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BEFORE THE STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

In the Matter of the September 29, 2022,
Approval of Howard Bros. Inc.'s Application
of Septage on the Plummer 7 Lot, in the Town of
Lac du Flambeau, County of Vilas, State of Wisconsin

DHA Case No. DNR-23-0001
DNR Case No. 22-045

HEARING

VOLUME 1 OF 4

BEFORE THE HONORABLE ERIC D. DÉFORT,
ADMINISTRATIVE LAW JUDGE

Location: Vilas County Courthouse, Eagle River, Wisconsin
Date: Monday, October 23, 2023
Time: 9:00 a.m. (CST)

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Eagle River, Wisconsin

Monday, October 23, 2023 - 9:00 a.m., CST

THE ADMINISTRATIVE LAW JUDGE: We are on the record In the Matter of the September 29th, 2022, Approval of Howard Bros. Incorporated's Application of Septage on the Plummer 7 Lot, in the Town of Lac du Flambeau, County of Vilas, State of Wisconsin.

I am Eric DéFort. I'm an Administrative Law Judge with the Division of Hearings and Appeals. The Case Number is DHA Case Number DNR-23-0001.

Just by way of brief synopsis, on September 29th of 2022, the Department of Natural Resources issued a license to Howard Bros. Incorporated approving Howard Bros.' request to engage in the spreading of septage to land on a parcel of land referred to as the Plummer 7 Lot. And this is located in the town of Lac du Flambeau, County of Vilas, State of Wisconsin.

Now, Mr. Kyle Howard prepared the license application on behalf of Howard Bros., which is located at 11548 Lemma Creek Road, Arbor Vitae, Wisconsin. And on October 27, 2022, the Lac du Flambeau Band of Lake Superior Chippewa Indians submitted a petition for a contested case hearing to review the approval.

And on November 16, 2022, the DNR granted

1 that request for a contested case hearing on a single
2 certified issue. Now, on January 20th, 2023, the DNR
3 submitted a request for a hearing to the Division of
4 Hearings and Appeals, along with the Petitioner's
5 contested case hearing request and other associated
6 documents.

7 Now on March 23rd, 2023, a prehearing
8 conference was held where scheduling and other issues
9 were discussed. And the issue now for this hearing is
10 as follows:

11 Whether the DNR lawfully approved Howard
12 Bros. Incorporated application to land spread septage
13 on the Plummer 7 Lot, specifically under Wisconsin
14 Statute Section 281.48(4m), and Wisconsin
15 Administrative Code Section NR 113.07(3). That's the
16 issue for this hearing. All right. I've said enough.

17 Appearances, please?

18 MS. BURKE: Alixandra Burke, on behalf of the
19 Department of Natural Resources.

20 MS. HANSON: Katherine Hanson, on behalf of
21 the Department of Natural Resources.

22 THE ADMINISTRATIVE LAW JUDGE: Oh. And I
23 will need people to speak up because I have a court
24 reporter here. I can't hear as well as I used to, so I
25 will just need everybody to speak up clearly. And that

1 goes for the witnesses, too, when they come up. So I
2 heard Katherine Hanson. And go ahead.

3 MR. ADAMS: Andrew Adams, on behalf of the
4 Lake Superior -- or the Lac du Flambeau Band of Lake
5 Superior Chippewa Indians.

6 MS. HERMSEN: Samantha Hermsen, also on
7 behalf the Lac du Flambeau Band of Lake Superior
8 Chippewa Indians.

9 MR. OLSON: Good morning. My name is Joseph
10 Olson. I am with the law firm of Michael, Best and
11 Friedrich. I represent Howard Bros. And with me at
12 the table this morning is Kyle Howard, the
13 vice-president of Howard Bros.

14 THE ADMINISTRATIVE LAW JUDGE: All right.
15 Now, you heard me announce at the beginning something.
16 I'm just going to double up on that announcement.

17 If anybody is here as a member of the public
18 who wants to participate by making a statement, that's
19 going to happen via testimony, but that's going to
20 happen towards the end of the hearing.

21 Why? Why are we doing that? Well, because
22 that way you benefit from the efficiencies of the
23 hearing. You get to hear what the testimony is; you
24 get to hear what the issue is; you get to hear the
25 questions. It helps sort of sculpt your thinking, your

1 framing of the issue so that when you come up and you
2 say something, it is actually very relevant to what we
3 have been talking about all week. That's the thinking
4 behind it.

5 Now, the -- I think that the reason why the
6 law requires that you make an appearance at the
7 beginning is that for the judge and the parties, we get
8 to actually plan on, okay, how many people are we going
9 to have who are interested in making a statement and
10 how much time do we have to set aside for this.

11 So I have a log up here at the -- on this
12 desk that's just under this clock near me. So if
13 anybody is here and they are considering on making a
14 statement, you should please come up right now and put
15 your name and your address on this log because your
16 appearance has to be noted at the beginning of the
17 hearing.

18 If you decide not to, then you won't be able
19 to make a statement later on. So just calling out,
20 this is your last chance to come up. I say last
21 chance, because the code says I have to do this at the
22 commencement of the hearing. And we are at the
23 commencement of this hearing right now. So if anybody
24 is thinking about doing that, please come up and do
25 that right now.

1 I see no movement. So I am thinking that
2 most people have already signed the log who decided
3 that they want to make a statement. All right. And
4 the parties and I will look over that log to figure out
5 how much time we are going to have to set aside,
6 probably during a break later today.

7 All right. Housekeeping, any issues over the
8 weekend that came up for the parties that you wanted to
9 bring to my attention?

10 MS. HANSON: No, Your Honor.

11 MS. BURKE: No, Your Honor.

12 MR. ADAMS: No, Your Honor.

13 MR. OLSON: One issue, Your Honor, you will
14 note on our witness list is Mark Wallen, who did the
15 soil borings as part of the application. He has a
16 childcare issue. And based on the flow and some of the
17 conversations about how long we think the witnesses are
18 going to take, I think it is going to be just fine, but
19 he is not available on Friday.

20 He is planning to be here on Thursday. So as
21 we go through this week, if we could all maybe just be
22 in contact about where we think we are. I think he
23 could get here Wednesday, too, if possible.

24 THE ADMINISTRATIVE LAW JUDGE: Okay. Now,
25 you're the -- in the order of parties, the Petitioner

1 is going first. Then DNR is second. You're third. So
2 it's likely that you would be hitting right on target
3 with Wednesday or Thursday anyway, but I appreciate the
4 info.

5 And just in case anybody sort of read over it
6 or glossed over it when you were reading, Thursday,
7 that's the 26th, that's the day that we will be using a
8 video room. I don't know where that room is yet, I
9 have got to go talk with the clerk's office here to
10 figure out what is the specific room, what does it look
11 like, what's the capacity, what's the setup.

12 But I'm thinking we're just going to set up
13 that day and do the -- that day of hearing in that
14 room. So I will probably put a sign up on the wall or
15 the door here for anyone who is a late comer and
16 doesn't realize that we have moved for that particular
17 day. But that's the plan for Thursday.

18 So if you have witnesses who are planning on
19 showing up, you should tell them that, that we're going
20 to be in a different room and that you'll know more --
21 hopefully I will know that room number by later today.

22 Any other last minute issues for the parties?
23 Okay. All right. I realize this is a contested case
24 hearing but, you know, I have done a number of trials
25 in my life, and I always benefit from having a brief

1 statement from the parties' perspective of the issues,
2 at least in their minds, and what they expect that
3 their witnesses will be contributing during the
4 hearing.

5 So I'm talking about opening statement. And
6 I'm thinking short opening statements are in order
7 here, especially for the members of the public who are
8 here. I would like folks to limit their comments to
9 five minutes or less because I don't want to spend all
10 day in opening statements either.

11 So because the Petitioner gets to go first,
12 and the Petitioner has the burden here, the Petitioner
13 gets to make their statement first, followed by the
14 DNR, followed by Howard Bros.

15 So please go ahead.

16 MR. ADAMS: Thank you, Your Honor. And may
17 it please the Court, my name is Andrew Adams, as I
18 stated before. I represent the Lac du Flambeau Band of
19 Lake Superior Chippewa Indians.

20 And in no disrespect to the Court or to you,
21 as the Honor, I believe it is telling that in the
22 preface by which you set up the location of where the
23 Plummer 7 site is situated, you identified it as being
24 in the Town of Lac du Flambeau, in the County of Vilas
25 and in the State of Wisconsin.

1 But from the tribe's standpoint, Plummer 7 is
2 located at Waaswaaganing, which is in the heart of the
3 Lac du Flambeau Indian Reservation, which was created
4 by way of treaties with the United States in 1837,
5 1842, and the boundaries of the reservation were
6 defined in 1854.

7 The reservation consists of 41 -- more than
8 41,000 acres of forested uplands, 24,000 acres of
9 wetlands, and over 17,000 acres of lakes and rivers.
10 And, Your Honor, from the tribe's standpoint, what
11 happens at Plummer 7 does not just impact Plummer 7 or
12 Plummer 6, which is the parcel just north of Plummer 7
13 that Howard Bros. uses to conduct their septage.

14 Their activities there of spreading pollution
15 as defined by Wisconsin state law not only impacts
16 Plummer 6 and 7, it impacts the lands that are
17 immediately adjacent and contiguous to those lands. It
18 impacts the non-tribal member landowners that also are
19 neighbors to that parcel. And it impacts the greater
20 tribal community at Lac du Flambeau.

21 The tribe will put on testimony and exhibits
22 that will show that Howard Bros. has demonstrated a
23 history of incompetence in terms of its land
24 application of septage at Plummer 6 and 7 that would
25 disqualify them from continued applications of septage.

1 The DNR had ample record of this incompetence
2 at the time of reviewing their application for Plummer
3 7, which should have been -- which should have heavily
4 factored into their review process under 113.07.

5 Howard Bros. failed to report correctly and
6 the DNR failed to verify correctly the recreational use
7 of the surrounding lands, which should nearly
8 disqualify the septage land spreading on both of those
9 parcels. They are and they have been spreading copious
10 amounts of garbage and biohazardous materials with
11 their septage in violation of Wisconsin law.

12 The available water holding capacity of their
13 land does not meet the standards under Wisconsin law,
14 which means that septage is likely to seep off the
15 property into other areas of the reservation. The sole
16 permeability rate of their land does not meet the
17 standards under Wisconsin law, which again means that
18 the earth is not able to hold this toxic septage
19 material.

20 They have not provided evidence that the
21 slope is low enough for the septage to be safely
22 applied, again, in violation of Wisconsin law. They
23 are not using the land for hay harvesting or another
24 beneficial use, as required under Wisconsin law. They
25 are not preventing animals from grazing on the land, as

1 required under Wisconsin law, and animals are highly
2 likely to regularly graze on their lands.

3 All of these violations are creating
4 conditions that are extremely hazardous to human life
5 and health, again, all in violation of Wisconsin law.

6 After the hearing and this testimony and
7 receiving the related exhibits, which have already been
8 provided to the Court, you will have ample basis to
9 conclude that the DNR did not abide -- abide by its own
10 regulations in approving Plummer 7 for septage land
11 application. And that Howard Bros., their incompetency
12 and the unsuitability of the land for septage land
13 application extends to both Plummer 6 and 7. Thank
14 you.

15 THE ADMINISTRATIVE LAW JUDGE: Thank you.
16 All right. Just give me a second. Okay. DNR, your
17 turn.

18 MS. BURKE: Thank you, Your Honor. As
19 mentioned earlier, my name is Alixandra Burke. And
20 together with my co-counsel, Katherine Hanson, we
21 represent the Department of Natural Resources.

22 This matter concerns the department's lawful
23 approval of Howard Bros.' application to land spread
24 septage on the Plummer 7 lot in Vilas County. In order
25 to receive this approval, the Howard Bros. had to make

1 a number of demonstrations to the department to show
2 that the soil on the Plummer 7 Lot, a property that
3 they owned, was appropriate to receive septage.

4 You will hear that land preparation prior to
5 septage spreading included tree removal, grading,
6 planting hay, and soil evaluations, among others. Only
7 after this work was completed and the soils properly
8 evaluated was an approval issued by the department.

9 The Howard Bros. had purchased an adjacent
10 site, Plummer 6, in May of 2021 from a previous septage
11 hauler. Testimony and evidence will show that since
12 ownership was transferred to the Howard Bros., this
13 Plummer 6 site has not been the subject of any
14 department enforcement actions. And there have been no
15 department substantiated complaints regarding that
16 site. However, Plummer 6 is not the site certified for
17 issue at this hearing.

18 In this hearing, focusing on the Plummer 7
19 lot, the evidence will show that the Howard Bros.' land
20 application site request met all of the eligibility
21 criteria required by code and DNR appropriately
22 approved the site for land spreading septage.

23 The department will present several witnesses
24 who will testify regarding the site approval process
25 and the Howard Bros.' application specifically. Alison

1 Canniff, a department wastewater specialist, reviewed
2 and issued the site approval for the Plummer 7 site.
3 She will testify to her site review process, the
4 communication -- the communications she had with the
5 Howard Bros. throughout the process, and to the
6 compliance assistance she offered the company as their
7 business was starting up in 2021.

8 Fred Hegeman, an advanced wastewater
9 engineer, will testify regarding the department's land
10 spreading program and his involvement in helping craft
11 NR 113, which is the chapter of administrative code
12 that covers regulation of septage.

13 As a septage expert, you will hear that
14 Ms. Canniff conferred with Mr. Hegeman on the Howard
15 Bros.' application prior to the approval.

16 Steve Warrner, an advanced wastewater
17 specialist and statewide land application site review
18 coordinator, will testify as to the types of
19 information that is reviewed when a site approval
20 request comes in, and his communications with Ms.
21 Canniff and Mr. Hegeman while Ms. Canniff reviewed the
22 Plummer 7 site.

23 Finally, Michelle BalkLudwig, the wastewater
24 field supervisor for the northern region, will testify
25 as to her outreach to the Lac du Flambeau Tribe when

1 the application for Plummer 7 was received by the
2 department.

3 These witnesses will also testify to the fact
4 that they found the Howard Bros. to be receptive to
5 comments from the department and responsive to
6 compliance concerns.

7 The evidence will show that the department
8 followed the provisions of Chapter NR 113 of the
9 Administrative Code when issuing this approval, and
10 that the department was transparent in the
11 decision-making process.

12 The evidence provided in this proceeding will
13 show that the DNR properly approved the Plummer 7 lot
14 for land spreading septage. And we respectfully ask
15 that you withhold -- or uphold the DNR's decision.
16 Thank you.

17 THE ADMINISTRATIVE LAW JUDGE: Thank you.
18 Howard Bros.?

19 MR. OLSON: Thank you, Your Honor. If it
20 please the Court, I would begin my opening statement by
21 echoing everything you just heard from the department.
22 And as a lawyer in private practice that represents a
23 lot of regulated entities in this state, I don't get to
24 say that very often.

25 But this -- the facts of this case are pretty

1 stark. You will see that Howard Bros. made its
2 application for septage spreading in January of 2021,
3 and that that application was not granted until
4 September of 2022. During that time, there were
5 extensive communications between Howard Bros. and the
6 DNR about the condition of Plummer 7, about the
7 requirements of NR 113, and about the work that Howard
8 Bros. needed to do to make sure that that site was
9 appropriate for septage.

10 You will see that at the very beginning of
11 this process, one of the very first things that the DNR
12 did was reach out to the tribe and provide them with a
13 copy of the application that was submitted by Howard
14 Bros. That occurred no later than January 25th of
15 2021. And what you are further going to see is that
16 the tribe never made a single comment to the DNR about
17 that application until October of 2022, after the
18 application had already been approved.

19 What this case is actually about was made
20 very clear in the Petitioner's original petition for a
21 contested case in which they spent three-quarters of
22 that time raising issues with the idea that the DNR has
23 any authority to regulate my client at all. That's
24 what this case really is, this is a stalking horse for
25 the tribe to try to assert jurisdiction over my

1 client's land. It's not actually about the issue that
2 was certified for approval. That's a very narrow
3 issue.

4 And the DNR files make it abundantly clear
5 that the process was followed, that Howard Bros. is
6 operating consistent with the requirements of the code.
7 And that while it is not everybody's favorite business,
8 the land spreading of septage is an absolutely
9 necessary part of rural living in Northern Wisconsin.

10 Quite simply, once somebody's private septage
11 holding tank is pumped out, the septage has to go
12 somewhere. There is not enough municipal wastewater
13 treatment facilities in the State of Wisconsin who will
14 take that septage, which leaves us with the need for
15 land spreading.

16 And what you will see is that on Plummer 7,
17 the septage is being spread on a hay crop, and that hay
18 crop is being continually harvested. You will hear
19 that at the beginning of this process, Plummer 7 was
20 wooded. And the tribe will tell you that Howard Bros.
21 lied on its application, saying it was already a
22 hayfield. But the records, the letters from the Howard
23 Bros. to the DNR in January of 2021, at the same time
24 that they submitted their application, states in plain
25 language that the lot was currently wooded and was

1 being cleared and was going to be converted to a
2 hayfield. There was no deception, there was no lie,
3 there was no misstatement.

4 You are also going to hear a lot of
5 complaints about sanitary wipes and other garbage on --
6 in the septage. And what you will also hear is
7 testimony that Howard Bros. has been working diligently
8 to try to rectify and minimize any of those types of
9 problems. Those problems begin with the individuals
10 who choose to put those things in their septage tanks.
11 And it is only Howard Bros. who have to deal with that
12 at the end of the process.

13 You will hear how Howard Bros. sent employees
14 out there to pick these things up by hand on their
15 fields and to walk the roadways and make sure they
16 weren't leaving waste behind. You will hear how they
17 upgraded their equipment to do a better job of catching
18 these things as the septage is being spread.

19 And the overall story you are going to hear
20 on that point is from the moment that Howard Bros.
21 bought the septage company in the spring of 2021,
22 things have improved and they continue to improve; and
23 that Howard Bros. is committed to improving even more.
24 Thank you.

25 THE ADMINISTRATIVE LAW JUDGE: Thank you.

1 Okay. I think we are ready for some evidence.

2 So, Petitioner, are you ready with your first
3 witness?

4 MR. ADAMS: Yes, Your Honor.

5 THE ADMINISTRATIVE LAW JUDGE: All right. So
6 I will have witnesses come and sit up here in between
7 me and the court reporter. I will swear them in, I
8 will have them spell their names out, and then we'll
9 get rolling.

10 MR. ADAMS: Okay. And we -- the first
11 witness we would like to call is Mr. John Johnson,
12 Senior, who is the president of the Lac du Flambeau
13 Tribal Council.

14 THE ADMINISTRATIVE LAW JUDGE: Raise your
15 right hand. Sir, do you swear or affirm under penalty
16 of perjury, that the testimony you are about to give
17 will be the truth, the whole truth, and nothing but the
18 truth?

19 THE WITNESS: Yes, sir.

20 THE ADMINISTRATIVE LAW JUDGE: All right.
21 Please state and spell your first and last name for the
22 record.

23 THE WITNESS: John D. Johnson, Sr. J-o-h-n,
24 D, J-o-h-n-s-o-n, S-r.

25 THE ADMINISTRATIVE LAW JUDGE: All right.

1 Thank you so much. Please go ahead.

2 JOHN D. JOHNSON, SR.

3 having been first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ADAMS:

7 Q Okay. Good morning, President Johnson.

8 A Good morning.

9 Q President Johnson, can you provide your job title?

10 A Tribal President of Lac du Flambeau Reservation.

11 Q Okay. And how do you become the president of the Lac
12 du Flambeau Tribal Council?

13 A Through elections.

14 Q Okay. Is the election conducted by the tribe itself?

15 A Yes, sir --

16 Q Okay.

17 A -- tribal membership.

18 Q And how long have you served in that position?

19 A Third year.

20 Q Okay.

21 A Going on third year.

22 Q And how long have you been on the Lac du Flambeau
23 Tribal Council?

24 A Since 2013. There was one year I wasn't in there, but
25 I had surgery that year so I took off so --

1 Q Okay. And what other positions have you held on the
2 Lac du Flambeau Tribal Council?

3 A I was a roads department manager for a long time, and I
4 worked for our housing authority. And I had numerous
5 jobs. I actually was an electrician at our casino
6 also.

7 Q Okay. And do you -- when were you first elected to
8 Tribal Council?

9 A 2013.

10 Q Okay, thank you. And can you describe a little bit of
11 your educational background?

12 A United States Army. I went to technical college at
13 Nicolet. I had some electrical training also.

14 Q Okay.

15 A That's about it.

16 Q Okay. And have you -- did you grow up on the Lac du
17 Flambeau Indian Reservation?

18 A Yes, I did, since I was 7 years old.

19 Q Okay, thank you. And can you describe, President
20 Johnson, your overall duties as President of the Lac du
21 Flambeau Band of Lake Superior Chippewa Indians?

22 A To protect everything in the boundaries of the
23 reservation, and that means for the future generations
24 of our children and our elders and everyone in between.

25 Q And, as tribal president, are -- does that mean that

1 you are also an enrolled member of the tribe?

2 A Yes, sir.

3 Q And as an enrolled member of the tribe, what type of --

4 what type of benefits do you get to enjoy on the Lac du

5 Flambeau Indian Reservation?

6 A Hunting, fishing and gathering. And that would either

7 be maple syrup, birch bark, hunting, trapping, fishing.

8 Q And how was the -- how was the -- from your

9 understanding, how was the Lac du Flambeau Indian

10 Reservation created?

11 A Back in I think it was 1836 when they ceded all of

12 their territorial lands to the United States for our

13 reservation, so 1836.

14 Q And based on your understanding of the history, the

15 tribe signed treaties with the United States that

16 essentially created the Lac du Flambeau Indian

17 Reservation; correct?

18 A Yes. Yes, sir.

19 Q And based on your experience working for the tribe, are

20 you pretty familiar -- and growing up on the

21 reservation, are you pretty familiar with the geography

22 of the reservation?

23 A Yes, sir.

24 Q Okay. So do you know where the Plummer 6 and 7 sites

25 are located?

1 A Yes, sir.

2 Q Can you just generally describe where they are located
3 on the reservation?

4 A Out in the East Boundary off of Highway 47. The road
5 goes all of the way back through all of the way to
6 Highway H. A couple other roads come back out on
7 Highway 47.

8 I grew up hunting in that area. We learned
9 from our grandfather. That's where we learned how to
10 hunt and fish and stuff like that, through all of the
11 lakes that are back in that area. So we hunted, fished
12 and gathered in that area, along with snaring rabbits
13 and trapping.

14 Q And, President Johnson, do you know of any surface
15 waters near the Plummer 6 and 7 sites?

16 A Warrior Lake, Plummer Lake, and there is a couple of
17 swamps here and there in between.

18 Q Okay.

19 A And Mishonagon Creek.

20 Q And does Mishonagon run on the east -- east of Plummer
21 6 and 7?

22 A Yes.

23 Q Okay. And, President Johnson, are you -- are you
24 generally aware of the fact that -- that Howard Bros.
25 does a land application of septage in that area on the

1 reservation?

2 A Yes.

3 Q Okay. And based on your understanding of what septage
4 is, can you explain what a land application of septage
5 is, from your perspective?

6 A Well, I have seen the sites, I have been there a few
7 times and I have just checked on the sites myself and
8 the spread dumping of it. And I guess what goes on
9 after, there is a lime that helps it deteriorate, the
10 septage.

11 And we have a lot of ground surface waters
12 there that we are trying to not contaminate because we
13 have 260 lakes on our reservation, 20 miles of rivers
14 and streams. And we are trying to keep that, I guess,
15 the bodies of water, the air and everything for our
16 next seven generations of our children and so they have
17 a place to call home later on in life.

18 Q And why is that important? Why is it important that
19 your tribal members have a place to call home?

20 A When we were given these allotments and somehow they
21 got switched around, they got sold into land to
22 privatize, and we're trying to get our lands back at
23 this time, de-privatize them so we have a place to call
24 home for our children.

25 And I know the allotments, a lot of them had

1 been sold off in the past. And, you know, they could
2 have been for mere pennies. But, you know, we are just
3 trying to survive there. That's the only piece of land
4 that my tribe is ever going to own unless we purchase
5 more off reservation.

6 Q And, President Johnson, can you describe how big the
7 reservation is?

8 A 12-by-12 square miles.

9 Q And can you explain the different types of land, like
10 the different classifications of land on the Lac du
11 Flambeau Indian Reservation?

12 A Yeah. We have a lot of lakes, we have a lot of rivers,
13 streams. We have a lot of -- we have some hilly land
14 in there. And, you know, a lot of it all comes back to
15 where it makes it back to the ground surface waters and
16 the waters surrounding each one of our pieces of land
17 there.

18 It has some connection to the land, all of
19 that water we have. And this is what we are trying to
20 keep safe for future generations.

21 Q And does the tribe own all of the land on the
22 reservation?

23 A No, we don't.

24 Q And who else owns land on the reservation?

25 A There is a lot of -- there is a lot of people that own

1 different parcels of that reservation, and I would like
2 to say we own like 72 percent of it.

3 Q Okay. And the land that the tribe owns, is some of
4 that in fee simple status?

5 A Yes.

6 Q Okay. And then is some of it in what's called trust
7 status?

8 A Yes, allotted lands, yep.

9 Q Okay. And the lands that are in trust, are those --
10 does the United States have some type of ownership
11 interest in those lands?

12 A Yes, they have the -- they have the ownership and
13 protecting all of these lands that we have in these
14 agreements that we have for our people.

15 Q Okay. And, President Johnson, in terms of the work
16 that you do, do you ever have to interact with the
17 Wisconsin Department of Natural Resources?

18 A Yes, I do, sir. And that date that you were giving
19 earlier, September 29th, 2022, we just happened to have
20 a Chippewa Federation meeting that day. All three
21 states were involved -- Michigan, Wisconsin and
22 Minnesota.

23 And my Tribal Council had me bring up the
24 fact that this was going on with the State DNR Liaison
25 Kris Goodwill. And that morning it was mentioned that

1 10:30 in the morning up in Red Cliff, another
2 reservation north of us, and by 2:30 or 3:30 that
3 afternoon, they already had their application. We
4 didn't find that out for almost a month later, but it
5 was mentioned that morning in that meeting.

6 Q And, President Johnson, did you -- did you say anything
7 during that meeting to any DNR officials concerning the
8 application?

9 A Yes. Kris Goodwill was there. And she said they would
10 get back to us, because we knew that application was
11 going in but it hadn't yet. And, you know, it was kind
12 of like we got the runaround from the DNR.

13 And I believe it was at the end of December
14 or the beginning of January we had consultation with
15 the DNR in Danbury, Wisconsin, and it was also brought
16 up again. And that's when we found out the application
17 had been accepted.

18 Q And so, President Johnson, I am curious if you could
19 describe -- let me take a step back.

20 The lands -- the land where Plummer 6 and 7
21 are located, can you generally describe the lands that
22 surround Plummer 6 and 7? Are you familiar with those
23 at all?

24 A Yeah. That's all woodland area around there.

25 Q Okay. And is that land that is owned by the tribe?

1 A Yes, a lot of it is allotted lands. One of my
2 relatives owns land just to the south of there, right
3 next to it.

4 Q Okay. And those lands that surround Plummer 6 and 7,
5 what do tribal members do with that land?

6 A They basically use it for hunting. You know, we --
7 this is where -- I guess there is not too many places
8 left on the reservation where we take our kids out, we
9 go hunting and we hunt birds and everything else like
10 that.

11 And most of it is all hunting land. But, you
12 know, the lands that are allotted there from our
13 relatives, they let us cross it all of the time. And,
14 you know, we can go do what we want in there.

15 Q Okay. And why is hunting important, you know, for Lac
16 du Flambeau tribal members?

17 A That's how we sustain our way of life. A lot of people
18 don't hunt -- or eat out of the grocery stores where
19 I'm from. And, you know, the deer and rabbits and
20 everything else that inhabit that area, that's where we
21 grew up hunting and, you know, trying to feed our
22 families.

23 Q And from your standpoint, what -- one of the purposes
24 of the reservation and it being a permanent homeland is
25 to provide for tribal members; correct?

1 A Yes, sir.

2 Q And that would include, you know, hunting animals, you
3 know, where it is available to do that on the
4 reservation; correct?

5 A Yes. Yep.

6 Q And where else do tribal members hunt, if it is not on
7 the reservation?

8 A Well, we have the ceded territory. But as we can see
9 moving forward, a lot of this land is being privatized
10 by the State of Wisconsin, the land that we once owned.

11 And as that gets privatized, you know, that
12 cuts our territories down for hunting and gathering.

13 Q And so the lands that surround Plummer 6 and 7, are --
14 do you know if there is any cultural like activities or
15 like any cultural significance to those lands also?

16 A Yeah. A lot of times, you know, around I guess the
17 swampy areas and stuff like that is where we gather a
18 lot of our medicines that we use back home.

19 And, like I said, the animals that we do
20 consume and eat, those animals are what carry the
21 essential vitamins and -- that we need as Native
22 American people, because this is what we grew up on.
23 And that's actually, the medicine in those animals is
24 what we consume.

25 Q And you yourself, President Johnson, through like

1 growing up from your time of being 7 years old and
2 growing up on the Lac du Flambeau Indian Reservation,
3 have you personally used those lands around Plummer 6
4 and 7 for any of these activities that you've
5 described?

6 A Yes. We used to snare rabbits during the winter. We'd
7 make drives there in the fall time. And my
8 grandfather, Bill Poupart, that's where -- he used to
9 be the one that would take us out to make these drives.
10 And this is where we were taught how to hunt. And, you
11 know, then we would have the state season because our
12 treaty rights weren't reaffirmed yet, and then we would
13 go off the reservation during the State of Wisconsin
14 hunting season.

15 And that's where our skills were utilized
16 then. Those were kind of like our training grounds out
17 there in the East Boundary.

18 Q And, President Johnson, when it comes to the trust
19 lands that are on the Lac du Flambeau Indian
20 Reservation, is it your understanding that those lands,
21 they are owned by the United States Government and they
22 are held for the beneficial use of the tribe itself?

23 A Yes, sir.

24 Q Okay. And the lands that surround Plummer 6 and 7,
25 even if the -- even if the United States owns them,

1 does the tribe have some duty to maintain and protect
2 those lands?

3 A Yes, we do, just like the rivers and streams we also
4 take care of. We take care of those. We are in
5 constant contact with the DNR. But, you know, they
6 have a lot of say-so on what happens to our water and
7 land within our reservation.

8 And I don't think that's very good because
9 there is hardly any collaboration with the two of us at
10 any time on our lands within. There is always talk
11 with lands without, but not within. And, you know, our
12 water rights that we have there, we actually have to
13 ask them, you know, what we can and can't do on our own
14 reservation with our water.

15 And, you know, we set our standards a lot
16 higher than the state does in the protection of
17 everything that we have. And sometimes it doesn't work
18 with them and we are at each other's throats once in a
19 while, you know, just trying to preserve what we have.

20 Q And from your standpoint, President Johnson, why is it
21 important to protect the environment and the resources
22 around the Plummer 6 and 7 site?

23 A As I look into the future and as our people grow and
24 our reservation gets bigger, we run out of land. And,
25 you know, this is why we are here today is to protect

1 that land, you know, for future generations of the
2 upcoming youth that we have.

3 And it would be nice that we had a clean
4 reservation for them. You know, clean water, clean
5 air, clean soil, everything.

6 Q And, President Johnson, do you personally believe that
7 the Howard Bros.' application of septage at their 6 and
8 7 site, does that -- does that threaten the surrounding
9 trust lands?

10 A Yes, it does. I would say, you know, once it gets into
11 the water system, you know, we are all going to pay for
12 it later on.

13 Q And do you believe that activity threatens individual
14 tribal members on the Lac du Flambeau Indian
15 Reservation?

16 A Yes. Because, you know, what we have there in that
17 area, a lot people won't go back out there and hunt and
18 gather any more because of the smell, because of the --
19 they know what's in the land. They're seeing trucks in
20 and out of there all summer and they know what's going
21 on.

22 So a lot of people just walked away from that
23 area. And, you know, I was always wondering how like
24 this lawyer over here -- attorney said this morning,
25 how it got from woodland to farmland, and I would like

1 to know.

2 Q And, President Johnson, the reservation, the folks that
3 make up the residents of the reservation, it is not
4 just limited to tribal members; correct?

5 A Correct.

6 Q Yeah, there is a number of non-tribal members that live
7 on the reservation, either full time or part time;
8 correct?

9 A Yes.

10 Q And how do you -- from your perspective, as the
11 president of the Tribal Council, have you heard from
12 any of those non-tribal members in terms of like the
13 application of septage on the reservation?

14 A Yes, we have. We had a --

15 MR. OLSON: I'm going to object. This is
16 just straight hearsay.

17 THE WITNESS: Well, they came to our council.

18 THE ADMINISTRATIVE LAW JUDGE: Just a second.
19 There is an objection.

20 Well, the Rules of Evidence don't actually
21 apply, the Wisconsin State Trial Court Rules of
22 Evidence, what is it, Chapters 901 to 911, so hearsay
23 is allowable.

24 It is not the greatest source of information
25 in any hearing so that means it is not the most

1 reliable source of information in any hearing. But it
2 is allowable. So you can go ahead and tell us what you
3 were going to tell us. And if you need the question
4 repeated, go ahead and repeat the question.

5 THE WITNESS: Yes. We had a lot of people
6 from I think it was the Plummer Lakes, Lakes
7 Association come over to one of our council meetings
8 and present to us, knowing that we had the same
9 concerns that they do.

10 BY MR. ADAMS:

11 Q And, President Johnson, have you had tribal members
12 express -- your like constituents, have you had tribal
13 members express some type of concern to you about the
14 land application?

15 A Yes, we have.

16 Q And what's been kind of the nature of both the
17 non-tribal members and the tribal member kind of
18 opinions?

19 A I guess they would say they don't like to see that on
20 the reservation because of the watersheds that we have
21 there and the contamination that it can possibly
22 present later on down the road, with all of the COVID
23 and the opioids and everything else that we've seen in
24 the last few years since COVID, and not knowing where
25 all of this is coming from off the reservation onto our

1 reservation and being dumped.

2 Q Okay. And I believe you testified earlier that you
3 have been physically out at the Plummer 6 and 7 sites
4 recently?

5 A Yep.

6 Q Okay. And in the past, have you ever seen any garbage
7 or debris, say, on the roads that lead to Plummer 6 and
8 7?

9 A Yes.

10 Q And what's been kind of the type of garbage that you've
11 seen out on the roads?

12 A Toiletry articles.

13 Q Okay. And stuff that wouldn't necessarily be there but
14 for the land application; correct?

15 A Yep.

16 Q And has there been anything that's like -- that's
17 concerned you in terms of -- that you have seen out on
18 the roads?

19 A Yes. And this is kind of why we had -- in that
20 Chippewa Federation meeting, why we brought this up to
21 Kris Goodwill, talking about all of the things that we
22 are talking now and the concerns that the Lac du
23 Flambeau Tribe had, plus the Lakes Association.

24 And somehow that day that permit made it out
25 by 3:30 in the afternoon, so I don't know what was

1 going on there. But they swore up and down that they
2 didn't have nothing to do with it, and it was a
3 coincidence that it was brought up that morning in Red
4 Cliff and then -- at 10:30 in the morning and their
5 application was finalized at 3:30 in the afternoon.

6 Q And from your -- from your personal opinion, President
7 Johnson, do you believe that Howard Bros. is conducting
8 this land application safely?

9 A I don't think so. In my opinion, no, I don't.

10 Q And, President Johnson, what happens -- again, based on
11 your knowledge of kind of the law and the federal
12 government's policies concerning treaty-bounded
13 reservations -- but what happens when a -- a
14 reservation becomes damaged, like the lands or the
15 waters become damaged or contaminated? Like can your
16 tribe get a new reservation?

17 A No, we can't. And the reason I say that is because the
18 water issues that we have there. And like I said, our
19 standards are really high. And we have purchased land
20 in the past in that area to reclaim it and, you know,
21 try to do the things we can to get that kind of cleaned
22 up back in that area so maybe some day we can inhabit
23 that again, hunt and fish and gather in there; but I
24 don't see that happening any time soon with what's
25 going on now.

1 Q And, President Johnson, just -- I guess you don't have
2 to provide like explicit numbers, but generally how
3 many -- how many tribal members live on the Lac du
4 Flambeau Indian Reservation?

5 A I would like to say around 2,200 or 2,300, 750 youth.

6 Q And so from your -- from your standpoint, do you
7 consider the Lac du Flambeau Indian Reservation to be
8 the permanent homeland of the Lac du Flambeau Band of
9 Lake Superior Chippewa Indians?

10 A Yes, I do. And you look at it from my standpoint,
11 there are 4,200 plus tribal members right now. And the
12 first descendancy is a little bit higher. It would be
13 around 4,200. So you are talking 8,500 people, where
14 once when this land was allotted, we were probably
15 lucky to have 200 tribal members at the time of the
16 treaties.

17 Q And just so we're clear, despite the fact that the
18 reservation is 12-by-12 and it's the acreage that it
19 is, that doesn't mean that tribal members have access
20 to every square inch of the reservation; correct?

21 A No. No, we don't. Even some of our lakes in there are
22 landlocked, you know, that we can't get to them.

23 Q And so would it be fair to say that that land -- the
24 trust land that surrounds Plummer 6 and 7, it's unique
25 in the fact that tribal members have access to it to

1 hunt and to gather?

2 A Yes, it is unique.

3 Q And is there a lot of that type of land on the Lac du
4 Flambeau Indian Reservation?

5 A Not any more. There is -- we have a place called East
6 River Road out there where there is no development yet,
7 but that's kind of like our safe haven right now where
8 the Bear River runs. But, you know, the land that we
9 used to utilize out in the East Boundary area was
10 almost the same until, you know, it got bought up at
11 some point.

12 But we were still working with the people
13 that live around in the areas, and being respectful to
14 them also when we go out that way and hunt.

15 MR. ADAMS: Okay. Thank you. That's all of
16 the direct questions I have, Your Honor.

17 THE ADMINISTRATIVE LAW JUDGE: Thank you.
18 Just a second. Okay. Who will be doing the
19 cross-examination for the department?

20 MS. HANSON: I will, Your Honor.

21 THE ADMINISTRATIVE LAW JUDGE: Remember to
22 speak up.

23 MS. HANSON: Thank you. I will do my best.

24 CROSS-EXAMINATION

25 BY MS. HANSON:

1 Q Good morning, President Johnson.

2 A Good morning.

3 Q My name is Kate Hanson. I'm an attorney for the DNR.
4 And I just have a few clarification questions about
5 your communications with the DNR and when they took
6 place.

7 So I recall some of your testimony about the
8 Chippewa Federation meeting that took place on Red
9 Cliff Reservation; is that correct?

10 A Yes, ma'am.

11 Q Okay. And DNR was in attendance at that meeting?

12 A Yes.

13 Q Okay. Thank you.

14 THE ADMINISTRATIVE LAW JUDGE: I'm sorry to
15 interrupt, but I'm really having trouble hearing you so
16 I am going to need you to dial it up to, you know, 10
17 or 11.

18 MS. HANSON: All right. Of course, thank
19 you.

20 BY MS. HANSON:

21 Q And I believe you testified that you learned an
22 application was finalized at that meeting?

23 A No. We had brought it up. Our Tribal Council members
24 asked me as the tribal leader to bring up what was
25 happening in that area at 10:30 that morning. And we

1 didn't find out till a few weeks later that at 3:30
2 that afternoon, you know, that application went
3 through.

4 Q Okay. Thank you. And when did that initial meeting
5 take place, the Chippewa Federation meeting?

6 A It was September 29th, 2022.

7 Q And then do you recall when about you found out later
8 that the application had been finalized?

9 A That probably would have been a week or two later.

10 Q And do you recall receiving any communication from the
11 DNR before that initial meeting --

12 A No, I don't.

13 Q -- about an application on Plummer 7?

14 A No, I don't.

15 Q Okay. And I also heard you testify about a Tribal
16 Council meeting at which the Plummer Lakes Association
17 came and presented. Do you recall that testimony?

18 A Yes.

19 Q And do you recall when that meeting took place?

20 A I do not know the exact date.

21 Q Okay. Do you recall the year?

22 A I would like to say within a year from now back. I
23 can't, you know, really tell you the specific date, but
24 it was within the last year.

25 Q Okay. So sometime within 2023?

1 A I would say 2022 to 2023.

2 Q Okay. And do you recall if the Lakes Association spoke
3 about Plummer 6 or Plummer 7 specifically?

4 A Plummer 7.

5 MS. HANSON: I have no further questions.
6 Thank you.

7 THE WITNESS: Thank you.

8 THE ADMINISTRATIVE LAW JUDGE: All right.
9 Counsel for Howard Bros?

10 MR. OLSON: Sure.

11 CROSS-EXAMINATION

12 BY MR. OLSON:

13 Q President Johnson, first of all, thank you for being
14 here today.

15 I'm going to ask you if you could grab --
16 there is a skinny binder on that stack of three binders
17 next to you there.

18 A This one?

19 Q Can you grab the skinny one?

20 A Um-h'm.

21 Q Can you flip that to tab 102. If you go to the third
22 page in on that tab, you will see a letter dated
23 January 25th of 2022, addressed to --

24 THE ADMINISTRATIVE LAW JUDGE: Counsel, can
25 you direct me to whose exhibits are we looking at?

1 MR. OLSON: I'm sorry, these are the DNR's
2 exhibits, Exhibit No. 102.

3 THE ADMINISTRATIVE LAW JUDGE: Okay. Thank
4 you. Appreciate it.

5 MR. OLSON: Yep. Sorry about that.

6 BY MR. OLSON:

7 Q You will see that that's a letter from the Department
8 of Natural Resources, addressed to President John
9 Johnson. That's you; right?

10 A Yes.

11 Q And it's dated January 25th, 2022; is that correct?

12 A Yes.

13 Q And after the salutation where it says, "Dear Mr.
14 Johnson," the letter reads, "This letter is to notify
15 you that an application for septage spreading has been
16 received for property located within the Lac du
17 Flambeau tribal boundaries."

18 Did I read that first sentence correctly?

19 A Yep.

20 Q So isn't it in fact true that you learned about the
21 application for Plummer 7 nine months before the
22 September 29th meeting on the Red Cloud [sic]
23 Reservation?

24 A It depends on if this was sent in regular email.
25 Because sometimes, you know, people do send me emails

1 and I don't get them.

2 Q Well, you --

3 A And it would just be from like a mess up from like a

4 lower case letter or something --

5 Q Sure.

6 A -- in my emails, and a lot of times I don't get them.

7 Q Sure.

8 A And they are cc'd to Dee Allen, James Yach.

9 Q So let's flip to the first page of that tab.

10 If you go to the bottom half of that, you

11 will see an email addressed to JJohnsonsrd@ldftribe.com.

12 Do you see that, at the bottom half of the

13 page, sir?

14 A Yep, that's where I'm looking. Yep, there's a capital

15 J there.

16 Q Sure. But that email is dated January 26, 2022; is

17 that correct?

18 A Yes.

19 Q And in the CC line, you see Dee Allen, James Yach; is

20 that right?

21 A Yep.

22 Q And Dee Allen and James Yach both also are officials of

23 the tribe; is that correct?

24 A No, just Dee Allen.

25 Q I'm sorry.

1 A James Yach is the DNR.

2 Q You are right, I apologize for that. But Dee Allen,
3 what is her job with the tribe?

4 A She was interim DNR staff at the time when one of
5 our -- the deputy administrator retired.

6 Q Okay. So if you look at the top half of that page, you
7 see another email -- never mind, it is the wrong
8 exhibit, sorry.

9 But in any event, the tribe was notified in
10 January; isn't that correct?

11 A Um-h'm. I wasn't, but the tribe was I guess.

12 Q Do you ever talk to Dee Allen?

13 A Yes, we do.

14 Q And, in fact, if you are the president of the tribe,
15 and there was an email sent to the two of you regarding
16 land application for Plummer 7, would you expect
17 Ms. Allen to come to you and talk to you about it?

18 A She probably did, but I'm a busy person because we're
19 fighting treaty rights daily, on a daily basis, in Lac
20 du Flambeau. And do you want my card? It has the
21 right email address on it.

22 Q No. Do you have any reason to believe that that letter
23 wasn't put in the U.S. Mail?

24 A If it was, I didn't see it.

25 Q Well, if you look again at that first page of 102, the

1 email says, "I have attached a letter of notification
2 regarding a septage site request, a signed hard copy of
3 this letter will be sent to you as well."

4 A Yep.

5 Q Did I read that correctly?

6 A Yep.

7 Q Do you have any reason to believe a signed hard copy
8 wasn't sent to you?

9 A I don't know, unless it went to our secretary, or my
10 secretary for the Council, Ms. Jamie Allen.

11 Q All right. I am going to need you to switch binders
12 for me, and I apologize for that.

13 There should be one in front of you labeled
14 Exhibits Howard Bros. Do you see that?

15 A Yep, yep.

16 Q Now, if you flip to tab 223.

17 A All right.

18 Q It shouldn't be a sideways document if we're on the
19 same document.

20 A This one?

21 Q No, tab 223.

22 A Yeah. Oh, wrong page. Sorry about that.

23 Q No problem. If you look at the bottom half of that
24 page, you'll see an email dated Friday, January 28th,
25 2022, from Michelle BalkLudwig at the DNR.

1 Do you see that?

2 A Yep.

3 Q And that email is addressed in the "to" line, to Dee
4 Allen; is that correct?

5 A Yep.

6 Q And in the CC line, there's a whole host of people?

7 A Yep.

8 Q We see a Jessie Peterson. Do you know who that is?

9 A Yep.

10 Q Who is that?

11 A She's our land management officer.

12 Q A tribal official?

13 A Yep.

14 Q And then we see Kristen Hanson. Do you know who that
15 is?

16 A Yep.

17 Q And who is Ms. Hanson?

18 A She is in the back of the room right there. She works
19 with our DNR for the Brownsfield project.

20 Q A tribe official or employee?

21 A Yes, she's an employee.

22 Q And then you see Celeste Hockings. Do you see that?

23 A Yep.

24 Q Who is Ms. Hockings?

25 A She's our deputy administrator right now at the DNR

1 level for Lac du Flambeau. She is in the back room.

2 Q And do you see Jodie Bednar?

3 A Yep.

4 Q Who is that?

5 A Tribal attorney.

6 Q All right. Then you see J. Johnson?

7 A Yep.

8 Q And it's a lower case J that time in your email
9 address; isn't it?

10 A Yep.

11 Q So that would be the correct email address?

12 A Yep.

13 Q Okay. And if you look at the text of that email, it
14 says, "Good afternoon, Dee. I have attached the
15 application that was submitted for the site. The
16 application has not been reviewed for completeness. It
17 will be checked for all required information and
18 processed under our normal review procedures by the
19 land application specialist prior to any decision being
20 made."

21 Did I read that correctly?

22 A Yes, sir.

23 Q So at least as of January 28th, it got to you with the
24 right email address; isn't that correct?

25 A Yep.

1 Q And it went to, what did we count up, like six or seven
2 other tribal officials or employees?

3 A Yep.

4 Q All right. So it is fundamentally not true that the
5 first time you learned about this application was
6 September 29th of 2022; isn't that correct?

7 A Yep. I probably read it so --

8 Q And from the time of this email on January 28th of
9 2022, until September 29th, 2022, to your knowledge,
10 nobody from the tribe reached out to the DNR about this
11 application; isn't that correct?

12 A This would have went to our tribal natural resources
13 building, this letter. And they are probably going to
14 -- you're probably going to hear from them later.

15 Q Okay. From the date of this email, January 28th of
16 2022, till September 29th of 2022 --

17 A Yep.

18 Q -- did you reach out to the DNR to talk to them about
19 this application?

20 A I probably did with Preston Cole. We used to have
21 phone calls like every couple of weeks just to check in
22 with one another. And I --

23 Q Do you remember any specific conversations?

24 A Yeah, we had talked about it once. And, you know, like
25 I said, I'm so busy every day, you know, doing

1 different things. I'm traveling, and a lot of times I
2 don't get the things right away.

3 Q All right. So if I am understanding you correctly,
4 what you are saying is this wasn't a big enough deal to
5 put aside some of your other issues to deal with?

6 A Well, it was a big enough deal if Preston and I had,
7 you know, talked about it. And we were going to get it
8 put on further agendas down the way. But, you know, it
9 was talked about, at GLIFWC also, Great Lakes Indian
10 Fish and Wildlife.

11 Q You don't have any documents between you and Preston
12 Cole about this?

13 A No, just conversations. I do the same thing with the
14 new secretary, Adam Payne.

15 Q Okay.

16 A Every couple of weeks we check in.

17 Q Earlier when you were testifying and answering some of
18 Mr. Adams' questions, you answered one of his questions
19 generally talking about the reservation by stating,
20 we're trying to get our lands back.

21 Do you remember saying that?

22 A Yeah.

23 Q Is that a stated policy of the Tribal Council, to try
24 to get back as much of the original reservation land as
25 possible?

1 A Yes, it is. And a lot of it has to do, you know, like
2 the LaFrenier site that we bought so we could reclaim
3 it and put it back to its natural state. That's what
4 I'm talking about.

5 Q Sure. I think I heard -- and I know the numbers might
6 not be perfectly correct -- but is it correct that
7 about 18 percent of the land inside of the boundaries
8 of the reservation is owned by individuals as fee
9 simple land?

10 A Yeah.

11 Q Yeah?

12 A It might be a little bit more than that.

13 Q Okay.

14 A Like 28.

15 Q I think -- I think in your petition you say -- it says
16 18 for fee owned land?

17 A Okay, okay.

18 Q Would it be the position of the tribe that they want
19 all 18 percent of that land back?

20 A Well, at some point in time, yes.

21 Q That would include all of these people's land, too;
22 right?

23 MR. ADAMS: Objection. How is it relevant?

24 THE ADMINISTRATIVE LAW JUDGE: I mean, that's
25 what we have been talking about throughout his entire

1 testimony so --

2 MR. ADAMS: Not particular to the individuals
3 that are sitting behind us.

4 THE ADMINISTRATIVE LAW JUDGE: I am going to
5 allow the question. And are you going to spend much
6 more time on this?

7 MR. OLSON: No.

8 THE ADMINISTRATIVE LAW JUDGE: All right. So
9 go ahead, answer the question and then move on.

10 THE WITNESS: So you want to repeat your
11 question?

12 BY MR. OLSON:

13 Q Sure. So your stated policy of getting back all
14 18 percent of the land that's currently owned as fee
15 simple land would include the land of all of these
16 people sitting behind you; right?

17 A Probably at some point in time, yes, because, you know,
18 a lot of agreements are made with different tribes
19 right now and the land back. And we see it on other
20 reservations, you know, people come there, they retire
21 and, you know, we make them a good offer for their
22 land, for the future use of it for our own tribe.

23 Q Okay. Do you have any education or training that you
24 have received related to soil composition?

25 A No.

1 Q Any specific training related to water retention of
2 different types of soil?

3 A No, just from what I learned from our DNR staff.

4 Q Any education or training related to surface water
5 flows?

6 A Can you repeat that?

7 Q Sure. That was a terrible question, I'll just start
8 over.

9 Any training or education related to the
10 mechanisms by which surface water flows from one point
11 to another?

12 A Just what I've learned from our staff, in which
13 direction it goes, you know, the surface down low.
14 There is different directions it does flow.

15 Q Does the tribe have its own wastewater treatment
16 facility?

17 A We have our own lagoon system.

18 Q And what is that lagoon system used for?

19 A Our township for pumping. It pumps in from our water
20 mains -- or not our water mains, but our septic mains
21 throughout the town of Lac du Flambeau. And it sets in
22 different pools out there.

23 Q Collects the sewer waste from the town of Lac du
24 Flambeau?

25 A Yep.

1 Q Does that lagoon system accept septage from companies
2 like Howard Bros.?

3 A No.

4 Q How many -- if you know, how many of the homeowners on
5 -- within the boundaries of the reservation use private
6 septic systems?

7 A I wouldn't know that question, sir.

8 Q Do you?

9 A No.

10 Q You would know that some of the tribal members have
11 private septic systems at their homes; is that correct?

12 A Yes.

13 Q In fact, sometimes when the Tribal Housing Authority
14 builds new housing, they install septic systems; isn't
15 that right?

16 A Yep.

17 Q So I think earlier you testified about a concern of
18 septage coming from off the reservation to be spread on
19 the reservation. But it is very likely that a lot of
20 that septage that's being spread on Plummer 7 is
21 actually from sites on the reservation; isn't that
22 correct?

23 A Yeah, I think it is coming from both.

24 Q From both.

25 A I see trucks coming into the reservation, everybody

1 sees it. It's always on Facebook, so it must be true.

2 MR. OLSON: All right. Thank you. I don't
3 have anything else. Appreciate your time.

4 THE WITNESS: Thank you.

5 THE ADMINISTRATIVE LAW JUDGE: Okay. Any
6 redirect?

7 MR. ADAMS: Yes, Your Honor.

8 THE ADMINISTRATIVE LAW JUDGE: Go ahead.

9 REDIRECT EXAMINATION

10 BY MR. ADAMS:

11 Q So, President Johnson, when Attorney Olson was asking
12 you questions about your knowledge of the DNR's
13 activities, I'd like to ask you in terms of being the
14 President of the Tribal Council, do you have authority
15 under tribal law to act independent of authority that's
16 provided to you from the Tribal Council?

17 A No, I don't.

18 Q And so when these letters come in from the DNR, whether
19 you know about them or not, do you have the authority
20 independently to tell the DNR what the tribe wants to
21 do and what it doesn't want to do?

22 A No, I don't. It has to go through a council meeting,
23 and there is twelve people on our council board.

24 Q And so, President Johnson, can -- what's the most
25 powerful way that the tribe can essentially voice its

1 decision, like when it relates to something like this?

2 A We would have to have a special meeting from our
3 council. And we probably would have to do -- get
4 people's comments throughout the community also on it.

5 Q Okay. And would the Tribal Council have to take some
6 type of vote?

7 A Yes.

8 Q Okay. And, President Johnson, from your standpoint, do
9 you believe that a letter -- or actually, let's, if we
10 could, can you go to that same skinny binder?

11 A Yep.

12 Q Yep. And let's go to Exhibit 102.

13 A Okay.

14 Q I think it's in that skinny binder.

15 A Yep.

16 Q Yeah. And so that letter that Attorney Olson had you
17 take a look at, it is on the third page of Exhibit 102,
18 it is dated January 25th of 2002 [sic]?

19 A Um-h'm.

20 Q The one from Michelle BalkLudwig that's addressed to
21 you?

22 A Yep.

23 Q In your review of that letter, does Ms. BalkLudwig, at
24 any point in that letter does she say that if the tribe
25 objects, that the DNR will listen to the tribe?

1 A Nope.

2 Q Does she say that she is just notifying you?

3 A Basically, yeah.

4 Q And, President Johnson, from your standpoint, do you
5 equate notice as being an opportunity to -- for the DNR
6 to listen to the tribe in terms of complying with what
7 the tribe has to say?

8 A They never have. We have never had consultation with
9 them on something like in this capacity.

10 Q So from your standpoint, President Johnson, are there
11 other -- are there other instances of, say, like
12 environmental regulation on the Lac du Flambeau Indian
13 Reservation where the DNR makes a decision that the
14 tribe doesn't agree with?

15 A Yes. And that would have to be with our water
16 resources, with our fishing. You know, we establish
17 things on our reservation. And if we are going to
18 bring up fishing right now, we own our own fish
19 hatchery, but we have never been supported by the DNR.

20 And they tell us what our bag limits are, who
21 can fish there, who -- who can't, throughout the
22 interior of our boundaries of our reservation. And
23 it's pretty sad that we have no input on any of this,
24 but yet we stock all of these lakes with fish and
25 everything like that. And, you know, the consultation

1 that we do have never goes our way.

2 And it's always, I'll get back to you, and
3 then we never hear anything.

4 Q And, President Johnson, despite all of these letters
5 and emails and phone calls with Secretary Cole and all
6 of that stuff, is it your understanding that when the
7 tribe did have an opportunity to raise an objection by
8 filing, you know, for this challenge of the
9 certification, did the tribe actually do that?

10 A Yes. And when we started talking about it, and soon
11 after that, that's when Preston retired. Not too long
12 after that.

13 Q And, President Johnson, would it be fair to say that
14 the Lac du Flambeau Band of Lake Superior Chippewa
15 Indians is typical of a lot of other governments, like
16 the State of Wisconsin and the United States of
17 America, that as a government it doesn't make decisions
18 quickly?

19 A Yeah, we never do. We never make decisions quickly,
20 and we are always trying to research what we have in
21 front of us. It might take time. But if you come in
22 with something like this and say, hey, this application
23 is going to be done in a week, what's your comments,
24 how are we supposed to comment on that when our
25 meetings are usually set a few weeks apart, you know,

1 for our reservation? So we would never be able to call
2 all of our council in to review it.

3 Q And, President Johnson, would -- so in the same -- in
4 the same way that you, as the president of a federally
5 recognized Indian tribe, that you lack independent
6 authority to act on behalf of the tribe unilaterally,
7 is it fair to say that Ms. Dee Allen and Ms. Jessie
8 Peterson, that they also lack the independent authority
9 to act unilaterally on behalf of the tribe?

10 A Yep. They cannot act on their own for any reason. It
11 all has to go through our Tribal Council, everything
12 that we do, every decision that we make.

13 Q And, President Johnson, Attorney Olson asked you some
14 questions related to your technical expertise when it
15 comes to the soil.

16 And I don't mean to pry, but would it be fair
17 to say that you possess perhaps maybe not degrees
18 related to environmental or like environmental
19 protection or soil, like technical soil expertise, but
20 do you -- do you possess some cultural and spiritual
21 expertise when it comes to protecting the environment?

22 A Yes. And, you know, I want to say this happened like
23 15, 20 years ago, we had a State DNR issue, we had a
24 gravel pit. And, you know, the -- I think it was Bud
25 Bowman's pit was right next door to us.

1 But he could do anything that he wanted with
2 the state application, but we had things that we had to
3 adhere to on our own reservation, you know, things that
4 we couldn't do that somebody else could do, you know,
5 without our permission, no collaboration with the tribe
6 at any point. And a lot of it had to do with, you
7 know, reclamation of blacktop and stuff like that,
8 where we would dump it.

9 And, you know, these guys could bring in any
10 kind of equipment they wanted in their pit area. And
11 just on the tribal side of it, right next door, we
12 couldn't do the things that we wanted to do, you know,
13 without permission or talking to the DNR.

14 Excuse me, I am kind of dry. But a lot of it
15 had to do with the air quality and water quality, but
16 it was in the same location.

17 Q Okay, thank you.

18 MR. ADAMS: I don't have anything further,
19 Your Honor.

20 THE ADMINISTRATIVE LAW JUDGE: Okay. Any
21 recross?

22 MS. HANSON: Yes, Your Honor.

23 THE ADMINISTRATIVE LAW JUDGE: All right.
24 Let's be brief, please.

25 MS. HANSON: Of course.

1 THE WITNESS: Your Honor, I have a couple of
2 these books here. Could I pass them out to each one of
3 the individuals here? They're just treaty books.

4 THE ADMINISTRATIVE LAW JUDGE: To the
5 parties?

6 THE WITNESS: Yeah, the three parties.

7 THE ADMINISTRATIVE LAW JUDGE: Sure.

8 THE WITNESS: If you guys would like a copy
9 of that.

10 MR. ADAMS: President Johnson, she had just a
11 couple of questions.

12 THE WITNESS: Oh.

13 MS. HANSON: Just one or two.

14 THE WITNESS: Okay.

15 RECROSS-EXAMINATION

16 BY MS. HANSON:

17 Q Thank you. So I have some questions about your
18 testimony that you lack independent authority to act
19 unilaterally, and that all actions must go through the
20 Tribal Council.

21 So in between January 25th, 2022, when the
22 tribe was notified about the Plummer 7 application and
23 September 29th, 2022, when that application was
24 approved, was there any tribal meeting regarding that
25 application?

1 A I don't remember, because we were in transition with
2 losing one of our people that ran that department.
3 That would have been Larry Wawronowicz. And he had
4 constant contact with James Yach all of the time, and I
5 don't know how the relationship went after that with
6 the DNR.

7 Q Okay.

8 A But I know doing -- during COVID, he had retired and we
9 had an interim staff in there until Ms. Celeste
10 Hockings was hired.

11 Q But in that time period, you don't recall any meetings?

12 A I don't recall. We might have had a conversation over
13 the phone, but I don't recall.

14 Q But a tribal meeting regarding this application?

15 A No.

16 MS. HANSON: Thank you. Those are all of my
17 questions.

18 THE ADMINISTRATIVE LAW JUDGE: All right.
19 Anything from Howard Bros.?

20 MR. OLSON: Yeah, two quick questions.

21 THE ADMINISTRATIVE LAW JUDGE: Okay.

22 RE-CROSS-EXAMINATION

23 BY MR. OLSON:

24 Q I see you put it away so I won't ask you to pull it
25 back out. But once again, going back to that letter

1 that's at 102. And if you want to look at it, feel
2 free.

3 But I'm going to read you the last sentence.
4 "If you have any questions regarding this application
5 or its review, please contact me at..." And then
6 Ms. BalkLudwig gave her phone number and her email
7 address.

8 Do you recall that being the final sentence
9 of that letter?

10 A Yes.

11 Q Okay. So you were asked if you had any comments or
12 questions; isn't that correct?

13 A I guess not personally asked, but in an email.

14 Q It was a letter addressed to you?

15 A I mean in a letter. Like I said, I might not have got
16 them because we have a secretary that opens all of our
17 mail in Lac du Flambeau.

18 Q Okay. And you just answered a question for the other
19 lawyer that you don't recall any meetings about this
20 application between January of 2022 and September of
21 2022; is that right?

22 A Um-h'm.

23 Q Do you remember any Tribal Council meetings at all in
24 those nine months?

25 A Yeah.

1 Q So any one of those meetings was an opportunity to
2 discuss this application; right?

3 A I guess it could have, if it was on the agenda. We
4 have an agenda set a week before.

5 MR. OLSON: Okay. Thank you, that's all I
6 have.

7 THE WITNESS: Okay.

8 THE ADMINISTRATIVE LAW JUDGE: All right.
9 Anything else from the parties on this witness?

10 MS. HANSON: No, Your Honor.

11 MR. OLSON: No, Your Honor.

12 MR. ADAMS: No, Your Honor.

13 THE ADMINISTRATIVE LAW JUDGE: Thank you so
14 much.

15 THE WITNESS: Thank you, sir.

16 THE ADMINISTRATIVE LAW JUDGE: Do we need a
17 break? Maybe five minutes. All right. Let's take a
18 five-minute break.

19 (Recess taken from 10:23 to 10:30 a.m.)

20 THE ADMINISTRATIVE LAW JUDGE: So, Counsel,
21 do you have another witness?

22 MS. HERMSEN: Yes, we are going to call
23 Celeste Hockings.

24 THE ADMINISTRATIVE LAW JUDGE: So I'm going
25 to ask you to speak up because people are having

1 trouble hearing in the back.

2 THE WITNESS: Troubles in the back, yes.

3 THE ADMINISTRATIVE LAW JUDGE: So please
4 raise your right hand. Do you swear or affirm under
5 penalty of perjury that the testimony you are about to
6 give will be truth, the whole truth, and nothing but
7 truth?

8 THE WITNESS: Yes.

9 THE ADMINISTRATIVE LAW JUDGE: Okay. And I
10 will need you to state and spell your first and last
11 name for the record.

12 And please speak up during this and the rest
13 of your testimony.

14 THE WITNESS: Okay. Celeste Hockings.
15 C-e-l-e-s-t-e, H-o-c-k-i-n-g-s.

16 THE ADMINISTRATIVE LAW JUDGE: Thank you.
17 Okay. Counsel, go ahead.

18 MS. HERMSEN: Thank you, Your Honor.

19 CELESTE HOCKINGS
20 having been first duly sworn, was examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. HERMSEN:

24 Q Ms. Hockings, can you please tell us what your title is
25 on your current job?

1 A I am the Natural Resource Director for the Lac du
2 Flambeau Tribe.

3 Q And can you give us an overview of your educational
4 background?

5 A I graduated from University of Wisconsin-Stevens Point
6 with a wildlife and ecology management degree in 2014.

7 Q And do you have any sort of ongoing education or
8 licensing or trainings that you participate in?

9 A I do a lot of -- I did a lot of aquatic plant --
10 aquatic plant survey -- or aquatic plant identification
11 trainings, USGS training with lake survey salmon
12 protocols, both groundwater and surface water, basic
13 and advanced wetland delineation with the UW system.
14 That's as far as I can recall.

15 Q So it is safe to say you partake in a lot of
16 environmental-related trainings as part of your job?

17 A Yes, ma'am.

18 Q And what was your -- or how long have you had this
19 current position?

20 A I was -- since December 2022.

21 Q Okay. What was your job before that?

22 A I was the water resource program manager and aquatic
23 ecologist from 2014 to 2022.

24 Q What are your professional responsibilities now as
25 Director of the Natural Resource Department for the

1 tribe?

2 A Working with other natural resource programs, I help
3 manage all the natural resources within the reservation
4 boundaries.

5 Q And as part of your professional experience, are you
6 familiar with the process of septage land applications?

7 A Yes.

8 Q And are you aware of any septage land applications on
9 the reservation in the past?

10 A Yes.

11 Q And were those from an outside company?

12 A Yes.

13 Q Can you tell us a little bit about how that affected
14 the land on the reservation?

15 A They -- all of them impact it or will have impact to
16 the natural ecosystem by providing excess of -- well,
17 unnatural levels that weren't there normally,
18 physically, chemical and biological.

19 Q And are you aware of the tribe participating in
20 restoration or cleanup efforts after septage land
21 applications on the reservation?

22 A Yes.

23 Q Can you just describe that a little bit?

24 A So our GLRI Habitat Management Program with forestry
25 and a few other of our programs worked on a property

1 that was near Spring Creek, and they pretty much
2 restored it to more of a wildlife corridor.

3 Q Okay. What does that restoration process entail
4 generally?

5 A So it generally will have to -- this way we -- it has
6 been a while, sorry.

7 To -- they pretty much took an inventory of
8 what was there, and then they -- from what I recall, I
9 think they tilled it and then they planted some quick
10 seeds, that would grow quicker. And then now they're
11 getting more further into the restoration process,
12 adding more species.

13 Q Is that a several years long process?

14 A Yes.

15 Q Okay. And are you generally familiar with the layout
16 of the reservation?

17 A Yes.

18 Q That's where you currently perform all of your job
19 duties?

20 A Yes.

21 Q And have you lived in that area?

22 A I grew up on the reservation.

23 Q So you're familiar with the different types of land
24 ownership within the reservation?

25 A Yes.

1 Q And is it fair to say that the tribe owns some of that
2 land and then some of it is private?

3 A Yes.

4 Q And when we are referring to trust lands, is that
5 referring to land that the tribe is the owner of --

6 A Yes.

7 Q -- along with the United States?

8 A Yes.

9 Q Can you please describe the natural resources of the
10 reservation, starting with generally how the land is
11 laid out and what type of land you will find there?

12 A It's going to be a mixture of upland and the majority
13 of it is actually considered wet.

14 We have as previous -- as President Johnson
15 says, we have pretty much 24,000 acres of wetlands and
16 approximately about 17,000 acres of lakes and 71 miles
17 of rivers. So we are about 50 percent wet on our
18 reservation.

19 Q And what about the types of animals, wildlife you'll
20 find on the reservation?

21 A We have a variety of species. We have bobcat, bear,
22 black bear, ospreys, American bald eagles, deer,
23 white-tailed deer and grouse.

24 And there's a variety of species, I mean, we
25 can find normally in the Northwoods. I could go on but

1 --

2 Q Are you aware of how the tribe sort of relies on those
3 animal species?

4 A Yes.

5 Q Can you just describe that briefly?

6 A So all -- within the resources within the reservation
7 are all for the hunting and -- hunting, gathering and
8 fishing for the tribal members' lifestyle.

9 Q And how does the Natural Resource Department work to
10 protect those resources?

11 A We use current science, research and cultural knowledge
12 to kind of inform us in our management decisions.

13 Q Do you believe, as Director of the Natural Resource
14 Department, that land applications of septage threaten
15 those natural resources?

16 A Yes.

17 Q Can you briefly state why?

18 A Without the proper due diligence, if you do it wrong or
19 in improper amounts, that it can impact the chemical,
20 physical and biological ecosystems of the reservation.

21 Q All right. I'm going to talk to you a little bit about
22 the people involved in this case.

23 Are you familiar with the Wisconsin DNR?

24 A Yes.

25 Q And have you worked with them in the past at all?

1 A Yes.

2 Q Does the tribe's Natural Resource Department have any
3 control or authority over the Wisconsin DNR?

4 A No.

5 Q Can the tribe's Natural Resource Department veto
6 something that the Wisconsin DNR is doing?

7 A No.

8 Q Does the tribe have a permitting system for septage
9 disposal under tribal law?

10 A Yes.

11 Q And is that process different from the Wisconsin DNR's
12 process?

13 A Yes.

14 Q Is it safe to say that the process that the tribe would
15 use to permit a septage land application project would
16 require different approvals?

17 A Yes.

18 Q And do you know who from the tribe would have to
19 approve that?

20 A It goes through our LUA, our Land Use Application
21 permit process where multiple departments --
22 departments in our tribal -- tribal entity is a part of
23 land management, the Tribal Historic Preservation
24 Office. Well, all of our natural resource programs
25 went into it. There is a few others that I can't

1 recall off the top of my head.

2 Q That's okay. And why do you think that's a
3 multi-department review process?

4 A Because we don't just see it as one program, we see it
5 as a whole. We like looking at the whole picture and
6 not just one narrow.

7 Q And I believe you heard the testimony earlier about the
8 Wisconsin DNR's notice to the tribe regarding Howard
9 Bros.' application?

10 A I did hear that, yes.

11 Q As the Director of the tribe's Natural Resource
12 Department, do you believe that receiving that
13 notification means that the tribe is consenting to
14 septage land application on the reservation?

15 A No.

16 Q As part of your job, do you sometimes communicate with
17 Vilas County about zoning issues and land use issues?

18 A Yes.

19 Q And did you ever ask the county to verify the way that
20 Howard Bros.' property is zoned?

21 A Yes.

22 Q I'm going to have you look at -- I think it's going to
23 be the biggest binder there. It says LDF exhibits on
24 it.

25 A Tribal?

1 Q Yeah. There should be a tab for Exhibit 34, if you can
2 flip to that.

3 Looking at Exhibit 34, is that an email chain
4 that you are involved in?

5 A Yes.

6 Q And who are you emailing in that?

7 A With the town zoning, Mike Zimmerman, the clerk.

8 Q And in that email, were you asking the county whether
9 Howard Bros. had forestry zoned land?

10 A Yes.

11 Q What did the county say about that?

12 MR. OLSON: Your Honor, I am going to object
13 to this entire line of questioning. The zoning status
14 of the land at issue is not part of the Chapter 113
15 review process. It is wholly irrelevant to the
16 question that's been certified to be answered at this
17 hearing.

18 THE ADMINISTRATIVE LAW JUDGE: Okay. What's
19 the offer of proof on this?

20 MS. HERMSEN: Your Honor, the DNR and the
21 Howard Bros. case is going to essentially blaming the
22 tribe for not objecting to this application.

23 But the tribe has been verifying the
24 different processes that this application touches on,
25 such as zoning permitting, such as the tribe's own

1 permitting scheme, and none of those things were
2 complied with either, which I believe is relevant to
3 counteract the Howard Bros. and the DNR's arguments.

4 THE ADMINISTRATIVE LAW JUDGE: But I mean
5 with regard to the specific code -- statute and code
6 provisions that we are dealing with in this hearing,
7 281-48(4m) and 113.07(3), what's your offer of proof on
8 its relevance to that -- those statutes and codes that
9 are here for hearing -- I mean, that's the issue for
10 the hearing?

11 MS. HERMSEN: Well, Your Honor, the -- the
12 statutes and codes at issue go to whether the land is
13 fit for this type of practice, whether it is fit to
14 absorb septage.

15 And I believe that other governmental
16 determinations about the way that that land should be
17 used is relevant to the question of whether this type
18 of septage land application would be damaging to the
19 surrounding areas, damaging to human life and health,
20 and those things are directly considered under the
21 DNR's code.

22 THE ADMINISTRATIVE LAW JUDGE: Where?

23 MS. HERMSEN: I would have to pull up the
24 citation. So under NR 113.07(3)(c)3b.

25 THE ADMINISTRATIVE LAW JUDGE: Okay. Give me

1 a second so that I can actually get there, too.
2 113.07. And then you were saying, what was the last
3 part of that?

4 MS. HERMSEN: (3)(c)3 I believe it is b.

5 THE ADMINISTRATIVE LAW JUDGE: (3)(c)b?

6 MS. HERMSEN: (3)(c)3b.

7 THE ADMINISTRATIVE LAW JUDGE: I'm sorry,
8 (3)(c)3b. Site approval may be rescinded if
9 information is provided or available to the department
10 showing the information used by the department to
11 approve a site is not consistent with the new
12 information and the site is deemed by the department to
13 be inadequate to protect public health and the waters
14 of the State.

15 Well, let me first ask, what is the
16 department's position on that interpretation of this
17 code provision?

18 MS. HANSON: We disagree.

19 THE ADMINISTRATIVE LAW JUDGE: I cannot hear
20 you. I'm sorry, I can't hear you.

21 MS. HANSON: Sorry, I'll speak louder. We
22 disagree with the Petitioner's interpretation of this
23 code section.

24 The department approves a site based on
25 information available to it at the time. And the email

1 and exhibit that the Petitioner is referring to was
2 exchanged on -- in October of 2022. So this is all
3 information that came after the site was approved. We
4 don't know how it is relevant to the site approval and
5 the information that was available to the department
6 when it approved the site in September of 2022.

7 THE ADMINISTRATIVE LAW JUDGE: Okay. And
8 Counsel for Howard Bros., what is your position on the
9 cited language as being the doorway to this evidence
10 that's just been discussed?

11 MR. OLSON: I don't think the doorway is that
12 broad. It talks about receipt of after the fact
13 information that directly relates to the factors that
14 were to be considered in the first approval, not a
15 separate county or township zoning issue.

16 THE ADMINISTRATIVE LAW JUDGE: So, Counsel,
17 is there some -- for the tribe, is there some part of
18 this language that talks about other governments, for
19 example, zoning board decisions or what language are
20 you referring to that actually makes other
21 determinations by other authorities relevant to these
22 provisions here?

23 MS. HERMSEN: Well, Your Honor, not
24 specifically to other governmental authorities,
25 including the tribe's government.

1 But the tribe is going to testify to the ways
2 that animals migrate through this land, through the
3 ways -- through the types of plants and animals that
4 can be found in this land.

5 And I believe that the zoning determination
6 which takes that into consideration is relevant to that
7 testimony. I also believe that it's relevant to the
8 information that the Howard Bros. provided on their
9 application where they labeled this land as permanent
10 hay lands and to provide evidence as to the tribe's
11 understanding of that land in contrast to what the
12 Howard Bros. provided.

13 And the citation regarding animals that would
14 be on the land is NR 113.07(3)(d)2e.

15 THE ADMINISTRATIVE LAW JUDGE: All right.
16 Can you run that last part by me again? 07 and then
17 (3)(b)?

18 MS. HERMSEN: (3)(d)2e.

19 THE ADMINISTRATIVE LAW JUDGE: (3)(d)2e. All
20 right. Sub three is land disposal of septage. Sub
21 (B)2 is septage may not be surface applied in soils
22 that have -- it refers to permeability. Maybe I
23 misheard your cite.

24 MS. HERMSEN: Let me pull it up to verify.
25 But I said (3)(d)2e.

1 THE ADMINISTRATIVE LAW JUDGE: Did you say B
2 as in boy or D as in David?

3 MS. HERMSEN: D as in David.

4 THE ADMINISTRATIVE LAW JUDGE: Oh, okay,
5 that's the problem. All right. I have (3)(d)2, what
6 was the last part of that?

7 MS. HERMSEN: 2e.

8 THE ADMINISTRATIVE LAW JUDGE: Okay. All
9 right. Animals may not be allowed to graze on the land
10 for 30 days after the application of septage. Is that
11 the section?

12 MS. HERMSEN: Yes, Your Honor.

13 THE ADMINISTRATIVE LAW JUDGE: All right. So
14 that would be the criteria at the time that the
15 application was made; right?

16 And so can you give me an offer of proof as
17 to what you are trying to introduce relates to this
18 particular criteria?

19 MS. HERMSEN: In regards to the specific
20 section about animals grazing, based on Ms. Hockings'
21 communications with the county at the time the
22 application was approved, the Howard Bros. land was
23 zoned as forestry.

24 And I believe that it's relevant to consider
25 the way that the county has designated the land use

1 when considering the type of activities that might
2 naturally occur there, absent some sort of variance.

3 THE ADMINISTRATIVE LAW JUDGE: Okay. Well,
4 for that limited purpose, I would say that it is
5 relevant. So I'll allow the question.

6 And I am going to close this door, because
7 I'm hearing a lot of noise coming in and it makes it
8 hard for me to hear you.

9 MR. OLSON: Your Honor, I think before we
10 finalize that ruling, I think we need to consider
11 Statute 281.48(5p).

12 THE ADMINISTRATIVE LAW JUDGE: Let me get
13 there.

14 MR. OLSON: On local regulations.

15 THE ADMINISTRATIVE LAW JUDGE: Let me get
16 there. Hang on. All right. Give me that again.

17 MR. OLSON: 281.48(5p), P as in Paul.

18 MR. ADAMS: I'm sorry, could you repeat that
19 citation again, please?

20 MR. OLSON: Sure. 281.48(5p), P as in Paul.

21 THE ADMINISTRATIVE LAW JUDGE: And it is 5P.
22 It is not sub 5, sub P; it's sub 5P?

23 MR. OLSON: Yes, correct.

24 THE ADMINISTRATIVE LAW JUDGE: And it says
25 limit on local regulation. No city, village, town or

1 county may prohibit or regulate through zoning or any
2 other means the disposal of septage on land if that
3 disposal complies with this section and rules
4 promulgated under this section or with an ordinance
5 adopted under Sub (5m) A or B. Plenty of subsections.

6 But the question here really is not whether
7 it's being regulated. I believe the argument is that
8 this, I guess, zoning designation is simply proof of
9 what we were referring to under 113.07(3)(d)2e.

10 That question being whether animals were
11 allowed to graze on the land for 30 days after
12 application of septage. So it is merely just a
13 question of some evidence that may or may not be
14 relevant to that particular criteria. And so for that
15 limited purpose, I think it's -- I think it's relevant.
16 But that's it. So I will allow the question and
17 answer. And, please, let's move on.

18 MS. HERMSEN: Thank you, Your Honor.

19 BY MS. HERMSEN:

20 Q So, Ms. Hockings, in Exhibit 34 there, what did you
21 learn from the County about the way the land is zoned?

22 A It was zoned forest and there was no permits issued by
23 the county. And all the town did was to issue the tree
24 cutting permit.

25 Q All right. Thank you. And why is it relevant to your

1 considerations as Director of the Natural Resource
2 Department that a piece of land is zoned forestry?
3 A Normally, you have any disturbance more than one acre
4 requires a stormwater prevention plan. And that's
5 issued by the EPA for anything within Indian Country,
6 which is the tribe, the reservation.
7 Q So are you saying that there would be a -- that the
8 fact that it was zoned one way means that there would
9 be other types of requirements you would expect Howard
10 Bros. to comply with?
11 A Um-h'm, yes.
12 Q Okay. Are you familiar with where Plummer 6 and 7 are
13 located on the reservation?
14 A Yes.
15 Q And they are surrounded by trust lands?
16 A Yes.
17 Q How are those trust lands used generally by tribal
18 members?
19 A Hunting, fishing and gathering. Mostly hunting and
20 gathering.
21 Q Would you consider those cultural purposes?
22 A Yes.
23 Q Would you consider them recreational purposes?
24 A Yes.
25 Q What about subsistence purposes?

1 A Yes.

2 Q And does the tribe maintain those lands?

3 A Yes.

4 Q Would you find animals like wildlife in those trust
5 lands?

6 A Yes.

7 Q And those would be animals that the tribe is hunting
8 for food?

9 A Yes.

10 Q Do you believe that the Howard Bros.' land application
11 threatens the tribal members' ability to use those
12 surrounding lands for those purposes?

13 A Yes.

14 Q Can you describe how, briefly?

15 A There would be concerns about the -- how safe it is to
16 eat the white-tailed deer, you know, because deer don't
17 know boundaries.

18 And just the factor of their concerns about
19 the area on Plummer 6 and 7, whether they can properly
20 eat any or gather any plants that would be on the --
21 our lands, the trust lands.

22 Q As director of the tribe's Natural Resource Department,
23 are you familiar with the soil composition in different
24 parts of the reservation?

25 A Yes.

1 Q And do you believe that soil composition is important
2 when considering whether land should be used for
3 septage land application?

4 A Yes.

5 Q What do you know about the soil composition at Plummer
6 6 and Plummer 7?

7 A In that general area, it's sandy soils.

8 Q And does that concern you at all?

9 A Yes.

10 Q Why is that?

11 A The rate that the water will flow through it, the sandy
12 soils.

13 Q Would that mean that possibly septage that's being
14 applied to that land would seep off of the specific
15 land it is being put on?

16 A Possibly.

17 Q Into the trust lands surrounding?

18 A Possible.

19 Q As part of your job as the Director of the Natural
20 Resource Department, and your prior job, which was --
21 I'm sorry, can you repeat the --

22 A Water resource program manager and aquatic ecologist
23 for the tribe.

24 Q All right. As the water resource program manager, do
25 you receive complaints or reports from tribal members

1 or other locals related to environmental issues?

2 A Yes.

3 Q And have you received complaints regarding Howard
4 Bros.' land application or been made aware of such
5 complaints?

6 A Yes.

7 Q Was that related to both parcels?

8 A Yes.

9 Q Can you generally describe some of the reports you have
10 gotten? And if you remember when, that would be
11 helpful.

12 A Generally, they're talking about the levels of trash
13 that they've seen. The smell that comes from it. And
14 the potential over applying of the septic and the
15 ability the land can take it, the -- I don't remember
16 the timelines. The past three years, though.

17 Q Okay. Throughout the past three years?

18 A Yeah.

19 Q Have you still been receiving complaints like that
20 recently?

21 A Yes.

22 Q And can you take a look at Exhibit 27 in that same
23 binder. Or, I'm sorry -- yeah, 27.

24 So it looks like this was an email that
25 George Thompson received and then forwarded to you,

1 among other people?

2 A Yes.

3 Q And the date on that was September of 2022?

4 A Yes.

5 Q And is it safe to say that in this email there is a
6 complaint coming from Joanne Wandsneider regarding
7 Howard Bros. activities?

8 A Yes.

9 Q Do you know who that is?

10 A She is a property owner on Wishow Lake.

11 Q That's near the Plummer 6 --

12 A Yes.

13 Q -- and 7?

14 A Yes.

15 Q Okay. And do you see the part that's about seven lines
16 down in her message, it says: Toilet debris along the
17 road and an unpleasant odor?

18 A Yes.

19 Q Okay. And then can you turn to Exhibit 26, which is
20 just before that one. Was this the letter that was
21 attached to that email?

22 A Yes.

23 Q Okay. And it looks like this letter is outlining with
24 more detail the concerns from that local resident?

25 A Yes.

1 Q And what are some of the general concerns that she had?

2 A Traffic, road degradation, noise issues, surface water
3 groundwater impacts, E. coli, algae blooms, well
4 contamination, et cetera.

5 Unbearable odors and breathing health issues,
6 septic waste debris, human waste, toilet paper,
7 needles, et cetera, carried out of site and spilled on
8 roads.

9 Wildlife habitat, property values, expansion
10 impacts, septage application site oversight and
11 communication.

12 Q And when you receive complaints like that, does that
13 concern you?

14 A Yes.

15 Q And why does that concern you?

16 A Clearly, it has -- it has impacted the local residents
17 of the area. And, you know, we take those concerns
18 into our management and considerations as well.

19 Q And when she is saying that in her letter --

20 THE ADMINISTRATIVE LAW JUDGE: Which exhibit
21 are we on now?

22 MS. HERMSEN: This is 26, Your Honor.

23 THE ADMINISTRATIVE LAW JUDGE: Okay.

24 BY MS. HERMSEN:

25 Q She is seeing debris such as human waste, toilet paper,

1 and needles, would you consider needles to be something
2 that is harmful to the health of people in that area?

3 A Yes.

4 Q And why is that?

5 A Well, that's human -- or human -- it's a biological
6 hazard for the local residents. And they have children
7 that play and walk those roads. And children will pick
8 up anything. That's a very, very big concern.

9 MS. HERMSEN: All right. I don't have any
10 further questions. Thank you, Ms. Hockings.

11 THE ADMINISTRATIVE LAW JUDGE: All right,
12 cross-examination?

13 MS. HANSON: Yes, just a few questions, Your
14 Honor.

15 THE ADMINISTRATIVE LAW JUDGE: And I'm sorry
16 to be pedantic about this, but please speak up.

17 MS. HANSON: Sure. It's okay. I do have a
18 problem projecting so I don't mind. Tell me every
19 time.

20 CROSS-EXAMINATION

21 BY MS. HANSON:

22 Q Ms. Hockings, I have a few questions about the previous
23 line of testimony, those questions that you were just
24 answering about this Exhibit 26.

25 So when you receive letters like this, what

1 is your typical response?

2 A Typical response is to follow our command. I would --

3 I would have pushed it to the director at the time.

4 Q And who was the director at the time?

5 A When was that? I think that was Larry Wawronowicz. It

6 was in a really weird transition.

7 THE ADMINISTRATIVE LAW JUDGE: I'm sorry,

8 what was the name?

9 THE WITNESS: Larry Wawronowicz.

10 THE ADMINISTRATIVE LAW JUDGE: Okay.

11 THE WITNESS: I can spell it.

12 THE ADMINISTRATIVE LAW JUDGE: Do you know

13 the spelling?

14 THE WITNESS: Yeah, W-a-w-r-o-n-o-w-i-c-z.

15 THE ADMINISTRATIVE LAW JUDGE: Thank you.

16 Sorry to interrupt with that, but go ahead.

17 THE WITNESS: No, it's no problem.

18 BY MS. HANSON:

19 Q And are you aware if there was any follow-up to the

20 receipt of this letter?

21 A I can't recall. My apologies.

22 Q After receiving this letter, did you visit the area

23 around Plummer 6 and 7?

24 A Yes. I have been in the area.

25 Q And do you recall when you made that visit?

1 A No, I don't.

2 Q Is it safe to say that it took place at some point
3 after January -- I'm sorry, September of 2022?

4 A I can't recall.

5 Q Do you recall making any other visits to the Plummer 6
6 and 7 site?

7 A To the surrounding areas, yes.

8 Q And do you recall if that was before or after you
9 received this letter?

10 A It was -- I believe it was before.

11 Q Would it have been in 2022?

12 A I think so.

13 Q Could you say if it was spring, summer, fall?

14 A I'm sorry, I don't recall. I have a lot more -- a lot
15 of activities that go on during summer.

16 Q But you are pretty sure that you did make a visit at
17 some point --

18 A Yes.

19 Q -- in 2022? Okay. And what did you observe during
20 those visits -- during that visit?

21 A Shoot, I can't recall.

22 Q Did you stand directly around the Plummer 6 and 7
23 sites?

24 A I know at one point I -- there was a site visit that I
25 attended, but I can't recall when the date was.

1 Q Do you know if that was in 2022?

2 A I -- like I said, I don't know the date and the year,
3 sorry.

4 Q Was there anybody with you at that site visit?

5 A It would have been Alison, I think Kyle. Okay, Kyle.
6 I know there was probably one or two more people I
7 can't recall.

8 Q And even though you can't recall the date of that
9 visit, can you describe your general recollections?

10 A We seen -- I did -- I did a tour, explained what was
11 occurring on the site. I think from -- showed us a
12 trailer -- a trail -- hookup to the -- their trucks.
13 Explained what that was about, and then how they go
14 make -- they go back and forth with their pattern with
15 their truck.

16 Q And was --

17 THE ADMINISTRATIVE LAW JUDGE: I'm just going
18 to interrupt for a second. There is the term "site"
19 being thrown around. Which site are we talking about?

20 THE WITNESS: Oh, I know I was on Plummer --
21 I think -- no, that was Plummer 6. That was Plummer 6
22 that we were on. That was -- oh, yeah, that was -- I
23 think that was before Plummer 7 was clear-cut. So
24 whenever that date was, I don't recall.

25 MS. HANSON: Okay.

1 THE ADMINISTRATIVE LAW JUDGE: Sorry, just a
2 clarification. Please continue.

3 MS. HANSON: I appreciate it, thank you.

4 BY MS. HANSON:

5 Q And during that particular site visit to Plummer 6, do
6 you recall seeing any garbage or debris on the site or
7 on the surrounding roads?

8 A Yes.

9 Q Can you describe it?

10 A A couple of tampons -- tampon applicators.

11 Q Anything else that you can recall?

12 A Huh-uh, no.

13 Q And were they on the fields or were they on the roads?

14 A One was on the -- they were mostly in the field.

15 Q I am just going to take a beat to review my notes, see
16 if I have any further questions. Okay. I just have a
17 couple more.

18 And this is about your educational
19 experience. Do you have education, any degrees or
20 specific training in soil science?

21 A No.

22 Q In geology?

23 A No, it's just only classes.

24 Q You took classes in geology?

25 A And soils. I don't know if that counted but --

1 Q And that was for your undergrad degree at Stevens
2 Point?

3 A Yes.

4 Q What about hydrogeology?

5 A I don't know if there was a specific course on it.

6 Q You don't recall?

7 A No.

8 MS. HANSON: I have no further questions.
9 Thank you.

10 THE ADMINISTRATIVE LAW JUDGE: Okay. Just a
11 second. Okay. Any cross from Howard Bros. Counsel?

12 MR. OLSON: Yeah, just a couple of questions.

13 CROSS-EXAMINATION

14 BY MR. OLSON:

15 Q Would it refresh your recollection about that site
16 visit if I told you it happened in October of 2021?

17 A I can't -- I don't remember. Like I know it happened,
18 I don't know the date. I mean if I had something in
19 front of me, maybe.

20 Q Okay. And do you recall that that was actually a DNR
21 audit of Howard Bros,' operations?

22 A Yes.

23 Q Okay. And you asked to be present; is that correct?

24 A Yes.

25 Q And Mr. Howard said that he was fine with you being

1 there --

2 A Yes.

3 Q -- isn't that right?

4 A Yes, sorry.

5 Q And after visiting the site, talking with Ms. -- is it
6 Conniff or Canniff?

7 MS. HANSON: Canniff.

8 BY MR. OLSON:

9 Q Ms. Canniff from the DNR and Mr. Howard, you, in fact,
10 stated everything looked good; didn't you?

11 A From my recall, I can't remember what I said or not
12 said during the whole thing.

13 Q Okay. Did you, after that site visit, lodge any
14 specific complaints with what you saw that day with the
15 DNR?

16 A I can't recall, sorry.

17 Q The exhibits that you were asked to look at before, 26
18 and 27, you received those in September 8th of 2022; is
19 that correct?

20 A Yes.

21 Q Did you send them to the DNR?

22 A I don't think so. I'm not -- I don't remember.

23 Q And this is in that nine-month period of time after the
24 tribe had been notified about the application and
25 before it was approved; is that correct?

1 A Yes.

2 Q Okay. Were you aware of the application for Plummer 7
3 as of September 8th, 2022?

4 A I can't recall.

5 Q When you received that letter which mentioned the
6 concerning statement that there were needles on the
7 side of the road, did you contact anybody in the tribe
8 and just have somebody dispatched to immediately clean
9 up the area?

10 A I can't recall.

11 Q Did you contact Mr. Howard and tell him he needed to
12 clean up the area?

13 A I don't recall.

14 Q All right. I need you to switch binders. If you go to
15 the one that says on the cover Howard Bros. If you
16 could flip to Exhibit 239, second to last.

17 THE ADMINISTRATIVE LAW JUDGE: Take your time
18 with it.

19 THE WITNESS: Yes, I'm there now.

20 BY MR. OLSON:

21 Q Okay. If you look at the second page of that, you see
22 an email from an email address that is Dickens,
23 D-i-c-k-e-n-s, 34@netzero.com. Do you see that?

24 A Yes.

25 Q And that email was addressed to Alison Canniff at the

1 DNR. And you were cc'd on that email; is that right?

2 A Um-h'm.

3 Q Do you remember getting this email?

4 A Yes.

5 Q Okay. And if you look about just a little bit more
6 than halfway through that email, in the middle of that
7 paragraph that starts "Just east of Fence Lake there is
8 a septic dump." Do you see that sentence?

9 A Oh, yeah.

10 Q Okay. If you jump two sentences forward, it says, "A
11 property owner contacted Celeste Hockings, water
12 specialist for the Flambeau tribe. She has tested the
13 water and has recorded a ten times increase..." -- I
14 assume it's supposed to be in -- "...in E. coli
15 bacteria in the lake." Do you remember reading that?

16 A Yes.

17 Q And you had a pretty strong reaction to that claim,
18 didn't you?

19 A Yes.

20 Q In fact, if you flip to the first page of this you see
21 a response to that email chain written by you; is that
22 correct?

23 A Yes.

24 Q And if you go down to the paragraph that starts now,
25 comma, do you see that?

1 A Yes.

2 Q You wrote, "Now, with the current water quality
3 testing, there is no way to determine if E. coli in
4 Wishow Lake is from the septic land spreading site or
5 if it's from septic systems on the lake or even
6 wildlife waste." Is that correct?

7 A Yes.

8 Q And at that time, that was your opinion, right, that
9 the source of any E. coli in Wishow Lake was just as
10 likely to come from private septic systems around the
11 lake or from wildlife waste?

12 A Yes.

13 Q And that's still your opinion today, isn't it?

14 A Yes.

15 Q If you go down to the final paragraph there, you write,
16 "Take a look at our beach samples that were taken on
17 July 28th, 2021. Same day as Wishow samples. E. coli
18 is already present at Big Crawling Stone Lake and all
19 of our lakes. The most probable source for the
20 majority of these sites are due to Canadian geese, but
21 I can't say 100 percent that geese are the main reason
22 either as there are many septic systems on those
23 lakes." Did I read that correctly?

24 A Yes.

25 Q And so it's your opinion that the main source of E.

1 coli in the lakes on the reservation are private septic
2 systems and wildlife; is that correct?

3 A Other factors, yes.

4 MS. BURKE: Okay. I have no other questions.

5 THE ADMINISTRATIVE LAW JUDGE: Just a moment.

6 Okay, any redirect?

7 MS. HERMSEN: Yes, Your Honor.

8 THE ADMINISTRATIVE LAW JUDGE: Go ahead.

9 MS. HERMSEN: Thank you.

10 REDIRECT EXAMINATION

11 BY MS. HERMSEN:

12 Q Ms. Hockings, you testified that there are -- there is
13 a difference between the tribe's process for approving
14 septage land application and the Wisconsin DNR's
15 process for approving it; is that correct?

16 A Yes.

17 Q And the Wisconsin DNR is in charge of handling their
18 application process?

19 A Yes.

20 Q And the tribe does not have control over what they do?

21 A No.

22 Q And do you believe that the tribe should take the blame
23 when something goes wrong in the Wisconsin DNR's
24 approval process?

25 A No.

1 Q Why is that?

2 A If they're following their own procedures and we have
3 no say, then we're not to blame.

4 Q And is it the tribe's job to clean up after septage
5 land applications that are approved by the Wisconsin
6 DNR?

7 A No.

8 Q Is it the tribe's job to clean up after Howard Bros.?

9 A No.

10 Q When you discussed the E. coli testing in the email
11 that Attorney Olson was referencing, you said that
12 there were many factors that might contribute to rises
13 in E. coli levels; correct?

14 A Yes.

15 Q And was it your general conclusion that you could not
16 determine what the cause was?

17 A Yes.

18 Q Is it safe to say that the tribe's Natural Resource
19 Department is concerned about E. coli levels rising in
20 light of septage land application in the area?

21 A Yes.

22 Q And by conducting those tests, you are monitoring the
23 levels and seeing what happens next?

24 A Yes.

25 Q And do you still have a concern about Howard Bros.?

1 land application possibly contributing to or leading to
2 E. coli levels going up in those lakes?

3 A Yes.

4 MS. HERMSEN: I don't have any other
5 questions. Thank you.

6 THE ADMINISTRATIVE LAW JUDGE: Okay. Any
7 recross?

8 MS. HANSON: No recross from the DNR.

9 THE ADMINISTRATIVE LAW JUDGE: Any recross?

10 MR. OLSON: Yeah, hopefully one question --
11 or it is going to be at least two.

12 RE-CROSS-EXAMINATION

13 BY MR. OLSON:

14 Q You are aware of the fact that there is a wetland
15 between Plummer 6 and 7 and the nearest lake; is that
16 correct?

17 A Yes.

18 Q I mean you did E. coli testing there, in fact, didn't
19 you?

20 A Yes.

21 Q And that test came back at a no detect level; is that
22 correct?

23 A Yes.

24 MR. OLSON: Okay, thank you. I don't have
25 anything further.

1 THE ADMINISTRATIVE LAW JUDGE: Okay. And I
2 missed the lake name, what you referred to the wetlands
3 near.

4 MR. OLSON: I said the closest lake.

5 THE ADMINISTRATIVE LAW JUDGE: Okay. Did you
6 name the lake?

7 MR. OLSON: I didn't name the lake.

8 THE ADMINISTRATIVE LAW JUDGE: Okay.

9 MR. OLSON: I think it's Wishow; right?

10 THE WITNESS: Um-hum.

11 MR. OLSON: Wishow?

12 THE ADMINISTRATIVE LAW JUDGE: Okay.

13 Anything else from the tribe?

14 MS. HERMSEN: No, Your Honor.

15 THE ADMINISTRATIVE LAW JUDGE: Okay. All
16 right. Thank you very much.

17 THE WITNESS: You're welcome.

18 THE ADMINISTRATIVE LAW JUDGE: Do you have
19 another witness?

20 MS. HERMSEN: Yes, Your Honor. We're going
21 to call Dee Allen.

22 THE ADMINISTRATIVE LAW JUDGE: Okay. Go
23 ahead. And while you're doing that, I'm going to see
24 about locking the casters here.

25 All right. Please raise your right hand.

1 Ma'am, do you solemnly -- do you swear or affirm that
2 the testimony you are about to give shall be the truth,
3 the whole truth, and nothing but the truth under
4 penalty of perjury?

5 THE WITNESS: Yes, I do.

6 THE ADMINISTRATIVE LAW JUDGE: All right.
7 Thank you. Please state and spell your name for the
8 record.

9 THE WITNESS: Dee Ann Allen. D-e-e. A-n-n.
10 A-l-l-e-n.

11 THE ADMINISTRATIVE LAW JUDGE: Thank you very
12 much.

13 And as I have told at least the previous
14 witness, please make sure that you speak up so that you
15 can be heard.

16 THE WITNESS: Sure.

17 THE ADMINISTRATIVE LAW JUDGE: All right. Go
18 ahead.

19 MS. HERMSEN: Thank you, Your Honor.

20 DEE ALLEN

21 having been first duly sworn, was examined and
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MS. HERMSEN:

25 Q Ms. Allen, can you tell us what your current job and

1 title is?

2 A It is Environmental Protection Program Manager with the
3 tribe.

4 Q And is that within a certain department of the tribe?

5 A Environmental Department.

6 Q Okay. Can you briefly describe your educational
7 background?

8 A I attended Nicolet College. I obtained a tribal
9 business management certificate. I also had -- I was
10 required to obtain a lot of different trainings and
11 certifications in the job responsibilities I do.

12 Q Can you tell us what some of those trainings and
13 certifications are?

14 A A lot of those are federal agency trainings from the
15 BIA, EPA, US Army Corps of Engineers, USGS, to do HUD.
16 Even some state emergency management training I have.
17 To do environmental reviews, assessments, stormwater
18 runoff, pollution control, pollution prevention type of
19 trainings.

20 I have some tribal citation court training,
21 as well as our historic preservation, archeology
22 paraprofessional training, radon mitigation measurement
23 training, asbestos inspector training, certifications.

24 There is probably -- there is Phase I, Phase
25 II, different types of site reviews.

1 Q Okay. So it is safe to say that you have a lot of
2 training and education related to environmental and
3 natural resource issues?

4 A Yes.

5 Q In your current job, what are your general professional
6 responsibilities?

7 A So a lot of it is like doing the research,
8 environmental reviews, looking at different projects
9 that are occurring within the reservation, a lot of
10 tribal projects.

11 Solid waste, illegal dumping management. I
12 have to oversee the Chapter 24 Solid Waste Code. Do --
13 I have been involved with a lot of different surveys
14 with studies that we've done. I have worked with our
15 fisheries technician. I started out there, worked as a
16 water resource technician, so I was involved with a lot
17 of different studies and management there.

18 And then I was the interim Natural Resource
19 Director for like 15 months. And then returned back to
20 my environmental program manager position.

21 Q Okay. When you said the Solid Waste Management Code,
22 was that it?

23 A Yes.

24 Q Is that the tribe's code?

25 A Yes. Chapter 24.

1 Q And is that the code that the tribe uses for
2 consideration and/or approval of septage land
3 application?

4 A Yes. It had to be included in there after the previous
5 LaFrenier case, to put more specific reviews that would
6 be -- that would be needed or required to be conducted
7 for land spreading.

8 Q Okay. Are you aware of septage land applications that
9 have taken place on the reservation in the past?

10 A Yes.

11 Q Was that the LaFrenier situation?

12 A Yes, in the '90s, yep.

13 Q Okay. In the '90s?

14 A I was a water resource tech at that point.

15 Q And how did that affect the land and natural resources
16 on the reservation?

17 A So the area out there was towards one of our
18 outstanding water, resource water, Spring Creek that
19 leads into Mishonagon Creek. It's in the Tomahawk
20 watershed. We have four watersheds on the reservation.

21 So we had gotten several solid waste
22 complaints was the first thing that came across, you
23 know, they would find a lot of debris out there,
24 hygiene materials. There is access in and out so a lot
25 of our hunters were still utilizing it, and then they

1 would come in and complain.

2 So, of course, it'd come to our area and we'd
3 work with the wardens or other areas or departments
4 within the res to address that situation.

5 Q What are your general concerns in your professional
6 capacity about septage land application taking place on
7 the reservation?

8 A So because of that first LaFrenier site, it took a long
9 time to get -- you know, when we amend our codes, it
10 takes a long time to get wording into our code. But
11 also, the concerns were coming from our elders, our
12 hunters. I mean I even hunt out in that area. My dad
13 still hunts out there, he's 85 years old.

14 So they were going in and out of there and
15 the stuff was, you know, a lot of debris. There's
16 runoff towards Spring Creek which is outstanding
17 resource water.

18 I take my grand -- I took my kids and my
19 grandkids out to pick all of the berries out there.
20 There is all kinds of berries, hazelnuts. And that
21 whole area is -- we designated like four different
22 areas within the reservation to try to limit the type
23 of development that occurs on there.

24 Like you heard from President Johnson, we
25 have like the Bear River area, we have Wild Rice area,

1 East Boundary and Prairie, and Trout River set aside.
2 There is resolutions for no development to occur in
3 those areas.

4 So that's kind of some of the management
5 plans that we developed for the tribe, the integrated
6 resource management plan. We have done a solid waste
7 management plan. You will see that -- our climate
8 resiliency plan. So it has those issues related to it
9 within that area.

10 I also would like to -- I think I should lay
11 out there, I was on our Tribal Council for like 20
12 years, a lot of it with our -- as vice-president and
13 then a council. I haven't been on there for like the
14 past three years, but so I do have that background.
15 And being on the council, I was appointed to the State
16 Tribal Relations Committee. And it is in that
17 committee that we study a lot of the laws and
18 regulations that are affecting tribes, where there is
19 gaps in DNR code versus tribal codes.

20 So that was a way to study ways we can
21 incorporate, you know, our concerns that we were --
22 that we were needing to address.

23 Q Is it safe to say that the tribal approval process for
24 land application takes into account factors that the
25 state DNR does not take into account?

1 A Correct. Like, you know, something like this would
2 have required an environmental assessment to be
3 conducted and alternatives sought so that there is
4 different -- maybe there is a different way we're going
5 to all have to look at of treating septic. Because all
6 of these affects our -- it is just going to be a
7 cumulative.

8 And we only have one homeland. We have a
9 12-by-12, where that's all we have. And we have got to
10 look at all of these different issues occurring within
11 our reservation and make -- you know, try to work
12 towards the protection of those things.

13 Q But the Howard Bros. applied through the state DNR;
14 correct?

15 A Correct.

16 Q Not through the tribe?

17 A Correct.

18 Q Are you familiar with the location of Plummer 6 and 7
19 on the reservation?

20 A Yes, I am.

21 Q And are you familiar with the bodies of water
22 surrounding those parcels?

23 A Yes.

24 Q Can you take a look at Exhibit 11. It should be in
25 whatever one is the tribe's exhibits, yeah.

1 Can you tell us what this exhibit shows?

2 A It shows a map of the area out by Plummer 7. Warrior
3 Lake, Wishow Lake. The different -- this doesn't show
4 the ownership but --

5 Q And was this map created by the tribe?

6 A I'm not familiar with it.

7 Q Okay. But does this correctly show the location and
8 layout of the water around the parcels Plummer 6 and 7?

9 A Yes.

10 Q Okay. Do you have concerns about septage land
11 application at Plummer 6 and 7 affecting those waters
12 we see on that map?

13 A Yes. Those surface waters, groundwater. I was really
14 concerned during the COVID period because we were
15 losing a lot of our members. And here, you know, we
16 had concerns from tribal members saying, why are we
17 letting people come onto the land, period. But why are
18 we letting everybody dump their septic out there?

19 So that is a concern, as well as, I was out
20 to Plummer 6 when it was Arbor Vitae as a complaint. I
21 went out there, I took pictures, observed all of the
22 hygiene products.

23 MR. OLSON: I'm going to object, Your Honor,
24 based on your ruling that you've made. Operational
25 problems with Plummer 6 when it was controlled by Arbor

1 Vitae have already been deemed irrelevant.

2 THE ADMINISTRATIVE LAW JUDGE: That is true.

3 Any offer of proof that you want to make on that?

4 MS. HERMSEN: No, Your Honor. I think I'll
5 just ask her some clarifying questions about when she
6 has received complaints since that change happened.

7 THE ADMINISTRATIVE LAW JUDGE: Okay. All
8 right.

9 BY MS. HERMSEN:

10 Q Ms. Allen, have you received complaints or witnessed
11 garbage at Plummer 6 and 7 since Howard Bros. took it
12 over?

13 A Yes, I have.

14 Q And can you just describe generally some of the
15 complaints you have received?

16 A Some were from, again, hunters or my relatives out that
17 way, saying there's a bunch of septic trucks that come
18 in and out of there, they are dumping out there. I
19 drove out there and I didn't -- I could not probably
20 say the debris flew off from the land spraying area out
21 onto the roadway but there was, you know, litter.

22 You could see the tracks from the trucks
23 coming in and out of there. That was a -- was the most
24 thing that I could see before they -- after we've had
25 so much rain. So we have people out there checking,

1 our wardens are out there checking for different things
2 like that, that occurs out there.

3 I did get notification from an attorney that
4 was representing some homeowners out there, that I had
5 to refer up. But I mean most of what we could say in
6 response was it's in the DNR's process.

7 Q And are you familiar with the tribe's trust lands
8 around Plummer 6 and 7?

9 A Yes.

10 Q How are those trust lands used?

11 A Mostly hunting, gathering. We have people just out
12 there walking. There is a lot of plants, berries and
13 things like that out there.

14 Q And are there trails through the -- those lands?

15 A Yes.

16 Q And the tribe maintains those trails?

17 A Yes.

18 Q Would you say the lands are used for cultural purposes?

19 A Yes, that, too.

20 Q What about recreational purposes?

21 A I mean we don't consider hunting recreation. But I
22 mean they're walking it, if you want to say that's
23 recreation. Biking, there is a lot of bikes, bikers
24 out there.

25 Q Okay. And what about subsistence purposes?

1 A Yes. That's one of our high areas for pretty much any
2 kind of species you can think of, plants and wildlife.

3 Q And you said you have personally been out to that area;
4 correct?

5 A Correct.

6 Q Have you used those surrounding trust lands personally?

7 A Oh, yes.

8 Q How have you used them?

9 A Hunting. Me and my -- like I said, my 85-year-old dad
10 still hunts. You will find him down there almost every
11 day. He is taking his rounds, looking for turkey,
12 partridge, whatever deer he can try to get. And like I
13 said, it just is through generations that's one of our
14 hunting lands.

15 Q And so people like your dad, are they eating those
16 animals that they hunt on those lands?

17 A Yes, we do.

18 Q Are you concerned about tribal members eating animals
19 that come from that area now?

20 A Yes. And again, there were studies going on with the
21 COVID transferring over to the animals and wildlife.
22 So that right there was a big issue. There is so many
23 things affecting our subsistence resources.

24 And it is just constant, there is always
25 something. And something like this, they have access

1 to. It is just free. There is no -- like I said, I
2 could have drove in there and drove out. There is
3 nothing to stop anybody from going in there. So it's a
4 concern.

5 Q What about the animals in that area, is there anything
6 that is stopping them from crossing onto Plummer 6 and
7 7?

8 A No, there is no fencing.

9 Q Anything that is stopping them from grazing on Plummer
10 6 and 7?

11 A No, there is not.

12 Q Do you believe that wildlife in that area is likely to
13 graze at Plummer 6 and 7?

14 A Yes, I seen one.

15 MS. HANSON: I'm going to object to lack of
16 foundation.

17 THE ADMINISTRATIVE LAW JUDGE: I'm sorry,
18 what was the objection?

19 MS. HANSON: I am going to object to the lack
20 of foundation.

21 THE ADMINISTRATIVE LAW JUDGE: And what was
22 the question?

23 MS. HERMSEN: Whether wildlife from the
24 surrounding lands is likely to graze at -- on Plummer 6
25 and 7.

1 THE ADMINISTRATIVE LAW JUDGE: So I guess lay
2 some foundation, does she know if that's the case in
3 the first place.

4 MS. HERMSEN: Sure.

5 BY MS. HERMSEN:

6 Q So you testified about the types of animals that are in
7 those surrounding trust lands. Do those animals graze?

8 A Yes.

9 Q And are you familiar with the grazing patterns of those
10 animals?

11 A Yes. They traverse through that whole area out there.
12 Not only like -- I mean, you will see bear through
13 there because of the berries right along that whole
14 roadway out there, right in the right-of-ways.

15 I mean, it is just constant. Like I said,
16 that was one area that we say is -- we wanted to leave
17 undeveloped.

18 Q So do you believe that based on your knowledge of the
19 animals and their grazing patterns, is it likely that
20 the animals would graze on Plummer 6 and 7?

21 A Yes.

22 Q Thank you. In your professional capacity, do you have
23 other concerns about the ways in which Howard Bros.'
24 septage land application is or could affect the
25 environment or natural resources in that area that we

1 haven't covered?

2 A I guess that's all unknown. I mean, that was one of
3 our concerns is there is -- pretty much you can go
4 ahead and do it and not go ahead and monitor or do any
5 kind of well tests or any of that type of -- to see
6 what the real and true impacts are going to be.

7 Q You have seen some impacts; correct?

8 A Yes.

9 Q Including garbage and debris?

10 A Um-h'm, and the odor, and the amount of traffic.
11 That's one complaint my dad has, there is so much
12 traffic, it is scaring all of his deer and animals
13 away.

14 MS. HERMSEN: Okay. I don't have any further
15 questions. Thank you.

16 THE ADMINISTRATIVE LAW JUDGE: All right.
17 Cross?

18 MS. HANSON: Yes, just a couple of questions.

19 CROSS-EXAMINATION

20 BY MS. HANSON:

21 Q So do you recall your testimony where you described a
22 site visit and you observed litter and tracks coming in
23 and out from the site?

24 A Um-h'm.

25 Q Was that --

1 A Yes.

2 Q -- Plummer 6, excuse me?

3 A It's both.

4 Q It was both Plummer 6 and Plummer 7?

5 A Yes.

6 Q And was that a single visit or multiple visits?

7 A Multiple. I mean we are up there constantly. Every

8 time we get a complaint or another concern, we have to

9 at least go out there and check it out.

10 Q Do you recall any dates or approximate dates of these

11 visits?

12 A There is several. I -- from the fall, to spring,

13 summer mostly.

14 Q Do you recall a year, 20 -- like this year or last

15 year?

16 A '19, '20, '21, '22.

17 Q So are you testifying that you have made visits spring,

18 summer and fall to Plummer 6 and then Plummer 7, 2019

19 until the present year?

20 A All -- part of my job is monitoring the whole res,

21 looking to see what kind of -- if there is illegal

22 dumping out there or not. So that's one of my routes.

23 I am out that way to see because we get a lot of

24 complaints -- not only this, but illegal dumping,

25 people dropping tires, chairs.

1 And so we make our rounds to the whole res to
2 find those sites to get them cleaned up. So that's a
3 routine route that I'm just checking because I'm out
4 that way.

5 Q But could you give me maybe an approximation of a
6 particular site visit?

7 A In '21, probably August, September.

8 Q August, September of 2021?

9 A Um-h'm.

10 Q Okay. And that is when you specifically recall seeing
11 the tracks coming in and out from one of the sites?

12 A Yep. Yes. The one site did get blocked off by a --
13 some kind of equipment on six.

14 Q So you weren't able to access it?

15 A Yeah. I didn't want to trespass.

16 Q Can you tell me more about complaints of dumping other
17 waste in the area?

18 A Yeah. On that side of the res we get a lot of off-res
19 people dumping, coming on the res, because it is so
20 close, and there is these roads off there.

21 We probably have three, four open cases of
22 non-members that have dumped in those areas.

23 Q What are the types of things that they dump in the
24 area?

25 A A lot of like project shingles, wood debris. Like I

1 said, there is tires, there is people's -- like they
2 clean their cabins out and whoever is -- just throws
3 their stuff out there.

4 Q So would you say -- is it fair to say that complaints
5 or instances of this type of dumping is a pretty common
6 occurrence in that part?

7 A You mean solid waste dumping?

8 Q Of the types of debris that you just described,
9 shingles, the wood debris.

10 A No, they're usually big sites. They'll come in with a
11 load, a big site, and we are out there to try to get
12 it -- if we can't find the names or the person, we're
13 out cleaning it up and documenting our time and the
14 cleanup because we don't want more to occur in those
15 areas.

16 Q You said you have three to four open cases of that kind
17 of dumping right now?

18 A Well, yeah. The person is either in jail or they live
19 in Chicago or Florida or somewhere else, and we are
20 still just waiting for them to come back around to get
21 them to tribal court.

22 MS. HANSON: I don't have any further
23 questions. Thank you.

24 THE ADMINISTRATIVE LAW JUDGE: Just a second.
25 All right. Any --

1 MR. OLSON: No questions, Your Honor.

2 THE ADMINISTRATIVE LAW JUDGE: No? Okay.

3 Anything else, any redirect?

4 MS. HERMSEN: Yes, Your Honor.

5 THE ADMINISTRATIVE LAW JUDGE: Okay. Go

6 ahead.

7 MS. HERMSEN: Thank you.

8 REDIRECT EXAMINATION

9 BY MS. HERMSEN:

10 Q So, Ms. Allen, you testified about seeing waste or
11 garbage related to Howard Bros.' activities and then
12 also about the types of garbage you would find from, I
13 think you called it, like dumps?

14 A Um-h'm. (Witness nodded head.)

15 Q How do you tell the difference between those?

16 A So those are, you know, just like littering. Litter
17 waste that you -- doesn't have a name tag to it,
18 doesn't -- it is just like pieces of debris, plastics,
19 latex, toilet paper.

20 Q But you have seen litter that you tied to Howard Bros.'
21 activities?

22 A There is litter along that roadway.

23 Q And you have received complaints related to litter tied
24 to Howard Bros.' activities?

25 A Yes.

1 Q And is that different from that type of dumping that
2 you were referencing?

3 A Yes. I am talking major like 30-yard dumpster areas
4 that we have had to clean up.

5 Q That's the dumping?

6 A Yep.

7 Q But then what you see with Howard Bros., how is that
8 different?

9 A It is more littering. It is more, you know, just
10 smaller debris flying around.

11 Q Okay. And did you see that debris before Plummer 7 was
12 approved last year?

13 A Yes, on six.

14 Q And then have you seen it since then?

15 A I haven't gone out to that -- out on seven because I
16 didn't want to get trespassing.

17 MS. HERMSEN: Okay, thank you. I don't have
18 any other questions.

19 THE ADMINISTRATIVE LAW JUDGE: All right.
20 Based on that question, is there any recross by either
21 of the remaining parties?

22 MR. OLSON: No.

23 MS. HANSON: No.

24 THE ADMINISTRATIVE LAW JUDGE: All right.
25 Thank you very much. I don't really need to take a

1 lunch, but I feel like people would be upset if we
2 didn't take a lunch. So is this an okay time to break?
3 Do you want to break or do you want to power through?
4 What do you feel like doing?

5 MS. HANSON: How many further witnesses does
6 the Petitioner plan to call today?

7 MS. HERMSEN: We have --

8 MR. ADAMS: We have a few.

9 MS. HERMSEN: Two people from the tribe, two
10 local residents, and our scientist. So that's five.
11 But I don't know if we will be able to get through them
12 all today.

13 MS. HANSON: We could perhaps try to get
14 through another witness before going to lunch.

15 THE ADMINISTRATIVE LAW JUDGE: Want to try
16 one more witness and then take a lunch break?

17 MR. OLSON: Sure.

18 MR. ADAMS: Sure, Your Honor.

19 THE ADMINISTRATIVE LAW JUDGE: Okay. Let's
20 do that. So who is your next witness?

21 MS. HERMSEN: We are going to call Jerome
22 Labarge.

23 THE ADMINISTRATIVE LAW JUDGE: Is he here?

24 MS. HERMSEN: Yes.

25 THE ADMINISTRATIVE LAW JUDGE: I'd ask you to

1 raise your right hand. Sir, do you swear or affirm
2 under penalty of perjury that the testimony you are
3 about to give will be the truth, the whole truth, and
4 nothing but the truth?

5 THE WITNESS: Yeah.

6 THE ADMINISTRATIVE LAW JUDGE: All right,
7 great. Please state and spell your first and last name
8 for the record.

9 THE WITNESS: Jerome Labarge. J-e-r-o-m-e.
10 L-a-b-a-r-g-e.

11 THE ADMINISTRATIVE LAW JUDGE: Thank you.
12 And as I have said to the past couple of witnesses,
13 make sure that you speak up so that people can hear
14 you.

15 All right. Who is going to handle his direct
16 examination?

17 MR. ADAMS: I'm going to ask him some
18 questions, Your Honor.

19 THE ADMINISTRATIVE LAW JUDGE: All right
20 great.

21 MR. ADAMS: All right.

22 JEROME LABARGE,
23 having been first duly sworn, was examined and
24 testified as follows:

25 DIRECT EXAMINATION

1 BY MR. ADAMS:

2 Q Good morning, Mr. Labarge. Could you -- would you
3 please tell us what your job title is?

4 A Field technician for Land Management, Lac du Flambeau
5 Tribe.

6 Q Okay. And can you describe to us what the Land
7 Management Office does for the tribe?

8 A We do everything from -- we do all of the permitting
9 mostly for the tribe.

10 Q Okay. And does the Land Management Office keep track
11 of like, say, the tribe's land, like the land that the
12 tribe owns, and land that like other folks might own?

13 A Yeah. We have got -- we follow the --

14 THE ADMINISTRATIVE LAW JUDGE: All right. I
15 can't hear you so I need you to speak up. And speak up
16 loudly so that everybody can hear you because even I'm
17 having trouble hearing you. Sorry to interrupt, but I
18 just can't hear him.

19 BY MR. ADAMS:

20 Q Okay, yeah. And, Mr. Labarge, how long have you worked
21 in the Land Management Office?

22 A I have worked there five years now.

23 Q Okay. And in your work, are you -- are you pretty
24 familiar with lands that the tribe owns around the res?

25 A Yeah, I'm familiar with all of the tribal land.

1 Q Okay.

2 A And a lot of the non-tribal land.

3 Q Okay. And the tribal land, do you get out and visit
4 that land? Do you --

5 A Yeah. Yes, I -- yeah, I'm constantly in the field
6 also, just like the other departments that have to be
7 in the field.

8 Q Okay. Great. Mr. Labarge, are you a Lac du Flambeau
9 tribal member?

10 A Yes, Lac du Flambeau tribal member.

11 Q Okay. And, Mr. Labarge, have you grown up on the Lac
12 du Flambeau Indian Reservation?

13 A Yes, I was born and raised in Lac du Flambeau.

14 Q Okay. And, Mr. Labarge, as part of your job, are you
15 familiar with septage land applications that Howard
16 Bros. has been doing on the reservation?

17 A Not entirely. We do a lot of permitting for tribal
18 members only.

19 Q Okay. Are you generally aware that Howard Bros. is
20 doing a land application of septage on the Lac du
21 Flambeau Indian Reservation?

22 A Yeah, I somewhat know what is going on with it.

23 Q Okay. And, Mr. Labarge, the land that Plummer -- that
24 Howard Bros. owns at Plummer 6 and 7, would that be fee
25 simple lands?

1 A Yes.

2 Q And, Mr. Labarge, if you could get the binder that has
3 -- that says tribal exhibits on it. And if you would,
4 if you would flip to Exhibit No. 40.

5 So, Mr. Labarge, do you see -- do you see
6 like a map at that exhibit?

7 A Yes.

8 Q And does -- do you believe that that map accurately
9 shows the Howard Bros.' land parcels that make up
10 Plummer 6 and Plummer 7?

11 A Yes.

12 Q Okay. And so, Mr. Labarge, would the -- I believe the
13 parcel identification number for that particular map
14 starts with a 10, and then there is a dash after that.

15 Would you agree that that would represent a
16 parcel identification number for this map?

17 A Yes.

18 Q Okay. And so would 10-3318, is that Howard Bros.'
19 land?

20 A Yes.

21 Q And do you believe that that accurately displays
22 Plummer 6, the north parcel?

23 A Yes.

24 Q Okay. And then would 10-3338-01, would that represent
25 Plummer 7?

1 A Yes.

2 Q Okay. Thank you. And then, Mr. Labarge, would -- just
3 to the east of that is 10-3319. Is that land that's
4 owned by the tribe?

5 A Yes.

6 Q Okay. And is 10-3338 tribal land also?

7 A Yes.

8 Q Okay. And then just to the west of that, Mr. Labarge,
9 is 10-3282-01. Is that tribal land?

10 A Yes.

11 Q And, Mr. Labarge, is 10-3362, is that tribal land?

12 A Yes.

13 Q Okay. And so for the four parcels of tribal land that
14 we have just discussed, have you ever physically been
15 out to those parcels?

16 A Yes.

17 Q Okay. And, Mr. Labarge, will you take a look at the
18 next -- it would be Exhibit 41 in that same binder.

19 And so, Mr. Labarge, this -- does this look
20 like a -- like an aerial like/satellite photo of that
21 same area?

22 A Yes.

23 Q Okay. And, Mr. Labarge, like based on your knowledge
24 and your experience, what do tribal members do on those
25 tribal lands that are around Plummer 6 and 7?

1 A We definitely hunt and gather that area.

2 Q What type of animals are tribal members hunting?

3 A All animals are usually harvested and used.

4 Q Would white-tailed deer be part of those animals that
5 are harvested there?

6 A Yes. White-tailed deer are the main animal that's
7 harvested in that area.

8 Q Okay. And, Mr. Labarge, have you -- have you ever
9 noticed any type of fence or obstacle that has been
10 installed on Plummer 6 and 7 that would keep
11 white-tailed deer from entering Plummer 6 and 7?

12 A No.

13 Q And, Mr. Labarge, are you a white-tailed deer hunter
14 yourself?

15 A Yes.

16 Q Mr. Labarge, have you ever seen a white-tailed deer eat
17 grass?

18 A Yes.

19 Q Have you ever seen a white-tailed deer eat shrubs?

20 A Yes.

21 Q Mr. Labarge, have you ever seen a white-tailed deer
22 travel more than 500 yards?

23 A Yes.

24 Q Have you ever seen a white-tailed deer jump a fence?

25 A Yes.

1 Q Okay. Mr. Labarge, do you know of any tribal members
2 that are harvesting plants on any of those lands around
3 Plummer 6 and 7?

4 A Yes.

5 Q Do you know what types of plants they may be
6 harvesting?

7 A A lot of medicines and edible plants.

8 Q And, Mr. Labarge, when you say medicines, those are --
9 those are medicines that are gathered and combined by
10 tribal members for consumption?

11 A Yes.

12 Q And, Mr. Labarge, from your perspective, is it
13 important for the tribe to protect the lands and waters
14 on the Lac du Flambeau Indian Reservation?

15 A Yes.

16 Q And why do you believe it is important to protect them?

17 A For future generations to be able to use and survive
18 on.

19 Q And, Mr. Labarge, in your personal opinion, do you
20 believe that the application of septage threatens the
21 lands and waters of the Lac du Flambeau Indian
22 Reservation?

23 A Yeah, personally I feel that large volumes of it does.

24 Q And, Mr. Labarge, have -- in the time that you have
25 been working in your position, have you seen any

1 garbage or debris on any of those tribal lands that
2 border Plummer 6 and 7?

3 A Just I suppose normal litter, just like I guess
4 consumer litter.

5 Q Okay. And, Mr. Labarge, will you -- will you flip to
6 exhibit -- in that same binder, Exhibit No. 39.

7 And, Mr. Labarge, on that first page of
8 Exhibit 39, where it says from and it is a
9 booj2149@gmail.com. Is that your email address?

10 A Yes.

11 Q Okay. And the two, the Jessie Peterson, the
12 jpeterson@ldftribe.com, who is Jessie Peterson?

13 A She is the -- my supervisor, the Director of Land
14 Management Department.

15 Q Okay. Great, thank you. And will you flip to the next
16 page, Mr. Labarge.

17 And these -- these photographs, did you
18 happen to take these photographs?

19 A Yes.

20 Q And how did you go about taking these photographs from
21 an elevated position?

22 A I fly a drone.

23 Q Okay. So you have a drone that you use for
24 professional purposes for the tribe?

25 A Yes.

1 Q And is it --

2 A Yes.

3 Q -- for land surveying purposes?

4 A It is just for aerial view, yes. Surveys, yep.

5 Q Okay.

6 A Yes.

7 Q Okay. And, Mr. Labarge, these photographs, do they --

8 they show Howard Bros.' equipment out on the property?

9 A Yes.

10 Q Okay. And are there any other descriptors related to

11 these photos that you would like to provide to the

12 Court?

13 Was there anything else that you saw out

14 there besides just the trucks and stuff? Did you see

15 any debris?

16 A Just that they were, yeah, dumping the sewage out in

17 the fields, and then it was just a shock that the

18 entire area was leveled out and that they were dumping

19 the sewage from the septic tank truck out.

20 Q And, Mr. Labarge, will you flip back to Exhibit No. 41.

21 And I have -- I would assume, Mr. Labarge, that -- so

22 in this photo, I think it's -- I think it's clear to

23 see where Plummer 6 has been set up for land

24 application because it doesn't look like there is a lot

25 of vege -- or at least trees there, would you agree

1 with that?

2 A Yes.

3 Q But then Plummer 7, it looks like at least when this
4 aerial or satellite photo was taken, would you agree
5 that it looks like there was still a lot of trees on
6 Plummer 7?

7 A Yes.

8 Q Okay. And based on your personal knowledge, Plummer 7
9 was clear-cut for the land application purposes?

10 A Yes.

11 Q Okay. Because I would assume it would be difficult if
12 trees were still there for them to be hauling all of
13 this equipment back that way; correct?

14 A Yes.

15 Q And, Mr. Labarge, will you turn to Exhibit 39, also,
16 to -- will you turn back to that again?

17 And it would be the -- it would be page three
18 of Exhibit 39, that top photograph. And it appears
19 that the drone is kind of situated above Plummer 6 and
20 it is looking south to Plummer 7; is that -- would that
21 be a correct orientation?

22 A Yes.

23 Q And, Mr. Labarge, in this photo, is there any type of
24 buffer of trees or other natural obstacles between
25 Plummer 6 and Plummer 7?

1 A No.

2 Q And so, Mr. Labarge, based on your knowledge of Plummer
3 6 and 7, is there any barrier that separates Plummer 6
4 and 7?

5 A No.

6 Q So -- so again, based on your knowledge of these two
7 parcels, Mr. Labarge, it would be extremely easy for a
8 truck that is on Plummer 6 to access any part of
9 Plummer 7?

10 A Yes.

11 Q Okay. And, Mr. Labarge, can you just generally
12 describe where Plummer 6 and 7 are at? Like is it --
13 like where are they at on the reservation, like
14 northeast corner, southwest corner?

15 A East.

16 Q East?

17 A East side.

18 Q And, Mr. Labarge, the land -- the tribal lands that are
19 on each side of Plummer 6 and 7, are they used for
20 cultural purposes by tribal members?

21 A Yes.

22 Q And, Mr. Labarge, are those lands used for recreational
23 purposes by tribal members?

24 A I suppose like hiking, scouting, recreational -- yeah,
25 recreational hiking, I suppose, and biking.

1 Q Yeah.

2 A Yeah.

3 Q If a tribal member wanted to camp on any of those
4 lands, would they have the ability to set up a camp on
5 one of those tribal lands?

6 A Yes.

7 Q And, Mr. Labarge, are those lands used for subsistence
8 purposes?

9 A Yes. That's what they are mostly used for.

10 Q And, Mr. Labarge, have you yourself ever used those
11 lands for subsistence purposes?

12 A Yeah. Yes, I have used that area for subsistence
13 hunting and gathering since -- my whole life.

14 Q And, Mr. Labarge, when was the last time you harvested
15 a deer from those tribal lands?

16 A Probably this past summer.

17 Q Okay. And, Mr. Labarge, have you received any
18 complaints from either tribal members or non-tribal
19 members related to the land application at Plummer 6
20 and 7?

21 A I haven't received any complaints in the office, just
22 personal complaints of people, friends and relatives
23 talking about the crooks out that way.

24 MR. ADAMS: That's all of the questions I
25 have for Mr. Labarge, Your Honor, on direct.

1 THE ADMINISTRATIVE LAW JUDGE: Okay. Just a
2 second. I am going to wrap up my notes here. There is
3 going to be some more questions for you, so just a
4 second. Thank you. Okay. Cross-examination?

5 MS. BURKE: Yes, Your Honor, thank you.

6 THE ADMINISTRATIVE LAW JUDGE: All right.

7 CROSS-EXAMINATION

8 BY MS. BURKE:

9 Q Mr. Labarge, you stated you're not familiar with the
10 Howard Bros. specifically as a business; is that right?

11 A Can you repeat the question?

12 Q You stated that you are not familiar with their
13 business personally, is that right, the Howard Bros.?

14 A Personally, no. I have never used Howard Bros., I
15 guess. I'm not sure what the question is, I guess.

16 Like --

17 Q Have you ever talked to Kyle Howard or any of the other
18 staff?

19 A I know Kyle from coaching wrestling.

20 Q Okay.

21 A So, yeah, I have seen him up there at Lakeland
22 wrestling.

23 Q Okay. Have you ever talked to any of the Howard Bros.'
24 staff about what's going on at the Plummer sites?

25 A No.

1 Q And have you ever seen septage being spread before you
2 took the photos at Plummer 7?

3 A No.

4 Q So you're not familiar with what septage spreading
5 should look like?

6 A No.

7 Q Okay. And I believe you stated you saw some normal
8 consumer litter near the Plummer sites; does that sound
9 right?

10 A Yeah.

11 Q Okay. Do you see normal litter on other parts of the
12 reservation ever?

13 A Yeah. I see -- I mean, normal litter everywhere.
14 That's why I said normal.

15 Q Okay. So do you feel like there was anything out of
16 the ordinary around the Plummer sites that you've seen?

17 A Just the smell.

18 Q Okay.

19 A The smell and then I suppose the heavy traffic on the
20 road -- I mean the heavy mud on the road, I guess.

21 Q Okay. And you stated the personal complaints you have
22 received are mostly about the traffic?

23 A Yes.

24 MS. BURKE: That's all of my questions, Your
25 Honor. Thank you.

1 THE ADMINISTRATIVE LAW JUDGE: Just a second.
2 Okay. Any cross-examination by Howard Bros.?

3 MR. OLSON: Just a couple of questions,
4 Mr. Labarge.

5 CROSS-EXAMINATION

6 BY MR. OLSON:

7 Q When Mr. Adams was asking you questions, he asked you
8 if you believed that spreading septage on Plummer 6 and
9 7 would negatively impact the surrounding land, and you
10 answered large volumes of it would. Do you remember
11 that?

12 A Yes.

13 Q Do you know what volume would? How large does the
14 volume have to be?

15 A Tanker trucks emptying --

16 Q How many? Go ahead.

17 A Tanker trucks emptying an entire field worth of it.

18 Q But you couldn't put that in gallons?

19 A No. I -- I could say millions of gallons. I don't
20 know how much it would take to cover the field. I just
21 know that it covers that entire field.

22 Q Do you have any special education or training on the
23 impacts of septage land spreading on surrounding lands?

24 A No.

25 MR. OLSON: Okay. No more questions.

1 THE ADMINISTRATIVE LAW JUDGE: Any redirect?

2 MR. ADAMS: No, Your Honor.

3 THE ADMINISTRATIVE LAW JUDGE: Okay. Thank
4 you very much for your time, sir.

5 THE WITNESS: Thanks.

6 THE ADMINISTRATIVE LAW JUDGE: All right.
7 We're going to take a lunch break now. And let's do a
8 healthy hour so that we'll be back here at 1:15-ish. I
9 would like to get started at around 1:20, 1:25. Okay?

10 MR. ADAMS: Yes, Your Honor.

11 THE ADMINISTRATIVE LAW JUDGE: Thank you.

12 MR. OLSON: Sounds good.

13 (Lunch recess taken from 12:15 to 1:20 p.m.)

14 THE ADMINISTRATIVE LAW JUDGE: All right. So
15 we left off with one of the Petitioner's witnesses. So
16 do you have another witness?

17 MS. HERMSEN: Yes, Your Honor. We are going
18 to call Ms. Jean Gorski.

19 THE ADMINISTRATIVE LAW JUDGE: Okay. Please
20 raise your right hand. Do you swear or affirm under
21 penalty of perjury that the testimony you are about to
22 give will be the truth, the whole truth, and nothing
23 but the truth?

24 THE WITNESS: I do.

25 THE ADMINISTRATIVE LAW JUDGE: All right.

1 Please state and spell your first and last name for the
2 record. And speak up, make sure that you are speaking
3 in the direction of the microphones so that you are
4 actually picked up.

5 THE WITNESS: Okay. Jean Gorski. J-e-a-n.
6 G-o-r-s-k-i.

7 THE ADMINISTRATIVE LAW JUDGE: All right.
8 Who will be doing the questioning?

9 MS. HERMSEN: I will, Your Honor.

10 THE ADMINISTRATIVE LAW JUDGE: All right. Go
11 ahead.

12 MS. HERMSEN: Thank you.

13 JEAN GORSKI
14 having been first duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. HERMSEN:

18 Q Ms. Gorski, thank you for being here today. And can
19 you tell us what your profession is?

20 A I'm a retired special education teacher.

21 Q Okay. And where do you live?

22 A I live at 8971 North Seneca Road, Bayside, Wisconsin.
23 It's a suburb of Milwaukee.

24 Q And do you spend some of your time residing on the
25 reservation, as well?

1 A Yes, I do.

2 Q And where is that home?

3 A 2153 Lilac Lane. It is on Wishow Lake or Wishow.

4 Q Okay. How long have you lived there?

5 A Sixty-two years.

6 Q And how much of the year do you spend in that house?

7 A Maybe three months or a little more.

8 Q Okay. What part of the year are you usually there?

9 A Summertime.

10 Q And what do you like about living on the reservation?

11 A Well, it is incredibly beautiful, and there is so many
12 pretty lakes. And, of course, I love my little lake,
13 Wishow Lake.

14 Q Are you familiar with the Howard Bros. as a company?

15 A Yes, I am.

16 Q And what do you know about them, generally?

17 A Well, my son had them come out about two years ago to
18 give an estimate on putting in a gas hot water heater.

19 And when he told me that, I said, well, those
20 are the people that are dumping in our backyard. It's
21 about 1,000 feet away.

22 Q So your backyard is about 1,000 feet from the Plummer 6
23 and Plummer 7?

24 A Right --

25 Q Okay.

1 A -- roughly.

2 THE ADMINISTRATIVE LAW JUDGE: What is that
3 noise coming from, do we know?

4 MS. HANSON: It could be the speaker. The
5 whirring sound?

6 THE ADMINISTRATIVE LAW JUDGE: Yes.

7 MS. HANSON: I think it is the speaker.

8 THE ADMINISTRATIVE LAW JUDGE: Is this
9 helping the amplification at all? No? I see mixed
10 reviews.

11 (Discussion off the record.)

12 THE ADMINISTRATIVE LAW JUDGE: Okay, let's
13 try it now.

14 MS. HERMSEN: Okay.

15 BY MS. HERMSEN:

16 Q So I was just asking you a couple of questions about
17 Howard Bros.

18 Do you know about when they started doing
19 septage land application on the reservation?

20 A I think it was January 2018. I'm not positive of that,
21 but that's the date I heard.

22 Q Okay. And you're familiar with the parcels of land
23 they own? If I refer to them as Plummer 6 and Plummer
24 7, do you understand --

25 A Yes.

1 Q -- what that is?

2 A I do.

3 Q And initially was Howard Bros. spreading septage on

4 both parcels of land or just one?

5 A Just one.

6 Q And then eventually it became both?

7 A Well, it's my understanding that they have it

8 clear-cut, the second site, Plummer 7; but I don't

9 think they are dumping yet, not that I know of.

10 Q But do you know them to be actively doing septage land

11 application on the res?

12 A Yes, very active.

13 Q Okay. Have you had any concerns about Howard Bros.'

14 land application of septage on the reservation?

15 A Yes, very serious concerns.

16 Q When did the concerns start?

17 A Well, I first heard about the dumping the summer of

18 2018. And then the summer of '29 [sic] and on, I

19 really got concerned. And my daughter and I took a

20 ride over there. And there was all stuff littered all

21 over the road, like used toilet paper, feminine hygiene

22 products that were used. And my daughter took a

23 picture of it with her camera. And she has a camera

24 that tells you -- you know, it stamps it like the time

25 and the location.

1 And then two months later, we came back and
2 it was still all there and she took another picture.
3 And the reason I know it was the same stuff, because
4 the one applicator was green and you don't usually see
5 that color and it was in that right same place. So
6 that's one of my concerns.

7 But really, more major is the little lake
8 that we're on, it has always been a pristine lake.
9 There is only nine people on that lake, nine homes.
10 Two of them live there year-round. So it has just been
11 this wonderful little quiet hideaway. And all of a
12 sudden, the water was tested and every year from 2019
13 on, it has risen, the E. coli measurements.

14 And I have a granddaughter, and she swims in
15 that water, and both of my adult kids do, and it's like
16 why spoil something so gorgeous, do you know what I
17 mean? It doesn't have to be. So, yes, I am very
18 concerned about it.

19 Q So when you talk about the garbage, like the used
20 toilet paper, the tampon applicator, have you noticed
21 problems with that prior to Howard Bros. starting their
22 land application?

23 A No, not really.

24 Q And have you noticed -- is that the only time that you
25 have seen garbage out there in that area?

1 A No. We take a ride by, I don't know, maybe every
2 month, six weeks or something, you know. And there is
3 berries back in that area and, you know, just kind of
4 riding around.

5 Q And so when you do those regular ride-bys, do you see
6 garbage usually now?

7 A Well, this year it's different because here we are at a
8 hearing; right?

9 But the other years, it was very steady.
10 And, you know, like you see kids riding by on a bicycle
11 or people walking their dog, you know. Who wants to
12 take your dog home and then he has got that on the paws
13 and in your house, you know?

14 Q What do you mean they have that on the paws?

15 A Well, you know, like if there is used toilet paper or
16 all of this stuff they're walking on that they
17 shouldn't be walking on, that's a big concern for
18 people, you know.

19 Q Do you see anything else on the roads that you think
20 are caused by Howard Bros.?

21 A Excuse me. Potholes. I noticed there is a lot of
22 potholes because these are very heavy trucks that dump.
23 And like the side of the roads are just kind of crumbly
24 like. I mean, it's not like it used to be like when
25 this wasn't happening.

1 Q What about actual septage or that type of material, do
2 you ever see that on the road?

3 A I can't honestly say I have seen it on the road, no.

4 Q Okay. And have you ever reported concerns about Howard
5 Bros. to any authorities?

6 A Well, let me think. I did talk to somebody at the town
7 hall, and they were really unfriendly and they did not
8 want to talk about that subject. And that's the only
9 person really in authority.

10 Q And are you part of any neighborhood groups or
11 associations where you talk about these problems?

12 A Definitely. Because, you know, like one person on one
13 lake knows someone on another lake. And when we really
14 got concerned about this, people came together. And
15 like I was -- I was assigned to do Wishow Lake and
16 Warrior Lake.

17 And last summer my granddaughter and I passed
18 out information about this that someone's son had
19 written up. And this last summer, I passed out a copy
20 of the hearing, a map to the dump site and information
21 about what's going on.

22 And this has been duplicated by people like
23 on Crawling Stone, Fence Lake, Bolton Lake, Plummer
24 Lake, different lakes. So it's a real outreach of the
25 community trying to stop this.

1 Q And what sort of actions have you taken as a community
2 group to try to stop this?

3 A Well, other than contacting people, as I said, finally
4 my neighbor was walking on the road and she met someone
5 who suggested that the tribe be contacted.

6 See, and that was the big mystery because we
7 thought, well, why would the tribe allow this to be
8 dumped on their reservation? And it didn't make any
9 sense, and so that's what happened.

10 Q So is it fair to say that within your community group,
11 you all have shared concerns about Howard Bros.' land
12 application?

13 A Definitely, yes.

14 Q And does everyone seem to agree that Howard Bros.' land
15 application is causing garbage to be dumped?

16 A Well, there is litter on the roads, and so much has
17 been dumped on the septage.

18 And then even in the wintertime, the rules
19 were supposed to be that when the ground froze over,
20 the dumping would stop. But then I read that they got
21 emergency permission to dump even more and more and
22 more in the wintertime. So, yes, it has been a real
23 topic of conversation, yes.

24 Q Are there any other concerns you have about Howard
25 Bros.' land applications that I haven't asked you

1 about?

2 A Well, one thing I found out from my brother, he owns
3 the place right next door to where we are, and I hadn't
4 talked to him about this issue.

5 So he called all around to get -- he needed
6 his septic tank cleaned out. So he said to me, guess
7 what? Howard Bros. is 20 bucks less than anybody else
8 so I got them. And I said, well, guess what, what you
9 paid for is now 1,000 -- or 1,200 feet behind us, right
10 through.

11 So, yeah. I mean it's -- they have an --
12 excuse me, allegedly they have an unfair advantage over
13 other people in that business because they can charge
14 less, you know.

15 MS. HERMSEN: Okay. I don't have any other
16 questions for you. Thank you, Ms. Gorski.

17 THE WITNESS: Okay.

18 THE ADMINISTRATIVE LAW JUDGE: Cross-
19 examination?

20 MS. BURKE: Yes. Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. BURKE:

23 Q Good afternoon, Ms. Gorski.

24 A Good afternoon.

25 Q Thank you for joining us today. I just have a few

1 questions.

2 You talked about I think it was your daughter
3 took pictures of litter on the side of the road; is
4 that right?

5 A Yes.

6 Q Did you provide those pictures to the tribe or to
7 anyone in the town hall?

8 A To Andrew Adams.

9 Q Okay. And did you ever see litter coming off of Howard
10 Bros.' trucks or you just saw it after the trucks went
11 by?

12 A I just -- there was one place where they pulled in and
13 one where they pulled out, and it was like in between
14 those two spots. But I have never seen a truck
15 actually there doing it.

16 Q Okay. And does your home on Wishow Lake also have a
17 septic tank?

18 A Yes, it does.

19 Q So septic tanks are common in the area?

20 A Yes.

21 MS. BURKE: That's all. Thank you, Your
22 Honor.

23 THE ADMINISTRATIVE LAW JUDGE: Give me a
24 second.

25 MR. OLSON: Yep.

1 THE ADMINISTRATIVE LAW JUDGE: Okay.

2 Cross-examination by Howard Bros. Counsel?

3 MR. OLSON: All right. Thank you, Your
4 Honor.

5 CROSS-EXAMINATION

6 BY MR. OLSON:

7 Q Ms. Gorski, thank you for being here today.

8 A Okay.

9 Q I live nearby in Whitefish Bay, so we're almost
10 neighbors back in Milwaukee.

11 A Okay.

12 Q You said you first had concerns about this land
13 spreading in 2018; is that correct?

14 A I first heard about it then, yes.

15 Q Yeah. And are you aware that Howard Bros. wasn't in
16 the septage business in 2018?

17 A I don't really know that one way or the other.

18 Q Okay. And you said in 2019, that summer you got a
19 little more concerned, and that's when you and your
20 daughter went out to the site and she took the pictures
21 you referenced; right?

22 A That's correct.

23 Q Are you aware of the fact that Howard Bros. wasn't in
24 the septage business in 2019?

25 A I don't really know when they started.

1 Q Okay. When you talked about --

2 A Could I take that back? It wasn't 2019 when she took

3 the pictures. I think it was last year, 2022. Yeah.

4 Q Are you sure about that?

5 A I am pretty positive, yes.

6 Q Okay. All right. You mentioned that you sometimes go

7 back into that area to gain access to berries. Do you

8 pick those berries?

9 A Yes.

10 Q Are you on tribal land when you do that?

11 A I think so.

12 Q Do you know?

13 A I don't know.

14 Q Do you have permission to do that?

15 A It has never been pointed out that we needed

16 permission, you know.

17 Q You never saw any evidence that told you, you couldn't

18 go on those parcels?

19 A No.

20 Q No signage?

21 A Nothing, no.

22 Q Okay. You said there has been some E. coli testing on

23 your lake; is that correct?

24 A That's correct.

25 Q And you also said that your granddaughter and your

1 adult children still swim in the lake; is that correct?

2 A Yes.

3 Q Have you ever received any notice that said the E. coli
4 levels were so high that swimming was dangerous?

5 A My daughter is going to testify later. I think she
6 could cover that a little better than I.

7 But I have not received an official
8 confirmation, but I have talked with the neighbor that
9 had the testing done. And every year it has gone up.
10 I had that in an email.

11 Q You talked earlier, I think you said you distributed a
12 flyer that somebody else had put together?

13 A Yes.

14 Q Did you do any research to determine whether or not the
15 things stated in that flyer were true?

16 A I talked things over with the people that lived there
17 full-time and had more knowledge about it. And, yes,
18 we did check it out.

19 Q How did you check it out?

20 A Because I talked to people that were actually there and
21 keeping track.

22 Can you repeat that again? I'm sorry.

23 Q Sure. Did you do anything to check the accuracy of the
24 flyers?

25 A The information?

1 Q Yeah.

2 A It was common knowledge what was written on there.

3 Q Did you ever talk to anybody from Howard Bros. about
4 it?

5 A No, I'm not too happy that I want to talk to them.

6 Q Okay. And you said a few minutes ago that you have
7 also heard that Howard Bros. got permission to do
8 emergency winter spreading; is that correct?

9 A That's right.

10 Q And who did you hear that from?

11 A A neighbor of mine.

12 Q Was this one of the same neighbors you fact checked the
13 mailer against?

14 A No, that was a different neighbor.

15 Q Okay. Would you be surprised to learn that Howard
16 Bros. does not now and never has had authorization to
17 do winter spreading?

18 A Well, that's the information that I was provided.

19 MR. OLSON: All right. Thank you. I don't
20 have any other questions.

21 THE ADMINISTRATIVE LAW JUDGE: All right.
22 Just a second. Okay. Any redirect?

23 MS. HERMSEN: No, Your Honor. Thank you.

24 THE ADMINISTRATIVE LAW JUDGE: Okay. Thank
25 you very much for your time.

1 THE WITNESS: Thank you.

2 THE ADMINISTRATIVE LAW JUDGE: Do you have
3 another witness?

4 MS. HERMSEN: Yes, Your Honor. We have
5 Jennifer Stephenson.

6 THE ADMINISTRATIVE LAW JUDGE: Jennifer
7 Stephenson, okay.

8 Raise your right hand. Do you swear or
9 affirm under penalty of perjury that the testimony you
10 are about to give will be the truth, the whole truth,
11 and nothing but the truth?

12 THE WITNESS: I do.

13 THE ADMINISTRATIVE LAW JUDGE: All right.
14 Please state and spell your name for the record, and
15 make sure that you're speaking into the microphone.

16 THE WITNESS: Jennifer Stephenson.
17 J-e-n-n-i-f-e-r. S-t-e-p-h-e-n-s-o-n.

18 THE ADMINISTRATIVE LAW JUDGE: Can everybody
19 hear her in the back? Still maybe tilt it up just a
20 tad and then speak up a little bit louder and hopefully
21 that will help.

22 THE WITNESS: Is that better?

23 THE ADMINISTRATIVE LAW JUDGE: Thank you.
24 Who will be doing her questioning?

25 MS. HERMSEN: I will, Your Honor.

1 THE ADMINISTRATIVE LAW JUDGE: Go ahead.

2 MS. HERMSEN: Thank you.

3 JENNIFER STEPHENSON

4 having been first duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. HERMSEN:

8 Q Ms. Stephenson, thank you for coming today. Can you
9 tell us what your profession is?

10 A I am a tax accountant.

11 Q And where do you currently live?

12 A I live in Mequon.

13 Q And do you live there all year?

14 A For the most part. I spend as much time as I can at
15 our place up here during the summer.

16 Q Okay. So is that a place on the reservation?

17 A Yes, it is the place on Wishow Lake Lane.

18 Q The same as your mom, Ms. Gorski?

19 A Yes, who just testified, um-h'm.

20 Q Okay. When did you start coming to that home on the
21 reservation?

22 A I was less than three months old.

23 Q Okay. And how old are you now?

24 A Fifty-one.

25 Q All right. So several decades of coming and spending

1 time up here?

2 A Half a century.

3 Q And are you familiar with the Howard Bros. as a

4 company?

5 A Vaguely. They are -- I know where their building is

6 and things like that.

7 Q And are you aware of their septage land application on

8 the reservation?

9 A Yes, somewhat. Not in detail, but yes.

10 Q And you know the location of where they are doing that?

11 A Yes, I do.

12 Q Can you describe how close that location is to your

13 home on the reservation?

14 A I believe it is east and a little bit north of us.

15 There is our property, and then there is a piece of

16 land that belongs to the reservation, I think it is

17 about 80 acres. And then this property is on the other

18 side of that. Or the Howard Bros.' property is on the

19 other side of that.

20 Q Have you had any concerns with Howard Bros.' septage

21 land application on the reservation?

22 A Many concerns.

23 Q Can you tell us what some of those are?

24 A Well, the location that they chose is an

25 environmentally fragile location. There is a lot of

1 wetlands, it's surrounded by lakes, there is little
2 streams all over the place.

3 Our lake is a seepage lake which means water
4 that comes into it is either rainwater or groundwater.
5 It doesn't have like a river flowing into it. And it
6 just seems like a very dangerous location to put
7 something like that. You know, Lac du Flambeau, the
8 northwoods, it is a beautiful location. But no one
9 would come up here if you didn't have the lakes. You
10 know, we would be Nebraska and you would drive by to
11 Minnesota to go to their 10,000 lakes.

12 And I would hate to see what really draws
13 people up here be destroyed. Because once you get
14 forever chemicals and you get medications that people
15 flush or go through their system into the groundwater
16 and bacteria, and who knows what else -- I'm not a
17 scientist, but I know that that is not something that
18 turns around quickly. I mean, you are destroying kind
19 of the cash cow of this area. People come here for
20 that. Why would you ruin it? So I mean that's part of
21 it.

22 And, you know, and personally, my family,
23 there has been five generations of my family on that
24 property. And I remember being little and my great
25 grandpa would -- we'd walk on the beach and there used

1 to be a spot where there was a boat landing. And we
2 would pick up like beer cans and things that people who
3 had come on the lake had dumped into the water.

4 And, you know, he made it very clear to me
5 that it was all of our responsibility to keep that
6 place as beautiful as when we got it. And, you know,
7 the last few summers, I have a niece, I have been
8 trying to explain to her -- she's excited some day
9 she's going to own it, and I'm like, well, you're
10 really more a steward, like you're not here that long.
11 And it's your responsibility so that your kids and
12 grandkids have it as nice as we do.

13 And, you know, we walk up and down the beach
14 or sometimes on the road and pick up garbage. And, you
15 know, she can be a little messy. I make her pick up
16 stuff that she'll kind of leave outside. And I don't
17 want our place to be destroyed. We have spent over 60
18 years trying to keep it nice. I don't -- you know, it
19 is my favorite place on earth. I don't want it to
20 disappear.

21 Q And in the past, let's say since 2020, have you seen
22 any garbage or litter on the area around Plummer 6 and
23 Plummer 7 that concerns you?

24 A Oh, absolutely. You know, there is always some garbage
25 on every road. There is a beer can and there is like

1 yesterday we drove down the road there was a card --
2 like small cardboard box.

3 But what you're seeing in the area around
4 that location is very disturbing. And I do have
5 pictures of it, too. There is thousands of black marks
6 on the pavement that appear to be feces. Some of them
7 are quarter sized. And like I have got pictures of
8 them. Some of them are, you know, bigger than my fist
9 or bigger than a baseball. There is hundreds of pieces
10 of toilet paper stuck on the road, and kind of like in
11 the brush on the sides of the road.

12 And to be really grossed out, in July of last
13 year, I took a picture of a green two-piece tampon,
14 like plastic tampon applicator. And that was July.
15 And then in September, I took a picture of the same
16 green tampon applicator still on the road. And there
17 were like the string from tampons. I've got a picture
18 of that.

19 It is not some redneck who threw out his beer
20 can on the side of the road; it's dangerous waste, you
21 know. It is -- it will pollute the environment.
22 People -- cars are driving through it, people are
23 walking through it and biking through it. Animals are
24 walking through it, they're spreading, you know,
25 whatever bacteria, chemicals, forever chemicals,

1 medications, whatever is there is getting spread
2 around. And it is a much bigger deal than some idiot
3 throwing a beer can out their window.

4 Q So you said that was last year that -- last summer that
5 you saw the tampon --

6 A Yes.

7 Q -- applicator?

8 A Yes.

9 Q Have you seen garbage since then that you attribute to
10 Howard Bros.?

11 A You know, I did not spend much time here this summer,
12 and I did not go down the road, so I could not -- I
13 can't give you an answer on that one.

14 Q Okay. Have you made complaints about anything related
15 to Howard Bros.' land application?

16 A I have not. What I was told by other people who had
17 made complaints is no one calls you back. And I should
18 have called, and I didn't.

19 Q Are you speaking about other local residents you talked
20 to?

21 A Other local residents who had called like, is that
22 Ashland, the DNR up there. Is that where? Yeah, that
23 person wouldn't return your phone calls.

24 And actually, maybe I did -- I'm not
25 100 percent sure. I think I maybe did call once and

1 didn't hear back a couple years ago. And that sort of
2 dissuaded me from continuing to waste my time.

3 Q And have you heard from other folks around there who
4 have made complaints?

5 I know you said that you have heard from
6 other people who made complaints, but can you describe
7 that more?

8 A Well, I know -- you know, my mom went and tried to talk
9 to the town of Flambeau. And she said that she was
10 treated very poorly. I actually went into the town of
11 Flambeau. I -- there was this misconception about
12 where the Howard Bros.' property was in relationship to
13 ours, if there was that piece of tribal land in between
14 or not.

15 So I went in -- because I'm old school, the
16 last time I looked at it, it was like big maps that you
17 would look at. I thought they would probably still
18 have that. And it was all computerized. But when I
19 walked in, there was a gentleman who was really nice to
20 me. And then there was a woman who actually screamed
21 at me because she's like, I know what property you are
22 talking about.

23 And I was like, well, I just wanted to know
24 who is directly -- who is my neighbor behind me. And
25 she is like, yeah, sure you do. I know you want -- you

1 are interested in that other property. I was like
2 okay. And the other guy -- the man was very nice to
3 me. But she really jumped on me, and she wasn't even
4 part of the conversation. I was talking to the man,
5 and she jumped in.

6 Q Have you ever communicated directly with anyone from
7 Howard Bros.?

8 A I have not. But can I go back one second?

9 I have actually called the police and the
10 sheriff multiple times for noise violations. Evenings,
11 weekends. There would be -- this was last year, there
12 would be pounding like this metal on -- loud because I
13 mean there is 80 acres between them and us. I mean, it
14 is not like I can look in their bathroom window, you
15 know.

16 And it was pounding. It sounded like someone
17 was digging a well or like an oil field pounding kind
18 of a thing. And so I did call at least three times,
19 maybe four or five. One time I actually -- it was
20 after midnight. And I called and I was waiting for the
21 sheriff to come, and no one was coming and no one was
22 coming. And I was listening to this and I just got
23 really angry.

24 So I drove over to the site. And I watched a
25 pickup truck leaving at 12:25 in the morning. And

1 that's when the noises stopped. And then when I got
2 back to my place, a couple minutes later, the sheriff
3 -- the Vilas County Sheriff arrived. And, of course,
4 there was no noise any more.

5 But so I have filed noise complaints,
6 repeated noise complaints. And it wasn't during like
7 normal business hours. Like 12:30 in the morning or
8 8:00 at night or 10:30. So I have done that. So it
9 wasn't like pollution complaints, but it was noise
10 complaints. But no, I have not spoken to Howard Bros.

11 Q Did anyone ever ask for your consent or opinion on this
12 land application going on?

13 A No, we were never notified. We have been -- we were on
14 the list to be notified for all variance requests and
15 we always have been. But we did not receive any
16 notification for this project.

17 Q What type of variance requests are you talking about?

18 A Someone wants to build closer to the lake than statute
19 allows or closer to a lot line or things like that.

20 But we did -- or -- yeah, I mean there really
21 hasn't been like a change in like going from
22 residential to, you know, usage, that I am aware of.
23 But usually it was something like, you know, a setback
24 variance type of thing. But we were supposed to be on
25 the list for everything.

1 And that's one of the reasons we were really
2 surprised, because you always get these little
3 postcards, and you're like, oh, neighbor so and so
4 wants to put their shed six inches short, you know,
5 closer than they're supposed to. But when something
6 big like this happens, then you don't hear anything.

7 Q And are you part of a community group or organization
8 up in the reservation area?

9 A Kind of on the fringe. I went to a meeting.

10 Q Okay.

11 A And I read their newsletter before -- or their little
12 letter that they were going to send out before they
13 send it out. But that would be the extent.

14 Q Do you have any other concerns about this septage land
15 application that I haven't asked you about yet?

16 A What else did I want to say?

17 You know, I love swimming there. Like that's
18 my favorite thing on earth. And the -- in the last --
19 last year, I got -- and I have a picture of it, like a
20 nasty -- it wasn't even a sinus infection. My entire
21 face swelled up. It was bright red, like my nose was
22 all twisted. It felt like someone had like kicked the
23 inside of my cheek bones from, you know, the inside
24 out.

25 And I had to go to urgent care and get

1 antibiotics because I had this infection in my face.
2 And it happened -- that was last summer. And it
3 happened one other time, it was either '20 or '21 that
4 it happened, and it also required antibiotics.

5 So like this summer, I never put my face in
6 the water. And it sucks, because I goof around with my
7 niece and we throw each other around. And I didn't do
8 any of that because I did not want to end up with
9 another nasty infection. And those two infections are
10 the only infections I have ever had up here in 51
11 years.

12 MS. HERMSEN: Okay. I don't have any other
13 questions. Thank you.

14 THE ADMINISTRATIVE LAW JUDGE: Cross-
15 examination?

16 MS. BURKE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. BURKE:

19 Q Good afternoon. Thank you for joining us. Just a few
20 questions for you.

21 You stated you tried to call a DNR service
22 center a couple of years ago. Do you have any idea of
23 how many years ago that might have been?

24 A It would have -- '21 or '22.

25 Q Okay. And then what -- I think you said it was summer

1 last year that was the noise complaints. Do you have
2 like a month?

3 A Yeah. It was around the Fourth of July. So July of
4 2022.

5 Q So after the Fourth of July?

6 A Well, I came up for the Fourth. So sometime in July.

7 Q Okay. And these photos that you have taken, have you
8 provided them to anyone?

9 A I don't know that I have, but I will.

10 Q And you also talked about the -- that you get notified
11 of different variance requests.

12 Do you know, do those come from the town or
13 the county or who sends those?

14 A I don't know. My mother signed up for the -- to be
15 notified. I just would see the postcards.

16 Q Okay.

17 A They are usually neon and hard to miss.

18 Q Okay.

19 MS. BURKE: I don't have anything further.
20 Thank you.

21 THE ADMINISTRATIVE LAW JUDGE: Counsel for
22 Howard Bros.?

23 MR. OLSON: I don't have any questions.

24 THE ADMINISTRATIVE LAW JUDGE: Any redirect?

25 MS. HERMSEN: No, Your Honor.

1 THE ADMINISTRATIVE LAW JUDGE: Thank you for
2 your time.

3 THE ADMINISTRATIVE LAW JUDGE: Do you have
4 another witness?

5 MR. ADAMS: Yes, Your Honor. We intend to
6 call Andre Virden.

7 THE ADMINISTRATIVE LAW JUDGE: Is Mr. Virden
8 here?

9 MR. OLSON: Could we take a five-minute break
10 real quick?

11 THE ADMINISTRATIVE LAW JUDGE: Sure.

12 (Recess taken.)

13 THE ADMINISTRATIVE LAW JUDGE: Okay. We are
14 back on the record. I don't know if I need my
15 microphone.

16 We are back on the record so we are going to
17 get back to some testimony here.

18 Please raise your right hand. Would you --
19 do you swear or affirm under penalty of perjury that
20 the testimony that you are about to give will be the
21 truth, the whole truth, and nothing but the truth?

22 THE WITNESS: I do.

23 THE ADMINISTRATIVE LAW JUDGE: Thank you.
24 Please state and spell your first and last name for the
25 record. Speak loudly and clearly so that everybody can

1 hear you.

2 THE WITNESS: Good afternoon. My name is
3 Andre Virden. A-n-d-r-e. V as in Victor, i-r, D as in
4 David, e-n.

5 THE ADMINISTRATIVE LAW JUDGE: Perfect. All
6 right. Who will be doing his questioning?

7 MR. ADAMS: I will, Your Honor.

8 THE ADMINISTRATIVE LAW JUDGE: All right.
9 Thank you, go ahead.

10 ANDRE VIRDEN
11 having been first duly sworn, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ADAMS:

15 Q Good afternoon, Mr. Virden. And thank you for being
16 here today.

17 Can you tell us what your job title is?

18 A Yep. I am the GLRI and habitat manager for the Lac du
19 Flambeau Tribe.

20 Q Oh, I'm sorry, go ahead.

21 A Great Lakes Restoration Initiative for those
22 unfamiliar.

23 THE ADMINISTRATIVE LAW JUDGE: Okay. So I
24 will need you to slow down and pronounce the --
25 everything, because I could hear you trailing off at

1 the end there and I didn't catch all of it.

2 So I heard habitat manager. So why don't you
3 take it from there?

4 THE WITNESS: All right. I am the habitat
5 manager for the Lac du Flambeau Tribe, as well as GLRI
6 program manager, which is Great Lakes Restoration
7 Initiative.

8 THE ADMINISTRATIVE LAW JUDGE: Got it. Thank
9 you very much.

10 THE WITNESS: Yep.

11 BY MR. ADAMS:

12 Q And Mr. Virden, is the Great Lakes Restoration
13 Initiative, is that a tribal program or is that like a
14 program that the tribe participates in?

15 A Both. It's a tribal program and one that we
16 participate in through the federal government.

17 Q Okay. And do you know what agency of the federal
18 government?

19 A Bureau of Indian Affairs.

20 Q Okay. Thank you. And, Mr. Virden, what is your
21 educational background from, say, high school on?

22 A I have a degree in water resources from the University
23 of Wisconsin-Stevens Point. I took several courses in
24 wildlife, GIS, soils science.

25 Q Okay. And, Mr. Virden, do you have any -- like based

1 on your job or any professional licenses that you have,
2 do you have any obligation for continuing training or
3 education for your job or any professional licenses you
4 may have?

5 A I'm sorry, could you repeat that, please?

6 Q Yeah. So do you possess any professional licenses?

7 A Just different trainings that have popped up. Hazmat
8 certification, any kind of thing required by the
9 bureau.

10 Q So with your job, there is an expectation that you have
11 to be certified in certain things and there is some
12 trainings that you have to attend?

13 A Yes.

14 Q Okay. And are there any other relevant qualifications
15 that you have related to the work that you do for the
16 tribe?

17 A I mean, I guess it depends on the definition of
18 relevancy. For me, you know, hunting, fishing,
19 gathering all play an important purpose in that,
20 whether traditional ecological knowledge from our
21 elders, who have helped teach me throughout my entire
22 career at the tribe, yeah.

23 Q And with that, Mr. Virden, are you a tribal member of
24 the Lac du Flambeau Band of Lake Superior Chippewa
25 Indians?

1 A Yes.

2 Q Okay. And, Mr. Virden, do you currently live on the
3 reservation?

4 A Yes.

5 Q Okay. And how long have you been a -- like a resident
6 or a community member of the reservation?

7 A My family moved back here back in 2003. And I guess I
8 would say since then.

9 Q Okay, yep. And, Mr. Virden, can you just kind of give
10 us like an explanation of what your professional
11 responsibilities are, like what your job duties are for
12 the tribe?

13 A With the habitat manager, I work with the Wildlife
14 Department on maintaining wildlife habitat, creating
15 wildlife corridors, restoring wildlife habitat areas.
16 And other, like say if there is erosion or like an
17 invasive species kind of issue, in restoring those
18 areas and things like that.

19 Q Okay. And, Mr. Virden, why -- from your -- I guess
20 your personal and your professional standpoint, why is
21 it -- why is there a need for habitat restoration on
22 the Lac du Flambeau Indian Reservation?

23 A A lot of the times it is land that we've picked back up
24 and reacquired that was left in a state that was
25 unusable for the tribe for hunting, gathering, fishing

1 purposes, things like that. And so I am there to help
2 fix it back so our membership can get use out of it.

3 Q And, Mr. Virden, when you say get use out of it, do you
4 mean for like hunting and gathering purposes?

5 A Yes.

6 Q Okay. And for potentially even just the enjoyment of
7 the outdoors, like say through recreation or just like
8 quality time in the woods?

9 A Yeah. I mean, I'm pretty sure in our state, hunting,
10 fishing, gathering is -- I mean, as well as being a
11 place of subsistence for us, it is also a recreational
12 activity at the same time. That -- I mean, there is
13 not much else to do in the Lac du Flambeau reservation,
14 so.

15 Q And, Mr. Virden, so in your experience as a habitat
16 restoration manager, are you aware of the land
17 application of septage that's occurring on the Lac du
18 Flambeau Indian Reservation, like presently now?

19 A Yes.

20 Q Okay. And is it fair to say that your knowledge of
21 that is what Howard Bros. is doing at the Plummer 6 and
22 7 site?

23 A Yes.

24 Q Okay. And are you familiar with other instances of
25 land application that's occurred on the Lac du Flambeau

1 Indian Reservation?

2 A Yes. A few years ago, the Lac du Flambeau Tribe picked
3 up an old septic spreading site owned by LaFrenier at
4 the time. I'm not sure if that was A-1 Septic or
5 whatever it was in the past.

6 But we spent the last several years restoring
7 that area. It's still an ongoing process that we are
8 in the middle of.

9 Q Okay. And, Mr. Virden, when you say that the -- that
10 the tribe is restoring the old LaFrenier site, what do
11 you mean by restoring it? Like what -- like I guess
12 what -- in your professional and personal opinion, like
13 what happened to it because of the septage that
14 LaFrenier was doing? And then what do you have to do
15 to like fix it, if that's the right word?

16 A Yeah.

17 MR. OLSON: Your Honor, I'm going to object.
18 This is the second time we've gone into a different
19 company's land spreading on a different parcel of land,
20 where it appears we are trying to draw an analogy as if
21 every company operates in the same manner and all soils
22 are the same. I think it's irrelevant and highly
23 prejudicial.

24 THE ADMINISTRATIVE LAW JUDGE: Well, it's
25 relevant only to his experience in this area. So I

1 mean, we earlier had an objection on foundation
2 grounds. This is the foundation of his expertise in
3 this area.

4 You can cross-examine and point out that
5 that's a different site, it has nothing to do with this
6 site, it's very different from this site. Those are
7 all of the sorts of objections and questions that I
8 expect would come out in cross-examination. That's the
9 purpose of cross-examination, to help clarify the
10 evidence.

11 But in terms of his experience and knowledge
12 about this sort of practice, I think this is fair game.
13 So I will allow the question. But, you know, I think I
14 have said enough on it. So you can go ahead.

15 THE WITNESS: Say this one, too?

16 THE ADMINISTRATIVE LAW JUDGE: So he's asked
17 you to sort of describe what happened at the LaFrenier
18 site with the septage operation that was there, and the
19 fallout from it.

20 THE WITNESS: Yes. As far as like relevance
21 to me, the site is less than a quarter mile down the
22 road from the Howard Bros.' application. But I just --
23 funnily enough, anyways. So at the LaFrenier site, so
24 they didn't have any kind of pickup of any of the
25 septage coming out of their trucks. And so anything

1 and everything you could think of that's in your
2 bathroom at home was spread out into these fields.

3 And so when the tribe reacquired the land,
4 you know, we were tasked to make it because East
5 Boundary again is one of our -- where the sites are is
6 one of our most heavily used hunting and gathering
7 areas in the reservation. So we were tasked with
8 restoring it to be -- to continue to be used for that
9 purpose.

10 And so again, everything on there, anything
11 in your bathroom you could think of, you know, was
12 still in the field itself. So the beginning of the
13 practice, we began tilling up the field to try to pull
14 everything. And for the last three, four years now, it
15 has been -- we still pull up all kinds of different
16 toiletry items, feminine hygiene products, toilet
17 paper, needles, literally anything you can think of
18 that's in your bathroom, we still pull up till now.

19 We are starting to see less of it now, but it
20 is still an ongoing process probably for the next
21 three, four, five years or so.

22 And then in doing so, we are restoring that
23 area with different beneficial plants and for -- and
24 for pollinators, for pollinator habitats as well as for
25 the various different game species. So deer, grouse,

1 turkey, rabbit, bear, yeah.

2 Q Okay. Great. And so, Mr. Virden, I would assume if
3 you are a habitat specialist for the reservation, you
4 are generally familiar with the reservation itself in
5 terms of its boundaries and its size?

6 A Yes.

7 Q And the various different types of habitat that makes
8 up the reservation?

9 A Yes.

10 Q And would it be safe to assume that being here in
11 Northern Wisconsin, with all of these lakes and woods
12 and stuff like that, that the reservation is a pretty
13 biodiverse environment?

14 A Yes. In some papers referring to the reservation by
15 the University of Wisconsin, it has us declared as one
16 of the -- some of the most high biodiversity in the
17 state.

18 Q And so, Mr. Virden, the -- so you have got different
19 types of habitats on the reservation, so that's kind of
20 like the natural world.

21 But then you've got this system of land
22 ownership on the reservation where those different
23 types of habitats kind of cross that different stuff.
24 And so here with the Plummer 6 and 7 site, when I say
25 the land is fee simple, do you know what that means

1 when I say fee simple?

2 A Yes.

3 Q Yes? And so from your standpoint, fee simple land
4 ownership on the reservation is private land ownership;
5 correct?

6 A Correct.

7 Q And then land that the tribe owns, the tribe also can
8 own fee simple private lands within the reservation;
9 correct?

10 A Correct.

11 Q And then there is a large -- there is a large
12 percentage of land that the United States Government
13 owns but holds for the beneficial use of the tribe, and
14 that's called trust land; correct?

15 A Correct.

16 Q So, Mr. Virden, the binder that has -- that's labeled
17 tribal exhibits, would you please flip that to Exhibit
18 number -- Exhibit No. 40, please?

19 A I just had hand surgery. It's a little tough, such a
20 hefty binder here.

21 Q Yeah, a lot of paper.

22 A Yep, I have it.

23 Q All right. And so, Mr. Virden, based on your
24 understanding of the tribe's land tenure on the
25 reservation, those parcels that are labeled in green

1 where it says LDF Tribe, is it your understanding that
2 those lands are owned by the United States Government
3 and held in trust for the benefit of the Lac du
4 Flambeau Band of Lake Superior Chippewa Indians?

5 A Yes.

6 Q And for parcel ID number 10-3318, that is labeled
7 Howard Bros., Incorporated, is it your understanding
8 that that is what we have been referring to as Plummer
9 6?

10 A Yes.

11 Q And the tax ID -- or parcel ID number 10-338-01, that
12 that represents their southern 40 acres that we have
13 been referring to as Plummer 7?

14 A Yes.

15 Q Okay. And so, Mr. Virden, can you -- can you give us
16 just like from 30,000 feet, those tribal parcels -- and
17 I would assume that the big kind of squares on that
18 parcel map represent -- is that a 40-acre parcel?

19 A Yes.

20 MS. HANSON: I am going to object as to
21 cumulative. I think all of this evidence has already
22 been entered through Mr. Labarge.

23 THE ADMINISTRATIVE LAW JUDGE: It is true it
24 was covered with Mr. Labarge, but I don't -- I don't
25 know how much time you planned on spending on this,

1 but --

2 MR. ADAMS: Well, I was going to move off of
3 this pretty quickly, Your Honor.

4 THE ADMINISTRATIVE LAW JUDGE: So the
5 objection is overruled. I assume counsel is time
6 sensitive as well, so we can continue with this.

7 MR. ADAMS: Okay.

8 THE ADMINISTRATIVE LAW JUDGE: You know, if
9 we are getting to witness three, four and five covering
10 the same ground, I think at that point it may be
11 cumulative, but I don't think we're there yet.

12 MR. ADAMS: And, Your Honor, not to bicker,
13 but I did not ask Mr. Labarge if those were 40-acre
14 parcels.

15 THE ADMINISTRATIVE LAW JUDGE: That's fair.
16 That's fair. So please continue.

17 MR. ADAMS: Thank you.

18 BY MR. ADAMS:

19 Q Mr. Virden, from your standpoint, can you just like
20 quickly describe when it comes to the tribal parcels,
21 what type of animals may, you know, naturally occur on
22 those types of lands?

23 A Yeah. Various different types of animals. Like I
24 mentioned earlier, white-tailed deer, roughed grouse,
25 turkey, snowshoe hare.

1 Let me see if I am forgetting anything.

2 Black bear, plenty of black bears throughout the
3 reservation, but especially East Boundary.

4 Q Any cats?

5 A Yeah. We have bobcat and occasionally we get a
6 mountain lion in the area, but that's occasionally, but
7 bobcat pretty regularly.

8 Q Okay. What type of -- so of those animals, what --
9 would it be safe to assume that tribal members are
10 harvesting deer and some of the birds?

11 A Yeah. Deer, turkey, roughed grouse, rabbit, snaring
12 rabbits. I believe Mr. Johnson stated that earlier
13 about doing that, pretty -- all pretty common activity
14 out there.

15 Q And what type of plants from like based on your
16 experience are out there that are harvestable?

17 A So we have medicinal plants in the area as well as like
18 berries out there, blueberries, blackberries, berries
19 not necessarily for people but for the animals, june
20 berries, things like that.

21 But you know, that will be taken up by
22 wildlife that a tribal member potentially would
23 consume. And then I'm not -- I don't know all of my
24 medicinal plants but, you know, things out there like
25 chaga mushroom, sweet fly, sweet fern, and mullein

1 plants.

2 Q Okay.

3 A All stuff that tribal members would, you know, gather
4 and then consume in like a tea or some kind of
5 medicine.

6 Q Okay. And, Mr. Virden, again, based on your job as a
7 habitat manager for the tribe, is this area used by
8 tribal members at a high frequency, the lands that are
9 owned by the tribe here?

10 A I would say this is the most heavily used area of our
11 tribal recreational folks as far as hunting and
12 gathering as well.

13 Q And is it common knowledge -- based on your experience,
14 based on your knowledge, is it common knowledge to
15 tribal members that this area is for use for hunting
16 and recreation?

17 A Yes, it is common knowledge to it. All of our like
18 wildlife corridors are posted by us. I have tribal
19 members that will wait for me at the gas station to see
20 if their favorite area has been opened up again for
21 them this year, yeah.

22 Q Okay. And, Mr. Virden, why is it -- why is it
23 important -- from your standpoint, why is it important
24 for the tribe to protect these areas?

25 A As has been mentioned before, we only have one

1 reservation. We can't pick up and move. Our
2 reservation is 50 percent wet. So that leaves very
3 little land for hunting and for just places for people
4 to live.

5 And hunting and gathering being an important
6 part of our culture, of our way of life. It is
7 something that we very strongly try to protect for what
8 little lands we have left on our reservation, and where
9 we don't even own all of the land within it.

10 Q Right. Can you flip to Exhibit No. 47, Mr. Virden, in
11 that same binder?

12 MR. OLSON: I don't think it is in there.

13 MR. ADAMS: Oh.

14 THE WITNESS: I'm only seeing 46.

15 MR. ADAMS: That's all right.

16 MS. HERMSEN: Is there not one up there
17 either?

18 THE WITNESS: No.

19 MS. HANSON: Your Honor, we have a copy.

20 THE ADMINISTRATIVE LAW JUDGE: Okay. First
21 confirm with Counsel.

22 MR. ADAMS: Yep, yep, same one. Thank you.

23 THE WITNESS: Oh. Thank you very much.

24 THE ADMINISTRATIVE LAW JUDGE: What are we
25 looking at here?

1 THE WITNESS: So --

2 THE ADMINISTRATIVE LAW JUDGE: Just a second.

3 THE WITNESS: All right.

4 THE ADMINISTRATIVE LAW JUDGE: Thank you.

5 BY MR. ADAMS:

6 Q So, Mr. Virden, this exhibit, this Tribal Exhibit 47,
7 can you describe to me what that photo is?

8 A So that's a photo of one of our postings on -- this one
9 is on one of the trails, wildlife corridors near
10 Plummer 6 and 7.

11 We -- so part of it is we maintain that area.
12 Every year we go back in there and make sure it is
13 accessible for the membership, make sure that also like
14 emergency vehicles can get back down into these areas
15 in case of fire, in case if somebody gets hurt or
16 something out there, but we make sure to post up each
17 one.

18 Every now and then they do get ripped down
19 by -- for whatever reason, but we check these
20 repeatedly. Our surveys bring us back to these areas
21 weekly. So if we see that it is down, we keep a big
22 stack of them in our work truck and post them back up
23 to the area.

24 Q And, Mr. Virden, are -- when you say lands near Plummer
25 6 and 7, are you referring to those parcels that we

1 just discussed that neighbor -- that are adjacent and
2 contiguous to Plummer 6 and 7?

3 A Yeah.

4 Q Okay. And so will you flip to -- I don't know -- yeah,
5 will you flip to 48, the next one, please?

6 So, Mr. Virden, is that an example of another
7 type of sign that's posted on the lands near Plummer 6
8 and 7? On tribal land, not on -- not on Plummer 6 and
9 7, but on the tribal lands near six and seven?

10 A Yes. This is another example of some of the many and
11 different signs we have that are posted near Plummer 6
12 and 7.

13 Q And, Mr. Virden, when you said trails, when you said
14 maintaining trails on those lands, what do you mean by
15 trails on those lands?

16 A So our wildlife corridors serve a dual purpose of being
17 for wildlife, but also being trails that our membership
18 can access, walk down and get berries, camp if they
19 really wanted to. Yeah. I think hopefully that
20 answers that.

21 Q Yes. And, Mr. Virden, is there an exhibit labeled 49
22 in that packet?

23 A Yes.

24 Q Can you explain what is going on in that photo,
25 Mr. Virden?

1 A So every year, me and the guys under me in my
2 department go out to each of these wildlife corridors,
3 we're actually doing that right now as far as this year
4 goes. And we maintain each of these corridors and
5 trails and such for our membership.

6 And in that picture there, we are putting --
7 you know, we're mowing the tall grass and stuff so
8 things don't catch on fire from vehicles coming down
9 there from hitting underneath the exhaust.

10 But then we also -- something I just did not
11 have a picture of, but we also have a little tiller
12 where we will rough up the ground and then also plant
13 beneficial things for, you know, grouse, deer, turkey
14 and such.

15 Q And so, Mr. Virden, in the time that you have been out
16 there, have you -- have you yourself seen white-tailed
17 deer moving in the area?

18 A All of the time, yeah. I have never been to court
19 before. I was hoping, but -- I have a substantial
20 amount of pictures I could show of deer, yeah.

21 Q Okay. And, Mr. Virden, have you seen deer eating
22 plants in that area?

23 A Of course.

24 Q Okay.

25 MS. HANSON: Do you have any further

1 questions about the supplemental exhibits? If not, I
2 would like to get them back.

3 MR. ADAMS: No, I don't. Thank you.

4 THE WITNESS: Thank you so much.

5 BY MR. ADAMS:

6 Q So, Mr. Virden, again, based on your personal and
7 professional, I guess, knowledge and experience, do you
8 believe that the land application of septage at Plummer
9 6 and 7 threatened the natural environment of the Lac
10 du Flambeau Indian Reservation?

11 A Yeah, I believe so. Deer especially like habitat known
12 as the edge, big open like, you know, open spaces, the
13 field, the corridor that we created with some cover on
14 the sides, trees, whatever. They really enjoy that.
15 They like the openness because there is potential for
16 things to graze on, but then there is also cover if
17 they need to dart into the woods.

18 Then, I'm sorry, could you -- I forgot the
19 first part of the question.

20 Q I was just asking if you -- if you thought it was
21 impactful to the environment of the reservation?

22 A Yeah, as far as -- yeah, as far as, you know, deer
23 uptaking whatever is being spread out there. As well
24 as, you know, when you are adding lime to the fields,
25 we have got berries out there that like acidic soil

1 types. You know, you're adding lime, neutralizing the
2 acidity in the soils.

3 Q And, Mr. Virden, do you know -- well, I guess I will
4 ask you this question personally.

5 Like has -- have you -- do you know of any
6 tribal members where they are reluctant to utilize that
7 area because of the land application that's occurring
8 at Plummer 6 and 7?

9 A I -- yeah, we have tribal members who have brought it
10 up as a concern where they have seen a couple of weird
11 animals out there. And -- and I guess to me it is
12 concerning because tribal members, they really don't
13 talk to me for the most part. So when one does come
14 and seek me out specifically, I take it pretty -- as
15 something significant to them, that they don't want to
16 go out there or they're going to stay away from that
17 area and only use the very southern portion or
18 something, something along those lines.

19 Q And as part of your job, Mr. Virden, do you -- have you
20 heard any complaints from non-tribal members concerning
21 the septage application?

22 A Several. Mainly about the odor out there from the
23 septage being spread, but also some concerns about
24 septage also being spread on the roads in the
25 surrounding area.

1 Q Okay. And have you ever gotten any complaints about
2 garbage in the area?

3 A Yeah. Yes, complaints about garbage in the area.
4 Specifically more toiletry items, which is something
5 that we don't really -- you know, again, mentioned
6 earlier, we do find garbage in the area, but that's
7 more like your shingles, your tires, your contractor
8 supplies. So the toiletry ones are more uncommon than
9 -- well, I should say very uncommon, yeah.

10 Q And, Mr. Virden, do you -- do you believe that it is
11 your responsibility or anyone else's responsibility to
12 pick up toiletry garbage that happens to be on the
13 roadway?

14 A No. I mean, it is just kind of a dangerous thing in
15 general, you know. If you get like the old -- our old
16 site, on -- some of the toiletry items, you know, if
17 people are diabetic and things like that, so you get
18 needles, some stuff that's really dangerous in there.

19 Q And, Mr. Virden, I am just going to take just a couple
20 just quick steps backwards to just ask one or two
21 clarifying questions.

22 So from your standpoint, what is the purpose
23 of the signs that I asked you to take a look at that
24 were at exhibits -- that were at Exhibits 47 and 48,
25 the posted signs? Like what is the purpose of those

1 signs?

2 A So because Lac du Flambeau Reservation is what is
3 called a checker boarded reservation, where there is,
4 you know, we have a reservation but we don't own all
5 the property within there, there is a lot of potential
6 for trespass.

7 So we put up the signs so that our membership
8 aren't going into other parcels and trespassing
9 potentially because there are a couple other trails
10 from people that own larger parcels nearby. And we
11 don't want them to get confused and be trespassing when
12 they thought they were on a tribal road that, you know,
13 we have all over the place out there so.

14 And that's why we make it a point to check
15 our signs regularly and make sure everything is good to
16 go on there, contact information, and so on and so
17 forth.

18 Q And, Mr. Virden, would it also be safe to say that the
19 signs also serve a purpose as showing non-tribal
20 members that without explicit permission, they should
21 not be hunting on those pieces of property?

22 A Yeah. I don't have the -- obviously, I don't have it
23 in front of me any more, but it does say right on
24 there. On each and every one it says no hunting and
25 fishing and trapping by non-members by Tribal

1 Ordinance, whatever that ordinance was, along with
2 contact for Fish and Game.

3 Q Okay. And, Mr. Virden, do you have any -- are there
4 any concerns about the land application that's
5 occurring at six and seven that I haven't asked about
6 that you may -- like any concerns or comments that you
7 want to make regarding it?

8 A I think you have covered everything, thank you.

9 Q Okay, thank you.

10 MR. ADAMS: I don't have any further direct
11 questions, Your Honor.

12 THE ADMINISTRATIVE LAW JUDGE: Okay. Any
13 cross-examination?

14 MS. HANSON: Yes, Your Honor, just a few
15 questions.

16 CROSS-EXAMINATION

17 BY MS. HANSON:

18 Q Good afternoon, Mr. Virden. I just have, I think, two
19 questions to clarify for you.

20 A No problem.

21 Q Okay. I believe you testified that there is the
22 potential for wildlife to graze in open spaces. Do you
23 recall that?

24 A Yep.

25 Q And what does grazing mean to you?

1 A Consuming of whatever, you know, to sustain themselves.

2 Q And what kind of animals do you associate with grazing?

3 A Deer, turkey, grouse. I mean really -- just kind of

4 depends. I mean, bears graze on berries. Deer can

5 graze on a multitude of things, hay grass, berries,

6 different tree shrubs, things like that if you want to

7 get into the real technical nitty-gritty.

8 Q So the wildlife that's naturally found in the area?

9 A Yeah.

10 Q Thank you. And then a final question or topic of

11 questions.

12 I believe you also testified that adding lime

13 can neutralize the acidity of soils. Do you recall

14 that?

15 A Yep.

16 Q Have you observed negative impacts to berry plants on

17 lands surrounding Plummer 6 and 7?

18 A I can't see it directly. I mean, we do check all of

19 our areas, but I'm not specifically looking for

20 berries. But it is a well known fact that blueberries

21 like acidic soils and tend not to do well in calcified

22 soils.

23 Q But you haven't observed that directly on the land

24 surrounding the two sites?

25 A Not at the moment, no.

1 MS. HANSON: Okay, thank you. I have no
2 further questions.

3 THE WITNESS: Yep.

4 THE ADMINISTRATIVE LAW JUDGE: Just a minute.
5 Okay. Counsel for Howard Bros.?

6 MR. OLSON: Sure. Thank you.

7 CROSS-EXAMINATION

8 BY MR. OLSON:

9 Q Mr. Virden, thank you for your time today.

10 Just a minute ago you were asked by the
11 attorney's for the department a couple of questions
12 about grazing. Do you recall that?

13 A Yep.

14 Q And I just want to make sure I am clear, you're
15 involved in the habitat management on the reservation;
16 correct?

17 A Correct.

18 Q I assume then you are familiar with the related term
19 browsing?

20 A Yeah.

21 Q And I'm assuming you are also familiar with the fact
22 that grazing almost exclusively refers to livestock and
23 browsing is the term for wildlife?

24 A Splitting hairs there. You can twist it whichever way
25 you want, but tomato/tomatoe.

1 Q Okay. You don't think there is any significance to the
2 fact that the Wisconsin Department of Natural Resources
3 consistently uses those two words differently?

4 MR. ADAMS: Objection, he is essentially
5 asking for a legal conclusion.

6 MR. OLSON: I am asking for his opinion if he
7 thinks it is of significance.

8 THE ADMINISTRATIVE LAW JUDGE: Yeah. I mean,
9 I will allow it. I don't -- I understand he is not a
10 member of the DNR -- of the Wisconsin State DNR. So
11 this might be a better question for a witness from the
12 DNR -- the Wisconsin DNR, but, you know, you can ask
13 your question. You can answer it, and then let's move
14 on.

15 MR. OLSON: Sure.

16 THE WITNESS: Sorry, could you repeat your
17 question?

18 BY MR. OLSON:

19 Q Sure. So do you believe there is any significance in
20 the fact that the Wisconsin DNR consistently uses
21 browsing to refer to wildlife and grazing to refer to
22 livestock?

23 A I'm not an employee of the DNR, and I don't have the
24 ordinances so I'm not -- you know, I'm not going to
25 say.

1 THE ADMINISTRATIVE LAW JUDGE: Okay. So
2 there is your answer. Now, you can move on.

3 MR. OLSON: Yep.

4 BY MR. OLSON:

5 Q The signs that you saw pictures of earlier, do you
6 recall those pictures?

7 A Yep.

8 Q You took those pictures?

9 A Yep.

10 Q When did you take them?

11 A I took those ones in October -- or maybe it was
12 September, sometime the end of summer.

13 THE ADMINISTRATIVE LAW JUDGE: Just to be
14 clear, we are looking at?

15 MR. OLSON: 47 and 48.

16 THE ADMINISTRATIVE LAW JUDGE: 47 and 48; is
17 that right?

18 MR. OLSON: Do you need to see them again?

19 THE WITNESS: I have got them.

20 THE ADMINISTRATIVE LAW JUDGE: Just for the
21 record, okay. Go ahead.

22 BY MR. OLSON:

23 Q So you took those in October of this year?

24 A No. I took them sometime during either the last few
25 months or so, but I can't remember specifically.

1 Q Okay. So you took them after Howard Bros.' application
2 for septage land spreading had been approved by the
3 DNR?

4 A Yep.

5 Q And I believe you testified earlier that those signs
6 are on the trails that your department has cut through
7 the LDF land; is that correct?

8 A Yes.

9 Q Okay. So they are not out on the perimeter along the
10 roads for any reason?

11 A No, they are out along the roads at the beginning of
12 the trails.

13 Q How many signs per acre do you hang?

14 A I mean, again, we put them at the start of the trails,
15 start and the end. So if they come back out on the
16 road, there is also signs there as well. Wherever
17 there is an entrance and exit. I don't know the number
18 off the top of my head.

19 Q Were you here earlier when Ms. Gorski testified?

20 A Yes.

21 Q Did you find it surprising that she apparently goes and
22 picks berries on LDF land and hasn't ever seen a sign
23 telling her she can't?

24 A No. You know, we have bathrooms, public bathrooms at
25 our Natural Resource Department. And there is a sign

1 like that hanging up in front that says public
2 bathrooms, and people walk right by it all of the time
3 and say, where are the public bathrooms?

4 Q You talked earlier about a different land application
5 site that was previously owned by a company called
6 LaFrenier. Do you recall that?

7 A Yes.

8 Q Is LaFrenier the same company as Howard Bros.?

9 A No.

10 Q Is the parcel that LaFrenier used to land spread on the
11 same parcels we're referring to as Plummer 6 and 7?

12 A No.

13 Q Do you have any first-hand knowledge as to the
14 differences in the operational styles between Howard
15 Bros. and LaFrenier?

16 A No.

17 Q Okay. So the condition of the LaFrenier site may have
18 very little to do with the condition of Plummer 6 or 7;
19 isn't that true?

20 A Again, you get like toiletry items around the area. I
21 can't say for sure, but I mean it -- if it looks like a
22 duck, tastes like a duck, along those kinds of lines;
23 but no, I couldn't be sure.

24 Q Sometimes a duck isn't a duck, though, right, sometimes
25 it's a coot?

1 A True, but I guess --

2 MR. OLSON: I don't have any other questions.

3 THE ADMINISTRATIVE LAW JUDGE: Just a second.

4 All right. Any redirect?

5 MR. ADAMS: Yes, Your Honor.

6 THE ADMINISTRATIVE LAW JUDGE: Okay. Go

7 ahead.

8 REDIRECT EXAMINATION

9 BY MR. ADAMS:

10 Q Mr. Virden, Attorney Olson just asked you questions
11 about when those photographs were taken of the signs.

12 A Yep.

13 Q Based on your knowledge, has that -- has the tribal --
14 the tribal lands where those signs are at, have they
15 been posted for quite some time?

16 A They have been posted since -- me speaking directly,
17 they have been posted ever since I started my job
18 five-and-a-half years ago. That's something we are
19 asked to do regularly. And when I did start, the signs
20 were already out there, so I can assume it has been
21 done in the past as well.

22 Q Okay. And, Mr. Virden, when it comes to this issue of
23 grazing versus browsing, would it surprise you that
24 neither term is defined in NR 113?

25 A No, I believe I said so, tomato/tomatoe.

1 Q And, Mr. Virden, would it surprise you that animal is
2 not defined in NR 113?

3 A Nope.

4 MR. ADAMS: That's all I have, Your Honor.

5 THE ADMINISTRATIVE LAW JUDGE: Okay. Just a
6 second. Okay. Any recross?

7 MS. HANSON: No, Your Honor.

8 THE ADMINISTRATIVE LAW JUDGE: Any recross?

9 MR. OLSON: No, Your Honor.

10 THE ADMINISTRATIVE LAW JUDGE: Thank you so
11 much for your time, sir.

12 THE WITNESS: Thank you.

13 THE ADMINISTRATIVE LAW JUDGE: Do you have
14 another witness?

15 MR. ADAMS: We have one more, Your Honor.

16 THE ADMINISTRATIVE LAW JUDGE: Okay.

17 MR. ADAMS: Stephanie Finamore.

18 THE ADMINISTRATIVE LAW JUDGE: Okay. All
19 right. Then is Ms. Finamore here?

20 MR. ADAMS: Yes, she is, Your Honor.

21 THE ADMINISTRATIVE LAW JUDGE: Well, she can
22 come on up. Have a seat.

23 Raise your right hand, please. Do you swear
24 or affirm under the penalty of perjury that the
25 testimony you are about to give will be the truth, the

1 whole truth, and nothing but the truth?

2 THE WITNESS: I do.

3 THE ADMINISTRATIVE LAW JUDGE: All right.

4 Please speak up. Please state and spell your first and
5 last name for the record. And throughout your
6 testimony, keep trying to speak up.

7 THE WITNESS: All right. My name is
8 Stephanie Finamore. S-t-e-p-h-a-n-i-e.
9 F-i-n-a-m-o-r-e.

10 THE ADMINISTRATIVE LAW JUDGE: Counsel, your
11 witness.

12 MR. ADAMS: Thank you.

13 STEPHANIE FINAMORE

14 having been first duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ADAMS:

18 Q Good afternoon, Ms. Finamore. Thank you for being here
19 today.

20 Can you please tell us your current job title
21 and who you work for?

22 A Sure. I'm the Environmental Manager and Senior
23 Scientist at Mi-Tech Services. It's a consulting firm.

24 Q Okay, thank you. And, Ms. Finamore, can you provide to
25 us an explanation of your educational background?

1 A Sure. I have a bachelor's degree in geology from the
2 University of Wisconsin-Oshkosh, and a master's degree
3 in geology from Laurentian University. And that's in
4 Sudbury, Ontario.

5 Q Okay, great. And, Ms. Finamore, do you currently
6 possess any specific like technical professional
7 licenses?

8 A I do. I'm a licensed professional geologist in
9 Wisconsin, and I am also a Wisconsin certified soil
10 tester.

11 And then I have additional ones. I'm an
12 endangered species reviewer, an ERR. And I have
13 several certifications regarding endangered species,
14 and I am also a trained wetland delineator.

15 Q Okay, great. And, Ms. Finamore, how long have you been
16 in your current position?

17 A 2006 I began working in this position.

18 Q Okay, great. And can you provide us just with kind of
19 an overview of your professional responsibilities?

20 A It is a broad range of things. The work we do is
21 primarily related to permits and, you know, kind of as
22 a liaison with the DNR. We do a lot with wetlands. We
23 do a lot with septage spreading and approvals. Phase I
24 and Phase II contamination assessments.

25 And then a lot of just general environmental

1 reviews. We do that for a variety of companies, like
2 utility companies and private individuals.

3 Q And, Ms. Finamore, can you -- the binder that is
4 labeled tribal exhibits, will you please turn it to
5 Exhibit 46.

6 A Yes, looks familiar.

7 Q And can you tell me what Exhibit 46 is, please?

8 A It is my personal resume -- or my professional resume.

9 Q Okay, thank you. So, Ms. Finamore, as part of your
10 profession, are you familiar with the DNR regulations
11 and rules related to the land application of septage?

12 A Yes, I am.

13 Q And have you assisted or consulted on other
14 applications or projects related to the land
15 application of septage in Wisconsin?

16 A Yes, I have.

17 Q And do you have like any type of ballpark figure in
18 terms of how many applications you have assisted with?

19 A At my division, my environmental division, we have
20 probably done I would say maybe 30.

21 Q Okay.

22 A Somewhere in that range.

23 Q And is it -- have they been kind of spread across the
24 entire state or in certain areas of the state?

25 A The majority of them are in the northern half of the

1 state, primarily because of the lack of wastewater
2 treatment plants in which septage haulers can take
3 their wastes.

4 Q Okay.

5 A So the southern parts, usually they don't typically
6 spread in the southern part of the state.

7 Q And why is that?

8 A Because there is usually a wastewater treatment plant
9 close enough that it can be disposed of there instead
10 of land spreading.

11 Q And, Ms. Finamore, are you generally familiar with like
12 where the closest, say, facility that would be suitable
13 for accepting this type of septage like to the Lac du
14 Flambeau Indian Reservation?

15 A I don't know that information.

16 Q Okay. And, Ms. Finamore, are you -- in your
17 experience, have you had to work with the Wisconsin
18 Department of Natural Resources related to these types
19 of projects, to these land application of septage
20 projects?

21 A Yes, many times.

22 Q Okay. And, Ms. Finamore, can you explain to us like
23 generally the main requirements under Wisconsin law
24 that the DNR considers when they are approving a site
25 for the land application of septage?

1 A I think probably -- I mean, I have a copy of NR 113
2 right here. And it is -- the purpose statement kind of
3 says it all, which is 113.01.

4 And it just says the beneficial use of
5 septage and its recycling to the land as a fertilizer
6 or soil conditioner is encouraged. So I think the
7 overall use is that septage is providing a source of
8 nutrients to a crop that is being grown.

9 So then additional things that are reviewed,
10 it is all about protecting the environment and human
11 health. So making sure that the septage moves through
12 the soil at such a rate that the groundwater is
13 protected, and also that, you know, any microbes in the
14 soil can break it down, it's available to the roots of
15 the plants that are planted, the crop.

16 And then also there is things such as slope
17 is a big deal. Making sure that septage does not run
18 off too quickly and also that it doesn't pond. So it's
19 all regarding how that septage moves once it is spread
20 onto the land.

21 Q And, Ms. Finamore, from your experience, is there a
22 requirement that there has to be a beneficial use?

23 A The way I read the NR 113, I would say yes. The term
24 disposal is defined in NR 113 as -- disposal means the
25 controlled discharge of septage to a POTW, a private

1 on-site treatment facility for treatment or storage
2 lagoon or to an agricultural field for the purpose of
3 recycling nutrients back into the environment.

4 So the purpose is recycling nutrients back to
5 the environment. So it is not spreading septage for
6 the sake of spreading septage, it's serving a use.

7 Q And so, Ms. Finamore, under the definitions under
8 agricultural land, could you read real quickly under
9 that definition what agricultural land means? It's the
10 first defined term.

11 A Oh, yes. It means land on which a food crop, a feed
12 crop, or a fiber crop will be grown within 12 months
13 after septage is applied to the land. This includes
14 range land and land used as pasture.

15 Q And, Ms. Finamore, have you -- have you provided
16 professional advice to other clients concerning
17 demonstrating of beneficial use?

18 A Yes, I have.

19 THE ADMINISTRATIVE LAW JUDGE: I'm sorry,
20 what was the cite for that last --

21 MR. ADAMS: That, Your Honor, is -- it is NR
22 113.03(1).

23 THE ADMINISTRATIVE LAW JUDGE: Thank you.

24 MR. ADAMS: Definitions.

25 THE ADMINISTRATIVE LAW JUDGE: Thanks.

1 BY MR. ADAMS:

2 Q So, Ms. Finamore, when it comes to the requirements
3 under Wisconsin law for -- that the DNR has to follow
4 in terms of processing an application for land applying
5 septage, are you generally familiar with like assessing
6 the considerations when it comes to soil type, the
7 slope of the land, and then the nature of the
8 surrounding areas?

9 A Yes. We provide that service to our clients, so
10 evaluating a property for compliance with NR 113 prior
11 to it being submitted as an app for spreading.

12 Q Ms. Finamore, from your professional standpoint, why is
13 it important that the considerations embodied in
14 Wisconsin law are strictly followed?

15 A I think the reason the DNR exists is to protect human
16 health and the environment, and I think that's the
17 reason the rules are there.

18 They are speaking to different practices and
19 how those practices protect human health and the
20 environment.

21 Q And, Ms. Finamore, can you -- can you describe the work
22 that you have done in the region and area surrounding
23 the reservation?

24 A Yes. So I have provided a soil evaluation on the
25 adjacent parcels to Plummer 6 and 7, which involves,

1 you know, taking soil samples, excavating soil pits,
2 and that's in compliance with a DSPS Code.

3 And then I have also reviewed all of the
4 exhibits and information as part of this hearing
5 provided by the tribe.

6 Q And, Ms. Finamore, can you explain your past experience
7 in this area of land -- like the land application of
8 septage? I mean, have you been working in this field
9 for a short amount of time, a long amount of time?

10 A I have been involved in septic waste and site
11 approvals, I would say, about seven years. Something
12 along those lines, seven or eight years.

13 I'm a member of the Wisconsin Liquid Waste
14 Carriers Association, the WLWCA. And through that I
15 have been quite involved in approvals of these -- this
16 nature.

17 Q And, Ms. Finamore, would it be safe to say that most of
18 your clients in this field are the actual commercial
19 operators?

20 A That's true, yes.

21 Q Okay.

22 MR. ADAMS: Your Honor, to the extent that it
23 is allowable under Wisconsin law, I would like the --
24 this proceeding to consider Ms. Finamore as an expert.

25 THE ADMINISTRATIVE LAW JUDGE: Since we are

1 not operating under Chapters 901 to 911, the one you
2 are referring to, I think is -- it has been awhile --
3 there's statutes on experts. We don't have to do that
4 for these proceedings.

5 MR. ADAMS: Okay.

6 THE ADMINISTRATIVE LAW JUDGE: But I mean
7 clearly the questions have laid a foundation for
8 further questions about her opinion on things. So I
9 shouldn't be hearing objections on lack of foundation.
10 So please go ahead.

11 MR. ADAMS: Thank you, Your Honor.

12 BY MR. ADAMS:

13 Q Ms. Finamore, have you visited the Lac du Flambeau
14 Indian Reservation?

15 A I have, yes.

16 Q And, Ms. Finamore, have you visited the tribal lands
17 that neighbor the Plummer 6 and 7 site?

18 A Yes, I have.

19 Q And you are generally familiar with the location of
20 Plummer 6 in terms of the relation of the reservation
21 itself?

22 A Yes.

23 Q Okay. Did you conduct any testing of soil on the sites
24 that are adjacent to --

25 MR. OLSON: Your Honor, you just issued a

1 Motion in Limine on this on Friday, saying she was not
2 allowed to testify to this topic.

3 THE ADMINISTRATIVE LAW JUDGE: That's true.
4 That's true. But she can testify about Plummer 7 in
5 particular since that's the site that we're having the
6 hearing about.

7 She can be asked questions about whether or
8 not she has conducted any testing or made any
9 observations of that particular site and the soils at
10 that site. But she will not be a conduit for other
11 sites because this hearing is not about the other
12 sites, it is about Plummer 7.

13 BY MR. ADAMS

14 Q Ms. Finamore, you have been out to the tribal lands
15 that surround Plummer 6 and 7?

16 A I have, yes.

17 Q Okay. And based on what you saw, do you believe that
18 Plummer 6 and 7 are co-dependent with one another?

19 A I -- from what I can see looking at maps, that seven
20 has to be accessed through six. There is no separate
21 access to Plummer 7.

22 And then I have also seen some aerial photos
23 that indicate that they are spread on continuously so
24 as if it was one site. It looks like I can see tracks
25 going from six to seven. So from what I can tell, they

1 are spread as a single site, which is fine because they
2 are adjacent properties, owned by the same property
3 owner.

4 Q Okay. So with that being said, Ms. Finamore, because
5 they are adjacent sites that are owned in fee simple by
6 the same owner, there is no need for a buffer between
7 those two sites?

8 A That's correct.

9 Q Okay. So from your standpoint, then -- and feel free
10 to correct me if you believe I am wrong -- but do you
11 -- is it -- would it be fair to consider it one
12 operational site, six and seven, from a business and
13 operational and logistical standpoint?

14 A I am -- I would say that -- I mean they have separate
15 approvals, six and seven, as two separate sites. And
16 they are both reported on an annual basis, the gallons
17 that are spread, from what I can tell, are reported
18 individually.

19 But again, as I am able to observe from
20 aerial photographs, it looks as if, you know, they are
21 spread contiguously. So it is not like -- it doesn't
22 look to me like a truck makes a loop around Plummer 6
23 and then a separate loop around Plummer 7, that they go
24 from one to the other.

25 Q And, Ms. Finamore, will you turn to -- in the tribal

1 exhibit binder, will you turn to Exhibit No. 8. And
2 flip to page 10, please.

3 A Okay.

4 Q And is there a Howard Bros.' letterhead at the top of
5 that page?

6 A Yes.

7 Q And do you see numbered paragraphs?

8 A Yes.

9 Q Will you look at number three, please?

10 A Okay.

11 Q And will you read number three, please?

12 A "Total proposed acreage for non-winter spreading is
13 39.92 acres. This is the area inside of the proposed
14 setback area, including the area of Plummer 6 field
15 that can be cleared for the width of proposed Plummer 7
16 field now that both properties are owned by Howard
17 Bros., Inc."

18 Q And, Ms. Finamore, will you flip to page 16 of that
19 same exhibit?

20 A Okay.

21 Q And at the top of that page, I believe it says Vilas
22 County planning and zoning map. Are you on that same
23 page?

24 A Yes.

25 Q And, Ms. Finamore, would it be safe to assume that this

1 particular page of this exhibit like clearly shows that
2 Plummer 7 is going to be accessed via Plummer 6?

3 A Yes. I see a note on this map saying as much. Access
4 to Plummer Number 7 shall be from Plummer Number 6.

5 Q Okay. And now, Ms. Finamore, will you turn to Exhibit
6 39 in that same binder?

7 A Okay.

8 Q And will you flip to page three of that exhibit,
9 please?

10 A Okay.

11 Q And can you generally explain -- I have never been to a
12 -- I know nothing about a land -- I have never been on
13 a land application field. I wouldn't be able to -- I
14 wouldn't be able to tell you like what's going on here.
15 But I see a lot of lines that are going up and down
16 this -- the top photo.

17 Is that -- is that kind of the direction that
18 the trucks are going on or is that tilling or in your
19 opinion what would those lines kind of demarcate?

20 A In my opinion, those lines would be tracks from
21 spreading. Basically, the septage is spread -- the
22 valve is opened and it is spread along the field. When
23 that truck ends, there is typically a way to mark where
24 that end was, and the next truck will pick up at that
25 location.

1 Q And --

2 THE ADMINISTRATIVE LAW JUDGE: Just for
3 clarification, we are looking at the top photo?

4 MR. ADAMS: Yes, Your Honor.

5 THE ADMINISTRATIVE LAW JUDGE: On page three,
6 because there are two photos.

7 MR. ADAMS: Yeah, the top photo.

8 THE ADMINISTRATIVE LAW JUDGE: I just wanted
9 to be clear for the record. Okay. Thank you.

10 BY MR. ADAMS:

11 Q To that point, Ms. Finamore, on the bottom photo of
12 that same page, there is at the very top of the -- of
13 that photo, there appears to be a circle. I mean, does
14 it -- would it be safe to say that that's a pond?

15 A I believe there is -- there is a mapped wetland on
16 Plummer 6, and I believe that's what we're seeing
17 there.

18 I know looking at aerial photos that at times
19 of the year that is standing water and at other times
20 it's surface saturation, so a wetland.

21 Q Okay. And would -- with a surface saturation pond like
22 that, would it be safe to assume that that -- the water
23 level in that pond is pretty much dependent on
24 rainwater and water seeping into the pond?

25 A Most likely. I would say yes.

1 Q Okay. And so, Ms. Finamore, based on your review of
2 the exhibits, do you believe it was known to the DNR
3 and to Howard Bros. that these parcels would be
4 codependent sites?

5 A Yes. I think that's -- was stated obviously on the
6 application.

7 Q And again, Ms. Finamore, in your opinion, how should
8 that have affected the DNR's consideration of the
9 application for Plummer 7?

10 A In my opinion, at the time of the Plummer 7 approval,
11 there shouldn't be any, you know, outstanding issues
12 with Plummer 6 or with Howard Bros.; that everything is
13 well and good on Plummer 6 so that Plummer 7 can be
14 approved, assuming it is the same company doing the
15 work.

16 Q But if there were problems on either one, would it
17 impact the other?

18 A I would say, yes, it would.

19 Q Okay. Now, Ms. Finamore, will you turn to Exhibit
20 No. 3 in that same binder?

21 A Okay.

22 Q And let's flip to page three of Exhibit 3.

23 A Okay.

24 MS. HANSON: I would like to object to the
25 relevance of this document. This exhibit is addressed

1 to Arbor Vitae Septic Systems. This is not addressed
2 to the Howard Bros.

3 I believe this regards a site that the Howard
4 Bros. did not yet own.

5 THE ADMINISTRATIVE LAW JUDGE: Counsel, is
6 that true? It is just a different business that was
7 running it at the time that this letter was drafted? I
8 think we -- it does remind me of a conversation we did
9 have at the final pre hearing that Howard Bros. took
10 over the operation, I believe, in twenty --

11 MR. OLSON: '21. This letter is about two
12 years prior to Howard Bros. owning Plummer 6.

13 MR. ADAMS: Your Honor, I am only asking that
14 Ms. Finamore look at just specifically page three, not
15 the letter, but to page three, for the topography.

16 I would -- I would assume that the general
17 topography of the earth in that time has not changed
18 dramatically. There haven't been any earthquake or
19 volcanic, you know, activity, in this area, in that
20 time?

21 THE ADMINISTRATIVE LAW JUDGE: Sure, sure,
22 okay. Well, with that qualification then, it is really
23 not page one that you are concerned with, you are
24 concerned with page three?

25 MR. ADAMS: With page three, yes, Your Honor.

1 THE ADMINISTRATIVE LAW JUDGE: Thank you for
2 the clarification.

3 MR. ADAMS: Thank you.

4 THE ADMINISTRATIVE LAW JUDGE: All right. So
5 there is a limited, I suppose, relevance, of the
6 document as to page one and I guess page two. But page
7 three is the relevant portion.

8 So you guys can go ahead with your questions.

9 BY MR. ADAMS:

10 Q And, Ms. Finamore, that -- so the -- it would be the
11 East Boundary of that kind of square, there is a --
12 there is some text there that says ROC. Can you see
13 that?

14 A Yes, I can.

15 Q Does ROC mean anything to you from a soil technician
16 standpoint?

17 A It does. It is -- I have that here. ROC is the
18 Rubicon sand soil series, six to 15 percent slopes.

19 Q And, Ms. Finamore, will you turn to Exhibit 36 in that
20 same binder?

21 A Okay.

22 Q And the top says, Vilas County, Wisconsin, and RoC,
23 Rubicon sand. Can you -- so again, I know what sand is
24 but I don't know what Rubicon sand is.

25 So can you just explain to me from -- I get

1 just, you know, treat me as a total lay person when it
2 comes to soil technician and geology stuff. What does
3 Rubicon sand, six to 15 percent slopes mean?

4 MR. OLSON: Your Honor, I am going to I guess
5 renew the DNR's relevancy objection. I realize we are
6 not talking about the operations when the predecessor
7 company was in place, but we now seem to be delving
8 into a discussion about the sand on the border of a
9 site that is not the subject of this hearing.

10 This -- that map we just looked at was
11 Plummer 6. The Rubicon sand designation was on the
12 border, the eastern border of Plummer 6. And now we
13 are about to get educated on what Rubicon sand is. And
14 I haven't heard the word Plummer 7 in about 20 minutes.

15 THE ADMINISTRATIVE LAW JUDGE: I did hear,
16 and I -- I believe -- correct me if I'm wrong -- but I
17 did hear testimony that, at least from this witness,
18 that the application for Plummer 7 would be potentially
19 affected if there are any issues with Plummer 6 because
20 the application, I believe she said, explicitly says
21 that this new application sort of covers both tracts of
22 land because it explicitly says that.

23 MR. OLSON: Your Honor, I believe her
24 testimony was they would be -- the issues of Plummer 6
25 would be considered because it was being operated by

1 the same company.

2 I believe she was referring to operational
3 issues, not to the different soil compact. When we get
4 deeper into this, you'll see that a 40-acre parcel is
5 going to have many different kinds of soil and the
6 spreading allowability based on the different soils is
7 different within the same 40 acres. So this is wholly
8 irrelevant to whether or not Plummer 7 is an
9 appropriate site.

10 THE ADMINISTRATIVE LAW JUDGE: Okay. Well,
11 I'll allow it at this point.

12 If it turns out that it is irrelevant, I am
13 sure that Counsel for the DNR as well as for Howard
14 Bros. will clarify that within their cross-examination.
15 I will allow it at this point. So go ahead.

16 MR. ADAMS: Thank you, Your Honor.

17 BY MR. ADAMS:

18 Q So I'll restate my question. So what -- why is -- what
19 is Rubicon sand in this slope percentage?

20 A As shown in Exhibit 36, that is the NRCS, the Natural
21 Resources Conservation Services definition of that
22 soil. So a soil series is a particular set of soils.
23 So it has particular textures, particular colors, and
24 soil properties that define it as a discrete unit.

25 And the USDA also separates it by slope. So

1 you can have, you know, multiple Rubicon sands. You
2 can have a six to 15 percent slope one, you can have a
3 zero to five, or zero to six percent, depending on the
4 property.

5 Q And in your opinion, Ms. Finamore, is this type of soil
6 appropriate for land applications of septage?

7 A All I know about the Rubicon sand is what I can see
8 here on this Exhibit 36. I have not worked with it.
9 But I can see that the typical profile from zero to
10 79 inches is sand. There is no loam or silt shown
11 here. So in my opinion, a soil that is sand from top
12 to bottom would not be appropriate.

13 Q And why is slope important?

14 A Slope is important because if it is too steep, septage
15 will run off and not soak in. Basically, it is not
16 soaking in as it needs to, to serve the roots of
17 plants.

18 So you lose that beneficial use of the
19 septage and you also increase a risk for runoff.

20 Q And the runoff being that it could potentially impact
21 surrounding lands?

22 A Potentially, yes.

23 Q And, Ms. Finamore, have you reviewed any documents that
24 disprove the NRCS web soil survey in relation to
25 Plummer 6?

1 A I have not seen any. From what I -- I have not seen
2 any specific documents. I have seen the soil report
3 for Plummer 6 and 7. But those are typically not
4 associated with a particular soil definition.

5 Q Okay. And, Ms. Finamore, just based on your knowledge
6 of that particular type of soil, and the NRCS survey
7 information that you have about Plummer 6, I mean, does
8 it raise any concerns or does it raise -- does it lead
9 you to any type of conclusions?

10 A As far as the Rubicon sand is concerned?

11 Q Yeah, and the application of septage to that land.

12 A I know that if it says it is six to 15 percent slope,
13 which would disqualify it for -- well, we can look at
14 that.

15 NR 113 Table 3 is where that comes from.
16 Maximum allowable slope for septage spreading in
17 non-frozen non-snow covered conditions is six percent.
18 So anything greater than six percent cannot be spread
19 on in accordance with Table 3.

20 Q Ms. Finamore, are you aware of any inspections the DNR
21 has conducted since Plummer 6 was approved?

22 A I am, yes.

23 Q And, Ms. Finamore, I don't know if that binder has it,
24 but I am going to -- do you guys have a copy of our
25 Exhibit 55?

1 MS. BURKE: Yes.

2 MR. ADAMS: Okay. Do you have a copy?

3 MR. OLSON: Thank you.

4 MR. ADAMS: Do you have a copy, Judge DéFort?

5 THE ADMINISTRATIVE LAW JUDGE: I'm looking
6 for it.

7 MR. ADAMS: Okay.

8 THE ADMINISTRATIVE LAW JUDGE: I do. I have
9 a copy.

10 MR. ADAMS: Do you need a copy, Your Honor?

11 THE ADMINISTRATIVE LAW JUDGE: I have a copy.

12 MR. ADAMS: Okay.

13 THE ADMINISTRATIVE LAW JUDGE: And this is 52
14 and 55?

15 MR. ADAMS: I am going to speak about 55
16 first, if you are -- if that's okay with you, Your
17 Honor.

18 THE ADMINISTRATIVE LAW JUDGE: Yep, I have
19 got that up. Thank you.

20 BY MR. ADAMS:

21 Q So, Ms. Finamore, do you have Exhibit 55 with -- that
22 says case activity report on the top right-hand corner?

23 A Yes.

24 Q Okay. And have you reviewed this exhibit before
25 today's trial?

1 A Yes, I have.

2 Q Okay. And what do you notice as being areas of concern
3 in the case activity report?

4 A I see several, well, issues, that are in -- that are
5 not in accordance with NR 113.

6 The things that I had noted was that neither
7 truck had a standard operating procedure. Neither
8 truck had lime onboard. Neither truck had a log book
9 of past activities. There was one service ticket
10 onboard at the time of the inspection.

11 And then this statement that prior to leaving
12 the shop in the morning, 100 pounds of lime is mixed
13 with water and added to each truck. And then this
14 statement that checking the pH of the load prior to
15 spreading was not a regular practice. And above that
16 was that the morning service tickets are dropped off
17 and then the afternoon ones are picked up, so they are
18 not retained in the vehicle.

19 And then I saw multiple concerns with the
20 work ticket. I saw there was no written certification
21 by the operator in charge, and the vehicle operating
22 statement was missing. I don't see the pathogen
23 reduction and vector attraction reduction information.
24 So I saw multiple issues, compliance issues.

25 Q And, Ms. Finamore, why are those concerns or why are

1 those violations of NR 113?

2 A These -- all of these things are in place to protect
3 human health and the environment. The pathogen
4 reduction and vector attraction reduction is a very
5 important one. That has to do with the lime and taking
6 readings of lime, the pH readings, and documenting
7 that.

8 It is making sure that the septage is at the
9 proper pH prior to spreading, and then that it is
10 spread properly and documented properly.

11 Q Okay. And, Ms. Finamore, can you go back to the front
12 page of that exhibit?

13 A Okay.

14 Q And what is the date of the activity?

15 A 8-10-2021.

16 Q And what does it say under the activity in that table?

17 A I'm sorry?

18 Q Second line down, where it says activity under case
19 number.

20 A Oh. Site visit, Plummer 6.

21 Q Okay. Thank you. I am going to bring to you Exhibit
22 52.

23 A Thank you.

24 Q Yep. Oh, and I am sorry, before we move to 52,
25 Ms. Hanson -- I'm sorry, not Ms. Hanson, Ms. Finamore.

1 Here is -- will you take a look at the very
2 top left-hand corner of Exhibit 55, please?

3 A Okay.

4 Q What -- the top left-hand corner of that exhibit, does
5 it say State of Wisconsin Department of Natural
6 Resources Law Enforcement?

7 A Yes.

8 Q And so, Ms. Finamore, in your professional experience,
9 a document like this -- again, this is the first time I
10 have ever seen a DNR case activity report.

11 Would it be -- would it be fair to say that
12 folks internal to the DNR would have access to this
13 type of document?

14 MS. HANSON: Objection to lack of foundation.

15 THE ADMINISTRATIVE LAW JUDGE: Would she
16 know?

17 THE WITNESS: I don't know.

18 MR. ADAMS: Okay.

19 BY MR. ADAMS:

20 Q Is it fair to say that this is a DNR document?

21 A Yes.

22 Q And will you turn to the last page of Exhibit 55?

23 A Okay.

24 Q And what is the name of the reporting officer?

25 A Christopher Bartel -- Bartelt.

1 Q I think that's the supervisor's name, but the name to
2 the left of that.

3 A Oh, I apologize.

4 Q Oh, that's fine.

5 A Warden Timothy Ebert.

6 Q And the supervisor's name again?

7 A Christopher Bartelt. Sorry, I don't know how to
8 pronounce his last name.

9 Q That's fine. That's fine. Okay.

10 Now, will you turn to Exhibit 52, please?

11 A Okay.

12 Q And in the top left-hand corner of that document, does
13 it say Wisconsin State Patrol?

14 A Yes.

15 Q And the code in the box in the middle of that document,
16 can you tell me what that says?

17 A E, septage and industrial waste.

18 Q And, Ms. Finamore, did you review Exhibit 52 before
19 today's trial?

20 A Yes, I did.

21 Q And what do you notice as being areas of concern in
22 Exhibit 52?

23 A They were the same areas of concern as I had noted in
24 the other document. In particular, the lack of SOPs,
25 logs and lime onboard were called out. That was a

1 concern of mine.

2 And then he had noted, I did not see an SOP
3 in writing, pH of each truck is not generally checked
4 prior to dumping. And truck did not have any log
5 information, had noted as issues of concern.

6 Q And on -- I am -- I apologize for this. Will you turn
7 back to Exhibit 55 quickly and go to the last page?

8 A Okay.

9 Q The page that has the reporting officer information.

10 A Um-h'm.

11 Q What is the date of the report?

12 A August 23rd, 2021.

13 Q Okay. Now, will you turn back to Exhibit 52?

14 A Okay.

15 Q And the end of -- let's see, on page -- it would be the
16 second page of Exhibit 52. There is a three at the --
17 I am sorry, the third page, my apologies.

18 But can you read the date of those last
19 entries from Tim Ebert?

20 A The very latest date I see is August 23rd, 2021.

21 Q And the entry for August 10th of '21 at 12:16 p.m. that
22 day, where it says Canniff, do you know, is Canniff
23 significant to you at all?

24 A Yes, that's -- I would assume that would be Alison
25 Canniff with the DNR.

1 Q And what does she do for the DNR?

2 A She's a wastewater specialist.

3 Q Okay. So it would be safe to say that the WW in that
4 entry from August 10th means wastewater?

5 A That would be my assumption as well, yes.

6 Q Okay. And Ms. Canniff is an employee of the Wisconsin
7 DNR?

8 A As far as I know, yes.

9 Q Okay. Thank you. And in your opinion, Ms. Finamore,
10 and based on the exhibits that you have reviewed in
11 this case, has Howard Bros. demonstrated the required
12 competency in terms of its application of its land
13 application of septage?

14 A All I know is these two documents. And based on these
15 two documents, no. There are multiple compliance
16 issues that are stated here.

17 Q And assuming that the DNR had this information
18 regarding Plummer 6 at the time that they were
19 reviewing the Plummer 7 application, should they have
20 granted the application for Plummer 7?

21 A I can't speak for the DNR. But in my opinion, if these
22 were all outstanding at the time, there is some
23 serious, you know, concerns that I would have. So in
24 my opinion, I would say, no, that these needed to be
25 addressed first.

1 Q Okay. Thank you. And then I am going to turn to this
2 issue of beneficial use under NR 113.

3 And can you -- again, can you explain to me
4 why that's important, like why is a beneficial use
5 under NR 113 important?

6 A I think that goes back to the whole purpose of NR 113,
7 going back to that purpose statement at the very
8 beginning, which is the purpose of the chapter is to
9 establish standards for the servicing of private sewage
10 systems including septic and holding tanks to provide
11 for the use and disposal of wastewater. And then the
12 beneficial use of septage and its recycling to the land
13 as a fertilizer or soil conditioner is encouraged.

14 And that could be -- is it okay if I refer to
15 an exhibit?

16 Q Yes.

17 A There in the land application site request, Exhibit
18 200, there are several of those in the list of
19 exhibits. But within that there is several pages that
20 talks about what's supposed to be listed. Let's see
21 here.

22 So in Exhibit 200, page seven, I see Item G,
23 proper disposal, beneficial reuse, and/or land
24 treatment of applied waste requires a harvested crop
25 that is grown and removed from the site so --

1 THE ADMINISTRATIVE LAW JUDGE: I'm sorry,
2 what page are you on?

3 THE WITNESS: Page seven.

4 THE ADMINISTRATIVE LAW JUDGE: Okay.

5 THE WITNESS: So I guess my -- what I would
6 say is that NR 113 was -- the purpose for allowing
7 septage to be spread is that it is providing nutrients
8 to a crop. It is not being spread just for the sake of
9 being spread. It has a purpose, it is reducing the
10 need for additional fertilizer.

11 BY MR. ADAMS:

12 Q Okay. And on that Exhibit 200 that you are referring
13 to, page seven of the Howard Bros. exhibits, under that
14 sub G on that same page, why is it important that it
15 says that the harvested crop that is grown and why does
16 it have to be removed from the site?

17 A Well, a lot of crop will -- there is an uptake of
18 nitrogen, sometimes phosphorus that's going into that
19 crop. And removing it from the site prevents over -- a
20 build-up of those nutrients.

21 So the purpose is that you are planting this
22 crop, you are feeding it with the septage. But then it
23 is being harvested and used for something. So again,
24 not only is that crop removing those nutrients from the
25 site so that you can add additional nutrients from

1 future septage loads, but it is also serving a purpose.

2 So that crop is being consumed by an animal
3 most likely. And you're not just mowing the crop and
4 leaving it to decompose.

5 Q Okay. And in your experience, is that ever verified?

6 A In my experience, I have worked with clients and we
7 have had to prove that that is the case, that that crop
8 is being taken off-site and utilized for a beneficial
9 purpose.

10 Q And at the end of the day, is it the DNR's
11 responsibility to verify that that crop is being
12 removed from the site?

13 A Well, I can't speak for the DNR. I would say -- I was
14 looking through the certification statement on the land
15 application site request, and I would say that that --
16 in signing this application, the applicant is saying
17 that they are following all of the -- that they will
18 provide, you know, an NR 113 compliant practice.

19 So I would say the onus is on the applicant.

20 Q And in this particular case with that application, did
21 Howard Bros. describe their beneficial use?

22 A I believe it is shown as permanent hay land.

23 THE ADMINISTRATIVE LAW JUDGE: Is there an
24 exhibit number that's associated with the document that
25 she is referencing?

1 THE WITNESS: 200.

2 THE ADMINISTRATIVE LAW JUDGE: Still on 200?

3 MR. ADAMS: Yes, 200.

4 THE ADMINISTRATIVE LAW JUDGE: What page are
5 you on?

6 THE WITNESS: Two.

7 THE ADMINISTRATIVE LAW JUDGE: All right,
8 thank you.

9 BY MR. ADAMS:

10 Q And, Ms. Finamore, if -- I guess in your opinion, what
11 is a permanent hay land or hayfield, or whatever --
12 however they describe it?

13 A From what I know, a permanent hay land would be
14 something that -- so it is planted typically with an
15 alfalfa or a clover. Something that, you know, it
16 grows, it's mowed and it's removed. It is not
17 replanted multiple times. It just is constantly being
18 used as a source.

19 So typically, I would say alfalfa and clover
20 are pretty common, from what I have seen. Kind of
21 something that grows, you know, up to probably two feet
22 high because you want to get a decent amount of crop
23 off of that when you mow it.

24 Q And to your knowledge, based on the exhibits that you
25 have had access to, has that been verified by anyone?

1 A Not that I have seen, no.

2 Q And do you know of any information that would negate
3 their assertion that this is a permanent hay land?

4 A I don't know of any information. The only thing I can
5 see is some aerial photos. And it looks like the field
6 might be planted in a low growing grass. I can't see
7 any tall vegetation, but I have no real knowledge or
8 information about that.

9 Q And again, this is related to Plummer 7, Ms. Finamore,
10 but in your opinion, based on what you have reviewed,
11 does the site meet the requirements under the NR Code
12 for beneficial use?

13 A I can't say one way or the other. It -- I would hope
14 that it does. By saying that the site is in compliance
15 with NR 113, the applicant is saying that it does. But
16 as far as I know, that has not been verified.

17 Q And, Ms. Finamore, again, based solely on your
18 opinion -- well, actually, strike that.

19 In terms of -- backing up, did you say that
20 you're some type of endangered species -- you have some
21 type of certification related to animals?

22 A I do, yeah.

23 Q Okay. Are you familiar with white-tailed deer?

24 A Just to the degree that they are in my backyard quite
25 often.

1 Q Okay. Do you have any personal or professional
2 knowledge that white-tailed deer appreciate alfalfa as
3 a food source?

4 A I don't know that specifically. I would assume that
5 they do. I really can't say one way or the other.

6 Q Okay, thank you. So, Ms. Finamore, what does the
7 code -- what does NR 13 [sic] require in terms of
8 adjacent and surrounding land uses?

9 Are there any restrictions in NR 113 that
10 would impact an operator concerning the status or the
11 state of surrounding lands?

12 A Yes. I would look at Table 3 of NR 113. Let's see.
13 So distance to a community well or a private well.
14 Distance to a residence, business or recreational area.
15 Distance to rural schools and healthcare facilities.
16 And then distance to natural resources like a stream,
17 river, pond, lake, sinkhole, flowage ditch or wetland.
18 And those each have a specific setback that is required
19 per 113.

20 Q And, Ms. Finamore, does the -- does the application
21 itself ask for some type of description or
22 identification of what the surrounding lands are?

23 A Yes, it does. Page two, there is an area to check the
24 appropriate boxes for the land use types adjacent to
25 the site. It's kind of in the middle of the page.

1 Q And on this particular application, what is the -- what
2 are the boxes that are checked?

3 A It looks like residential, forest, and other, which is
4 specified as Indian land.

5 Q And in your professional opinion, what is Indian land?

6 A Well, I don't know that that's a technical term that
7 I'm familiar with. I would say it would be land owned
8 by a tribe would be my assumption there.

9 Q And, Ms. Finamore, the document that you are looking
10 at, this is a document that was signed off on by --
11 this is what was submitted by Howard Bros.; correct?

12 A Correct.

13 Q To the DNR?

14 A Yes.

15 Q In your opinion, Ms. Finamore, does an applicant like
16 Howard Bros. have a duty to accurately report adjacent
17 land use?

18 A Yes.

19 Q So do they have -- does essentially the applicant have
20 a duty to do some diligence to ascertain what
21 surrounding land is being used for?

22 A Yes, they do.

23 Q And, Ms. Finamore, is there any significance to them
24 checking the box residential? Is land -- is the land
25 application of septage something that would happen like

1 in a -- like a suburban subdivision?

2 A No. There is a setback -- that's that Table 3 again.
3 Minimum distance to a residence is 500 feet, without
4 permission from the owner or occupant.

5 And if there is permission granted, that
6 setback is reduced to 250 feet. And that's for
7 spreading specifically of septage, no incorporation or
8 injection.

9 Q Okay. And, Ms. Finamore, when Howard Bros. checked the
10 other box and said Indian land, do you believe that
11 that prompts some type of duty of the Wisconsin DNR to
12 verify what that land is being used for, if other is
13 checked and it says Indian land?

14 A I can't speak for the DNR. I would say yes. I
15 suspect, yes.

16 Q And, Ms. Finamore, based on your knowledge, what do you
17 know about the use of the adjacent land to Plummer 7?

18 A I have been on the land on either side that is owned by
19 the tribe. And I have been on -- there is recreational
20 trails that have been cleared. We were able to get our
21 equipment back in there for our soil work.

22 Those trails were well maintained. And from
23 conversation with the tribe, I have been told that that
24 land is prized hunting land. And I could see there was
25 quite a -- quite a large amount of blueberries back in

1 there, sweet fern and other useful, I would say,
2 plants. It was -- I would say that was prime
3 forestland --

4 Q Okay.

5 A -- from what I could see.

6 Q And did you see any signage on those lands?

7 A I did. The first thing I saw where I parked on the
8 road was one of the signs. I don't know if it was the
9 sign that was brought up earlier, but it was one of
10 those signs. And the trails had signage throughout.
11 That was in the beginning of October that I was out
12 there.

13 Q Okay. And, Ms. Finamore, based on your -- your
14 knowledge of NR 113, would those lands fit the -- and I
15 don't even know if the term is actually defined in NR
16 13 [sic].

17 I know NR 13 [sic] mentions recreational
18 lands, but in your professional opinion, would you
19 consider those lands recreational lands?

20 A Yeah. And I was looking at the definition of
21 recreational land as defined in NR 113. And it just
22 says a designated area clearly identified and
23 maintained for the purpose of providing an opportunity
24 for recreational activity.

25 I don't know. I know a lot of hunters that

1 would consider hunting a recreational activity. I
2 consider hiking a recreational activity.

3 Q Do you consider camping a recreational activity?

4 A Absolutely, absolutely.

5 Q How about harvesting berries or wild plants?

6 A I would say, yeah.

7 Q So assuming that those lands are recreational, how
8 would that affect Howard Bros.' ability to land spread
9 on Plummer 6 or 7?

10 A On Table 3, again, which is the setbacks, of NR 113,
11 the setback would be 500 feet for spreading. So not
12 incorporation or injection, just for spreading.
13 500 feet. Without permission from the
14 owner-operator -- owner or occupant, I apologize. That
15 distance could be reduced to 250 feet with a written
16 permission.

17 Q Ms. Finamore, would you turn to Exhibit 42 in the
18 tribal binder?

19 A Okay.

20 Q And, Ms. Finamore, have you reviewed this exhibit prior
21 to today's trial?

22 A I did see this exhibit when I was reviewing the
23 provided materials, yes.

24 Q And based on your opinion, if the lands were considered
25 recreational, would that red rectangle essentially be

1 some type of approximate area that would be suitable
2 for a land application of septage if Howard Bros. could
3 not obtain the consent of the adjacent landowners?

4 A Assuming that polygon is drawn with a 500-foot setback
5 from the property line, then yes, that would be a
6 suitable depiction of that.

7 Q And in your opinion, based on what we -- or what you
8 have reviewed, does the site meet the requirements
9 under the NR code for setbacks based on surrounding
10 land uses?

11 A As we have discussed multiple times today, that
12 recreational site component, I have a hard time seeing
13 that as anything but recreational land. So in my
14 opinion, I would say, no, it does not meet that
15 requirement.

16 Q Ms. Finamore, will you turn to Exhibit 31, please?

17 A Okay.

18 Q And does the top of Exhibit 31 say Hegeman, Frederick J
19 dash DNR?

20 A Yes. And does this look like an email -- like
21 essentially like a printoff of a Microsoft Outlook type
22 email with a "from" and a "to"?

23 A Yes, it does.

24 Q And is this from Canniff, Alison E dash DNR, to Kyle at
25 Howard Bros. Inc?

1 A Yes.

2 Q And, Ms. Finamore, have you reviewed Exhibit 31 before
3 today's trial?

4 A Yes, I have seen this email.

5 Q Why is this -- why is this exhibit important?

6 A This is the approval. So this was the kind of the
7 cover email that went with the approval for Plummer 7
8 when the DNR approved the site.

9 Q Okay. And would it be safe to say that in Exhibit 31
10 and -- can you turn to Exhibit 32, also, please?

11 A Okay.

12 Q Is that also an email exchange?

13 A Yes.

14 Q And would it be fair to say that in Exhibits 31 and 32,
15 the DNR is wanting further verification of the slope at
16 the site?

17 A That is a fair assumption, yes.

18 Q And will you turn to Exhibit 30, please?

19 A Okay.

20 Q And at the top of this document, does it say Soil
21 Evaluation Report?

22 A Yes.

23 Q And will you turn to pages five and six of this
24 document or this Exhibit 30?

25 A Okay.

1 Q On pages five and six, is there any elevation or survey
2 data that's included in this Soil Evaluation Report?

3 A I do not see any, no.

4 Q Is it -- would it be -- in your experience and based on
5 your training, is it -- would it be proper or
6 appropriate or reasonable for this type of soil report
7 to have evaluation or survey data?

8 A It is probable. I know that elevation -- soil pit
9 elevations are required as part of the Soil Evaluation
10 Report, and those were not shown. And the map is
11 supposed to be to scale, which I am not seeing.

12 Typically, you would not see any slope
13 analysis on a report of this nature. That would be a
14 separate document.

15 Q In this -- in this document at all, in Exhibit 30, is
16 there any indication that the DNR confirmed the slope
17 or verified the slope?

18 A In Exhibit 30?

19 Q Yeah.

20 A No, there is no slope data in Exhibit 30. So, no, not
21 in Exhibit 30, there is nothing there to verify the
22 slope.

23 Q And slope is important when it comes to the land
24 application of septage; correct?

25 A It is, yes. There are different slopes for regular

1 summer spreading and winter application.

2 Q So again, Ms. Finamore, based on the documents, the
3 exhibits that you have had access to and that you have
4 reviewed, is Howard Bros. in conformance with the slope
5 requirements under NR 113 at Plummer 7?

6 A At Plummer 7, based on the soil survey and the data
7 provided in the soil survey, they are in compliance for
8 summer spreading. As far as I know, I recall that they
9 have requested winter spreading and that has not been
10 granted, to the best of my knowledge.

11 And they would not be in compliance with
12 winter spreading based on the soil survey.

13 Q And, Ms. Finamore, what does the -- what does the code
14 or the regs require or consider in regard to the
15 protection of human health in terms of animals grazing
16 and adjacent land use?

17 A Let's see here. One of the -- well, there is several
18 components to that.

19 Animals are not allowed to graze within 30
20 days of a septic application. And I can't recall the
21 actual citation for that. Then there is, of course,
22 the vectors and making sure that it is applied -- it is
23 not over applied and that it has a chance -- the
24 septage has a chance to be taken up by the roots of the
25 vegetation that's planted there, and the microbes in

1 the soil have a chance to break down the septage. And
2 there is the risk to the groundwater, groundwater
3 contamination is reduced.

4 Q And based on your opinion and your knowledge of NR 13
5 [sic], Ms. Finamore, do you know if there is any type
6 of clarification or interpretation in the use of the
7 word animal in NR 113?

8 A I am not aware of a definition of the word animal.

9 Q So it is just safe to assume that when it says animals,
10 it means any animal that's under the sun?

11 A I agree. That is -- it is not defined, to the best of
12 my knowledge, in here.

13 Q So in this situation, Ms. Finamore, the use of the
14 surrounding land would be important given the fact that
15 white-tailed deer are extremely prevalent in Northern
16 Wisconsin?

17 A I would agree.

18 Q And the specific uses here, the hunting, the
19 subsistence and the recreation make this a particular
20 importance; would you agree with that statement?

21 A Yes, I would agree.

22 MR. ADAMS: Your Honor, I see that we are at
23 3:55. I have got some other -- so I want to be
24 respectful of --

25 THE ADMINISTRATIVE LAW JUDGE: I appreciate

1 that.

2 MR. ADAMS: -- of your declarations that you
3 wanted to adjourn close to 4:00 p.m.

4 THE ADMINISTRATIVE LAW JUDGE: Yep. I
5 appreciate that. And the only reason why we need to
6 adjourn by 4:00 is because the Clerk of Courts said
7 that we only have until 4:00.

8 So, yeah, we have to be respectful of that as
9 well. So why don't we retake this then tomorrow
10 morning? We will start a little bit earlier at 8:30.
11 I know that the building opens at 8:00. So, you know,
12 we should probably get here close to 8:00, set up and
13 get going at 8:30.

14 MR. ADAMS: Yes, sir.

15 THE ADMINISTRATIVE LAW JUDGE: All right. So
16 at this time, is there any other issue that needs to be
17 discussed before we recess for today?

18 MS. BURKE: Could we get an update on how
19 many people were wishing to provide public comment.

20 THE ADMINISTRATIVE LAW JUDGE: Yes. So by my
21 count, there were eight, but Jean Gorski was one of
22 them, and she already testified.

23 I don't know if it was her intent to also
24 make more comment at the end of the hearing. But
25 assuming that's not the case, that reduces the number

1 to -- oh, and I also see Jennifer Stephenson was listed
2 as well. So I don't know if they both intend on --

3 MS. STEPHENSON: I may possibly add something
4 on Thursday. I'm not sure at this point.

5 THE ADMINISTRATIVE LAW JUDGE: Okay. All
6 right. And is that also the case with Ms. Gorski?

7 MS. GORSKI: Yes.

8 THE ADMINISTRATIVE LAW JUDGE: Well, then it
9 looks like at this point we have eight folks. Well,
10 wait a minute. It looks like someone scribbled out
11 number three.

12 MR. OLSON: So seven-and-a-half?

13 THE ADMINISTRATIVE LAW JUDGE: So seven. We
14 have seven folks. So if we were to give each ten
15 minutes, including whatever brief statement they have
16 and maybe some follow-up questions, you know, that's 70
17 minutes' worth, a little over an hour.

18 I think we could easily accommodate that on
19 Thursday afternoon, assuming we wrap up with the other
20 parts of the case. Of course, what could blow this all
21 out of the water is if we go very late on Thursday,
22 then we go into Friday. But that's more within your
23 control rather than my control.

24 MR. ADAMS: And, Your Honor, we -- I believe
25 we don't have any other direct witnesses to call after

1 we wrap up our questioning of Ms. Finamore.

2 THE ADMINISTRATIVE LAW JUDGE: Okay. All
3 right. Well, that's good to know. So it looks like we
4 are on track to perhaps finish this up on Thursday
5 afternoon.

6 MR. OLSON: Great.

7 THE ADMINISTRATIVE LAW JUDGE: We'll see.
8 All right. We'll see you in the morning.

9 * * * * *

10 (Proceedings recessed for the day at 4:00 p.m.)

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1 STATE OF MICHIGAN)
)
2 COUNTY OF MARQUETTE)

3 I certify that this transcript, consisting of pages 1 -
4 243 is a complete, true, and correct transcript of the
5 proceedings and testimony taken in this case on October 23,
6 2023.

7

8

Date

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