wide
7 and how long that particular piece is. I can tell
8 you how many acres it is.

9 Well, how did you get the acreage?
10 Well, I went out there with this GPS system and stuck
11 it into a computer program and that generated this
12 map and it told me how many acres. Okay. But that's
13 erroneous. So it's -- I'm sorry, an old 70s computer
14 term, trash in, trash out.

15 I don't have any idea whether this data
16 is anywhere near to being true. I don't have any
17 idea if this is the scale. I guess we go with that.

18 Mr. Davidson -- and I was appreciative
19 of his information. We did talk quite a bit about
20 the -- well, what did we talk about? We talked quite
21 a bit about the process and what he went through.

22 But the thing -- I have to go here. I
23 have to run over here. Ms. Aldridge testified about
24 how the penalty got calculated. Oh, I know. That's
25 what it's tied into my brain.

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1 wrong.

2 And for the penalty to be bigger because
3 he had a proactive or had an active role with the
4 Corps, that's wrong. To make the next assumption
5 that somehow Mr. Stevenson has acquired this vast
6 knowledge of the Clean Water Act, we've already shown
7 that they hired engineers.

8 The report that -- the summary from Mr.
9 Davidson even says: "d.p. Consulting Engineers
10 submitted DA permit application on behalf of..." It
11 doesn't say that Mr. Stevenson filled out anything.
12 It says "d.p. Consulting Engineers."

13 We've got GTI - d.p. Consulting
14 Engineers did most of the work. And I think that
15 really didn't come out in the testimony, but d.p.
16 Consulting Engineers did most of the work for ACR, LP
17 and GTI did the work for Parkwood.

18 To say Mr. Stevenson is somehow better
19 gifted in the ways of the Clean Water Act before he
20 had to go through this process because I think having
21 to go through preparation and trying to get ready for
22 a hearing like this, I think he's a lot smarter than
23 he was two years ago.

24 But to say that he should get a bigger
25 fine simply because he filed for applications or

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1 delineations and to say that he should get a bigger
2 fine because he knows more. I think, is a stretch or
3 an assumption that's -- quite frankly, it's not
4 valid.

To say that there is no calculation for
6 an economic benefit, either pro or con, on this
7 worksheet when calculating it, that's not in
8 accordance with what the Guidelines say.

The arbitrary capriciousness of picking
10 a set multiplier. Gee, I like 500. If I put 500 in
11 here, I haven't done the work and done the math. If
12 I put 500 in there, I guarantee you that 32,500 is
13 12. Guarantee it.

The amount that this can be skewed
15 simply based on somebody's arbitrary number, whim,
16 whether they like Mr. Stevenson, whether they didn't
17 like Mr. Stevenson, whether they'd heard of him
18 before or not.

I don't know. I just -- I think when
20 the authors of CFR sat down and drafted those six
21 guidelines, I think they were looking for a little
22 bit more objectivity than subjectivity. I think they
23 were looking for -- I don't know. I'm not sure that
24 they were looking at this.

And to say, and have Ms. Aldridge say so

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1 to be strong enough and it needed to be safe enough.
2 And while he may be mistaken about
3 putting fill on the inside, which is what he thought
4 he was getting. He thought he was putting fill on
5 the inside because that's what his application, Pre-
6 construction Notification said.

While he might be mistaken of where he
8 was supposed to put the fill, I certainly think that
9 the application of fill on the inside of the track
10 turnaround and the southwest corner, which gave him
11 the opportunity to utilize his upland there and that
12 area there to get the heavy equipment up into where
13 it's gotta be.

I think that is certainly within any
15 normal interpretation of minor modifications as we
16 pointed out and beat that line to death. But I think
17 any normal person would think, well, if I'm allowed
18 to do this project -- I'm not sure if -- you know,
19 Mr. Murdock has actually asked my client, you know,
20 could you take a barge up the river?

I'm not sure how the Corps -- you know,
22 the Corps has issued -- hey, tell you what, Sunny,
23 you go get you a delineation and you get your Pre-
24 construction Notification and you give it to us and
25 we'll give you a Nationwide 3 and you can go to work.

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1 on the stand, that they purposely went to 32,500 and
2 then backed the numbers in from there making it
3 outcome determinative thinking so they could
4 purposely have the largest Class 2 fine that they
5 could have -- I'm sorry, the only word I can think of
6 is that's reprehensible.

You don't come to conclusions. You
8 don't already figure out, well, I want to make it
9 32,500. I want to make it the biggest Class 1.

That's not the way the system is supposed to
11 work. You're supposed to work it in from the front.
12 What do you think his culpability was? What do you
13 really think that his compliance with, compliance
14 history, what do you think the need for deterrence
15 is?

Mr. Stevenson applied for a permit.
17 Spent a lot of money to get a permit. Did what he
18 thought he was supposed to be doing. And, obviously,
19 was not.

He still thinks he's right. He still
21 thinks that there's no jurisdiction on the property.
22 He still thinks that the truck turnaround and the
23 other areas on the southwest corner there, that he
24 put in there in order to accomplish the mission of
25 fixing the levee. It had to be wide enough, it had

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1 Did they think he was going to -- did
2 they think that a trackhoe was miraculously going to
3 fall from the sky by parachute there? I mean, he's
4 got to get it from the road up to where the work has
5 got to be done.

I think the bottom line is here, even if
7 he's wrong with what he originally thought he had
8 gotten in Nationwide No. 3, he didn't understand
9 that.

I think any work that he did on this
11 project was an attempt to comply with the Nationwide
12 3 and was certainly in compliance when you talk about
13 that minor deviations. And a \$32,500 fine for that
14 is absolutely not in line with his actions.

So with that, I will ask for either zero
16 fine or a fine of less than \$10,000. Thank you.

JUDICIAL OFFICER RANKIN: Mr. Murdock,
18 would you like to --

MR. MURDOCK: Yes. I thank you for your
20 indulgence in my little bit of unorthodoxy. I'll
21 keep it brief as I did in opening.

CLOSING STATEMENT ON BEHALF OF THE COMPLAINANT

MR. MURDOCK: As we set out to show,
24 first, that Texas Regional Condition, there's a
25 little confusion here. 1B, 2002; 2B, 2007 is the

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1 name. It's the same language. It's just 13 versus
2 23. Nothing has changed.

3 But we set out to show that that applied
4 and as a result. Pre-construction Application was
5 required because it qualified as a Bald Cypress
6 Tupelo swamp.

7 We had an expert, in Mr. Davidson, come
8 -- not only to identify the various vegetation, which
9 led him to say that it was a swamp, but he explained
10 how he did it. He explained its history in looking
11 at similar sites in east Texas.

12 And then we had two other non-expert
13 witnesses in Ms. Aldridge and Ms. Shivers explain how
14 they identified the individual vegetation even if
15 they couldn't come to the determinative decision of
16 whether it qualifies as a swamp. They both were able
17 to identify, both the Tupelo swamp, cattails
18 associated and cypress trees.

19 And we even had -- as Mr. Stevenson and
20 his Counsel said, he's not an engineer. It's not his
21 job to understand how this all works. So he hired
22 someone, who he is supposed to, GTI Environmental.

23 We're relying on their submissions to
24 the Corps and as such, we should rely on what they
25 said about "vegetation dominates the site." Cypress

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1 violations. Some, as Mr. Kibler termed them, "good
2 interactions." But whether or not, in Mr. Kibler's
3 and Mr. Stevenson's mind, these should be viewed
4 towards culpability.

5 The fact of the matter is, prior
6 experience or receipt of 404 authorization is part of
7 the Clean Water Act Guidance under Culpability.

8 And, ultimately, it's not Ms. Aldridge's
9 job to change what factors go into each one of these
10 penalty calculation factors according to what seems
11 fair to her. It's her job to implement the guidance
12 as it was adopted and that's what she did.

13 And one final note, Ms. Aldridge did not
14 agree that this was an outcome determinative penalty
15 calculation. In fact, she did not say, at any point,
16 that she said "I'm going to write in 32,500 here and
17 find the numbers to input."

18 Instead, she said that was a
19 consideration. And so that might not be, for
20 calculating penalties under the Clean Water Act, may
21 not be the prettiest process, it's -- I would
22 certainly object to the idea that it was an outcome
23 determinative one.

24 But instead, it was one of several
25 factors that she considered while relying on the

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1 trees, swamp Tupelo, nattle bush, swamp smart weed
2 dominate the central portion of the site.

3 Second, going to the fill -- as we've
4 heard testimony, it's not the Corps's job to analyze
5 feasibility. Their job is to analyze whether this is
6 a violation of the Clean Water Act as adopted by
7 Congress.

8 So the fact that, even if it is true,
9 that he would have had to have this truck turnaround
10 to bring up the dump truck, he needed to request that
11 in his authorization because it's not the Corps' job
12 to say it's economically feasible, especially when it
13 is potentially feasible to bring in a barge.

14 Whether or not he could afford that,
15 that's a possibility. And even that goes beyond the
16 Corps' requirement to look at what is or is not
17 feasible for the site.

18 And, finally, the Clean Water Act is a
19 strict liability statute. We understand that -- no
20 one here is trying to say -- I don't think that Mr.
21 Stevenson purposely set out to violate the Clean
22 Water Act or to do anything criminal that would
23 require a showing of his mental state.

24 Instead, we're simply saying that Mr.
25 Stevenson did have a history with the Corps. Some

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1 penalty policy. Thank you.

2 JUDICIAL OFFICER RANKIN: Well, with
3 that, we'll regard this case as submitted and I'll
4 take it under consideration, issue a written opinion
5 and today's evidentiary hearing is now closed.

6 [Whereupon, the hearing was concluded at
7 4:14 p.m.]

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REPORTER'S CERTIFICATION

I, Melody Wright, hereby certify that this is the transcript of the proceedings held before Patrick Rankin, Regional Judicial Officer, at the U.S. Army Corps of Engineers, Jadwin Building, 2906 Fort Point Road, Galveston, Texas on November 14, 2012, in the above styled cause, and that the foregoing is a full and correct transcription of the proceedings prepared by me or under my direction.

DATE: November 30, 2012

Melody Wright

Melody Wright, CSR

Official Reporter

1533 VZ County Road 4810

Chandler, TX 75758

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