

**IN THE COURT OF COMMON PLEAS
KNOX COUNTY, OHIO**

**STATE OF OHIO, ex rel. DAVE YOST,
ATTORNEY GENERAL**

Plaintiff,

v.

**THE LANDINGS PROPERTY OWNERS
ASSOCIATION, INC., et al.,**

Defendants.

Case No. 20IN06-0149

JUDGE RICHARD D. WETZEL

MULLINS BROS. LTD.,

Third-Party Plaintiff,

v.

CAROL A. DIDINGER, TRUSTEE, et al.,

Third-Party Defendants.

**PLAINTIFF STATE OF OHIO'S MOTION
FOR ADDITIONAL INTERIM RISK REDUCTION MEASURES**

Plaintiff, State of Ohio, moves this Court for an Order imposing additional Interim Risk Reduction Measures at the Knox Cattle Company Dam necessary to safeguard life, health, and property. A Memorandum and affidavits in support of the Motion are attached.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

/s/ Brett A. Kravitz
BRETT A. KRAVITZ (0069101)
JOSEPH WAMBAUGH (0098546)
KEVIN PORTER (0103054)

Assistant Attorneys General
Environmental Enforcement Section
30 E. Broad St., 25th Floor
Columbus, Ohio 43215
Phone: 614-466-2766 / Fax: 614-644-1926
Brett.Kravitz @OhioAGO.gov
Joseph.Wambaugh@OhioAGO.gov
Kevin.Porter@OhioAGO.gov

Counsel for Plaintiff, State of Ohio

MEMORANDUM IN SUPPORT

On January 27, 2021, the Court granted the State’s Motion for Preliminary Relief ordering certain Interim Risk Reduction Measures (“IRRM”) at the Knox Cattle Company Dam and Lake (“Dam” and “Lake”) necessary to safeguard life, health, and property pursuant to R.C. 1521.062(H). On November 1, 2021, the Court granted the State’s Motion for Additional IRRMs at the Dam on the same basis.

Conditions at the Dam have again worsened requiring additional IRRMs. Despite ongoing maintenance at the Dam, and implementing the prior IRRMs, water levels at the court-ordered elevation have not been able to be maintained due to the repeated clogging of the primary outlet and siphons, sedimentation in the Lake, and poor retention in the upstream stormwater pond – all leading to the threat of sudden dam failure by overtopping. *See* Affidavit of Mia Kannik, Ex. 1, ¶¶ 8, 11 . The integrity of the Dam has also worsened due to the presence of woody vegetation and its progressively deteriorating condition that could likewise lead to the sudden failure of the Dam. *Id.* ¶ 10. No analyses have been performed to develop an Emergency Action Plan to follow in the event of dam failure, or to ensure that measures taken to reduce the risk of dam failure comply with dam safety and stormwater requirements. *Id.* ¶¶ 12, 14. As a result, additional IRRMs are needed to safeguard life, health, and property. *Id.* at ¶ 14.

Pursuant to R.C. 1521.062(H), the State therefore requests an Order authorizing the City of Mount Vernon, acting on behalf of the Chief of the Division of Water Resources of the Ohio Department of Natural Resources, to immediately take the following IRRMs:

- (1) Construct a new principal spillway and lake drain;
- (2) Remove accumulated sediment from the bottom of the Lake, and evaluate and implement measures to reduce future sediment accumulation;
- (3) Remove woody vegetation from the Dam;
- (4) Reconstruct and improve the upstream stormwater pond;
- (5) Perform a detailed Hydrologic and Hydraulic (H&H) analysis and dam failure analyses for the Dam; and
- (6) Contract design, permitting, and construction oversight services, and perform geotechnical testing and analysis, as necessary for the above measures.

(1) **Construct a new principal spillway and lake drain.** The small diameter of the current principal spillway is causing the spillway to repeatedly clog so that water cannot exit. This causes the water level in the Lake to rise which could cause the Dam to overtop and fail during large rain events. Affidavit of Mia Kannik, Ex. 1, ¶ 8. The construction of the new sufficiently sized principal spillway and lake drain is necessary to prevent a sudden failure of the Dam. *Id.* ¶ 14a. A more detailed description of these measures is provided in the attached Affidavit of Brian Ball, Ex. 2, ¶ 6.

(2) **Remove accumulated sediment from the bottom of the lake, and evaluate and implement measures to reduce future sediment accumulation.** The accumulation of sediment from the bottom of the Lake is reducing the amount of potential water storage in the Lake that could be used during a rain event to prevent the Dam from overtopping. Affidavit of Mia Kannik, Ex. 1, ¶ 9. Removal of existing sediment, and the implementation of measures to reduce future sediment accumulation, will reduce the risk of a sudden failure of the Dam. *Id.* ¶ 14b. A more detailed description of these measures is provided in the attached Affidavit of Brian Ball, Ex. 2, ¶ 6.

(3) **Remove woody vegetation from the Dam.** The woody vegetation on the Dam is compromising its integrity. Affidavit of Mia Kannik, Ex. 1, ¶ 10. Removing the woody vegetation from the Dam is needed to protect the integrity of the Dam and reduce the risk of its sudden failure. *Id.* ¶ 14c. A more detailed description of these measures is provided in the attached Affidavit of Brian Ball, Ex. 2, ¶ 6.

(4) **Reconstruct and improve the upstream stormwater pond.** The upstream stormwater pond has limited retention to slow water entering the Lake. Affidavit of Mia Kannik, Ex. 1, ¶ 11. Reconstructing and improving the upstream stormwater pond to increase retention in the pond will slow down the water entering the Lake thereby reducing the likelihood of overtopping and the risk of the sudden failure of the Dam. *Id.* ¶ 14d. A more detailed description of these measures is provided in the attached Affidavit of Brian Ball, Ex. 2, ¶ 6.

(5) **Perform a detailed H&H analysis and dam failure analyses.** No H&H analysis or dam failure analyses have been undertaken to ensure regulatory compliance or plan for evacuation. Affidavit of Mia Kannik, Ex. 1, ¶ 12. The H&H analysis is necessary to ensure that the IRRMs will comply with Ohio Dam Safety Laws, as well as any applicable stormwater rules or regulations, while dam failure analyses are necessary to predict the extent of inundation in the event of a dam failure, and to develop an Emergency Action Plan (EAP) that includes evacuation procedures in the event of a dam failure. *Id.* ¶ 14e. Additional description of these measures is provided in the attached Affidavit of Brian Ball, Ex. 2, ¶ 6.

(6) **Contract for design, permitting, and construction oversight services, and perform geotechnical testing and analysis as necessary for the above measures.** No design, permitting, or construction services, or geotechnical testing and analysis, have been performed as necessary

to ensure proper construction. Affidavit of Mia Kannik, Ex. 1, ¶ 13. Design, permitting, and construction oversight services, as well as geotechnical testing and analysis, are required to ensure that the construction is performed properly for the above IRRMs. Affidavit of Mia Kannik, Ex. 1, ¶ 14f. A more detailed description of these measures is provided in the attached Affidavit of Brian Ball, Ex. 2, ¶ 6.

The above IRRMs are needed to safeguard life, health, and property as they would reduce the risk of a sudden failure of the Dam and a release of water from the Lake. Affidavit of Mia Kannik, Ex. 1, ¶ 15. The onset of the wet, winter season increases the likelihood of elevated water levels in the Lake and dam failure. *Id.* ¶ 16. The sudden failure of the Dam would result in either the probable loss of human life or the structural collapse of at least one residence or one commercial or industrial business. *Id.* ¶ 7. Multiple properties are located downstream of the Dam, including several homes, businesses, and roads. *Id.* Sudden failure of the Dam would result in a probable loss of human life in a number of residences and flooding of high value property downstream of the Dam. *Id.*

As part of this relief, the State requests that, upon the final disposition of this case, all costs associated with these IRRMs be certified by the City to the Court. Upon receipt of said costs, the Court shall enter a grant of judgment for said costs and file the same with the Clerk of Courts ordering the Clerk to issue a certificate of judgment in favor of the City pursuant to R.C. 2335.19 and R.C. 2329.02. A proposed Order is attached to this Motion.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

/s/ Brett A. Kravitz
BRETT A. KRAVITZ (0069101)
JOSEPH WAMBAUGH (0098546)

KEVIN PORTER (0103054)
Assistant Attorneys General
Environmental Enforcement Section
Ohio Attorney General's Office
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Phone: (614) 466-2766
Fax: (614) 644-1926
Brett.Kravitz@OhioAGO.gov
Joseph.Wambaugh@OhioAGO.gov
Kevin.Porter@OhioAGO.gov
Counsel for Plaintiff, State of Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served by email and/or regular mail

on September 30, 2024, upon the following:

<p><i>Via Email</i> Kelli J. Amador Thomas J. Bonasera William M. Mattes DINSMORE & SHOHL, LLP 191 W. Nationwide Blvd., Suite 200 Columbus, Ohio 43215 Email: thomas.bonasera@dinsmore.com kelli.amador@dinsmore.com bill.mattes@dinsmore.com Attorneys for Defendant Mullins Bros. Ltd.</p>	<p><i>Via Email</i> City of Mount Vernon c/o P. Robert Broeren, Jr., Esq. City Law Director 5 North Gay Street, Suite 222 Mount Vernon, Ohio 43050 probertbroeren@mountvernonohio.org Attorney for Defendant City of Mount Vernon</p>
<p><i>Via Email</i> Stephen P. Samuels, Esq. Christina Wieg, Esq. Frost Brown Todd 10 W. Broad Street, Suite 2300 Columbus, Ohio 43215 ssamuels@fbtlaw.com cwieg@fbtlaw.com Attorneys for Defendant City of Mount Vernon</p>	<p><i>Via Email</i> Noel B. Alden, Esq. Zelkowitz, Barry & Cullers, Ltd. 103 South Main Street Mount Vernon, Ohio 43050 nalden@zbclaw.com Attorney for Amy E. Badertscher and Michael C. Reilly</p>
<p><i>Via Email</i> Stephen E. Chappellear, Esq. Kyle D. Tucker, Esq. Eastman & Smith Ltd. 100 E. Broad Street, Suite 2100 Columbus, Ohio 43215 sechappellear@eastmansmith.com kdtucker@eastmansmith.com Attorneys for Long Third-Party Defendants</p>	<p><i>Via Email</i> Kenneth E. Lane, Esq. 812 Coshocton Avenue, #101 Mount Vernon, Ohio 43050 laneoffices@gmail.com Attorney for Defendant Michele D. Lane</p>
<p><i>Via Email</i> Gary and Julie Fisher and Iris Morales 26 Wildwood Lane East Mount Vernon, Ohio 43050 femaleundercov@yahoo.com Pro Se Defendants</p>	<p><i>Via Email</i> Cynthia A. Cunningham, Esq. Kidwell & Cunningham, Ltd. 112 North Main Street Mount Vernon, Ohio 43050 ccunningham@kclawohio.com Pro Se Defendant</p>
<p><i>Via Email</i> John Witham Kristen Witham <u>drkristenwitham@gmail.com</u> Defendant</p>	<p><i>Via Email</i> Nuh and Asiye Aydin 5 Longvue Court Mount Vernon, Ohio 43050 nuhaydin@gmail.com sueda.aydin@yahoo.com Defendant</p>

<p><i>Via Email</i> Mark Stoessel - markstoessel@yahoo.com Sara Stoessel - sarastoessel@62020@gmail.com <i>Defendant</i></p>	<p><i>Via Email</i> Phillip and Helena Curry 63 Woodlake Trail Mount Vernon, Ohio 43050 phillipwcurry@gmail.com helenacurry7@gmail.com <i>Defendant</i></p>
<p><i>Via Email</i> Deborah Forsythe - missdeb.forsythe@gmail.com <i>Defendant</i></p>	<p><i>Via Email</i> Chad Taylor submakersinc@gmail.com <i>Defendant</i></p>
<p><i>Via Email</i> Karen L. Cherup Kcherup0506@yahoo.com <i>Defendant</i></p>	<p><i>Via Email</i> Matthew A. Cherup Matthew33308@yahoo.com <i>Defendant</i></p>
<p><i>Via Email</i> Enon Banda Deborah Banda deborahbanda@me.com <i>Defendant</i></p>	<p><i>Via Email</i> Carol A. Didinger Cdidinger1937@gmail.com <i>Defendant</i></p>
<p><i>Via Email</i> Gary Gray Carolyn Gray Garygray824@gmail.com <i>Defendant</i></p>	<p><i>Via Email</i> Stephen D. Mullendore Jeanne C. Mullendore mullendore@coldwellbanker.com smulwin1@gmail.com</p>
<p><i>Via Regular Mail</i> The Landings Property Owners Association, Inc. c/o George Bertko, Registered Agent P.O. Box 336 Mount Vernon, Ohio 43050 <i>Defendant</i></p>	<p><i>Via Regular Mail</i> Daniel Risser and Cara Salmon Risser 43 Wildwood Lane West Mount Vernon, Ohio 43050 <i>Defendant</i></p>

/s/ Brett A. Kravitz _____
BRETT A. KRAVITZ (0069101)

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EXHIBIT 1

Affidavit of Mia Kannik, P.E.

**IN THE COURT OF COMMON PLEAS
KNOX COUNTY, OHIO**

**STATE OF OHIO, ex rel. DAVE YOST,
ATTORNEY GENERAL**

Plaintiff,

v.

**THE LANDINGS PROPERTY OWNERS
ASSOCIATION, INC., et al.,**

Defendants.

MULLINS BROS. LTD.,

Third-Party Plaintiff,

v.

CAROL A. DIDINGER, TRUSTEE, et al.,

Third-Party Defendants.

Case No. 20IN06-0149

JUDGE RICHARD D. WETZEL

**AFFIDAVIT OF MIA KANNIK, P.E. IN SUPPORT OF
PLAINTIFF STATE OF OHIO'S MOTION
FOR ADDITIONAL INTERIM RISK REDUCTION MEASURES**

STATE OF OHIO)
) SS:
FRANKLIN COUNTY)

I, MIA P. KANNIK, being of sound mind, age of majority, and being duly sworn in on oath, make the following statements based upon personal knowledge, information, and/or belief:

1. I am employed as a Program Manager for the Dam Safety Program in the Division of Water Resources at the Ohio Department of Natural Resources ("ODNR"), located at 2045 Morse Road, Building B-3, Columbus, Ohio 43229. I have held my current position since 2014. I


have been employed by ODNR in the Division of Water Resources (“Division”) since January 1998. When I first began working with the Division, I was a Project Engineer, and then later I was promoted to Project Manager before I became a Program Manager.

2. I earned a Bachelor of Science in Civil Engineering from the University of Cincinnati in June of 1996. I earned a Master’s degree in Geotechnical Engineering from the Virginia Polytechnic Institute and State University (Virginia Tech) in December of 1997. I am also a Professional Engineer and have been licensed in the State of Ohio since 2001.
3. As a Program Manager, I function as an authorized representative of the Chief of the Division (“Chief”) for the purpose of inspecting and investigating conditions related to the construction, maintenance, and operation of dams in the State of Ohio.
4. As Program Manager, my job duties include, but are not limited to, the following:
 - a. Managing staff engineers and other technical staff;
 - b. Prioritizing and assigning workload of dam inspections, permits, repairs, and enforcement;
 - c. Developing policies for implementation of dam and levee safety regulations;
 - d. Providing supervision and review for lower-level engineers performing detailed engineering analysis;
 - e. Performing periodic dam safety inspections for existing dams and prepare detailed reports of findings; and
 - f. Providing administrative review of periodic dam safety inspection reports to ensure consistency within the report such as making sure the items captured in the field checklist are reflected in the required remedial measures section, review of the previous reports, and making sure the database includes up-to-date information of the dam and all requirements.
5. In my role as Program Manager, I work with other divisions and agencies of the State, including the Ohio Attorney General’s Office, when the Chief seeks to enforce compliance with Ohio’s dam safety laws and rules.

6. I am familiar with the Knox Cattle Company Dam and Lake (“Dam” and “Lake”), located on a tributary to Center Run in Knox County, Monroe Township, Ohio. I have reviewed the Division files and inspection reports relating to the Dam and inspected the Dam.
7. The Dam is a Class I dam, per Ohio Adm.Code 1501:21-13-01(A)(1). Among other things, a Class I dam is one whose sudden failure would result in either the probable loss of human life or the structural collapse of at least one residence or one commercial or industrial business. Multiple properties are located downstream of the Dam including several homes, businesses, and roads. Sudden failure of the Dam would result in a probable loss of human life in a number of residences and flooding of high value property downstream of the Dam.
8. The small diameter of the current principal spillway is causing the spillway to repeatedly clog so that water cannot exit. This causes the water level in the Lake to rise which could cause the Dam to overtop and fail during large rain events.
9. The accumulation of sediment from the bottom of the Lake is reducing the amount of potential water storage in the Lake that could be used during a rain event to prevent the Dam from overtopping.
10. The woody vegetation on the Dam is compromising its integrity.
11. The upstream stormwater pond has limited retention to slow water entering the Lake.
12. No H&H analysis, or dam failure analyses, have been undertaken to ensure regulatory compliance or plan for evacuation.
13. No design, permitting, or construction services, or geotechnical testing and analysis, have been performed as necessary to ensure proper construction.
14. In order to safeguard life, health, and property, the following Interim Risk Reduction Measures (“IRRM”) need to be taken:

- a. **Constructing a new principal spillway and lake drain.** The construction of the new sufficiently sized principal spillway and lake drain is necessary to prevent a sudden failure of the Dam.
 - b. **Removing accumulated sediment from the bottom of the Lake, and evaluating and implementing measures to reduce future sediment accumulation.** Removal of existing sediment, and the implementation of measures to reduce future sediment accumulation, will reduce the risk of a sudden failure of the Dam.
 - c. **Removing woody vegetation from the Dam.** Removing the woody vegetation from the Dam is needed to protect the integrity of the Dam and reduce the risk of its sudden failure.
 - d. **Reconstructing and improving the upstream stormwater pond.** Reconstructing and improving the upstream stormwater pond to increase retention in the pond will slow down the water entering the Lake thereby reducing the likelihood of overtopping and the risk of the sudden failure of the Dam.
 - e. **Performing a detailed H&H analysis and dam failure analyses.** The H&H analysis is necessary to ensure that the IRRMs will comply with Ohio Dam Safety Laws as well as any applicable stormwater rules or regulations, while dam failure analyses are necessary to predict the extent of inundation in the event of a dam failure, and to develop an Emergency Action Plan (EAP) that includes evacuation procedures in the event of a dam failure.
 - f. **Contracting for design, permitting, and construction oversight services, and perform geotechnical testing and analysis as necessary for the above measures.** Design, permitting, and construction oversight services, as well as geotechnical testing and analysis, are required to ensure that the construction is performed properly for the above IRRMs.
15. The above IRRMs are needed to safeguard life, health, and property as they would reduce the risk of a sudden failure of the Dam and a release of water from the Lake. As explained in ¶ 7 above, the sudden failure of the Dam would result in a probable loss of human life in a number of residences and flooding of high value property downstream of the Dam.
16. The onset of the wet, winter season increases the likelihood of elevated water levels in the Lake and dam failure.
17. The above IRRMs are necessary to reduce the risk of sudden failure of the Dam.

AFFIANT FURTHER SAYETH NAUGHT.



Mia P. Kannik, P.E.

Sworn to and subscribed before me this 30th day of September, 2024.



Notary Public



DAMIAN W. SIKORA, ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date
Section 147.03 R.C.

EXHIBIT 2

Affidavit of Brian Ball

**IN THE COURT OF COMMON PLEAS
KNOX COUNTY, OHIO**

STATE OF OHIO, ex rel.	:	
DAVE YOST,	:	
ATTORNEY GENERAL	:	Case No. 20IN06-0149
	:	
Plaintiff,	:	
	:	Judge Richard D. Wetzel
v.	:	
	:	
THE LANDINGS PROPERTY	:	
OWNERS ASSOCIATION, INC.,	:	
et al.,	:	
	:	
Defendants.	:	

AFFIDAVIT OF BRIAN W. BALL, P.E. IN SUPPORT OF PLAINTIFF STATE OF OHIO'S MOTION FOR ADDITIONAL INTERIM RISK REDUCTION MEASURES

STATE OF OHIO)
) SS:
KNOX COUNTY)

BRIAN W. BALL, being first duly sworn, states as follows:

1. I am employed as the City Engineer for the City of Mount Vernon, Ohio, and have held that position since October 2015. In that role, I plan, direct, and administer all engineering functions within the City Engineering Division, including but not limited to the design and preparation of plans, specifications, cost estimates, and contract documents for public works projects; the inspection of City and private construction projects; and the general oversight and approval of specifications, construction methods and material types to be utilized in construction within the City.
2. Prior to being engaged as City Engineer, I was employed as a civil engineer for the U.S. Army Corps of Engineers from 2003-2015, in which position I planned, directed, and coordinated the design, construction, operation, and maintenance of a variety of civil works projects, including flood control, navigation locks, dams, reservoirs, local protection floodwalls, and levees. This work included the development of schedules, budgets, design

reports, construction plans and specifications, project cost estimates, and operation/maintenance manuals.

3. I was awarded a B.S. degree in 2003 from The Ohio State University and a Master of Science Degree in Engineering Management in 2014 from Marshall University. My thesis topic was *Evaluation of Local Protection Projects - river bank erosion related instability evaluations and prioritization, design of stabilization alternatives, and communication of risks to decision makers*. I hold a professional engineers license from the State of Ohio, with a specialty in Water Resources Engineering.
4. I am familiar with the Knox Cattle Company Dam (“the Dam”), located on a tributary to Center Run in Knox County, Monroe Township, Ohio. I have inspected the Dam on multiple occasions and have reviewed the files maintained by the Ohio Department of Natural Resources (“ODNR”).
5. Based on my inspections of the Dam, I concur with the findings and recommendations set forth in Plaintiff’s Motion for Additional IRRMs and the Affidavit of Mia Kannik attached to it.
6. The following subparagraphs, which follow the enumeration of recommendations set forth in the State’s Motion, provide additional details regarding the IRRMs:

1. **Construct a new principal spillway and lake drain**

The dam embankment will be open cut and the existing principal spillway will be removed and replaced with a minimum 24-inch diameter spillway with an 8-inch lake drain. The size of the principal spillway will be determined by the hydrologic and hydraulic (“H&H”) analysis described in subparagraph 5 below.

2. **Remove accumulated sediment from the bottom of the lake, and evaluate and implement measures to reduce future sediment accumulation**

To allow for the required stormwater storage to be maintained at a lower elevation on the dam, accumulated sediment in the bottom of the lake will be excavated and disposed off-site. To minimize sediment accumulation, we will evaluate the installation of sediment traps around the lake and the construction of a stormwater pond on the south tributary to the lake.

3. **Remove woody vegetation**

All woody vegetation will be removed from the dam and grading will be performed to backfill voids created by roots.

4. Reconstruct and improve the upstream stormwater pond

The embankment of this stormwater pond has failed. The pond embankment will be reconstructed and the pond modified to better manage stormwater and sediments. The H&H analysis will be used to develop the specifications for this work.

5. Perform hydrologic and hydraulic (H&H) work and dam failure analyses

The H&H analysis will be used to optimize the elements of the stormwater facilities, reduce risk, forecast inundation in case of dam failure, and ensure IRRM's comply with applicable laws and regulations.

6. Contract for design, permitting, construction oversight, geotechnical testing and analysis, and construction

As necessary, the City will execute contracts with appropriate consultants and contractors to design and perform the work described above.

Brian W. Ball

Brian W. Ball, P.E.

Sworn to and subscribed before me this 30th day of September, 2024.

Mary K Jordan

Notary Public



MARY K. JORDAN
Notary Public, State of Ohio
My Commission Expires
March 17, 2028