



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 26 2010

REPLY TO THE ATTENTION OF:

C-14J

**BY PERSONAL DELIVERY**

The Honorable Marcy Toney  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd.  
Chicago, IL 60604

Re: Batesville Water & Gas Utility and Don Gunter Excavating, LLC,  
Docket No. CWA-05-2010-0013

Dear Judge Toney:

Please find enclosed a copy of Complainant's Motion to Amend Complaint Through Interdelineation Instantly that was filed today in the above-captioned matter.

Very truly yours,

  
Jeffrey A. Cahn  
Associate Regional Counsel

**Enclosure**

cc: Larry Kane  
Bingham McHale, LLP  
2700 Market Tower  
10 West Market Street  
Indianapolis, IN 46204

Kathryn Watson  
Spalding & Hilmes, PC  
330 South Downey Avenue  
Indianapolis, IN 46219

Greg Carlson, WW-16J

CERTIFICATE OF SERVICE

RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA REGION 5

2010 JUL 26 PM 12:57

I, Jeffrey A. Cahn, hereby certify that I caused a copy of "Complainant's Motion to Amend Complaint Through Interdelineation Instantner" to be served by United States Mail, Certified and Return Receipt Requested, on this 26 day of July, 2010, upon the following:


Larry Kane  
Bingham McHale, LLP  
2700 Market Tower  
10 West Market Street  
Indianapolis, IN 46204

Kathryn Watson  
Spalding & Hilmes, PC  
330 South Downey Avenue  
Indianapolis, IN 46219

I further certify that I caused a copy of "Complainant's Motion to Amend Complaint Through Interdelineation Instantner" to be personally on this 26 day of July, 2010, upon the following:

The Honorable Marcy Toney  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd.  
Chicago, IL 60604

I further certify that I caused the original of "Complainant's Motion to Amend Complaint Through Interdelineation Instantner" to be filed with the Regional Hearing Clerk, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Illinois 60604 on this 26 day of July, 2010.

  
\_\_\_\_\_  
Jeffrey A. Cahn  
Office of Regional Counsel  
U.S. Environmental Protection  
Agency  
Mail Code C-14J  
77 West Jackson Blvd.  
Chicago, Illinois 60604

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 5  
2010 JUL 26 PM 12:57

\_\_\_\_\_  
IN THE MATTER OF: )

BATESVILLE WATER & GAS UTILITY )  
and )  
DON GUNTER EXCAVATING, LLC, )

RESPONDENTS. )  
\_\_\_\_\_ )

Docket No. CWA-05-2010-0013

Judge Toney

**COMPLAINANT'S MOTION TO AMEND COMPLAINT THROUGH  
INTERDELINEATION INSTANTER**

Complainant moves the Presiding Officer for leave to amend its complaint through interdelineation, instanter, pursuant to 40 C.F.R. §§ 22.14(d) and 22.16(a). In further support, Complainant states as follows:

1. Complainant filed its Complaint in this matter on June 10, 2010.
2. On, or about, June 6, 2010, Respondent Don Gunter Excavating, LLC, ("Gunter Excavating") transmitted its Motion For Enlargement Of Time To File An Answer for filing.
3. On July 12, 2010, this Court granted the motion of Don Gunter, LLC, allowing Respondent until August 13, 2010, to file its Answer.
4. On, or about, July 12, 2010, Respondent Batesville Water & Gas Utility ("Batesville") transmitted its Answer for filing.
5. Upon review of the Answer of Batesville, Counsel for Complainant learned that, at a minimum, neither Counsel for Complainant, nor Batesville, received a copy of Exhibit 1 to the Complaint.
6. It appears that Exhibit 1 to the Complaint was inadvertently omitted from the filed and served copies.

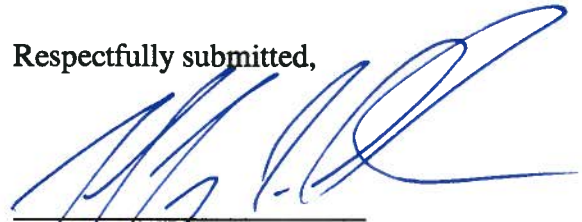
7. Exhibit 1 is an ariel photograph depicting the Moellenkramer Reservoir, along with the areas where (among other things) excavating, sidecasting, and stockpiling are alleged to have occurred. A copy of Exhibit 1 is attached to this Motion.

8. Complainant moves this Court for an order amending the Complaint through interdelineation, instantanter, to include the attached Exhibit 1 as a part of the Complaint.

9. Granting this Motion should not cause the Respondents prejudice. Respondent Gunter Excavating has not yet filed its Answer. Respondent Batesville has just filed its Answer. Exhibit 1 is referenced in only one paragraph of the Complaint. Complainant will not oppose a Motion by Respondent Batesville to file an amendment to its Answer regarding Exhibit 1 if Respondent Batesville determines such an amendment is necessary.

WHEREFORE, Complainant moves this Court to enter an order allowing amendment of the Complaint through interdelineation instantanter to include Exhibit 1.

Respectfully submitted,

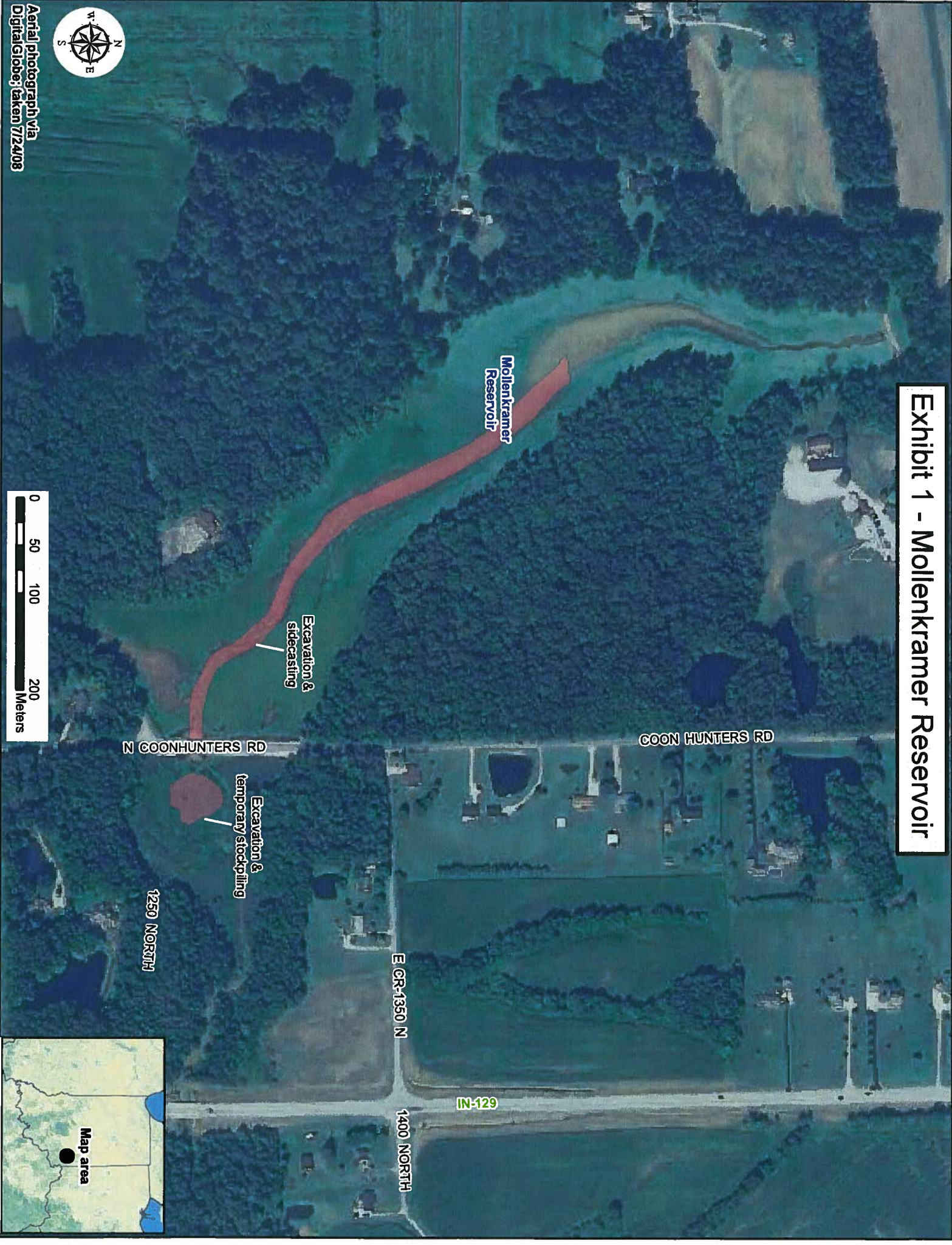


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Jeffrey A. Cahn  
Associate Regional Counsel  
Attorney for Complainant



# Exhibit 1 - Mollenkramer Reservoir



Mollenkramer Reservoir

Excavation & sidecasting

Excavation & temporary stockpiling

N COONHUNTERS RD

COON HUNTERS RD

1250 NORTH

E GR-1350 N

IN-129

1400 NORTH



Aerial photograph via DigitalGlobe; taken 7/24/08

