CERTIFICATE OF TRANSCRIPT

IND. ✓
REC ✓
PAGE ✓

THE STATE OF IOWA, Madison County, ss.

I, Margaret Wheeler Clerk of the District Court

in and for said County, do hereby Certify that the attached is a full, true and correct copy of Application to Chief Judge for the Condemnation of Land and Appointment of a Compensation Commission to Assess Damages; Plat of Property; Notice of Appeal to District Court ; Notice of Assessment; Oath of Compensation Commissioners; Sheriff's Certification as to Damages and Costs; Application For Extension of Time to File Petition; Application for Additional Extension of Time to File Petition; Petition on Appeal from Condemnation of Real Estate; Jury Demand; Answer of Defendants; Reply; Claim of Lien of The Federal Land Bank of Omaha; Certificate of Readiness for Trial; Motion in Limine; Resistance to Defendants' Motion in Limine; Stipulation of Settlement and Dismissal; Claimant's Certification from State Conservation Commission; Clerk's Report of Disposition of Funds Deposited with him; Claimant's Certification of Payment of Court Costs.

COMPARED

FILED NO. 210
BOOK 110 PAGE 77

1973 FEB -9 AM 10:55

MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

Fee 7.50

as the same appears of record in my office.

WITNESS my hand and the Seal of said Court hereto affixed, at my office in Winterset, in said County, on this 8th day of February, 19 73

SEAL

Margaret Wheeler, Clerk

By _____, Deputy

DH

Sheriff

7

ENTERED FOR TAXATION
THIS 9 DAY OF February 1973
AUDITORS FEE $ 1.00
George T. Hlubaros
AUDITOR
DEPUTY AUDITOR

FILED NO. 210
BOOK 110 PAGE 71
1973 FEB -9 AM 10:55
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA
Fee 7.50

In the Matter of the Condemnation of Certain Lands by the Executive Council of Iowa for the Use and Benefit of the State of Iowa

Location: Winterset, Iowa
Madison, County

Project: Badger Creek Watershed

APPLICATION TO THE CHIEF JUDGE OF THE FIFTH JUDICIAL DISTRICT FOR THE CONDEMNATION OF LAND AND APPOINTMENT OF A COMPENSATION COMMISSION TO ASSESS DAMAGES

TO: The Honorable Maurice C. Herrick, Chief Judge of the Fifth Judicial District, including Madison County, Iowa.

Comes now the Executive Council of Iowa and states that the public interest requires that the State of Iowa acquire certain rights in agricultural land hereinafter described, by condemnation proceedings, as authorized and provided by law. The applicant herein has been unable to secure the described rights in lands by purchase and conveyance.

The lands or property rights affected and the record owners, lienholders encumbrancers, and other persons interested therein, are as listed on the sheets hereto attached and made a part hereof, and are shown with reference to their location as to lands affected on the plat(s) hereto attached, marked Exhibit(s) "A" and made a part hereof.

The State of Iowa desires fee title to the land herein sought to be condemned for public park and recreational purposes.

NOW, THEREFORE, the Executive Council of Iowa hereby requests the appointment of a compensation commission of six persons qualified as prescribed in Sec. 472.4, Code of Iowa, 1971, none of whom shall possess any interest in the proceeding which would cause such person to render a biased decision, to view and appraise the damages which the owners thereof, lienholders, encumbrancers, or other persons interested therein will sustain by reason of the appropriation of the land herein sought to be condemned, for the purpose herein stated, and make their report in writing to the Sheriff as provided by law.

Dated at Des Moines, Iowa, this 9th day of June, 1971.

BY RICHARD C. TURNER
Attorney General of Iowa

BY Clifford E. Peterson
CLIFFORD E. PETERSON
Assistant Attorney General

BY _____
JAMES C. DAVIS
Assistant Attorney General
ATTORNEYS FOR APPLICANT

RECEIVED
June 9, 1971
Rep Rouse
MADISON COUNTY
SHERIFF
WINTERSET, IOWA

Filed with me this 9th day of June, 1971.

Maurice C. Herrick
Chief Judge of the
Judicial District including
County, Iowa

RECORDED
Date ____ 19____
Book ____ Page ____

PLAT OF PROPERTY

Acquired From ROBERT W. CUTSHALL ET UX

Area 90 ± Acres. Consideration ____

Acquired By ____ Project No. SITE M-1-A TRACT NO. 20

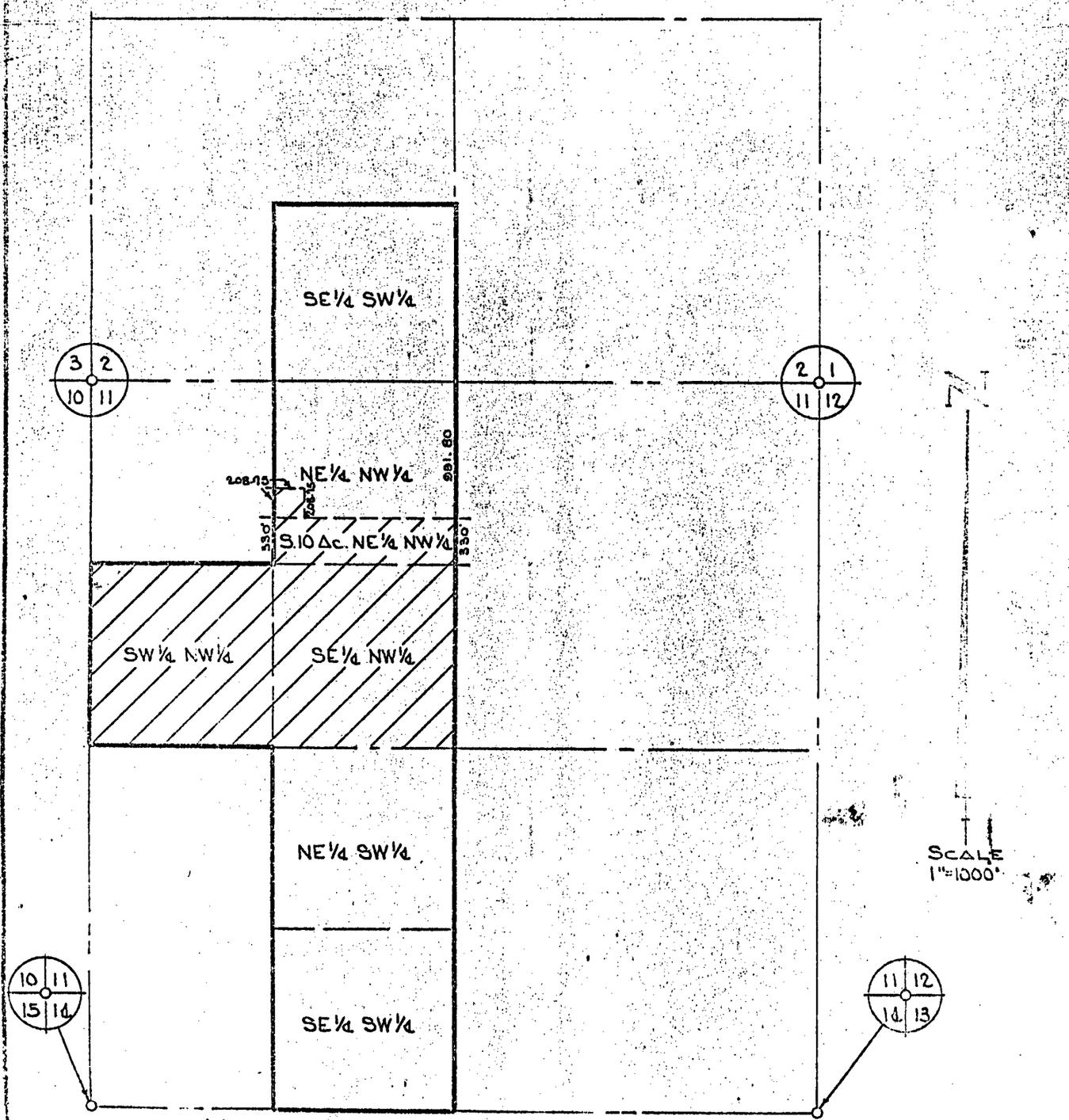
LOCATION

Section 2-11

Township (Civil) JEFFERSON

Township (Congressional) T77N Range R27W

County MADISON Iowa



MADISON County Project BADGER CREEK WATERSHED

Approved By ____ Supt. Land Acquisition Date ____ drawn by ____ date JAN. 1970

7-7-71 mp

MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA
1971 JUL 28 PM 3:53

RECEIVED
7-28-71 1:20 PM
MADISON COUNTY
SHERIFF
WINTERSET, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

: - : - :

ROBERT W. CUTSHALL and JUDITH A. CUTSHALL,	:	No. 20853 Law
Plaintiffs,	:	
-vs-	:	
STATE OF IOWA, THE EXECUTIVE COUNCIL OF IOWA FOR THE USE AND BENEFIT OF THE STATE OF IOWA,	:	NOTICE OF APPEAL TO THE MADISON COUNTY, IOWA DISTRICT COURT FROM DAMAGES IN CONDEMNATION PROCEEDINGS AGAINST CERTAIN REAL ESTATE OF THE PLAINTIFFS
Defendants.	:	

: - : - :

TO: THE STATE OF IOWA; THE EXECUTIVE COUNCIL OF IOWA FOR THE USE AND BENEFIT OF THE STATE OF IOWA; MADISON COUNTY, IOWA; GEORGE ABRAHAMS, AUDITOR OF MADISON COUNTY, IOWA; EARL FREY, TREASURER OF MADISON COUNTY, IOWA; REX ROUSE, SHERIFF OF MADISON COUNTY, IOWA; THE FEDERAL LAND BANK OF OMAHA, NEBRASKA; AND DALLAS COUNTY STATE BANK:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the Plaintiffs, Robert W. Cutshall and Judith A. Cutshall have and do hereby appeal from the award of damages made by the Commissioners duly appointed under the provisions of Chapter 472 of the 1971 Code of Iowa, said award having been made on the 29th day of June, 1971, Rex Rouse, Sheriff of Madison County, Iowa, acting as Sheriff in said proceedings, all as by law provided, for the purpose of appraising and awarding to the Plaintiffs damages sustained as a result of condemnation and taking by right of eminent domain for the purpose of public park and recreational area, as specified in said proceedings, the following described real estate, as the same is described in the notice of assessment served on the Plaintiffs June 10, 1971, a copy of which notice of assessment is attached hereto and made a part of this notice, to-wit:

> The South Half of the Northwest Quarter commencing at a point 1090.80 feet South of the Northeast corner of the Northwest Quarter of Section 11, thence Westerly on a line parallel to North line of Section 11 to a point 1112.83 feet, thence North 208.75 feet, thence West 208.75 feet, thence South 439.75 feet, thence East 1321.58 feet, thence North 231 feet to point of beginning, all in Section 11, Township 77 North, Range 27, West of the Fifth P. M., Madison County, Iowa,

all as described and referred to in the notice of condemnation and the return of Commissions in said proceedings.

YOU AND EACH OF YOU ARE FURTHER NOTIFIED that a Petition will be filed in said cause on behalf of the Plaintiffs in the Office of the Clerk of the District Court of the State of Iowa, in and for Madison County, Iowa, within twenty (20) days

after perfection of this appeal, and that said cause will be heard and disposed of as by law provided.

Dated at Winterset, Iowa, this 14th day of July, 1971.

C. R. BENTZ
210 North First Street
Winterset, Iowa 50273
Telephone 462-3392

GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa 50273
Telephone 462-2442

Attorneys for Plaintiffs

IN THE MATTER OF the Condemnation
of Land by the Executive Council of Ia. NOTICE OF ASSESSMENT
for the Use and Benefit of the
State of Iowa

Location: Winterset, Iowa
Madison County

Project: Badger Creek Watershed

TO: Robert W. Cutshall, Rural Route 1, Van Meter, Iowa
Judith A. Cutshall, Rural Route 1, Van Meter, Iowa
Dallas County State Bank, Adel, Iowa
Federal Land Bank of Omaha, Nebraska (Mortgage Loan Dept)
Madison County, Madison County Courthouse
Treasurer's Office, Winterset, Iowa

and all other persons companies, or corporations having any interest in or owning any of the following described real estate:

S 1/2 NW 1/4 and NE 1/4 NW 1/4 Section 11-77-27 (record title held by Robert and Judy Cutshall, husband and wife, as joint tenants with full right of survivorship)

YOU AND EACH OF YOU ARE HEREBY NOTIFIED THAT the Executive Council of Iowa desires the condemnation of the following described land: S 1/2 NW 1/4 commencing at a point 1090.80 ft. south of NE corner of NW 1/4 of Section 11, thence westerly on a line parallel to north lin of Section 11, to a point 1112.83 feet, thence North 208.75 feet, thence West 208.75 feet, thence South 439.75 feet, thence East 1321.5 feet, thence North 231 feet to point beginning, all in Section 11, T 77 N, R 27 West of 5th P.M., Madison County, Iowa

Such condemnation is sought for the following purpose: Public Park and Recreational Area

That a commission has been appointed as provided by law for the purpose of assessing damages which will be caused by said condemnation.

That said commissioners will, on the ~~24~~ 29th day of June, 1971 at 11:00 o'clock a.m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

Dated at Des Moines, Iowa, this 9th day of June, 1971.

, Applicant

By RICHARD C. TURNER
Attorney General of Iowa

By Clifford E. Peterson
CLIFFORD E. PETERSON
Assistant Attorney General

By _____
JAMES C. DAVIS
Assistant Attorney General

ATTORNEYS FOR APPLICANT

ACCEPTANCE AND ACKNOWLEDGEMENT OF SERVICE

The undersigned, John Mahan, Chairman of the Board of Supervisors of Madison County, Iowa, George Abrahams, Auditor of Madison County, Iowa, Earl R. Frey, Treasurer of Madison County, Iowa, and Rex Rouse, Sheriff of Madison County, Iowa, do each hereby accept and acknowledge due, legal and timely service of notice of appeal to which this acceptance and acknowledgement of service is attached, at Winterset, Iowa, this _____ day of July, 1971.

_____
John Mahan, Chairman of the Board of Supervisors of Madison County, Iowa.

_____
George Abrahams, Auditor of Madison County, Iowa.

_____
Earl R. Frey, Treasurer of Madison County, Iowa.

_____
Rex Rouse, Sheriff of Madison County, Iowa.

Madison County

IN THE MATTER OF the Condemnation of Land by the Executive Council of Ia. for the Use and Benefit of the State of Iowa

NOTICE OF ASSESSMENT

Location: Winterset, Iowa
Madison County

Project: Badger Creek Watershed

TO: Robert W. Cutshall, Rural Route 1, Van Meter, Iowa
Judith A. Cutshall, Rural Route 1, Van Meter, Iowa
Dallas County State Bank, Adel, Iowa
Federal Land Bank of Omaha, Nebraska (Mortgage Loan Dept)
Madison County, Madison County Courthouse
Treasurer's Office, Winterset, Iowa

and all other persons companies, or corporations having any interest in or owning any of the following described real estate:

S 1/2 NW 1/4 and NE 1/4 NW 1/4 Section 11-77-27 (record title held by Robert and Judy Cutshall, husband and wife, as joint tenants with full right of survivorship)

YOU AND EACH OF YOU ARE HEREBY NOTIFIED THAT the Executive Council of Iowa desires the condemnation of the following described land: S 1/2 NW 1/4 commencing at a point 1090.80 ft. south of NE corner of NW 1/4 of Section 11, thence westerly on a line parallel to north line of Section 11, to a point 1112.83 feet, thence North 208.75 feet, thence West 208.75 feet, thence South 439.75 feet, thence East 1321.58 feet, thence North 231 feet to point beginning, all in Section 11, T 77 N, R 27 West of 5th P.M., Madison County, Iowa

Such condemnation is sought for the following purpose: Public Park and Recreational Area

That a commission has been appointed as provided by law for the purpose of assessing damages which will be caused by said condemnation.

That said commissioners will, on the 29th day of June, 1971 at 11:00 o'clock a.m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

Dated at Des Moines, Iowa, this 9th day of June, 1971.

, Applicant

By RICHARD C. TURNER
Attorney General of Iowa

By Clifford E. Peterson
CLIFFORD E. PETERSON
Assistant Attorney General

By _____
JAMES C. DAVIS
Assistant Attorney General

ATTORNEYS FOR APPLICANT

RETURN OF SERVICE OF NOTICE

STATE OF IOWA, DALLAS COUNTY, SS:

I hereby certify and return that the hereto attached Notice of Assessment came into my hands for service on the 9th day of June, 19 71, and on the 10th day of June, 19 71, I served the same on Herb Jacobsen for Dallas County State Bank, Adel, Iowa by delivering a true and correct copy thereof to him personally in the Town of Adel, Dallas County, Iowa.

And on the _____ day of _____, 19_____, I served the same on _____, at _____ dwelling-house or usual place of abode in the _____ of _____, Dallas County, Iowa, by there delivering a true and correct copy thereof to _____, a person residing therein who was then more than eighteen years old.

Service $_____
Copy .75
Mileage 1.00
TOTAL $ 1.75

John T. Wright
Sheriff, Dallas County, Iowa
By John T. Wright ~~Deputy~~

STATE OF IOWA
Madison County } ss.

RETURN OF ORIGINAL NOTICE

No._____

The within notice received this 9th day of June, 19 71 and I certify that I served the same on the defendants named below by delivering a copy thereof to each of said defendants personally at the time and place set opposite their respective names:

Name of Defendants	Month	Day	Year	~~xxxxxx~~ or Township	County	State
Robert W. Cutshall	June	10th	1971	Union	Madison	Iowa
Judith A. Cutshall	June	10th	1971	Union	Madison	Iowa

Service & Copy 1.25
Mileage_____

Rex Rouse, Sheriff of Madison County
Rex Rouse
Official Title

243-1. STATES PUBLISHING CO., BETTENDORF, IOWA

RETURN OF SERVICE—~~Company or Corporation~~ Governmental Body

STATE OF IOWA, Madison County, ss.

The within Notice of Assessment came into my hands on the 9th day of June, 19 71 and on the 11th day of June, 19 71 I served the same upon the Madison County by offering to read the same to John Mahan, he being the ~~Chairman of the Board~~ of Supervisors of Said Governmental Body of said ~~Corporation~~, which he waived, and by giving him a true copy thereof, all done in _____ Township, _____ County, Iowa.

FEES
Service - - - $ .50
Copies - - - $_____
Mileage - - - $_____
Total - - - $_____

Rex Rouse, Sheriff
of Madison County
By_____ Deputy.

IN THE MATTER OF the Condemnation of Land by the Executive Council of Ia. for the Use and Benefit of the State of Iowa

NOTICE OF ASSESSMENT

Location: Winterset, Iowa
Madison County

Project: Badger Creek Watershed

TO: Robert W. Cutshall, Rural Route 1, Van Meter, Iowa
Judith A. Cutshall, Rural Route 1, Van Meter, Iowa
Dallas County State Bank, Adel, Iowa
Federal Land Bank of Omaha, Nebraska (Mortgage Loan Dept)
Madison County, Madison County Courthouse
Treasurer's Office, Winterset, Iowa

and all other persons companies, or corporations having any interest in or owning any of the following described real estate:

S 1/2 NW 1/4 and NE 1/4 NW 1/4 Section 11-77-27 (record title held by Robert and Judy Cutshall, husband and wife, as joint tenants with full right of survivorship)

YOU AND EACH OF YOU ARE HEREBY NOTIFIED THAT the Executive Council of Iowa desires the condemnation of the following described land: S 1/2 NW 1/4 commencing at a point 1090.80 ft. south of NE corner of NW 1/4 of Section 11, thence westerly on a line parallel to north l of Section 11, to a point 1112.83 feet, thence North 208.75 feet, thence West 208.75 feet, thence South 439.75 feet, thence East 1321 feet, thence North 231 feet to point beginning, all in Section 11, T 77 N, R 27 West of 5th P.M., Madison County, Iowa

Such condemnation is sought for the following purpose: Public Park and Recreational Area

That a commission has been appointed as provided by law for the purpose of assessing damages which will be caused by said condemnation.

That said commissioners will, on the 24th day of June, 1971 at 11:00 o'clock a.m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

Dated at Des Moines, Iowa, this 9th day of June, 1971.

, Applicant

By RICHARD C. TURNER
Attorney General of Iowa

By Clifford E. Peterson
CLIFFORD E. PETERSON
Assistant Attorney General

By James C. Davis
JAMES C. DAVIS
Assistant Attorney General

ATTORNEYS FOR APPLICANT

8/6

file w/ Sheriff in Winterset

ACCEPTANCE OF SERVICE

The Federal Land Bank of Omaha, a corporation, named in the attached Notice of Assessment for Badger Creek Watershed Project at Winterset, Madison County, Iowa, hereby accepts due, legal and timely service thereof and acknowledges receipt of a copy thereof at Omaha, Nebraska, this 10th day of June, 1971

THE FEDERAL LAND BANK OF OMAHA

By _____
Edward J. Welch, Attorney

IN THE MATTER OF the Condemnation of Certain Lands by the Executive Council of Iowa for the Use and Benefit of the State of Iowa.

OATH OF COMPENSATION COMMISSIONERS

Location: Winterset, Iowa
Madison County
Project:
Badger Creek

STATE OF IOWA)
) ss
County)

Each of the undersigned being duly sworn says:

That I do possess the qualifications listed under my name below, and

That I do not possess any interest in the proceeding which would cause me to render a biased decision, and

That I will, to the best of my ability, faithfully and impartially assess the damages which owners, lienholders, encumbrancers and other persons interested in the land which is sought to be appropriated by these proceedings will sustain by reason of the appropriation of the land as set forth and described in the Application in the Office of the Sheriff for Public Park and Recreational Area and make a written report to the sheriff as authorized and prescribed by law and in accordance with the instructions of the Chief Justice of the Supreme Court, and will well and truly perform any and all other duties imposed upon me by law as a member of the compensation commission selected and appointed to assess said damages.

Name:
Licensed Real Estate Salesman or Broker

Name:
Licensed Real Estate Salesman or Broker

Name:
Knowledgeable of Property Values by Virtue of Occupation

Name:
Knowledgeable of Property Values by Virtue of Occupation

Name: Owner or Operator Agricultural Property

Name: Owner or Operator Agricultural Property

Subscribed and sworn to before me this 29 day of June, 1971.

~~Notary Public~~
(Clerk of Court)
in and for said County and State

Filed in my office at Winterset, Iowa, this 29 day of June 1971.

IN THE MATTER OF the
Condemnation of Certain
Lands by the Executive
Council of Iowa
for the Use and Benefit of
the State of Iowa

SHERIFF'S CERTIFICATION
AS TO DAMAGES AND COSTS

Location: Winterset, Iowa
Madison County

To:
State Conservation Commission
300 - Fourth Street, Des Moines, Iowa

I hereby certify that the Compensation Commissioners in the above entitled cause convened at Winterset, Iowa on the 29th day of June, 1971, and thereupon proceeded to view the premises; and said commissioners did thereafter, on the 30th day of June, 1971, file their report in my office awarding damages as follows:

Robert W. Cutshall; Judith A. Cutshall; Dallas County	$
State Bank, Adel, Ia.; Federal Land Bank of Omaha, Nebr.	$ 48,901.50
	$
	$
	$
	$
TOTAL DAMAGES AWARDED	$ 48,901.50

I further certify that costs incident to this proceeding have been taxed as follows:

Serving notices, as listed below:

DATE	NAME OF PERSON SERVED	FEE	MILEAGE	AMOUNT	TOTAL
6-10-71	Robert W. Cutshall	.75			
6-10-71	Judith A. Cutshall	.50			
6-11-71	Madison County, Ia.	.50			
6-10-71	Dallas County State Bank, Adel, Ia.	1.75			3.50

Sheriff, summoning and attending commissioners (per day) . . $7.50

Sheriff, mileage while attending commissioners _____ @ $.10 $____

Rex Rouse

REX ROUSE
SHERIFF, MADISON COUNTY
WINTERSET, IOWA 50273

IN THE MATTER OF the Condemnation of Certain Lands by the Executive Council of Iowa for the Use and Benefit of the State of Iowa

APPRAISEMENT REPORT OF COMPENSATION COMMISSION

Location: Winterset, Iowa
Madison County

Project:
Badger Creek

TO: Rex Rouse, Sheriff of Madison County, Iowa.

We, the undersigned, being the duly appointed and qualified commissioners appointed to assess the damages sustained by the owners, lienholders, encumbrancers, and other persons interested in the appropriation of certain lands as set forth and described in the notice attached hereto pertaining to the above entitled matter respectfully reported as follows:

That we proceeded to view the respective premises at the time or times fixed in the notice to persons interested therein and do hereby assess and appraise the damages which the respective persons will sustain by reason of the appropriation as follows:

Value of Dwelling	Land and Improvements Other than a Dwelling	Additional Damages	Moving Persons & Property (not more than 25 miles from land.
$_____	$36,900.00	$11,175.00	$_____ ($500 max.)

Damage to Personal Property	Total Award	Condemnees' Attorney Fees & Costs
fence $826.50	$48,901.50	$_____

Respectfully reported at Winterset, Iowa, this 30th day of June, 1971.

John W. Foster
Raymond Clark
R. K. Williams
Earl B. Brandhorst
Jewell L. Olson
Earle Stewart

I certify that the above amounts are legally payable to each claimant and that the claim is correct and just and that payment has not been received.

Filed in my office at Winterset, Iowa, this 30 day of June, 1971.

Rex Rouse
SHERIFF, Madison County, Iowa

IN THE MATTER OF the Condemnation of Land by the Executive Council of Ia. for the Use and Benefit of the State of Iowa

NOTICE OF ASSESSMENT

Location: Winterset, Iowa
Madison County

Project: Badger Creek Watershed

TO: Robert W. Cutshall, Rural Route 1, Van Meter, Iowa
Judith A. Cutshall, Rural Route 1, Van Meter, Iowa
Dallas County State Bank, Adel, Iowa
Federal Land Bank of Omaha, Nebraska (Mortgage Loan Dept)
Madison County, Madison County Courthouse
Treasurer's Office, Winterset, Iowa

and all other persons companies, or corporations having any interest in or owning any of the following described real estate:

S 1/2 NW 1/4 and NE 1/4 NW 1/4 Section 11-77-27 (record title held by Robert and Judy Cutshall, husband and wife, as joint tenants with full right of survivorship)

YOU AND EACH OF YOU ARE HEREBY NOTIFIED THAT the Executive Council of Iowa desires the condemnation of the following described land: S 1/2 NW 1/4 commencing at a point 1090.80 ft. south of NE corner of NW 1/4 of Section 11, thence westerly on a line parallel to north li of Section 11, to a point 1112.83 feet, thence North 208.75 feet, thence West 208.75 feet, thence South 439.75 feet, thence East 1321. feet, thence North 231 feet to point beginning, all in Section 11, T 77 N, R 27 West of 5th P.M., Madison County, Iowa

Such condemnation is sought for the following purpose: Public Park and Recreational Area

That a commission has been appointed as provided by law for the purpose of assessing damages which will be caused by said condemnation.

That said commissioners will, on the 24th day of June, 1971 at 11:00 o'clock a.m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

Dated at Des Moines, Iowa, this 9th day of June, 1971.

, Applicant

By RICHARD C. TURNER
Attorney General of Iowa

By _____
CLIFFORD E. PETERSON
Assistant Attorney General

By _____
JAMES C. DAVIS
Assistant Attorney General

ATTORNEYS FOR APPLICANT

to be filed

IN THE MATTER OF the Condemnation of Certain Lands by the Executive Council of Iowa for the Use and Benefit of the State of Iowa

AFFIDAVIT OF FINAL OFFER

Location: Madison County

Project: Badger Creek

On this 23rd day of June, 1971, comes the Executive Council of Iowa and states, as by law provided, that the most recent offers made to the owners, lienholders, encumbrancers and other persons interested in the appropriation of lands as described by the notice attached hereto and pertaining to the above matter as follows:

$ 50,000

Executive Council of Iowa

BY: Fred A. Priewert, Director
IOWA STATE CONSERVATION COMMISSION

Subscribed and sworn to before me this 23 day of June, 1971

Mrs Clarence Jordan
Notary Public in and for
Polk County, Iowa

Filed in my office at Winterset, Iowa, this 29 day of June 1971.

Rep Rose
SHERIFF, Madison County, Iowa

50,000

IN THE MATTER OF the Condemnation
of Land by the Executive Council of Ia. NOTICE OF ASSESSMENT
for the Use and Benefit of the
State of Iowa

Location: Winterset, Iowa
Madison County

Project:
Badger Creek Watershed

TO: Robert W. Cutshall, Rural Route 1, Van Meter, Iowa
Judith A. Cutshall, Rural Route 1, Van Meter, Iowa
Dallas County State Bank, Adel, Iowa
Federal Land Bank of Omaha, Nebraska (Mortgage Loan Dept)
Madison County, Madison County Courthouse
Treasurer's Office, Winterset, Iowa

and all other persons companies, or corporations having any interest in or owning any of the following described real estate:

S 1/2 NW 1/4 and NE 1/4 NW 1/4 Section 11-77-27 (record title held by Robert and Judy Cutshall, husband and wife, as joint tenants with full right of survivorship)

YOU AND EACH OF YOU ARE HEREBY NOTIFIED THAT the Executive Council of Iowa desires the condemnation of the following described land: S 1/2 NW 1/4 commencing at a point 1090.80 ft. south of NE corner of NW 1/4 of Section 11, thence westerly on a line parallel to north li of Section 11, to a point 1112.83 feet, thence North 208.75 feet, thence West 208.75 feet, thence South 439.75 feet, thence East 1321. feet, thence North 231 feet to point beginning, all in Section 11, T 77 N, R 27 West of 5th P.M., Madison County, Iowa

Such condemnation is sought for the following purpose: Public Park and Recreational Area

That a commission has been appointed as provided by law for the purpose of assessing damages which will be caused by said condemnation.

That said commissioners will, on the 24th day of June , 1971 at 11:00 o'clock a.m., view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

Dated at Des Moines, Iowa, this 9th day of June , 1971.

, Applicant

By RICHARD C. TURNER
Attorney General of Iowa

By _____
CLIFFORD E. PETERSON
Assistant Attorney General

By _____
JAMES C. DAVIS
Assistant Attorney General

ATTORNEYS FOR APPLICANT

SHERIFF'S CERTIFICATION OF COSTS

I further certify that costs incident to this proceeding have been taxed as follows:

	FEE	MILEAGE	TOTAL
1. Sheriff, serving Notices	$8.25	$18.50	$26.75
2. Fees advance for out of county services			7.15
3. Summoning Commissioners	3.50		3.50
4. Sheriff attending commissioners (2 days)	15.00	4.30	19.30
5. Commissioner's meals (advanced by Sheriff)			24.68
			$81.38

6. COMMISSIONERS EXPENSES:

Raymond Clark, RR, Booneville, Ia. 2 days service and mileage	$107.00
Ronnie K. Williams, Peru, Ia. 2 days service and mileage	105.00
Earl Crawford, RR 4, Winterset, Ia. 2 days service and mileage (car used in viewing)	109.90
Earle Whitworth, Macksburg, Ia. 2 days service and mileage	107.20
Lowell Olson, Winterset, Ia. 2 days service and mileage	102.00
John W. Foster, Winterset, Ia. (Chairman) 2 days service and mileage	102.00
TOTAL COMMISSIONER EXPENSES	$633.10

7. DAMAGES AWARDED:

Russell Craft, Attorney-in-fact for Selma W. Radke, Louise Gossett, Ann Vance and Marily Lipnik	$23,370.00
William E. Heldenbrand and Esther Heldenbrand	98,000.00
Virgil N. Smith, tenant	4,500.00
Rex R. Shambaugh; Anna Lee Shambaugh; Dallas County State Bank, Van Meter, Ia.; Equitable Life Assurance Society of the United States, Central National Bank Bldg., Mortgage Dept., Des Moines, Ia.	35,103.00
Russell Craft, attorney fee (award exceeded 110%)	750.00
Robert W. Cutshall; Judith A. Cutshall; Dallas County State Bank, Adel, Ia.; Federal Land Bank of Omaha, Nebr.	48,901.50
TOTAL DAMAGES AWARDED	$210,624.50

RECAPITULATION

TOTAL DAMAGES AWARDED	$210,624.50
TOTAL SHERIFF'S COSTS	81.38
TOTAL COMMISSIONER'S EXPENSES	633.10
GRAND TOTAL	$211,338.98

NOTE: A copy of this report attached to each set of papers.

Certified a true statement of condemnation awards and expenses in connection with: "In the Matter of the Condemnation of Certain Lands by the Executive Council of Iowa for the Use and Benefit of the State of Iowa", Project - Badger Creek Watershed, Location - Madison County, Winterset, Iowa.

Rex Rouse

Rex Rouse, Sheriff
Madison County
Winterset, Iowa 50273

8-17-71 mp

FILED
1971 AUG 17 PM 4:54
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

: - : - :

ROBERT W. CUTSHALL and JUDITH A. CUTSHALL, Plaintiffs, -vs- STATE OF IOWA, THE EXECUTIVE COUNCIL OF IOWA FOR THE USE AND BENEFIT OF THE STATE OF IOWA, Defendants.	:	No. 20853 Law APPLICATION FOR EXTENSION OF TIME TO FILE PETITION

: - : - :

Plaintiffs hereby apply to the Court for additional time for the filing of Petition herein, pursuant to Section 472.22 of the Code of Iowa. As grounds for said Application Plaintiffs state they have not to this time been able to accumulate all data respecting the description of real estate and damage factors necessary to complete said Petition.

C R Bentz (cmd)

C. R. BENTZ
210 North First Street
Winterset, Iowa 50273
Telephone 462-3392

Gordon K. Darling

GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa 50273
Telephone 462-2442
Attorneys for Plaintiffs.

ORDER

Now on this 17th day of August, 1971, this matter is before the Court on the foregoing Application for extension of time to file Petition herein. For good cause shown the Court hereby

ORDERS, ADJUDGES AND DECREES that Plaintiffs be and they are hereby granted until the 1st day of September, 1971 within which to file Petition herein.

Robert O Frederick

Judge of the Fifth Judicial District of Iowa

One copy filed herewith for -
Richard C. Turner
Attorney General of Iowa

FILED
1971 SEP -9 AM 10:33
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

: - : - :

ROBERT W. CUTSHALL and JUDITH A. CUTSHALL, : No. 20853 Law

Plaintiffs, :

-vs- :

STATE OF IOWA, THE EXECUTIVE COUNCIL OF IOWA FOR THE USE AND BENEFIT OF THE STATE OF IOWA, : APPLICATION FOR ADDITIONAL EXTENSION OF TIME TO FILE PETITION

Defendants. :

: - : - :

Plaintiffs hereby apply to the Court for additional time for the filing of Petition herein, pursuant to Section 472.22 of the Code of Iowa. As grounds for said Application Plaintiffs state that they have still not been able to accumulate all information respecting the description of real estate, damage factors, and other facts relating to said appeal, to complete said Petition.

Copy Received and Mailed or Delivered
to Clifford Petersons
on 9-9-71 19
M. Wheeler
Clerk of District Court
Madison County, Iowa

C R Bentz

C. R. BENTZ
210 North First Street
Winterset, Iowa 50273
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Gordon K. Darling

GORDON K. DARLING
53 Jefferson Street
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Telephone 462-2442
Attorneys for Plaintiffs.

ORDER

Now on this 9th day of September, 1971, this matter is before the Court on the foregoing Application for extension of time to file Petition herein. For good cause shown the Court hereby

ORDERS, ADJUDGES AND DECREES that Plaintiffs be and they are hereby granted until the 16th day of September, 1971, within which to file Petition herein.

Robert O Fredericks

Judge of the Fifth Judicial District of Iowa

One copy filed herewith
for -
Richard C. Turner
Attorney General of Iowa

9-10-71 mp

FILED
1971 SEP 16 AM 8:46
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

Copy Mailed or Delivered
to Clifford E. Peterson
on Sept. 16 1971
M. Wheeler
Clerk of District Court
Madison County, Iowa

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

: - : - :

ROBERT W. CUTSHALL and JUDITH A. CUTSHALL, Plaintiffs,	:	No. 20853 Law
-vs-	:	
STATE OF IOWA, THE EXECUTIVE COUNCIL OF IOWA FOR THE USE AND BENEFIT OF THE STATE OF IOWA, Defendants.	:	PETITION ON APPEAL FROM CONDEMNATION OF REAL ESTATE.

: - : - :

Come now the Plaintiffs and for cause of action state:

DIVISION I

Par. 1

Plaintiffs are the owners and holders of the following described contiguous real estate situated in Madison County, Iowa, to-wit:

> The Northeast Quarter of the Northwest Quarter and the South Half of the Northwest Quarter and the East Half of the Southwest Quarter, all in Section Eleven (11), and the Southeast Quarter of the Southwest Quarter of Section Two (2), all in Township Seventy-seven (77) North, Range Twenty-seven (27) West of the Fifth P. M., which real estate comprises a total of 240 contiguous acres.

Par. 2

Said real estate has at all times mentioned herein been held by Plaintiffs and used by them for residential purposes for their family and others, and for general farming purposes, including the raising of livestock and the growing of grain and other agricultural products. Said real estate other than that portion appropriated by Defendants as hereinafter alleged will continue to be used in the future by Plaintiffs for said purposes.

Par. 3

On or about June 29, 1971, the Defendants purported to take and appropriate by condemnation proceedings a portion of Plaintiffs'

said real estate and rights with respect to the remainder thereof, by eminent domain and condemnation procedure for the purpose of public park and recreational area. The real estate alleged to have been appropriated by Defendants by said condemnation procedure was described by Defendant as follows:

> The South Half of the Northwest Quarter commencing at a point 1090.80 feet South of the Northeast corner of the Northwest Quarter of Section 11, thence Westerly on a line parallel to North line of Section 11 to a point 1112.83 feet, thence North 208.75 feet, thence West 208.75 feet, thence South 439.75 feet, thence East 1321.58 feet, thence North 231 feet to point of beginning, all in Section 11, Township 77 North, Range 27, West of the Fifth P. M., Madison County, Iowa

all as described and referred to in the Notice of Condemnation and the Return of Commissioners in said proceedings. A true and correct copy of a Notice whereby said condemnation was instigated by Defendants is attached hereto, marked Exhibit "A" amd by this reference made a part of this Petition.

Par. 4

The area of said land alleged by Defendants to have been taken and appropriated by Defendants comprised approximately ninety (90) acres, and included improvements. Said land is situated in the middle of Plaintiffs' contiguous real estate, thereby leaving the remainder of Plaintiffs' land in two separate non-contiguous tracts.

Par. 5

By reason of said condemnation and taking the Plaintiffs have been damaged and the value of their said real estate has been diminished as hereinafter alleged.

Par. 6

Included in the items of damage to the Plaintiffs occasioned by said condemnation taking and appropriation are the following:

A. The purported taking of fee title and ownership to ninety (90) acres of land, more or less.

B. The division of Plaintiffs' remaining land into two separate non-contiguous tracts of real estate.

C. The limitation in access from portions of Plaintiffs' land to other portions thereof.

D. The destruction and impairment of drainage outlets of Plaintiffs' remaining land and the substantial obstruction of and interference with drainage and natural flow of water upon and across Plaintiffs' remaining land.

E. The loss and destruction of fences and the requirement of the erection and construction of new fences occasioned by the division of Plaintiffs' remaining land into non-contiguous tracts.

F. The diminishment in value of Plaintiffs' land occasioned by the nature of the use contemplated by Defendants for the lands taken.

G. The diminishment in the value of Plaintiffs' land occasioned by the fact that there are situated upon the lands of Plaintiffs not taken by Defendants substantial improvements including two dwelling houses, constructed in anticipation of the use of such improvements in conjunction with all of Plaintiffs' lands heretofore owned by Plaintiffs.

H. The reduction and diminishment in value of Plaintiffs' real estate occasioned by the cumulative effect of the items of damage sustained by Plaintiffs, including the foregoing.

Par. 7

By reason of said condemnation taking and appropriation by the Defendants Plaintiffs' said real estate has been diminished in value in the total sum of Seventy-six Thousand, Eight Hundred ($76,800.00) Dollars, and Plaintiffs have therefore been damaged in the sum of Seventy-six Thousand, Eight Hundred ($76,800.00) Dollars.

WHEREFORE, Plaintiffs respectfully pray that their damages be determined and awarded in the sum of Seventy-six Thousand, Eight Hundred ($76,800.00) Dollars, together with lawful interest thereon from and after the date of taking of said real estate by Defendant, to-wit: June 29, 1971, and together with the costs of maintaining this action, including attorneys' fees for Plaintiffs' attorneys pursuant to the provisions of Section 472.33 of the Code of Iowa.

DIVISION II

Come now the Plaintiffs and in the alternative to the matters hereinbefore alleged in Division I hereof, respectfully state:

Par. 1

Plaintiffs re-allege each and all of the allegations set forth in Paragraphs 1 through 4 of Division I hereof, the same as though fully set out at length herein.

Par. 2

The only authority for such condemnation is Section 471.1 of the Code of Iowa.

Par. 3

The General Assembly of Iowa has not authorized any public improvement to be undertaken by the State of Iowa for which the condemnation of Plaintiffs' property is required.

Par. 4

The General Assembly of Iowa has not made an available appropriation for the condemnation of Plaintiffs' property or for any public improvement involving the same.

Par. 5

Without such authorization by the General Assembly of Iowa and such appropriation by the General Assembly of Iowa, the Executive Council of the State of Iowa has no power to institute or maintain condemnation proceedings and the asserted proceedings are wholly void.

Par. 6

Plaintiffs have no adequate or complete remedy at law and the continuance or completion of said proceedings will cause them irreparable damages.

WHEREFORE, Plaintiffs pray that the Court declare Defendants to be without power to institute, prosecute, or consummate said condemnation; that it be enjoined from so doing, or from taking possession of Plaintiffs' premises; and for such other relief as may be equitable, and for judgment against the Defendants

for costs.

C. R. BENTZ
210 North First Street
Winterset, Iowa 50273
Telephone 462-3392

GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa 50273
Telephone 462-2442

Attorneys for Plaintiffs

One copy filed herewith
for -
Richard C. Turner
Attorney General of Iowa

FILED
1971 SEP 27 AM 8:49
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR MADISON COUNTY

ROBERT W. CUTSHALL and JUDITH A. CUTSHALL, Plaintiffs, vs. STATE OF IOWA, EXECUTIVE COUNCIL OF IOWA for the Use and Benefit of the State of Iowa, Defendants.	*	Law No. 20853 JURY DEMAND

COME NOW the Defendants pursuant to R.C.P. 177 and demand a trial by jury of all issues of fact in this cause.

RICHARD C. TURNER
Attorney General of Iowa

Clifford E. Peterson

CLIFFORD E. PETERSON
Assistant Attorney General

State Capitol
Des Moines, Iowa 50319
Telephone (515) 281-5351

ATTORNEYS FOR DEFENDANT

Copies to:

C. R. Bentz
210 North First Street
Winterset, Iowa 50273

Gordon K. Darling
53 Jefferson Street
Winterset, Iowa 50273

ATTORNEYS FOR PLAINTIFFS

Copy Hereof ~~Mailed or~~ Delivered
to C. R. Bentz
Gordon Darling
on 9-27 1971
M. Wheeler
Clerk of District Court
Madison County, Iowa

NN-154

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR MADISON COUNTY

FILED
SEP 27 AM 8:45
MARGARET TWEEDY
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

ROBERT W. CUTSHALL and
JUDITH A. CUTSHALL,

Plaintiffs,

vs.

STATE OF IOWA, EXECUTIVE COUNCIL OF IOWA for the Use and Benefit of the State of Iowa,

Defendants.

Law No. 20853

ANSWER OF DEFENDANTS

DIVISION I

COME NOW the Defendants and for their Answer to Division I of Plaintiffs' Petition show to the Court as follows, to wit:

1. Defendants admit the allegations of Paragraph 1 of Plaintiffs' Petition.

2. Defendants deny the allegations of Paragraph 2 for lack of information.

3. Defendants deny all the allegations of Paragraph 3 of Plaintiffs' Petition and state that on or about June 9, 1971, the Defendants instituted condemnation proceedings of the following described real estate, to wit:

> The South Half of the Northwest Quarter and commencing at a point 991.80 feet South of the Northeast corner of the Northwest Quarter of Section 11, thence Westerly on a line parallel to North line of Section 11 to a point 1112.83 feet, thence North 208.75 feet, thence West 208.75 feet, thence South 538.75 feet, thence East 1321.58 feet, thence North 330 feet to point of beginning, all in Section 11, Township 77 North, Range 27, West of the Fifth P.M., Madison County, Iowa.

for the purpose of a public park and recreational area. Defendants further state that the description of real estate sought for condemnation as described in Division I Paragraph 3 of Plaintiffs' Petition is in error, that the correct description is an described above and that the Plaintiffs were present at the viewing of the above described real estate and at the hearing on or about June 25, 1971.

Copy Hereof Mailed or Delivered
to G. R. Brent,
Gordon Darling
on 9-27 19 71
M. Wheeler
Clerk of District Court
Madison County, Iowa

4. Defendants admit that said taking of land by Defendants comprised approximately 90 acres and included improvements and that said taking is situated in the middle of Plaintiffs' land. Defendants deny all other allegations of Paragraph 4 of Plaintiffs' Petition and state further that Plaintiffs' land is not contiguous for farming purposes and that the noncontiguous quality of Plaintiffs' land has not been created by the said taking by Defendants because Plaintiffs' real estate is divided by Badger Creek which prevents Plaintiffs' from transporting farming equipment from one end of the real estate to the other and necessitates their using a road to go around the land. Said taking by Defendants will not change the farming habits of the Plaintiffs.

5. Defendants deny all the allegations of Paragraph 5 and demand strict proof thereof.

6. Defendants deny all the allegations of Paragraph 6 and demand strict proof thereof.

7. Defendants deny all the allegations of Paragraph 7 of Plaintiffs' Petition and demand strict proof thereof.

WHEREFORE, Defendants pray that Plaintiffs be held to strict proof and that their damages be determined as provided by law.

DIVISION II

COME NOW the Defendants and for their Answer to Division II of Plaintiffs' Petition show the Court as follows, to wit:

1. Defendants reallege their Answers to Paragraph 1 through 4 of Division I of Plaintiffs' Petition as their Answers to Paragraphs 1 through 4 of Division II of Plaintiffs' Petition.

2. Defendants deny the allegations of Paragraph 2 and further Answer that Section 111.7, Code of Iowa, 1971 empowers the Executive Council of Iowa to condemn lands for public parks.

3. Defendants deny the allegations of Paragraph 3 of Plaintiffs' Petition and state further that Chapter 11, Laws of the 62nd General Assembly of Iowa, is the specific legislative act whereby

the General Assembly authorized the project here involved.

4. Defendants deny the allegations of Paragraph 4 of Plaintiffs' Petition and state further that Chapter 11, Laws of the 62nd General Assembly of Iowa, is the specific legislative act whereby the General Assembly made anappropriation for the particular project here involved.

5. Defendants deny all the allegations of Paragraph 5 of Plaintiffs' Petition.

6. Defendants deny the allegations of Paragraph 6 of Plaintiffs' Petition.

WHEREFORE, the Defendants pray that Plaintiffs be held to strict proof and that their damages be determined as provided by law.

RICHARD C. TURNER
Attorney General of Iowa

Clifford E. Peterson
CLIFFORD E. PETERSON
Assistant Attorney General

State Captiol
Des Moines, Iowa 50319
Telephone (515) 281-5351

ATTORNEYS FOR DEFENDANTS

Copies to:

C.R. Bentz
210 North 1st Street
Winterset, Iowa 50273

Gordon K. Darling
53 Jefferson Street
Winterset, Iowa 50273

ATTORNEYS FOR PLAINTIFFS

9-29-71 mp

10

FILED
1971 SEP 30 AM 8:21
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

: - : - :

ROBERT W. CUTSHALL and JUDITH A. CHTSHALL,	:	No. 20853 Law
Plaintiffs,	:	
-vs-	:	
STATE OF IOWA, EXECUTIVE COUNCIL OF IOWA for the Use and Benefit of the State of Iowa,	:	
Defendants.	:	REPLY

: - : - :

DIVISION I

Come now the Plaintiffs and for Reply to the affirmative allegations contained in Division I of Defendant's Answer state:

1. They deny the affirmative allegations of Paragraph 3 thereof.

2. They deny the affirmative allegations of Paragraph 4 thereof.

WHEREFORE, Plaintiffs pray as in their Petition hereinbefore filed.

DIVISION II

Come now the Plaintiffs and for Reply to the affirmative allegations contained in Division II of Defendant's Answer herein state:

1. They deny the affirmative allegations of Paragraph 1 thereof.

2. They deny the affirmative allegations of Paragraph 2 thereof.

3. They deny the affirmative allegations of Paragraph 3 thereof.

4. They deny the affirmative allegations of Paragraph 4 thereof.

Copy thereof Mailed or Delivered
to Clifford E. Peterson
on 9-30 1971
M. Wheeler
Clerk of District Court
Madison County, Iowa

WHEREFORE, Plaintiffs pray as in their Petition hereinbefore filed.

C. R.BENTZ
210 North First Street
Winterset, Iowa 50273
Telephone 462-3392

GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa 50273
Telephone 462-2442

By Gordon K Darling
Attorneys for Plaintiffs

One copy filed herewith
for -
Richard C. Turner
Attorney General of Iowa
State Capitol
Des Moines, Iowa 50319
Attorney for Defendants

22

FILED
1971 OCT 20 AM 9:32
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR THE COUNTY OF MADISON

ROBERT W. CUTSHALL and JUDITH A. CUTSHALL, Plaintiffs, vs. EXECUTIVE COUNCIL OF IOWA acting for the Use and Benefit of the State of Iowa, Defendants, THE FEDERAL LAND BANK OF OMAHA, Intervenor.	DOCKET NO. 20853 43 PAGE 41 CLAIM OF LIEN OF THE FEDERAL LAND BANK OF OMAHA

Comes now The Federal Land Bank of Omaha, Intervenor, being interested in the subject matter of this litigation, and files its Claim of Lien and in support thereof states:

I.

That The Federal Land Bank of Omaha is a corporation, organized, existing, and doing business under and by virtue of the Laws of the United States of America, with its principal place of business at Omaha, Douglas County, Nebraska.

II.

That The Federal Land Bank of Omaha is the owner and holder of a certain mortgage recorded on May 11, 1967, at 11:48 a.m., in Book 112, Page 377, of the mortgage records of Madison County, Iowa, covering with other real estate, property which is the subject matter of this proceedings; which mortgage lien is unsatisfied and unpaid as of this date.

III.

That The Federal Land Bank of Omaha, by virtue of its said mortgage, claims a lien upon the proceeds of any award in damages that may be found and adjudged due and payable to the record owners of the real estate described in said mortgage through the exercise of the power of eminent domain.

IV.

That The Federal Land Bank of Omaha joins with the [illegible] that just compensation be awarded for damages for any property taken.

Copy Hereof Mailed or Delivered
to Clifford Petersen and Asst. Atty. Gen.
on 10-22 1971
M. Wheeler
Clerk of District Court
Madison County, Iowa

WHEREFORE, The Federal Land Bank of Omaha respectfully prays that the Court allow the claim of The Federal Land Bank of Omaha; that just compensation be awarded as damages for any property taken; that any award of damages to the record owners of the said real estate be turned over and paid to The Federal Land Bank of Omaha and to the record owners of said real estate as co-payees in satisfaction of said lien; and for costs.

THE FEDERAL LAND BANK OF OMAHA

By Edward J. Welch

Edward J. Welch, Attorney
Farm Credit Building
19th and Douglas Streets
Omaha, Nebraska 68102

Mailing Address:
Box 1242, Downtown Station
Omaha, Nebraska 68101

Telephone (A/C 402) 341-2904

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, Edward J. Welch, attorney for The Federal Land Bank of Omaha, hereby certify that I served the foregoing pleading upon the Attorneys of record by depositing a copy in the United States Mails, postpaid, addressed to:

Mr. Gordon K. Darling
Attorney at Law
53 Jefferson Street
Winterset, Iowa 50273

Mr. C. R. Bentz
Attorney at Law
210 North First Street
Winterset, Iowa 50273

Mr. Clifford E. Peterson
Assistant Attorney General
Department of Justice
Executive Hills, East
1223 E. Court, Room 203
Des Moines, Iowa 50319

on October 19, 1971.

Edward J. Welch, Attorney

FILED
1972 OCT -2 AM 9:49
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON **COUNTY**

ROBERT W. CUTSHALL and
JUDITH A. CUTSHALL,

Plaintiff,

vs.

EXECUTIVE COUNCIL OF IOWA,

Defendant.

LAW [XX]
EQUITY [ ]
PROBATE [ ]

No. 20853

CERTIFICATE OF READINESS FOR TRIAL

The undersigned hereby certifies that:

1. The issues are joined and the case is ready for trial in all respects;
2. Necessary use of discovery rules has been completed and the taking of desired depositions concluded by the undersigned;
3. The adverse party has had reasonable time to obtain inspections, examinations and reports under rules 131 to 133;*
4. Sufficient time has elapsed to afford the adverse party reasonable opportunity to be ready for trial;
5. Pretrial conference ~~(a) has or~~ (b) **has not** been held;*
6. Settlement of the case ~~(a) has or~~ (b) **has not** been discussed;* and
7. Assignment for trial (a) by **jury** upon timely demand filed ~~or (b) by the court~~ is requested.

A copy of this certificate is filed herewith for each adverse party appearing.

Dated this 28th day of September, 1972.

RICHARD C. TURNER
Attorney General

CLIFFORD E. PETERSON
Assistant Attorney General

P. O. Address State Capitol
Des Moines, Iowa 50319

BY Thomas J. Whorley
THOMAS J. WHORLEY, Asst. Atty. Gen.
Attorney(s) for

Telephone No. (515) 281-5351

*Strike 3 if not applicable. Strike (a) or (b) of 5, 6 and 7 to conform to the facts of the case. Indicate Law, Equity or Probate.

Copy of this certificate mailed or delivered to C. R. Bentz
210 North First Street
Winterset, Iowa 50273

Gordon K. Darling
53 Jefferson St.
Winterset, Iowa

(For purposes of record indicate specifically the name, or names)

as provided in R.C.P. 82 on the 2nd day of October, 1972.

Margaret Wheeler
~~(Deputy)~~ Clerk of said Court

R. C. P. No. 181
CERTIFICATES OF
READINESS FOR TRIAL

IOWA STATE BAR ASSOCIATION
Official Form No. 175
(Trade-Mark Registered, State of Iowa, 1967)

H-9065

This Printing: August 30, 1972

FILED
1973 JAN -4 PM 4:49
MARGARET L. MUELLER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

ROBERT W. CUTSHALL and JUDITH A. CUTSHALL, Plaintiffs, -vs-	:	No. 20853 Law
STATE OF IOWA, THE EXECUTIVE COUNCIL OF IOWA FOR THE USE AND BENEFIT OF THE STATE OF IOWA, Defendants.	:	MOTION IN LIMINE

Defendant, Executive Council of Iowa, believes that the Plaintiffs intend to question witnesses and introduce evidence in the jury's presence on matters hereinafter stated, which are inadmissible and moves the Court in limine to instruct the Plaintiffs and all their counsel as prayed:

1. Regarding any testimony or evidence to negotiated sales price, condemnation awards, or offers regarding any property acquired under the threat of or pursuant to the Eminent Domain statutes of Iowa, by this Defendant, or any other condemnor from any private party. Such evidence is inadmissible and unduly prejudicial in that the price paid is the result of compromise between condemnor, who was forced to acquire the land, and the condemnees, whose land is going to be taken in any event. Jones v. Iowa State Highway Commission, 1966, 259 Iowa 618, 619, 144 NW 2d 277, 279, Wilson vs. Fleming, 1948, 239 Iowa 718, 728, 31 NW 2d 393, 398; Socony Vacuum Oil Co. v. State of Iowa, 1969, Iowa, 170 NW 2d 378, 380; Gustafson v. Iowa Power and Light Co., 1971, Iowa, 183 NW 2d 212.

2. Any testimony or evidence regarding any value placed by Defendant's appraisers on any other land or interest therein appropriated or purchased in connection with the same project, which contains Plaintiffs' property, as such testimony or evidence is inadmissible and prejudicial. Jones v. Iowa State Highway Commission, 1966, 259 Iowa 618, 620, 144 NW 2d 277, 280.

3. Any testimony or evidence regarding the cost or value of future structures or improvements. Evidence relating to the cost of Plaintiffs other future construction is speculative, conjectural and remote and cannot

be recovered as a separate item of damage. See Trachta v. Iowa State Highway Commission, 1957, 249 Iowa 374, 86 NW 2d 849; Randell v. Iowa State Highway Commission, 214 Iowa 1, 241 NW 692; Dean v. State, 211 Iowa 143, 233 NW 36.

4. Any evidence or testimony regarding offers made to the Plaintiffs or previous owners to buy or sell this property which is the subject of this action or interest therein unless previous foundation is laid sufficient to establish that the offer was made prior to condemnation in good faith, by a competent person acquainted with the value of real estate and of sufficient ability to pay; that the said offer was for cash and not for credit or in exchange and whether made with reference to the fair cash market value of the property and not to supply a particular need or fancy. Further, the proof must come from the offeror. See Hardaway v. City of Des Moines, 1969, Iowa, 166 NW 2d 578.

5. Any testimony by expert witnesses regarding comparable sales or real estate should be required to first identify the transaction in the following manner before disclosing the purchase price of said sale. The foundation facts required before disclosing purchase price are:

a. Sale property must be comparable in size.
b. Sale property must be comparable for use.
c. Sale property must be in a comparable location.
d. Sale property must be comparable in characteristics of the land.
e. Date of the sale must be given.
f. Mode or manner of the sale must be shown.
g. Nature or character of the sale must be shown.
h. The document of sale, or at the very least, the Book and page where the instrument can be found in the public records, must be offered or given.

Such procedure is necessary in order to lay a proper foundation for the admission into evidence of testimony of comparable sales and such procedure will give each party the opportunity to ascertain for itself whether the comparable sale should be the subject of proper objection before the sale price is disclosed, otherwise such testimony is inadmissible and prejudicial. See Perry v. Iowa State Highway Commission, 1971, Iowa, 180 NW 2d 417, and Iowa Development Company v. Iowa State Highway Commission, 1961, 252 Iowa 978, 108 NW 2d 487; see further Redfield v. Iowa State Highway

Commission, 1959, 251 Iowa 332, 99 NW 2d 413; Harmsen v. Iowa State Highway Commission, 1960, 251 Iowa 1351, 105 NW 2d 660; Redfield v. Iowa State Highway Commission, 1961, 252 Iowa 1256, 110 NW 2d 397; In Re Primary Road No. Iowa 141, 1963, 255 Iowa 711, 124 NW 2d 141; Belle v. Iowa State Highway Commission, 1964, 256 Iowa 43, 126 NW 2d 311; Martinson v. Iowa State Highway Commission, 1965, 257 Iowa 687, 134 NW 2d 340; Jones v. Iowa State Highway Commission, 1966, 259 Iowa 616, 144 NW 2d 277; Linge v. Iowa State Highway Commission, 1967, 260 Iowa 1226, 150 NW 2d 642; Crozier v. Iowa-Illinois Gas and Electric Company, 1969, Iowa, 165 NW 2d 833.

6. Any evidence, including exhibits, regarding the source of the funds for the construction of state parks and reservoirs and land acquisition for said projects, whether state or federal, is immaterial, highly improper, and prejudicial to the Defendant. Defendant further states that the use of any such reference to funding in opening or closing argument by Plaintiffs' counsel is improper. Defendant cites Perry v.Iowa State Highway Commission, 1970, Iowa, 180 NW 2d 417, wherein the opinion provides that counsel in condemnation cases should not argue to the jury about a governmental unit paying for a project, but should direct their efforts toward central issue of difference in value of property taken before and after condemnation.

7. All evidence pertaining to this eminent domain condemnation proceeding shall relate to the date of the compensation commission's assessment of damages sustained by reason of the appropriation, that date being the 30th day of June, 1971; and further all evidence relating to values, transactions or improvements subsequent to this date shall not be admissible to show fair market value.

8. Were any of the above facts as stated in paragraphs 1. through 7. made known to the jury, it would be highly improper and prejudicial to the Defendant, even though the Court were to sustain an objection and instruct the jury not to consider such facts for any purpose. This Motion should also be granted because there is no other way that the problem can be properly handled at the trial of this cause and in all probability, any attempt would result in a mistrial.

WHEREFORE, Defendant, Executive Council of Iowa, respectfully requests the Court to instruct the Plaintiffs and all their counsel, not to mention, refer to, interrogate concerning, or attempt to convey to the jury in any manner, either directly or indirectly, any of the above-mentioned facts without first obtaining permission of the Court, outside the presence and hearing of the jury; and to further instruct the Plaintiffs and all their counsel not to make any reference to the fact that this Motion has been filed and granted, and to warn and caution each and every one of their witnesses to strictly follow the same instructions.

RICHARD C. TURNER
Attorney General of Iowa

CLIFFORD E. PETERSON
Assistant Attorney General

JOHN I. ADAMS
Assistant Attorney General

By
THOMAS J. WHORLEY
Assistant Attorney General

State Capitol
Des Moines, Iowa 50319

ATTORNEYS FOR DEFENDANT

FILED
1973 JAN -5 AM 10: 13
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA
73 mp

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

: - : - :

ROBERT W. CUTSHALL and JUDITH A. CUTSHALL,	:	No. 20853 Law
Plaintiffs,	:	
-vs-	:	
STATE OF IOWA, THE EXECUTIVE COUNCIL OF IOWA FOR THE USE AND BENEFIT OF THE STATE OF IOWA,	:	RESISTANCE TO DEFENDANTS' MOTION IN LIMINE
Defendants.	:	

: - : - :

Come now the Plaintiffs and resist the Motion in Limine filed herein by the Defendants, and as grounds for said Resistance respectfully state:

1. Plaintiffs resist each and all of the points raised in Defendants' Motion on the grounds that said points are not the appropriate subject of a Motion in Limine . A Motion in Limine is for the purpose of preventing the offer of evidence, which, if such evidence were excluded, would have the effect that the offer in and of itself before the jury would create irreparable injury to the movant.

The matters raised in Defendants' Motion are matters which can be met by timely objections, and rulings thereon by the Court, during the progress of a trial, without the danger of irreparable injury to the Defendants.

. Defendants' Motion is an improper attempt to make blanket objections to broad areas of evidence, without factual specification as to the foundation and surrounding record respecting such items of evidence.

2. Plaintiffs resist Paragraph 3 of Defendants' Motion on the further grounds that the exclusion of the offer of all evidence of <u>any</u> future structures or improvements to Plaintiffs'

land, without specifying the nature thereof or the relation of such improvements to the prior use by Plaintiffs of their land, is not appropriate.

3. Plaintiffs resist Paragraph 5 of Defendants' Motion on the further grounds that matters specified therein are improper elements of foundation respecting evidence regarding comparable sales of real estate.

4. Plaintiffs resist Paragraph 7 of Defendants' Motion on the following further grounds: The record showing without dispute that Defendants as condemnor have not tendered the Commissioners' award, nor any other compensation to Plaintiffs, nor have taken possession of Plaintiffs' land, Defendants have therefore not in any manner foregone their right to abandon the condemnation and taking sought. The present time at date of trial is therefore the appropriate date to be considered with reference to evidence as to valuation and damages to Plaintiffs' land.

WHEREFORE, Plaintiffs respectfully pray that Defendants' Motion in Limine be overruled as to each and every paragraph thereof.

C. R. BENTZ
210 North First Street
Winterset, Iowa 50273
Telephone 462-3392

GORDON K. DARLING
53 Jefferson Street
Winterset, Iowa 50273
Telephone 462-2442

Attorneys for Plaintiffs

1-9-73 mp

FILED
1973 JAN 10 AM 9:00
MARGARET KEELLER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

: - : - :

ROBERT W. CUTSHALL and JUDITH A. CUTSHALL,	:	No. 20853 Law
Plaintiffs,	:	
-VS-	:	
STATE OF IOWA, THE EXECUTIVE COUNCIL OF IOWA FOR THE USE AND BENEFIT OF THE STATE OF IOWA,	:	
Defendants.	:	STIPULATION OF SETTLEMENT AND DISMISSAL

: - : - :

For the purpose of fully and finally settling all matters at issue in this cause, the parties stipulate and agree as follows:

1. The Defendants shall cause to be paid to the Plaintiffs within three (3) weeks from the date hereof the sum of $58,750.00.

2. Respecting the approximately 91 acres being acquired by the Defendants in this condemnation proceedings, the Plaintiffs shall be afforded the free use of said land for all normal agricultural purposes during the 1973 crop year.

3. During the 1974 crop year the Plaintiffs shall be afforded the same free use of said land if the normal development of the conservation project for which said land was acquired by the Defendants does not require its use.

4. In the 1975 and all subsequent crop years, the Plaintiffs shall be afforded the option to rent said 91 acres at $30.00 per acre, until the normal development of the conservation project for which said land has been acquired by the Defendants requires its use. If Plaintiffs elect to exercise such option to rent, they shall notify Defendants in writing prior to March 1 of the respective crop year. Such rent shall be payable 1/3 on March 1 of the respective crop year, and 2/3 on or before December 1 of said year.

5. The Defendants, upon completion of said conservation project, shall construct all initial partition fences, consisting of 48" woven wire with two barbs above.

6. During the 1974 crop year and all subsequent years if the normal development of the conservation project for which said 91 acres is being taken require its use, Defendants shall pay Plaintiffs their actual crop damages resulting from the taking of said land. In the event the parties are not able to agree upon the monetary amount of such damages, the parties shall resort to an arbitration procedure whereby each party shall select one arbitrator, the two arbitrators thus selected shall select a third arbitrator, and the three arbitrators thus selected shall make a determination of the amount of such damages. The decision of said three arbitrators shall be conclusive and binding upon the parties.

7. The Defendants shall pay the actual court costs of these proceedings, but no other expenses or legal fees of the Plaintiffs.

8. Upon the performance of this Stipulation, the Plaintiffs fully and finally dismiss their Petition on Appeal from condemnation of real estate filed herein.

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Attorneys for Defendants.

21104

STATE CONSERVATION COMMISSION

ACCOUNTING DEPARTMENT

STATE OFFICE BLDG. – 300 4TH STREET
DES MOINES, IOWA 50319

(PLEASE PRINT OR TYPE)

NAME Robert W. Cutshall

ADDRESS Judith A. Cutshall

CITY

STATE ZIP

MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA
FILED
JAN 19 1973
5

CLAIMANTS CERTIFICATION

I, the within claimant do certify that the items for which payments claimed were furnished for State business under authority of the law, and that the charges are reasonable, proper, and correct, and no part of this claim has been paid.

DATE

(Signature of Claimant – No Initials)

DIVISION Lands and Waters

SECTION Parks and Preserves

COST CENTER NO.

Badger Creek
(Cost Center Location)

(Ordering Employee's Signature)

Note: – All bills filed against the State, to be passed upon by the State Comptroller, must show the date when each item was furnished, by whom ordered, for whose use, and if the department obtains its authority to incur the expenditure from some other department, that the authority has been granted as required by law.

Use ballpoint pen or typewriter in filling out this claim. For Merchandise Expense.

DUPLICATE INVOICES ARE REQUIRED WITH MERCHANDISE CLAIMS

DATE	QUAN.	PER ITEM	ITEM	CHARGE TO	AMOUNT
1/10/73			Stipulation of Settlement and Dismissal on Law 20853 (Cutshall vs State of Iowa)		$58,750.00

Tract #20

16-06-46

Total Payment

TOTAL THIS CLAIM

DO NOT WRITE BELOW THIS LINE

APPROVED BY:

DATE:

SUPV. / /

SURT. / /

DIV. CHIEF John M. Stoker Jr. 1/10/73

I hereby certify that the above expenses were incurred and that the amounts are correct and should be paid from the funds appropriated by Code Section 12-1-1-52 *or Chapter* ____ *Sec.* ____, ____ *th G.A.*

(Chief, Division of Administration)

Form CC100
SP 17131

16 646

JAN 11 1973

IN THE MATTER of the Condemnation of Certain Lands by the State Conservation Commission for the Use and Benefit of the State of Iowa for Public Recreational Grounds.)

Location - Madison Couty
Project - Badger Creek

CLERKS ~~XXXXXXXXX~~S REPORT OF DISPOSITION OF FUNDS DEPOSITED WITH HIM

FILED
1973 JAN 19 PM 2:53
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

I, the undersigned, hereby certify that, in the above noted matter, of the state warrants deposited with me in payment of the condemnation awards, I made delivery of the same to the defendants as listed below:

State Warrant No.	Amount	In Favor of
04008323	$58,750.00	Robert W. and Judith A. Cutshall by delivery to Gordon K. Darling, their attorney 1/19/73

Signed this 19th day of January, 1973

at

Margaret Wheeler

STATE CONSERVATION COMMISSION
ACCOUNTING DEPARTMENT
STATE OFFICE BLDG. – 300 4TH STREET
DES MOINES, IOWA 50319

CLAIMANTS CERTIFICATION

I, the within claimant do certify that the items for which payment is claimed were furnished for State business under authority of the law; and that the charges are reasonable, proper, and correct, and no part of this claim has been paid.

DATE _____ _____
(Signature of Claimant – No Initials)

(PLEASE PRINT OR TYPE)

DIVISION Lands and Waters

SECTION Parks and Preserves

COST CENTER NO. 18-02-42 63rd GA

Badger Creek Lake-Madison Co.
(Cost Center Location)

NAME Madison Co. Clerk of Court

ADDRESS Court House

CITY Winterset, Ia

STATE _____ ZIP _____

_____
(Ordering Employee's Signature)

Note: – All bills filed against the State, to be passed upon by the State Comptroller, must show the date when each item was furnished, by whom ordered, for whose use, and if the department obtains its authority to incur the expenditure from some other department, that the authority has been granted as required by law.

Use ballpoint pen or typewriter in filling out this claim. For Merchandise Expense.

DUPLICATE INVOICES ARE REQUIRED WITH MERCHANDISE CLAIMS

DATE	QUAN.	PER ITEM	ITEM	CHARGE TO	AMOUNT
1-22-73			Court Costs in Cause 20853 (Cutshall vs State of Iowa) District Court Appeal		$55.40

Pd 2/8/73

18-02-42

TOTAL THIS CLAIM

DO NOT WRITE BELOW THIS LINE

APPROVED BY:

SUPV. _____ DATE: / /

SUPT. _____ / /

DIV. CHIEF _____ 1/23/73

18 41

FEB 1 1973

I hereby certify that the above expenses were incurred and that the amounts are correct and should be paid from the funds appropriated by Code Section _____ or Chapter ____ Sec. ____, ____ th G.A.

_____
(Chief, Division of Administration)

Form CC100
P 17131