

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

ARKANSAS STATE CLAIMS COMMISSION

JAN 16 2009

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

RECEIVED

- Mr. Mrs. Ms. Miss

James H. Davis Claimant

Do Not Write in These Spaces
Claim No. 09-0625-CC
Date Filed January 16, 2009
Amount of Claim \$ 32,326.85
Fund AHTD

State of Arkansas, Respondent
Highway & Transportation

Property Damage/Loss of Profit/Ot

COMPLAINT

James H. Davis, the above named Claimant, of 94 S. Weed Rd. Arkadelphia
AR 71923 870-244-7497 County of CLARK represented by Pending

of (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.) says:

State agency involved: ARKANSAS Highway Dept. Amount sought: \$32,326.85

Month, day, year and place of incident or service:
Explanation: Please see enclosed copies of Incident Report. Also, copies of Settlement Request in detail.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?
NC when? (Month) (Day) (Year) to whom? (Department)

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? NC; if so, state name and address
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: and that the following action was taken thereon: and was acquired on, in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

James H. Davis (Print Claimant/Representative Name)

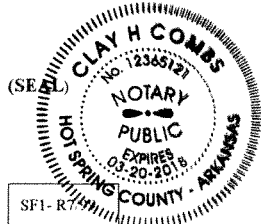
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Arkadelphia AR

on this 14th day of January 2009

(Date) (Month) (Year) (Notary Public)

My Commission Expires: 03 20 2008 (Month) (Day) (Year)



January 14, 2009

Mr. Norman L. Hodges Jr., Director
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Main Street Mall
Little Rock, AR. 72201-3823

ARKANSAS STATE
CLAIMS COMMISSION

JAN 16 2009

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Dear Mr. Hodges:

Re: Description of claim

From early August 2008, my pond located approximately 400 yards from the Arkansas Highway Department construction site has been contaminated to date. The construction site is located on the south side of Highway 26 just south of Arkadelphia joining my property on the east side.

Soil was excavated on their construction site from approximately a 60 foot by 140 foot with a depth of about 5 feet area. This soil was spread within just a few feet of my property line. I became concerned since the land of the construction site slopes downward then downhill across my property to my pond. I was assured by a supervisor more than once measures would be taken to keep the mud contained on the construction site. No action was taken and several weeks later a heavy rain fell and tons of mud run directly into the pond polluting it and killing the fish. The smell and mess was left for me to see and try to handle with very little results. Buzzards seemed to help more than I could.

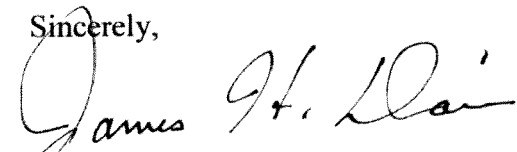
I made a feeble attempt not really knowing what to do and asked Mike Jester, inspector with the Arkansas Highway Department to come with me to look at this contamination after the second heavy rain. Two other men one being Blake Pierce, a surveyor with the Arkansas Highway Department had also witnessed the on going polluted damage process. I still find it hard to believe the total disregard for another person's property in this situation but am not naive enough to know different that they were following work orders as given to be done by the supervisor. I must say Mr. Jester was very nice and polite. He informed me that headquarters in Camden was aware of the situation although no one made any attempt to contact me. So I picked up the phone and called Camden while it was still raining. I talked with Mr. Baxter, in the district headquarters of the Arkansas Highway Department. He said the proper procedure to solve this situation is to file a claim with the Arkansas State Highway Department which I am now submitting to you.

Enclosed is a settlement sheet with three bids. Also enclosed is a detailed listing of what it will take to restore my pond back to the original condition, re-stock with fish, feed to edible size and loss of use for three years. I am also including photographs of ditches on

the construction site caused by the run-offs, mud settled among my pine trees, dead fish caused by the turbidity and the condition of my pond etc.

Many people would be willing to testify to the quality of fishing in my pond that had been developed and enjoyed for over 30 years.

Sincerely,



James H. Davis

Enclosures

ARKANSAS STATE CLAIMS COMMISSION
PROPERTY DAMAGE/PERSONAL INJURY INCIDENT REPORT FORM

SECTION I

CLAIMANT James H. Davis ADDRESS 94 S. Wood Rd

Arkadelphia CITY & STATE AR ZIP CODE 71923

DATE OF INCIDENT: Beginning Aug. 2008 19 TIME Ongoing

Give a brief description of incident, showing how incident happened, exact loss and extent of damage to property and/or injury to person:

Please See Attached Copies

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(If personal injury claim only, move on to Section IV)

SECTION II

Has this property been repaired? Yes () No () If repairs have been made, give the following

information: Amount: \$ _____ Have you paid for the repairs? Yes () No ()

NOTE: Attach a copy of repair bill.

If repairs have not been made, list three estimates below and **attach copies** of each of them.

NAME	ADDRESS	AMOUNT
<u>M+R CONSTRUCTION CO.</u>	<u>Arkadelphia, AR.</u>	<u>\$ 25,000</u>
<u>RON PENNY CONST. CO.</u>	<u>Arkadelphia, AR.</u>	<u>\$ 18,000</u>
<u>M+M ENTERPRISES</u>	<u>Gardner, AR.</u>	<u>\$ 16,640</u>

SECTION III

Was property covered by insurance? Yes () No ()
 If yes, what is the deductible? \$ _____

NAME OF INSURANCE CARRIER ADDRESS

SECTION IV

Is injured covered by medical insurance? Yes () No ()
 If yes, what is the deductible? \$ _____

If yes, is medical insurance:

- A. Job-based Yes () No ()
- B. Uninsured Motorist Yes () No ()
- C. Private Pay Yes () No ()

NAME OF INSURANCE CARRIER ADDRESS

SECTION V

If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation: _____

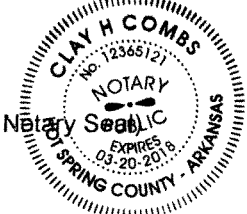
SECTION VI

The undersigned states on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.

James H. Davis
Signature of Claimant

Sworn to and subscribed before me at Arkadelphia, AR
City & State

on this 14 day of January, 2009.
day month year



My Commission Expires 03-20-2010

[Signature]
Signature of Notary Public

SETTLEMENT REQUEST

Restoration of pond	\$16640.00
Restocking fish and growing to catchable size with proper feed and fertilization	5686.85
Loss of use for 3 years and devaluation of property	10000.00
	<hr/>
	\$32326.85

This is a fair and equitable settlement request for the pollution and damage to my pond, the years of fish development destroyed, loss of use and devaluation of my property.

This settlement request is for past and present damages as of January 2009.

**ARKANSAS STATE
CLAIMS COMMISSION**

JAN 16 2009

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Cost of cleaning pollution and damage to pond:

M & R Construction Company	\$25000.00
Ron Penny Construction Company	18000.00
M & M Enterprises	16640.00

Please see copies of Bid Sheets.

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CLAIMS COMMISSION**

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M&M ENTERPRISES

1502 Smithton Road

Gurdon, AR 71743

Tel. (870) 353-2527

ARKANSAS STATE
CLAIMS COMMISSION

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Clean run off sludge off 2 acre pond

Track hoe- \$ 100 per hour X 72 hrs. = 7,200.00

Dozer work- \$100 per hour X 60 hrs. = 6,000.00

Dump trucks-

22 yd. dump- \$65 per hr.- 20 hrs. = \$1,300

18 yd. dump- 50 per hr.- 20 hrs. = \$1,000

Pump Pond Dry - Keep dry until work is done.

\$30 per hr. x 38 hrs. = \$1140

TOTAL

\$16,640.00

RON PENNEY CONSTRUCTION, INC.
856 OLD MILITARY ROAD

ARKADELPHIA, AR 71923

870-246-6343-CELL 870-245-6988

FAX: 870-246-5970

CONTRACTOR'S LICENSE # 0125200107

ARKANSAS STATE
CLAIMS COMMISSION

JUL 16 2009

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TO: JAMES AND BRENDA DAVIS

ESTIMATE

DRAIN AND CLEAN OUT POND SEDIMENT TO ORIGINAL DEPTH AND HAUL
THE SEDIMENT OFF.

TOTAL: \$18,000

THANK YOU,

Ronnie

RON PENNEY

939346

STATEMENT

DATE

12-03-08

TERMS

TO

James Davis

ADDRESS

Arkadelphia ar 71923

IN ACCOUNT WITH

M & R Const Co

PO Box 1288

Arkadelphia ar 71923

Cleaning pond out
 Due to washed dirt in
 it from AHWDep New
 Building when clear lot off
 Run off of the property
 went into ponds.
 Pump water out of
 Pond & clean out back
 to hard surfaces.

\$25,000.00
 NO Tax

Cell 870.403-3439

Bill
[Signature]

adams DC5812

ARKANSAS STATE
 CLAIMS COMMISSION

ARKANSAS STATE
 CLAIMS COMMISSION

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Restocking of fish

(See Enclosed price sheet from Dunn Fish Farm)

Crappie (1 inch to 3 inch)	300	=	255.00
Channel Catfish (6 inch to 8 inch)	600	=	390.00
Bass (6 to 8 inch)	500	=	1500.00
Fathead Minnows	40 lbs	=	398.00
Hybrid Bluegill (4 to 5 inch)	400	=	420.00
Coppernose Bluegill	500	=	325.00
Redear Bream	500	=	350.00
Grass Carp	25	=	<u>150.00</u>
			3788.00

Fish Feed: 7 month feeding season

3 years 50lb each week = 84 weeks x 16.00 per 50lb sack = 1344.00

Fertilizer: 4 Gal. per year x 3 years = 12 Gals. = 134.85

Lime: 10 tons lime at 42.00 per ton = 420.00

Lime prices according to Garland County SFA

Fish fingerlings	3788.00
Fish feed	1344.00
Fertilizer	134.85
Lime	420.00
Total	<u>5686.85</u>

**ARKANSAS STATE
CLAIMS COMMISSION**

JAN 16 2009

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Dunn's
Fish Farm

P.O. Box 85
Fittstown, OK 74820
800.433.2950 fax 580.777.2899
<http://www.dunnfishfarm.com>

Invoice No. _____

Delivery Invoice

Customer

Name James David
Address 94 South Wood Rd
City Arkadelphia State AR ZIP 71923
Phone _____

Date 11/4/2008
Order No. _____
Rep _____
Total # Ponds DO NOT SKIP

Qty	Description	Unit Price	TOTAL
100	6-8" Channel Catfish	\$0.65	\$65.00
200	lbs Channel Catfish 2# ave	\$3.50	\$700.00
100	6-8" Bass	\$3.00	\$300.00
100	lbs Large Bass	\$9.95	\$995.00
10	lbs Fathead Minnows	\$9.95	\$99.50
100	4-5" Hybrid Bluegill	\$1.05	\$105.00
100	3-4" Coppernose Bluegill	\$0.65	\$65.00
100	3-4" Redear Bream	\$0.70	\$70.00
100	8-10" Grass Carp	\$6.00	\$600.00

All sizes may not be available when ordering

Payment Details

- Cash
- Check
- Credit Card Visa

Name _____
CC # _____
Expires _____

SubTotal	\$2,999.50
Shipping & Handling	\$0.00
Taxes	State _____
TOTAL	\$2,999.50

Office Use Only

Directions To The Pond/Lake Site

Please Enter A Complete Set Of Directions To The Pond Site Here. Please Complete With Each Order

Thank you for your patronage!

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11

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The Best Information Available

Visit us at www.dunnfishfarm.com

Once again, it is time for our annual Holiday Special. We will have the best prices and fish specials in the industry. All manufactured items are 10% off. Check out these deals.

1400JFL Fountain by Kasco. Control box, Timer, GFI Protected, 5 Displays & Lights for only **\$764.95**

Dunn's "Trophy Grower" Liquid Pond Fertilizer only per case (4 gallons) only **\$44.95**

Dunn's "Sure Ketch" Turtle Trap
In Production since 1982
Only **\$152.95**

Aquapro 25dx hanging fish feeder. Solar Panel & Battery Included Only **\$128.67**

Floating Dock Packages 16.8 feet by 5 feet starting at **\$1999.00**



DON'T KNOW WHAT TO GET THAT SPECIAL SOMEONE.....

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www.dunnfishfarm.com
800.433.2950



You're not done with that Christmas TREE! A strategically placed Christmas Tree can make for great cover in your pond..

Articles available

- Algae Problems
- Nutrient Problems
- Water
- Temperature
- Feeding Your Fish
- pH Levels & Liming
- Diving & Wading
- Birds
- Spawning Areas
- Fish & Wildlife
- Water Gardens

Other Resources available online

- Pond Size
- Calculator
- Fish Stocking Rates
- Fish Identification
- Fish Production
- Identify Vegetation
- Spawning Areas
- Nuisance Animals
- Trapping Supplies



Your order needs to be Received By **January 8th 2008**

- FOUNTAINS BY KASCO
- DOCKS BY CANDOCK
- AQUAPRO FISH FEEDERS
- VEGETATION CONTROL
- PH & OXYGEN METERS
- POND FERTILIZERS
- TRAPPING SUPPLIES
- WINDMILLS
- WASTE & SLUDGE
- POND DYES

Pond & Lake Management Products

Dunn's Fish Farm offers a full line of pond & lake management products. We work hard providing you the best solutions in the industry.

- Algae Control Products
- Emergent Weed Control
- Submerged Weed Control
- Floating Vegetation Control

Did you know.....

It takes about 5 pounds of bluegill to produce a pound of bass... More on this at www.dunnfishfarm.com

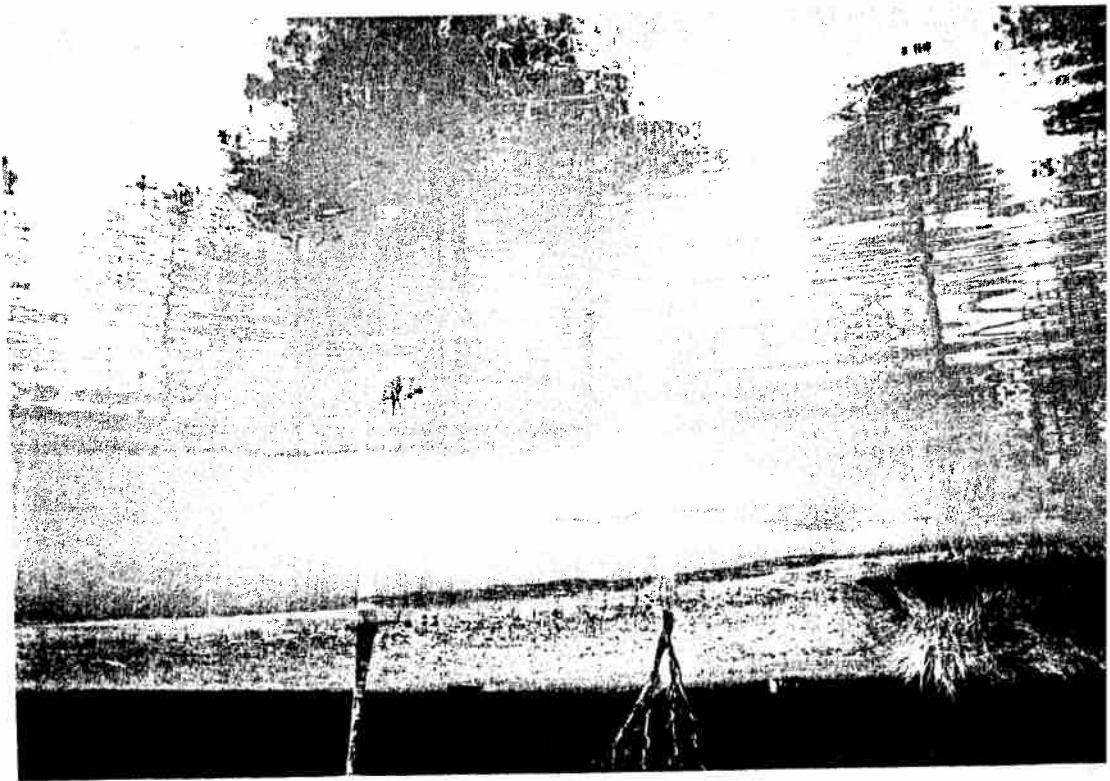
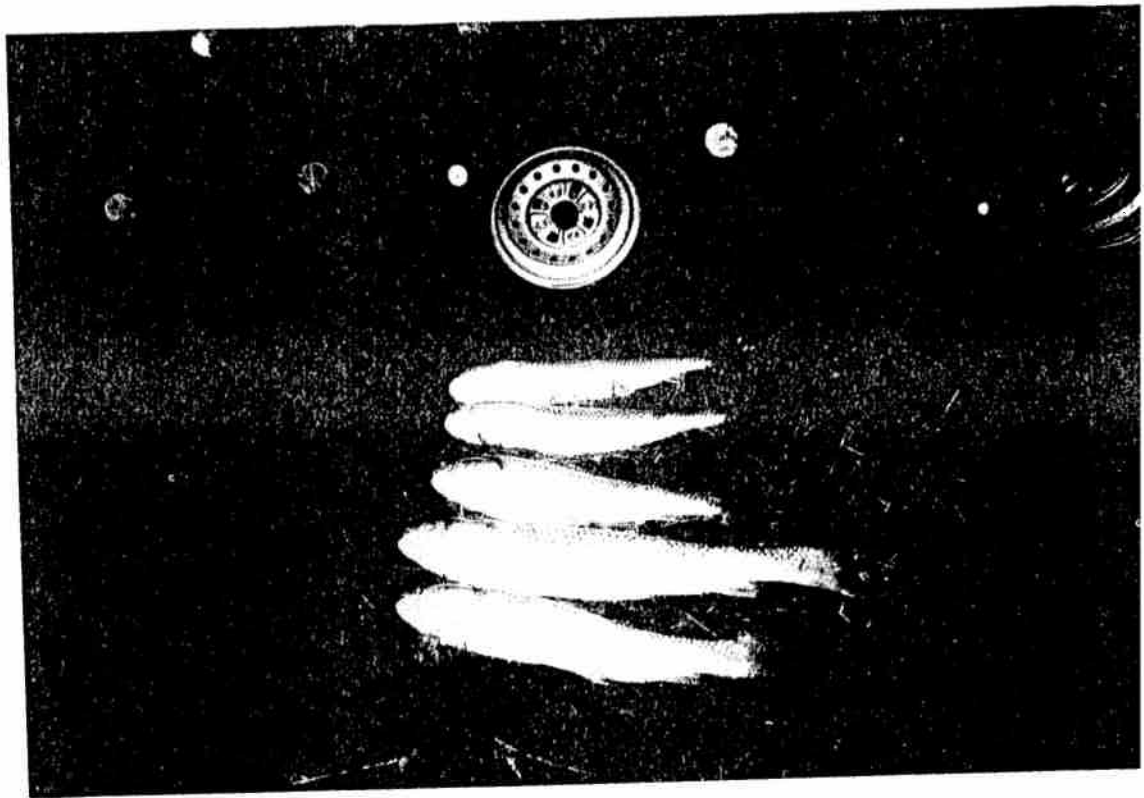
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SEASON'S GREETINGS









BEFORE THE ARKANSAS STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

JAMES H. DAVIS

CLAIMANT

V.

CLAIM NO. 09-0625-CC

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

RESPONDENT

ANSWER

Comes the Respondent and for its Answer to the Complaint herein states:

1. The Respondent denies all allegations of the Complaint not admitted herein.
2. The Claimant's damage, if any, was not caused by the negligence of the Arkansas State Highway and Transportation Department or its employees.

WHEREFORE, the Respondent PRAYS for dismissal of the Complaint, for cost, and all proper relief.

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

By: _____

David Dawson

David Dawson
Staff Attorney
AHTD, Legal Division
Arkansas Bar No. 93087
P. O. Box 2261
Little Rock, AR 72203-2261
(501) 569-2277

ARKANSAS STATE
CLAIMS COMMISSION

FEB 04 2009

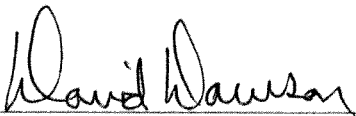
RECEIVED

CERTIFICATE OF SERVICE

I, David Dawson, certify that I have served the foregoing Answer upon the Claimant by mailing a true copy of same this 2 day of February, 2009,

to:

James H. Davis
94 S. Wood Road
Arkadelphia, AR 71923



David Dawson

09/06/08

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

RECEIVED

JAMES H. DAVIS

CLAIMANT

V.

CLAIM NO. 09-0625-CC

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

RESPONDENT

RESPONDENT'S PREHEARING STATEMENT

Comes the Respondent, and for its Prehearing Statement, states:

Facts

The Respondent owns property in Clark County Arkansas on which it is building a new Area Maintenance Headquarters facility and Resident Engineer's office. This property borders the southeast edge of the Claimant's property. Around June of 2006, dirt from the building site was excavated and spread on the western side of Respondent's property. Silt fencing and erosion control ponds and fencing were installed. The area was also over seeded for vegetation growth. In late August or early September 2008, a severe tropical storm (the remnant of a Gulf Coast hurricane) struck the area, resulting in a tremendous amount of rainfall. It is around this time that Claimant claims that dirt washed from the Respondent's property, travelled over 700 feet through an area covered by trees, brush and a pretty dense covering of leaves, weeds and pine needles, and into his pond, causing damage. Not all of the water from the tropical storm would have entered Claimant's property from the Respondent's property. Water and dirt would have also come from neighboring properties.

Argument

Any dirt that may have washed from the Respondent's property would have added a minimal amount of sediment to the pond. Mr. Brooks Booher, AHTD Staff Hydraulic Engineer,

Josh Seagraves, AHTD Environmental Analyst, and Gary Williamson, AHTD Environmental Administrative Assistant, were able to make a site visit to the Claimant's property and take core samples from the Claimant's pond on February 19, 2009. After an evaluation of the characteristics and topography of the land, and an evaluation of the core samples from the pond, Mr. Booher prepared a Soil Loss Estimate. *See copy of Soil Loss Estimate attached hereto as Exhibit 1.* The essence of the opinions contained in the report are that over a two and one-half year period, there may have been no more than an additional 22 to 34 cubic yards of soil deposited into the pond from the Respondent's property. Mr. Seagraves testimony will confirm this. He reported a very thin layer of sediment that may be attributable to the dirt from Respondent's property. When you compare this amount to the 1,920 cubic yards of dirt that Mr. Booher estimates has drained into the pond from natural forces over the past 20 years, it is evident that any additional amount from the Respondent's property over the 2.5 year period would not significantly affect the pond. The additional amount would only equal approximately 1.5% of the total sediment estimated in the pond. Mr. Seagraves and Mr. Williamson will testify that this amount of sediment will not cause the damages that Claimant is claiming.

Claimant is attempting to get the State of Arkansas to pay for cleaning out his pond, a process that the Claimant himself would have to do eventually as a result of natural sediment deposits over the years. If the Claimant is awarded any damages, it should be a small fraction 1.5% of what he is requesting, because the sediment from the Respondent's property is only a small fraction of the total sediment estimated in the pond.

ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

By: David Dawson

David Dawson
Staff Attorney
AHTD, Legal Division
Arkansas Bar No. 93087
P. O. Box 2261
Little Rock, AR 72203-2261
(501) 569-2277

CERTIFICATE OF SERVICE

I, David Dawson, certify that I have served the foregoing upon the Claimant by mailing a true copy of same this the 4 day of November 2009, to:

Mr. James H. Davis
94 S. Wood Road
Arkadelphia, AR 71923

David Dawson
David Dawson

Soil Loss Estimate – AHTD Area Headquarters Clark County, Arkansas

By Brooks Booher, Staff Hydraulic Engineer, AHTD
February 26, 2008

According to Carl Bachelor, District 7 District Engineer, the area headquarters site was cleared and silt fence was installed in June of 2006. The site was seeded in July of 2006. Mr. Davis Claim for damages was filed in January of 2009. The time frame for the soil loss analysis is June 2006 to January 2009. The area headquarters site contains a total of 7.87 acres of land that was previously covered in pine trees and underbrush.

The soil loss estimates were made using the RUSLE2 program developed by the U.S. Department of Agriculture's Natural Resources Conservation Service. For earthwork volume computations, AHTD typically assumes 1.3 tons per = 1 cubic yard of soil

From June 2006 to July 2006 (1 month) we'll assume the site was bare earth with no protection. The soil loss estimate for that condition is 99 t/ac/yr (tons per acre per year). The total amount of soil leaving the site during that month:

$$99 \text{ t/ac/yr} \times (1 \text{ month}/12 \text{ months per year}) \times 7.87 \text{ acres} = 64.9 \text{ tons}$$

The site was seeded in July of 2006, but it would take time for the seed to germinate and provide good soil coverage. Loss rate from a seeded site = 26 t/ac/yr. Loss rate from grassed site with a silt fence is only 0.26 t/ac/yr. Assuming good grass cover was established by September of 2007 (a little more than 1 growing season), we can assume an average loss rate of $(26 \text{ t/ac/yr} + 0.26 \text{ t/ac/yr}) / 2 = 13.13 \text{ t/ac/yr}$. So from July of 2006 until September of 2007, the total amount of soil that may have left the site was:

$$13.13 \text{ t/ac/yr} \times (14 \text{ months}/12 \text{ months per year}) \times 7.87 \text{ acres} = 120.6 \text{ tons}$$

After good vegetative cover was established and the silt fence and detention ponds were constructed, the loss rate from the site would be approximately 0.26 t/ac/yr. So the total soil loss that may have left the site from September 2007 until January 2009 would be:

$$0.26 \text{ t/ac/yr} \times (17 \text{ months}/12 \text{ months year}) \times 7.87 \text{ acres} = 2.89 \text{ tons}$$

So we estimate that the total amount of soil that may have left the site from June 2006 until January 2009 to be:

$$64.9 \text{ tons} + 120.6 \text{ tons} + 2.89 \text{ tons} = 188.39 \text{ tons} (=144.9 \text{ cubic yards})$$

However, the RUSLE2 program estimates that the average soil loss from this soil type in Clark County is 5 t/ac/yr in an undisturbed condition, so even if AHTD hadn't cleared the

site, some soil loss could still be expected to occur. We estimate an average soil loss from the site would have been:

$$5 \text{ t/ac/yr} \times (32 \text{ mos}/12 \text{ mos year}) \times 7.87 \text{ acres} = 104.9 \text{ tons} (= 80.7 \text{ cubic yards})$$

Which gives us an estimated $188.39 - 104.9 = 83.49$ tons (=63.2 cubic yards) of additional soil that could be attributed to the construction of the area headquarters.

All the soil loss estimates shown above are for volumes of sediment that may have left the new Clark County Area Headquarters construction site. Mr. Davis pond is located more than 700 ft. away from the area headquarters property line, and the land between the area headquarters site and Mr. Davis pond is covered by trees, brush, and has a pretty dense covering of leaves, weeds and pine needles. It is very unlikely that more than 1/3 to 1/2 of the soil that may have left the area headquarters site would have traveled to Mr. Davis pond without being intercepted along the way and being deposited on the ground upstream from the pond.

Taking the likely deposition of the eroded soil in areas upstream from the pond into account, we believe that no more than an additional (more than typical) 28 to 44 tons (22 to 34 cubic yards) of soil from the area headquarters site could have been deposited in Mr. Davis pond.

Soil erosion is a natural process, and, over time, it will tend to cause deposition in lakes and ponds that receive the surface water runoff that conveys the eroded soil. Mr. Davis home appears to be approximately 30 years old, and the pond is at least 20 years old. The pond has received surface water runoff (and eroded soil) from approximately 25 acres of property for its entire life. Assuming a typical soil loss rate from the 25 acre drainage basin, the pond may have received as much as 2,500 tons of soil over the last 20 years.

$$5 \text{ t/ac/yr} \times (240 \text{ months}/12 \text{ months year}) \times 25 \text{ acre basin} = 2,500 \text{ tons} \\ (= 1,920 \text{ cubic yards})$$

November 8, 2009

Mr. Norman L. Hodges, Jr.
Arkansas State Claims Commission Director
101 East Capitol Avenue
Suite 410
Little Rock, AR 72201-3823

ARKANSAS STATE
CLAIMS COMMISSION

NOV 10 2009

RECEIVED

Re: AR Highway Dept. Claim #09-0625-CC VS James H. Davis

Dear Mr. Hodges & Commissioners:

In regard to Mr. Dawson's prehearing statement which was received on Friday, November 6, 2009. I must say that Mr. Dawson would have you believe numerous half truths in my claim for damages. I would like to address each of Mr. Dawson's half truths and give you the true facts.

- (1) One silt fence was installed before early August 2008 which proved to be ineffective.
- (2) Erosion control ponds were not installed until after the 8 plus inch rain fell in early August 2008.
- (3) The storm fence around the site Mr. Dawson refers to was installed in the winter of 2008 or January 2009.
- (4) The seeding Mr. Dawson refers to was done in 2006. The soil was not excavated and spread until the summer of 2008, not 2006 as he stated. The excavated soil covered what grass that had been seeded. The area covered by the excavated soil was seeded on October 20, 2008.

Mr. Dawson's statement about the late August or September 2008 rain due to the remnant of a Gulf Coast hurricane is another half truth. We had in Gum Springs, AR, a 8 plus inch rain on the weekend of August 9th & 10th 2008. We did, in fact, have another heavy rainfall on September 1st through 4th because of the remnant the Gulf Coast hurricane Mr. Dawson referred to. The September 1-4, 2008 was recorded at 11.26 inches of rainfall in Bismarck, AR. (a few miles north of Gum Springs) and 10.65 inches in Hampton, AR. (a few miles south of Gum Springs). This heavy rainfall and the following heavy rain that fell on October 6 and 7, 2008 and December 8 and 9, 2008 served to flush the huge amount of sediment deposited on my property into the pond along with even more amounts of soil from the building site. These rainfalls can be confirmed on Yahoo weather.

- (5) Mr. Dawson also stated that the dirt washed from the construction site for over 700 ft. was through an area covered by trees, brush and a pretty dense covering of leaves, weeds and pine needles. Mr. Dawson accompanied the Arkansas Highway Department group which looked at the area and took samples. Part of the sediment did flow through a wooded area. The greatest portion of the

- pollution, however, came straight down my road, which was clean and clear of any objects that would slow the flow or restrict the sediment. Another half truth.
- (6) Mr. Dawson would have you believe all the containment instruments were in place at the time of the first and initial pollution of my pond. This is totally untrue.
 - (7) Mr. Dawson claims that water and dirt would have also come from neighboring properties. In 35 years my land or pond has never had any pollution from neighboring properties. Simply not true.
 - (8) After failure of the first silt fence a second silt fence was installed and then a third silt fence was installed. The second and third silt fence was installed after August 2008. (see photos of first silt fence) The site was cleared in 2006 yet remained a vacant lot until 2008 at which time the construction actually began.

Mr. Booher's prepared estimate of the sediment deposited in my pond has no creditability. The person taking the samples went approximately 61 feet in the upper shallow end of the pond. The farthest point the samples were taken the water was approximately 58 feet wide and an average of 3 feet deep. The velocity of water is at its greatest potential when it is restricted to a narrow and shallow channel. Therefore, the swiftness and amount of water that flowed in the pond because of numerous rainfalls from August 2008 to February 2009 flushed the sediment into the wider and deeper part of the pond. When the flow of water reached the widest and deepest area of the pond it dispersed, thus slowing down, allowing the sediment to filter down and settle to the bottom.

Mr. Booher's report is exactly what it is called, an estimate. This report was calculated from formulas and does not take into consideration the very heavy rainfall that occurred during this period. This entire report has been made on assumptions and estimates not facts.

Mr. Dawson stated that I was attempting to get the State of Arkansas to pay for cleaning out of my pond which he stated I would have to do eventually as a result of natural sediment deposit over the years. This simply is not true. The pond is 35 years old and I have never had any problems before the Arkansas Highway Department polluted the pond. (See photos)

Mr. Dawson called and offered a fifty per cent settlement. A few weeks later he called and offered less than thirty per cent settlement. Why is he now suggesting a 1.5% settlement?

For clarification:

The pond measurements are:

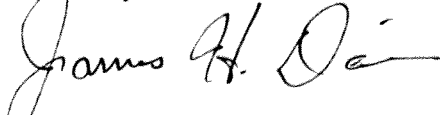
North end intake width approx.: 58 feet average depth 3 feet

South end discharge width approx: 148 feet (widest point) average depth 12 feet

Length: approx. 359 feet

Please give this information and facts just consideration. I will be glad to answer any and all questions you have as truthfully as I know how Thursday morning November 12, 2009.

Sincerely,

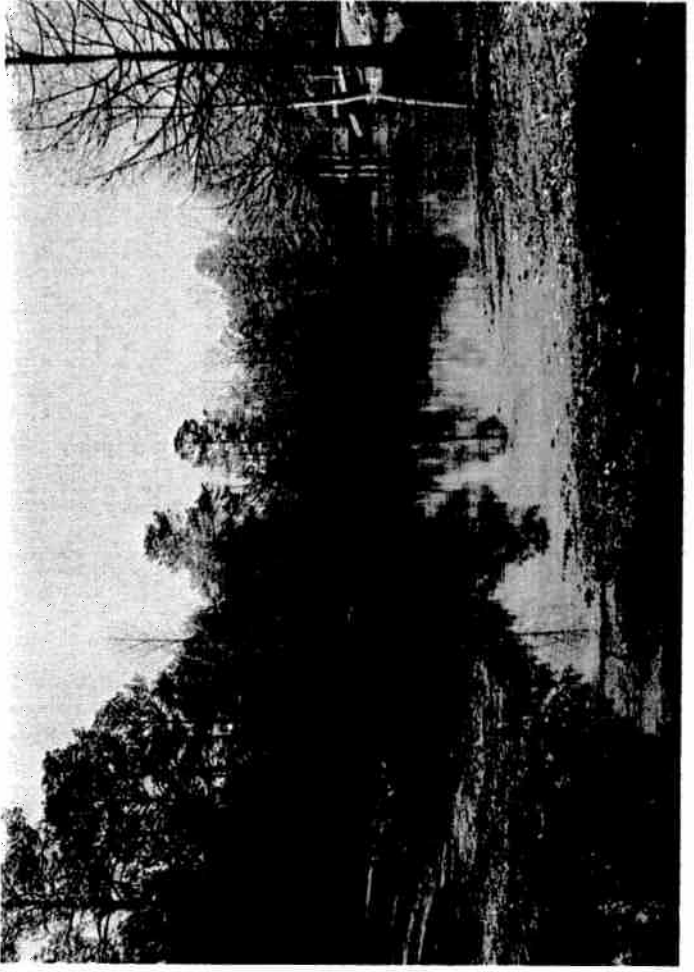


James H. Davis

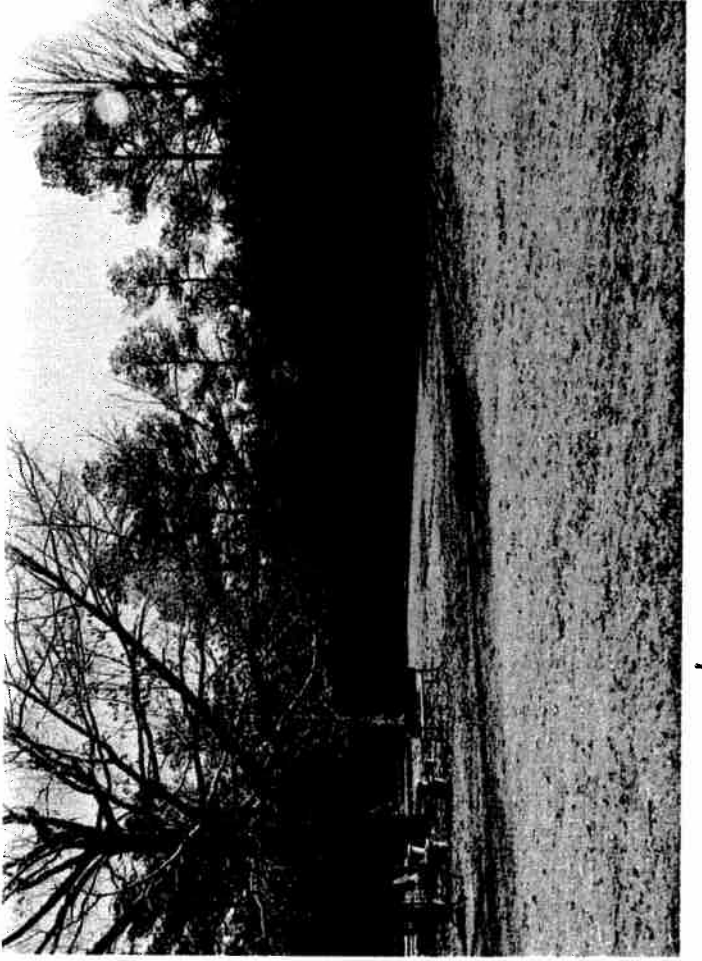
Enclosures

cc. David Dawson

A



C



B



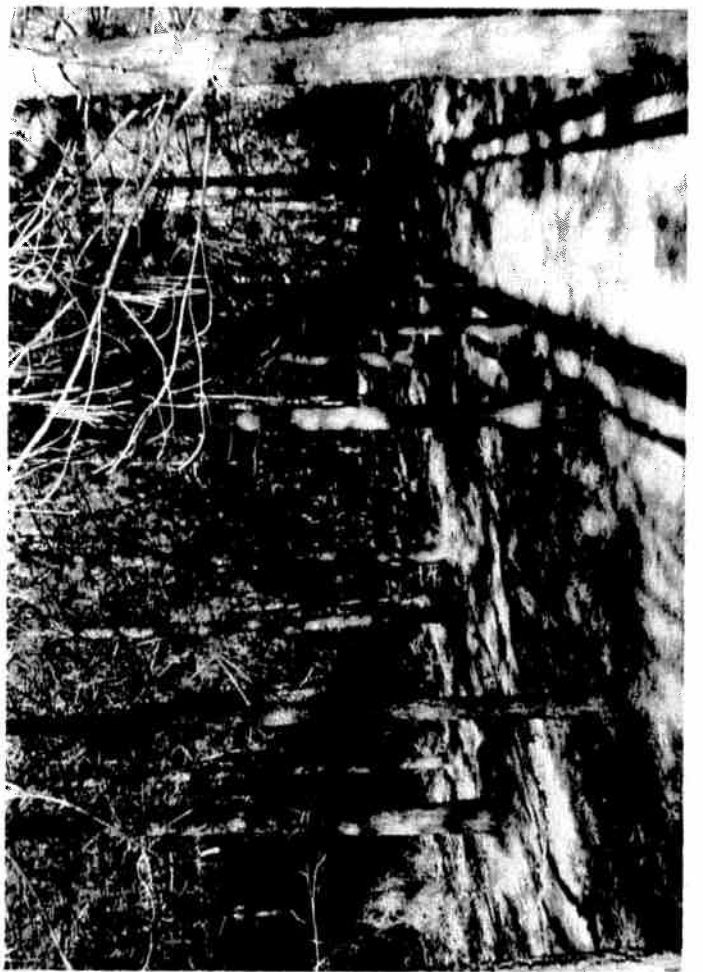
A



EXHIBIT NO. 1



B



D



A



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B



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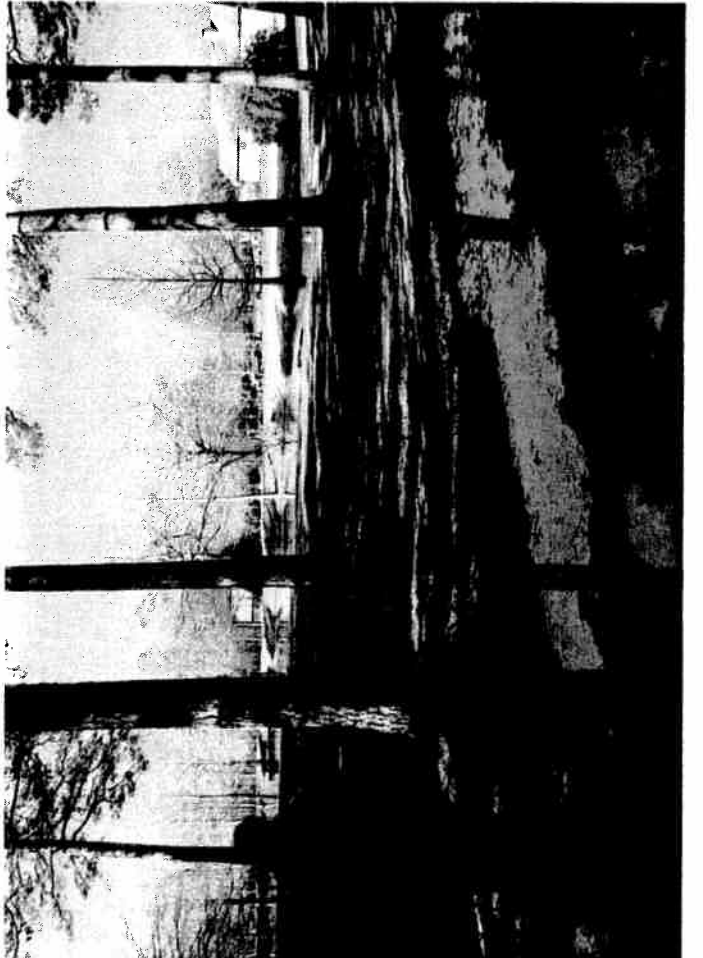


3

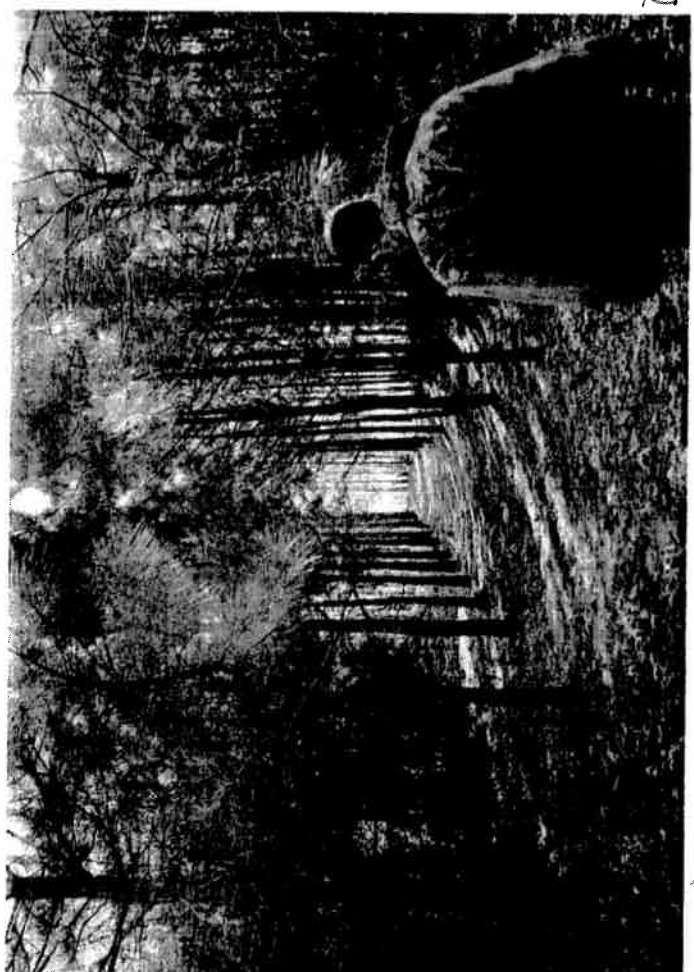
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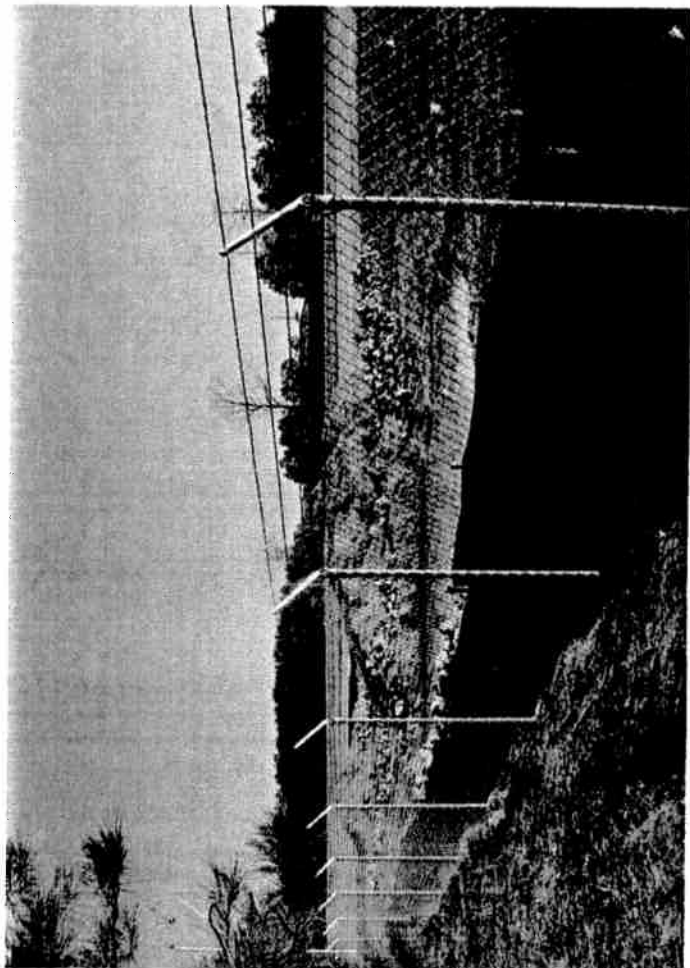


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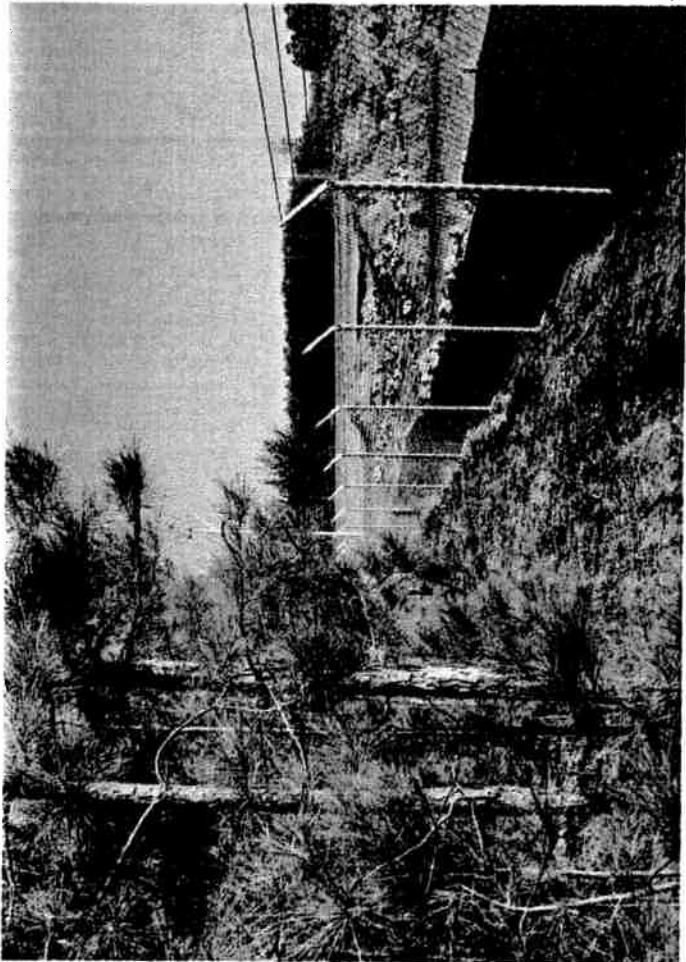


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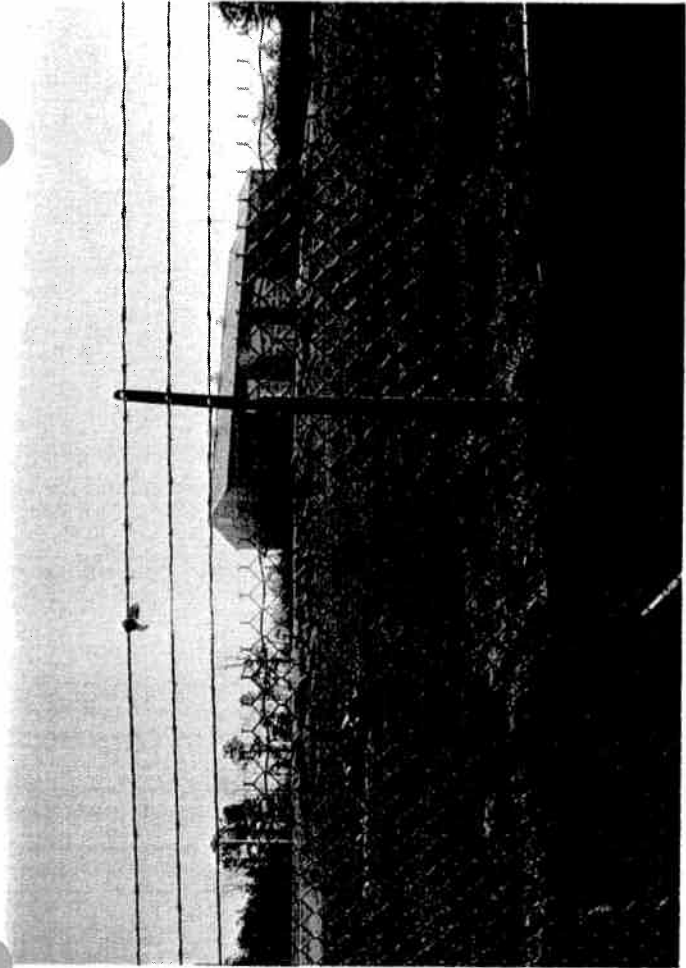


C

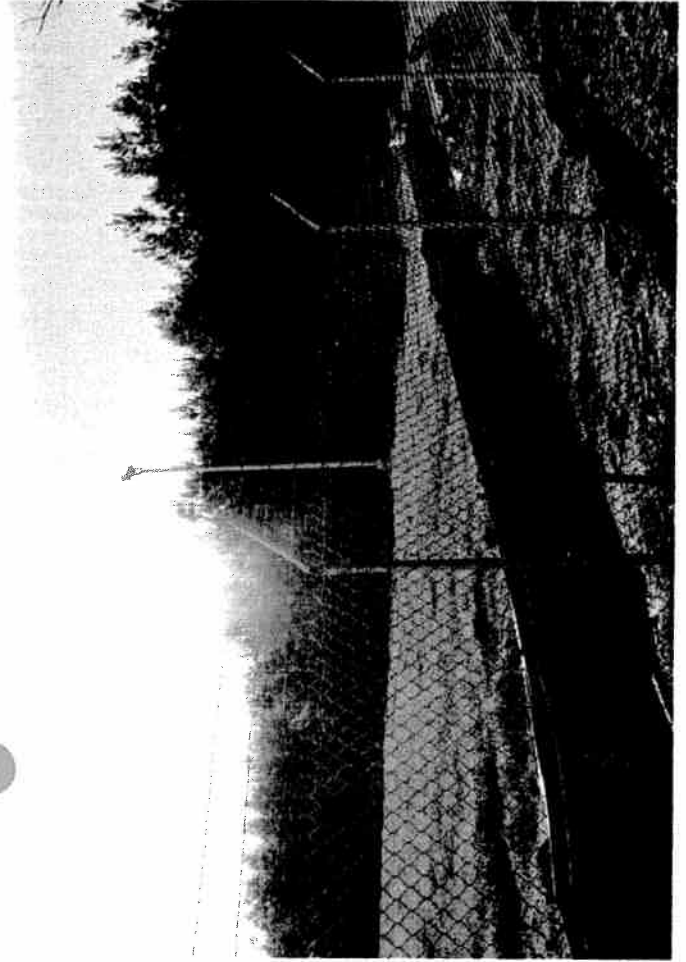


31

B



E



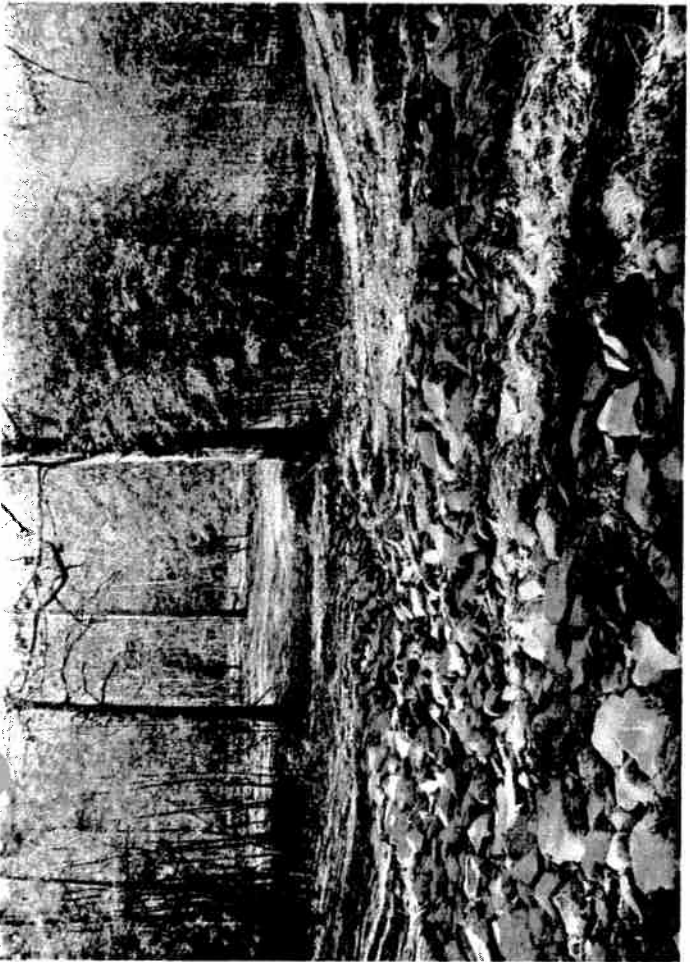


B



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A



J

A



B



33

B



A



STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 32,326.85

Claim No. 09-0625-CC

James H. Davis Claimant
vs.

Attorneys
Pro se Claimant

AR Highway & Transportation Dept.
State of Arkansas Respondent

David Dawson, Attorney Respondent

Date Filed January 16, 2009

Type of Claim Property damage, loss of profits

FINDING OF FACTS

This claim was filed for property damage and loss of profits in the amount of \$32,326.85 against Arkansas Highway and Transportation Department.

Present at a hearing November 12, 2009 was the Claimant, pro se, and the Respondent, represented by David Dawson, Attorney.

The Claims Commission hereby unanimously finds liability on the part of the Respondent and awards this claim in the amount of \$18,000.00 and **will submit the claim in a Claims Bill to the 88th Arkansas General Assembly, 2010 Legislative Session, for subsequent approval and payment.**

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously allowed this claim in the amount of \$18,000.00 and **will submit the claim in a claims bill to the 88th General Assembly, 2010 Legislative Session for subsequent approval and payment.**

Date of Hearing November 12, 2009

Date of Disposition November 12, 2009

Pat Moran Chairman
Bill Lancaster Commissioner
[Signature] Commissioner