Sheriff

HELDEN BRAND

362

ENTERED FOR TAXATION
THIS 9 DAY OF May 1975
AUDITORS FEE $ 1.00
Leroy F. Thrasher
AUDITOR
DEPUTY AUDITOR

FILED NO. 588
BOOK 111 PAGE 362
1975 MAY -8 PM 9:23
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA
Fee $6.50

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.

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

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

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

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

32 Pages

RECORDED
Date ____ 19__
Book ____ Page ____

PLAT OF PROPERTY

Acquired From WILLIAM E. HELDENBRAND ET UX

Area 160 ± Acres. Consideration

Acquired By Project No SITE M-1-A Tract No. 31

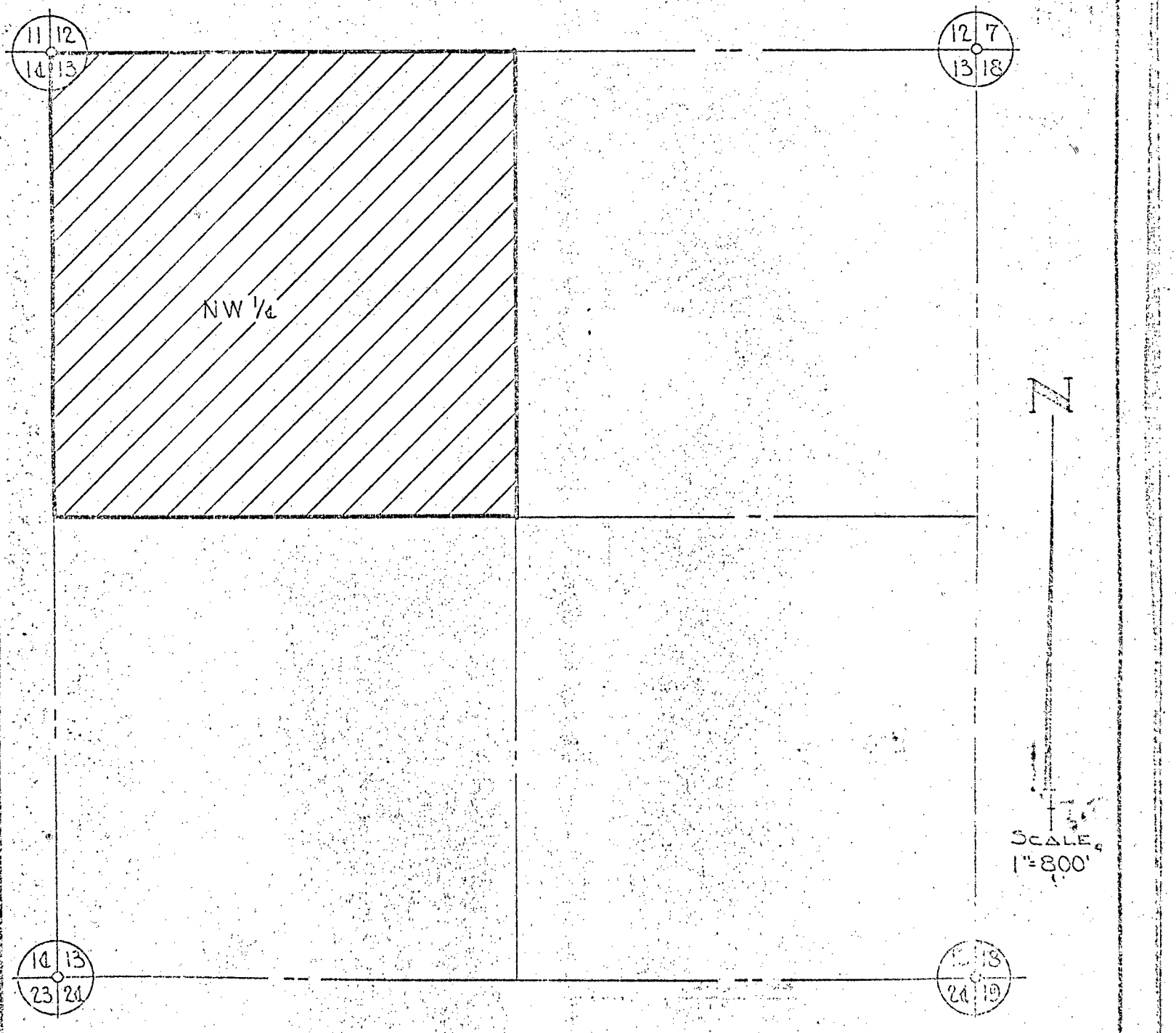
LOCATION

Section 13

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 KPB JAN. 1970

363

William Heldenbrand

364

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

NOTICE OF ASSESSMENT

Location: Winterset, Iowa
Madison County

Project:
Badger Creek Watershed

TO: William E. Heldenbrand, R.R. 1, Van Meter, Iowa
Esther Heldenbrand, R.R. 1, Van Meter, Iowa
Virgil N. Smith, lessee, R.R. 1, Van Meter, Iowa
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:

NW 1/4 Section 13-77-27 (Record title held by William E. and Esther Heldenbrand, husband and wife, as joint tenants with sole 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:

The NW 1/4 of Section 13, Township 77 North, Range 27 West of 5th P.M., in Madison County, Iowa, being 160 acres, more or less

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~~ 29th day of June, 1971 at 10:30 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

STATE OF IOWA
Madison County } ss.

RETURN OF ORIGINAL NOTICE

No.

The within notice received this 9th day of June, 1971, 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	~~or~~ Township	County	State
Virgil N. Smith	June	10th	1971	Jefferson	Madison	Iowa

Service & Copy .75 .50

Mileage

9-10-71 Fees Paid by State of Iowa

Rex Rouse, Sheriff of Madison County

Rex Rouse

Official Title

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

STATE OF IOWA
Madison County } ss.

RETURN OF ORIGINAL NOTICE

No.

The within notice received this 9th day of June, 1971, 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	~~or~~ Township	County	State
William E. Heldenbrand	June	10th	1971	Jefferson	Madison	Iowa
Esther Heldenbrand	June	10th	1971	Jefferson	Madison	Iowa

Service & Copy 1.25

Mileage

9-10-71 Fees Paid by State of Iowa

~~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, 1971 and on the 11th day of June, 1971, 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 Supervisons of Said Governmental Body of said ~~Company~~, which he waived, and by giving him a true copy thereof, all done in Center Township, Madison County, Iowa.

FEES

Service - - - $ .50

Copies - - - $

Mileage - - - $

Total - - $

9-10-71 Fees Paid by State of Iowa

Rex Rouse, Sheriff

of Madison County

By Deputy.

365

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

SELECTION AND APPOINTMENT OF COMPENSATION COMMISSIONERS BY THE CHIEF JUDGE OF THE FIFTH JUDICIAL DISTRICT

An Application for Condemnation having been filed with me by the Executive Council of Iowa for the selection and appointment, by lot, of six suitable persons as the law provides to act as a compensation commission to assess and appraise the damages sustained by reason of the condemnation of certain lands described by Applicant, in its Application filed in the above entitled matter, I hereby designate, select, and appoint as the members of said compensation commission required in this matter the following persons:

NAME	ADDRESS	QUALIFICATIONS
Ole Olson		Licensed Real Estat Salesman or Broker
~~(Chas Tucker Jr. Alternate)~~		
Earl Whitworth		Licensed Real Estat Salesman or Broker
~~Erwin Mintegs~~		Knowledgeable of Property Values by Virtue of Occupati
[Ronnie Williams alternate]		
John Foster		Knowledgeable of Property Values by Virtue of Occupati
Earl Crawford		Owner or Operator Agricultural Proper
~~(Harrison Vowell alternate)~~		
Raymond Clark		Owner or Operator o Agricultural Proper

I further designate, select, and appoint, the above named John Foster to act as Chairman of said commission.

TO THE SHERIFF OF MADISON COUNTY, IOWA: Attached hereto please find a duplicate of the Application for Condemnation in the above-entitled matter.

Dated at Indianola, Iowa, this 9th day of June, 1971

M. A. Hewitt
Chief Judge of the Fifth Judicial Dist
Including Madison County, Iowa

Filed in my office at Winterset, Iowa, this 9 day of June, 1971

Reg Rouse
Sheriff of Madison County, Iowa

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.

Lowell L. Olson
Name:
Licensed Real Estate Salesman or Broker

Earl M. Smith
Name:
Licensed Real Estate Salesman or Broker

John W. Foster
Name:
Knowledgeable of Property Values by Virtue of Occupation

R. K. Williams
Name:
Knowledgeable of Property Values by Virtue of Occupation

Earl E. Crawford
Name: Owner or Operator Agricultural Property

Raymond Clark
Name: Owner or Operator Agricultural Property

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

Margaret Wheeler
~~(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.

Ray Pierce, Sheriff

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:

Virgil N. SMITH	$ 4,500.00
William E. Heldenbrand and Esther Heldenbrand	$ 98,000.00
	$
	$
	$
	$
TOTAL DAMAGES AWARDED	$ 102,500.00

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	Virgil N. Smith	.75			2.25
6-10-71	William E. Heldenbrand	.50			
6-10-71	Esther Heldenbrand	.50			
6-11-71	Madison County	.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 and 5 acres	Land and Improvements Other than a Dwelling	Additional Damages	Moving Persons & Property (not more than 25 miles from land.
$ 20,000.00	$ 77,500.00	$	$ 500.00 ($500 max.)

Damage to Personal Property	Total Award	Condemnees' Attorney Fees & Costs
$	$ 98,000.00	$

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

John W. Foster
Raymond Clash
R. K. Williams

Earl B. Brandt
Jewell T. Allen
Cecil Whitworth

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

369

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

Location: Winterset, Iowa
Madison County
Project:
Badger Creek Watershed

TO: William E. Heldenbrand, R.R. 1, Van Meter, Iowa
Esther Heldenbrand, R.R. 1, Van Meter, Iowa
Virgil N. Smith, lessee, R.R. 1, Van Meter, Iowa
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:

NW 1/4 Section 13-77-27 (Record title held by William E. and Esther Heldenbrand, husband and wife, as joint tenants with sole 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:

The NW 1/4 of Section 13, Township 77 North, Range 27 West of 5th P.M., in Madison County, Iowa, being 160 acres, more or less

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 10:30 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

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.
$_____	$_____	$_____	$_____ ($500 max.)

Damage to Personal Property	Total Award	Condemnees' Attorney Fees & Costs
Unexpired term of 5 year Farm Lease $ 4,500.00	$ 4,500.00	$_____

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

John W. Foster
Raymond Clark
R. K. Williams
Earl G. Brandhorst
Lowell L. Olson
Earl De 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 Iowa for the Use and Benefit of the State of Iowa

NOTICE OF ASSESSMENT

Location: Winterset, Iowa
Madison County

Project:
Badger Creek Watershed

TO: William E. Heldenbrand, R.R. 1, Van Meter, Iowa
Esther Heldenbrand, R.R. 1, Van Meter, Iowa
Virgil N. Smith, lessee, R.R. 1, Van Meter, Iowa
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:

NW 1/4 Section 13-77-27 (Record title held by William E. and Esther Heldenbrand, husband and wife, as joint tenants with sole 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:

The NW 1/4 of Section 13, Township 77 North, Range 27 West of 5th P.M., in Madison County, Iowa, being 160 acres, more or less

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 10:30 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

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:

$ 60,000

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.

Rex Rouse
SHERIFF, Madison County, Iowa

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

NOTICE OF ASSESSMENT

Location: Winterset, Iowa
Madison County

Project:
Badger Creek Watershed

TO: William E. Heldenbrand, R.R. 1, Van Meter, Iowa
Esther Heldenbrand, R.R. 1, Van Meter, Iowa
Virgil N. Smith, lessee, R.R. 1, Van Meter, Iowa
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:

NW 1/4 Section 13-77-27 (Record title held by William E. and Esther Heldenbrand, husband and wife, as joint tenants with sole 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:

The NW 1/4 of Section 13, Township 77 North, Range 27 West of 5th P.M., in Madison County, Iowa, being 160 acres, more or less

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 10:30 o'clocka .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

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

TT-791

376

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

FILED
1971 JUL 13 9:33
MARGARET WHEELER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

WILLIAM E. HELDENBRAND, ESTHER HELDENBRAND, VIRGIL N. SMITH, MADISON COUNTY, Plaintiffs, vs. EXECUTIVE COUNCIL OF IOWA, Defendant.	NOTICE OF APPEAL FROM COMPENSATION COMMISSION AWARD #20837 43-25

TO: William E. Heldenbrand, R. R. 1, Van Meter, Iowa
Esther Heldenbrand, R. R. 1, Van Meter, Iowa
Virgil N. Smith, R. R. 1, Van Meter, Iowa
Madison County, Winterset, Iowa

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the defendant, Executive Council of Iowa, does hereby appeal to the District Court of the State of Iowa in and for Madison County from the appraisal and award of damages made on the 29th of June, 1971, by the Compensation Commission appointed for the purpose of appraising and awarding to the plaintiffs the damages sustained as a result of the condemnation and taking by right of eminent domain for public park and recreational purposes, the following described real estate, to-wit:

The NW 1/4 of Section 13, Township 77 North, Range 27 West of 5th P.M., in Madison County, Iowa, being 160 acres, more or less.

Said appeal will come on for hearing and trial before said Court in Winterset, Iowa, as by law provided.

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 DEFENDANT
Executive Hills, East
1223 E. Court, Room 203
Des Moines, Iowa 50319
Phone (515) 281-5351

FILED NO. 588
BOOK 111 PAGE 362
1975 MAY -8 PM 9:27
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

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

STATE OF IOWA, Madison County, ss.

The within Notice of Appeal from Compensation Commission Award came into my hands on the 13th day of July, 1971, and on the 13th day of July, 1971, I served the same upon the Madison County by offering to read the same to George Abrahams, he being the Auditor of said ~~Corporation~~ Governmental Body, which he waived, and by giving him a true copy thereof, all done in Center Township, Madison County, Iowa.

FEES

Service - - - $ ~~.75~~

Copies - - - $ .50

Mileage - - - $

Total - - $

Rex Rouse, Sheriff

of Madison County

By

Deputy.

STATE OF IOWA
Madison County } ss

RETURN ~~ORIGINAL NOTICE~~ No.

Notice of Appeal from Compensation Commission Award

The within notice received this 13th day of July, 1971 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	~~Corporation~~ or Township	County	State
William E. Heldenbrand	July	13th	1971	Jefferson	Madison	Iowa
Esther Heldenbrand	July	13th	1971	Jefferson	Madison	Iowa
Virgil N. Smith	July	13th	1971	Jefferson	Madison	Iowa
Rex Rouse, Sheriff	July	13th	1971	Center	Madison	Iowa

Service & Copy 2.75
Mileage 3.80
Total $ 6.55

8-11-71 fees paid by State of Iowa mm

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

Rex Rouse
Official Title
Rex Rouse, Sheriff of Madison County, Iowa

FILED
1974 JUL -3 PM 1:59
CLERK OF DIST. COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

WILLIAM E. HELDENBRAND & ESTHER HELDENBRAND, Plaintiffs, vs. EXECUTIVE COUNCIL OF IOWA, acting for the use and benefit of the State of Iowa, Defendant.	Law No. 20837 APPLICATION TO ALLOW WITHDRAWAL OF DEPOSITED FUNDS AND FOR POSSESSION

FILED NO. 588
BOOK 111 PAGE 362
1975 MAY -8 PM 9:30
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

COMES NOW the Defendant, Executive Council of Iowa, acting for the use and benefit of the State of Iowa, in the above entitled action, and states and shows to the court:

1. That on the 30th day of June, 1971, the Defendant, Executive Council of Iowa, acting for the use and benefit of the State of Iowa, acquired certain rights in lands through condemnation proceedings of which Plaintiff was the owner.

2. That the award of the compensation commission was in the sum of Ninety-eight Thousand Dollars ($98,000.00) for which sum warrants (#02225658, #02338434) were deposited with the Sheriff of Madison County, Iowa, and pursuant to Section 472.25, Code of Iowa, 1973, the Defendant is now entitled to take possession of the rights in the land condemned and to proceed with the public improvement.

3. That the above named Plaintiffs, together with Virgil N. Smith and Madison County are the parties

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid thereon, depositing said envelope in a United States depository in Des Moines, Iowa on the 3rd day of July, 1974.

entitled to the award of the compensation commission and the best interests of all parties will be served by this court directing that the full amount of said damages be paid to the Plaintiffs, subject to whatever interest Virgil N. Smith and Madison County may have in said award, as provided for in Section 472.25 of the Code of Iowa, 1973.

4. If on trial of this appeal the damages awarded exceed the amount of the warrant presently on deposit, the Defendant, Executive Council of Iowa, acting for the use and benefit of the State of Iowa, will deposit an additional sum as required.

5. Payment of the full amount of said warrant to Plaintiffs shall be subject to the repayment provisions of §472.25 of the Code of Iowa, 1973, and to the rights of all other interested parties or otherwise as the court may direct.

6. It is further requested that no evidence of the receipt of said deposited warrant nor the amount thereof shall be allowed to be introduced in the trial of this appeal and that the court so hold.

7. Payment to Plaintiffs, if so ordered, shall not prejudice the rights of any party to this action.

WHEREFORE, Defendant, Executive Council of Iowa, acting for the use and benefit of the State of Iowa, respectfully requests the Court to enter an order entitling the Plaintiffs to withdraw the sum stated in this application and now deposited with said sheriff and allowing this Defendant to take and maintain possession of the property condemned which is the

subject of this appeal and for such further order as the Court deems just and proper.

RICHARD C. TURNER
Attorney General of Iowa

CLIFFORD E. PETERSON
Assistant Attorney General

By John R. Dent
JOHN R. DENT
Assistant Attorney General

State Capitol
Des Moines, Iowa 50319

ATTORNEYS FOR DEFENDANT

copies mailed to:

William E. Heldenbrand
R.R. 1
Van Meter, Iowa 50273

Esther Heldenbrand
R.R. 1
Van Meter, Iowa 50273

Virgil N. Smith
R.R.
Van Meter, Iowa 50273

Lewis H. Jordan
Webster, Jordan & Oliver
Farmers' & Merchants' Bank Bldg.
Winterset, Iowa 50273

ATTORNEY FOR PLAINTIFFS

IN THE IOWA DISTRICT COURT IN AND FOR MADISON COUNTY

WILLIAM E. HELDENBRAND and ESTHER HELDENBRAND, Plaintiffs, vs. EXECUTIVE COUNCIL OF IOWA, Acting for the Use and Benefit of the State of Iowa, Defendant.	)	No. 20837 Law. Order.

FILED NO. 588
BOOK 111 PAGE 362
1975 MAY -8 PM 9:41
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

NOW on this 4th day of September, 1974 the Court makes this its Order upon Defendant's Application to Allow Withdrawal of Deposited Funds and for Possession. The Application was filed July 3, 1974, the matter was heard July 17, 1974, the Court entered a prior Order filed August 6, 1974, and the Defendant complied with the prior Order on August 9, 1974 by depositing said funds with the Sheriff.

IT IS ORDERED BY THE COURT that Defendant, Executive Council of Iowa, is by virtue of the deposit of funds under the provision of Section 472.25 of the Code made to the Sheriff of Madison County, Iowa, entitled to the immediate right of possession of the property which is the subject of this action, except that part thereof subject to Section 472.26 of the Code.

IT IS FURTHER ORDERED BY THE COURT that Plaintiffs be and are permitted to retain possession of the property owned by them specifically enumerated in Section 472.26 of the Code of Iowa. It is understood that in this action the property to be retained in possession by Plaintiffs is approximately five (5) acres of land in the Northwest Quarter (NW 1/4) of Section Thirteen (13), Township Seventy-seven (77) North, Range Twenty-Seven (27) West of the 5th P. M., Madison County, Iowa, being identical to the land reserved to Plaintiffs in a written lease made by Plaintiffs to Virgil N. Smith, recorded in Book 29, Page

49 in the Madison County Recorder's Office. It is further understood that Plaintiffs will retain the use and possession of reasonable access to said retained property and will retain the right to draw from and utilize a certain well, which although not located on the retained property, is in close proximity to the property retained by the Plaintiffs.

IT IS FURTHER ORDERED BY THE COURT that the Sheriff of Madison County shall endorse under order of this Court the deposited warrants (#02225658, #02338434) totaling $98,000.00 with the name of Plaintiffs by him, cash them, and release to Plaintiffs herein the amount of $78,000-00. $20,000.00 shall be retained by said Sheriff to secure compensation to the Plaintiffs for that property condemned but retained in possession by Plaintiffs as ordered by this Court above. The amount of said monies retained is identical to the amount of damages attributable to the value of Plaintiffs' dwelling and five (5) acres of land, as said damages were assessed by the Compensation Commission appointed to assess Plaintiffs' damage in this action. (Appraisal Report of Compensation Commission filed in the office of the Sheriff of Madison County, June 30, 1971).

IT IS FURTHER ORDERED BY THE COURT that Defendant shall immediately acquire such interest in a certain real estate lease as is held by Plaintiffs herein (said lease having been made by Plaintiffs to one Virgil N. Smith and recorded in Book 20 at page 49 of the records of the Madison County Recorder's Office). Defendant shall have the right to collect whatever rents are due and owing from and after the date of this Order. Plaintiffs' counsel at the hearing assured the Court and Defendant that timely termination of the tenancy will be accomplished by notice by them to the tenants. Defendant shall be entitled to the possession of

said leased property as against said tenant upon the expiration of said lease agreement.

Van Wifvat

VAN WIFVAT, District Judge

Of the 5th Judicial District of Iowa.

Form 499

Iowa Conservation Comm. 384
ATTN: Land Dept
300 4th St
Des Moines Ia 50319

IN THE MATTER of the Condemnation of)
Certain Lands by the State Conserva-)
tion Commission for the Use and Bene-)
fit of the State of Iowa for Public)
Recreational Grounds.)
)
Location - Madison County, Iowa)
Project - Badger Creek Lake)

SHERIFF'S REPORT OF DISPOSITION OF FUNDS DEPOSITED WITH HIM

FILED
1974 SEP 16 PM 2:46
MARY E. WELTY
RECORDER
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
02225658	$36,019.17	Wm E Heldenbrand
02338434	$61,980.83	Wm E Heldenbrand

FILED NO. 588
BOOK 111 PAGE 362

1975 MAY -8 PM 9:41

MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

Sheriff's check for $78,000.00 received this date 9-6-74 in accordance with Court Order attached hereto.

x Wm Heldenbrand

Signed this 6th day of Sept., 1974.

at Winterset, Iowa

I further certify that notice of award as amended by Court Order, mailed to condemnee this date via ordinary mail.

Red Reese, Sheriff



OFFICE OF

Sheriff of Madison County

REX ROUSE, SHERIFF
EDWARD POWELL, DEPUTY
WINTERSET, IOWA 50273

TELEPHONE
DAY OR NIGHT
462 - 3575
AREA CODE 515

Sept. 6, 1974

Mr. Wm. E. Holdenbrand
RR-1
Van Meter, Ia. 50261

Dear Sir:

This is to advise you that in accordance with Madison County District Court Order dated Sept. 4, 1974, in the case No. 20837 Law, William E. Holdenbrand and Esther Holdenbrand, plaintiffs -vs- Executive Council of Iowa, et al, I have deposited the award checks in my office account as directed and the $78,000.00 directed to be paid to you may be picked up at the Madison County Sheriff's Office at your convenience between the hours of 8 AM-Noon and 1 PM - 5 PM any Monday through Friday. I would,however suggest that you contact your attorney BEFORE picking this check up.

Yours truly,

Rex Rouse

Rex Rouse, Sheriff
Madison County, Ia. 50273

9192-383

386

FILED

1975 JAN 20 AM 9:58

MARGARET [illegible]
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

FILED NO. 588
BOOK 111 PAGE 362

1975 MAY -8 PM 9:42

MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

WILLIAM F. HELDENBRAND and ESTHER HELDENBRAND, Plaintiffs, vs. EXECUTIVE COUNCIL OF IOWA Acting for the use and benefit of the State of Iowa, Defendant.	Law No. 10837 JUDGMENT ENTRY

The Court FINDS that this case came on for trial to a jury on December 10, 1974, which trial ended December 12, 1974, with a jury verdict fixing the plaintiffs' damages at $115,266.50 and thereafter plaintiffs filed an application for allowance of attorney fees, appraisers' fees and other expenses incurred because of the condemnation proceedings, which application was argued orally to the Court on January 7, 1975.

Plaintiffs in their application pray in Division I for the Court to fix attorney fees in the amount of $16,300 and in Division II the plaintiffs seek to have the Court allow an additional $2,861.11 for appraisers' fees and other costs and expenses incurred by the plaintiffs in connection with the trial, pursuant to 42 USCA 4654 and related statutes under Uniform Relocation Assistance Act.

This case was tried twice to a jury in district court, the second time after the Supreme Court reversed the case on appeal by the defendant-condemnor. It appears that a substantial part of the services itemized by plaintiffs' attorneys are in connection

with the appeal to the Supreme Court, amounting to 123 3/4 hours of preparation and one-half day in the Supreme Court, which would account for approximately $5,125 of the total fees claimed by plaintiffs.

It is the opinion of this Court that Section 472.33 of the Code authorizes only the taxing of attorney fees as costs in connection with the appeal to the District Court from the allowance by the condemnation commission and does not authorize allowance of attorney fees for services on appeal to the Supreme Court. See Wilson v. Fleming, 32 NW2d 798.

With respect to the claim for appraisers' fees, and other expenses set forth in Exhibit B and Exhibit C attached to the plaintiffs' application, no authority has been advanced by plaintiffs to show that the federal statutes, 42 USCA 464 and related statutes under the Uniform Relocation Assistance Act, apply to an ordinary condemnation proceedings in state court. If the condemnation proceedings had been abandoned, there would be authority under the Supreme Court's decision in Atherton v. State Conversation Commission, 203 NW2d 622 to allow such costs and expenses and order the condemnor to pay the same. However, the reasoning of the Supreme Court in that decision would indicate that such costs and expenses inhere in the overall damage award where the condemnation is completed and the property is taken by the condemning authority.

This leaves remaining the question of the amount which should be allowed plaintiffs as reasonable fees for attorneys' services in connection with the trials in district court. A significant part of the attorney's time appears to have been devoted to constitutional issues which plaintiffs' counsel raised in both

trials. However, it does not appear to the Court that this condemnation really involved any unusual or difficult questions of law or fact. It involved the taking of the entire 160-acre farm owned by plaintiffs. Prior to the first trial of this case, same counsel tried a case involving the condemnation of a five-year lease on the same farm in which most of the expert witnesses were used who were witnesses in the present case. It is not questioned by the Court that plaintiffs' counsel did devote the time shown in the itemized statement of services in this case. Counsel for the plaintiffs has shown great zeal in representing his clients, which is to be commended. However, like all virtues, this can be overdone and there is some merit to be found in avoiding reversible error. In this case a second trial was necessary because the plaintiffs insisted on having the value of the farm fixed and determined by the jury at the time of trial in district court. On the appeal of the case the Supreme Court held that this was error and that the market value of the farm should have been determined as of the date that the farm was appraised and damages fixed by the Commissioner. Notwithstanding the ruling of the Supreme Court, counsel for the plaintiffs again requested upon retrial that the Court instruct the jury that the value of the farm should be fixed as of the date of trial, or the date when the money was deposited with the sheriff. The Court refused to do this in view of the Supreme Court's decision on the appeal. However, it would be almost too much to expect a jury to ignore the remarkable inflation which has occurred in farm values following the taking of this farm in 1971, and the amount of the verdict would indicate that they did not completely ignore what has happened to land values.

After considering all of the various factors which are to be considered by the Court in fixing fees of counsel in cases of this character, it is the opinion of the Court that a fair and reasonable fee for the services of the plaintiffs' attorney in both trials in district court is the sum of $8,000.

IT IS ORDERED, ADJUDGED AND DECREED that the amount of plaintiffs' damages is hereby ascertained and entered of record to be in the sum of $115,266.50. Plaintiffs are awarded interest at the rate of seven percent (7%) from and after the date of September 4, 1974, on the sum of $17,266.50 and on the sum of $20,000 from and after the date defendant takes possession of the plaintiffs' homestead until paid.

IT IS FURTHER ORDERED that the defendants pay the costs in the district court, including an attorney fee of $8,000, and that plaintiffs shall pay the costs in connection with the appeal to the Supreme Court of Iowa.

Dated this 17th day of January, 1975.

M. C. Herrick

M. C. HERRICK, Judge
Fifth Judicial District
State of Iowa

FILED
1975 APR -8 AM 9:46
MARGARET [illegible]
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

WILLIAM F. HELDENBRAND and ESTHER HELDENBRAND,	:	LAW NO. 20837
Plaintiffs,	:	
vs.	:	
EXECUTIVE COUNCIL OF IOWA Acting for the Use and Benefit of the STATE OF IOWA,	:	
Defendant.	:	APPLICATION

FILED NO. 588
BOOK 111 PAGE 362
1975 MAY -8 PM 9:42
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

COMES NOW, the Plaintiffs and request the Court for an Order directing the Sheriff to release the funds deposited by the Defendant and now held by the Sheriff to Plaintiffs.

WEBSTER, JORDAN & OLIVER

By Lewis H. Jordan

Lewis H. Jordan
Farmers & Merchants Bank Bldg.
Winterset, IA 50273
Telephone: 515-462-3731

ATTORNEYS FOR PLAINTIFFS

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on April 8, 1975.

J. Stephen Watters

391

592

MARGARET MUELLER
CLERK OF DISTRICT COURT
MADISON COUNTY, IOWA

1975 APR -8 AM 9:46

FILED

IN THE DISTRICT COURT OF THE STATE OF IOWA

IN AND FOR MADISON COUNTY

WILLIAM F. HELDENBRAND and ESTHER HELDENBRAND,	:	LAW NO. 20837
Plaintiffs,	:	
vs.	:	
EXECUTIVE COUNCIL OF IOWA Acting for the Use and Benefit Of the STATE OF IOWA,	:	
Defendant.	:	ORDER

FILED NO. 588
BOOK 11 PAGE 362

1975 MAY -8 PM 9:42

MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

BE IT REMEMBERED, that on this 7th day of April, 1975, this matter comes on before the Court on the application of the Plaintiffs for the release of funds and the Court having examined said application and being well and fully advised in the premises finds:

That the funds should be released.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that Rex Rouse, the Sheriff of Madison County, be and is hereby directed to pay all remaining funds in his hands in connection with this case over to Plaintiffs forthwith.

M J V Hayden
Judge of the 5th Judicial
District of Iowa

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U S Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on April 8, 1975.

G. Stephen Walker

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 County
Project - Badger Creek

CLERKS REPORT OF DISPOSITION OF FUNDS DEPOSITED WITH HER

FILED NO. 588
BOOK 111 PAGE 362
1975 MAY -8 PM 9:42
MARY E. WELTY
RECORDER
MADISON COUNTY, IOWA

The undersigned, hereby certifies that, in the above noted matter, of the 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
0373852	$17,266.50	William E. Heldenbrand, Esther Heldenbrand, Madison County

this 3rd day of February, 19 75.

SEAL OF THE DISTRICT COURT MADISON COUNTY IOWA

Margaret Wheeler
Clerk of District Court