

the alternatives proposed by the State and those proposed alternatives should be found to be available by the Secretary in accordance with past decisions. See *Yeamans Hall Club Appeal, supra*, at 13; *A. Elwood Chestnut Appeal, supra* at 13.

"In order to reach a determination as to whether the alternative identified by the [State] is reasonable (economically feasible), [the Secretary] must weigh the increased costs of the alternative against its environmental advantages." *Yeamans Hall Club Appeal, supra* at 16. "First, [the Secretary] must consider and evaluate the increased costs to the Appellant of implementing the alternative proposed by the [State]." *Id.* at 17.

With regard to the presently available alternatives, Barnes Nursery has never disputed that County Water is an available alternative source of water. Instead, Barnes Nursery has asserted, and continues to assert, that County Water is too expensive. (Administrative Record, Appellant's Supplemental Information, December 3, 2002, pg. 6) However, Barnes Nursery's claims are suspect because its figures are based on its inquiry "to the Erie County Sanitary Engineer as to the availability of County water to replace the 350,000 gallons/day now being pumped from the bay." (Administrative Record, Appellant's Supplemental Information, December 3, 2002, pg. 6) Barnes Nursery's professed costs are suspect because Barnes Nursery does not use 350,000 gallons of water per day, not even, during its "growing season." (Administrative Record, Appellant's Supplemental Information, December 3, 2002, pgs. 4 and 6)

Pursuant to Ohio Revised Code Section 1521.16, any owner of a facility with the capacity to withdraw more than 100,000 gallons of water daily, must register such facility with ODNR's Division of Water and submit annual reports listing actual water withdrawals and return flows. (Ohio Revised Code Section 1521.16) Barnes Nursery registered its facility at this site by State of Ohio Water Withdrawal Facility Registration Form No. 02091, received by ODNR's

Division of Water on June 19, 2001. (State's Final Brief, Barnes Nursery's Water Withdrawal Facility Registration Form, Exhibit II) On February 14, 2002, ODNR's Division of Water received Barnes Nursery's Water Withdrawal Report for the year ending December 31, 2001. (State's Final Brief, Barnes Nursery's Water Withdrawal Report for 2001, Exhibit JJ)

According to Barnes Nursery's 2001 Water Withdrawal Report, the maximum amount of water withdrawn, and also the maximum amount of water returned, by Barnes Nursery in the year 2001 took place during the month of August. (State's Final Brief, Barnes Nursery's Water Withdrawal Report for 2001, Exhibit JJ) Barnes Nursery reported that during its 31 days of operation in August 2001, it withdrew 8,749,821 gallons of water and returned 5,249,892 gallons of water. (State's Final Brief, Barnes Nursery's Water Withdrawal Report for 2001, Exhibit JJ) In other words, by dividing the respective reported amounts of water withdrawal and return flow for the month of August, by the reported 31 days that the facility was in operation during that month, Barnes Nursery withdrew an average of 282,252 gallons of water per day and returned an average of 169,351 gallons per day, leading to an average net removal of approximately 112,901 gallons of water per day in August 2001.

During the other months of 2001 Barnes Nursery's reported water usage ranged from somewhat less than that reported in August (July, June and April), to substantially less (March, May, September, October, and November), to nonexistent (January, February and December). (State's Final Brief, Barnes Nursery's Water Withdrawal Report for 2001, Exhibit JJ) Lest there be any concern about the accuracy of its reported information, Barnes Nursery indicated on its 2001 Water Withdrawal Report that both its water withdrawal amounts and return flow amounts were based on metered readings. (State's Final Brief, Barnes Nursery's Water Withdrawal Report for 2001, Exhibit JJ)

All registered water withdrawal facilities under Ohio Revised Code 1521.16 were provided notice on December 20, 2002, that their annual reports, listing actual water withdrawals and return flows for 2002, must be signed and returned to ODNR's Division of Water by March 1, 2003. (State's Final Brief, ODNR Division of Water Withdrawal Report Letter, December 20, 2002, Exhibit KK) Though Barnes Nursery filed its 2001 Water Withdrawal Report with the Division of Water well in advance of the March 1 deadline, the 2002 Water Withdrawal Report of Barnes Nursery has not yet been received by ODNR's Division of Water.

With regard to the alternatives of ponds and/or wells, Barnes Nursery has continued to provide no evidence regarding the cost of constructing ponds and/or drilling wells on its non-wetland property. The State in its Initial Brief submitted that the estimated costs of drilling three wells and purchasing well pumps would total \$84,000. (Administrative Record, State's Initial Brief, ODNR Email, February 20, 2002, pg. 26, Exhibit Z) This cost is significantly less than the other alternatives dismissed by Barnes Nursery, and is certainly not out of the realm of economic feasibility for a company with "a payroll of \$3,400,000" that is "currently cultivating 3 million trees and plants" in its "production fields." (Administrative Record, State's Initial Brief, Barnes Nursery Letter to Ohio EPA, July 24, 2001, pg. 26, Exhibit X, pg. 7; Appellant's Supplemental Information, December 3, 2002, pg. 6) Ironically, Barnes Nursery admits that "these fields are irrigated with County water on a drip system" - an alternative source of water and a method of water conservation that Barnes Nursery contends it can not use at this site. (Appellant's Supplemental Information, December 3, 2002, pgs. 6 and 8)

After the Secretary has determined the increased costs to the Appellant under the alternative(s) proposed by the State, the Secretary must then consider the environmental gain of not conducting the activity proposed "less the environmental advantages of Appellant's proposal."

Yeamans Hall Club Appeal, supra at 18. As discussed at length above, USFWS, USEPA, Ohio EPA and ODNR have collectively determined that the proposed activity will provide no environmental advantages to this wetland site, but rather will result in serious adverse impacts to the wetlands and to the threatened and endangered species for which it provides critical habitat. The USFWS again distills these facts most compellingly in its comments to the Secretary on this appeal as follows:

"Due to the value of this area as one of Ohio's last remaining intact coastal wetland systems, including its value to piping plovers, bald eagles, and other fish and wildlife resources, the Service recommends that the U.S. Department of Commerce reject the appeal submitted by Barnes Nursery, Inc."

(Administrative Record, U.S. Fish & Wildlife Service Response to Request for Comments, December 27, 2002, pg. 3)

In weighing the clearly affordable costs of the alternatives discussed above to Barnes Nursery, against the enormous environmental gain of restoring and preventing further damage to this critical resource, it is clear that either of these alternatives should be deemed reasonable by the Secretary, particularly when the proposed activity offers no benefit, but only continued, significant harm to this delicate ecosystem. Therefore, as there are reasonable alternatives to the proposed activity available to Barnes Nursery which would be consistent with Ohio CMP, Barnes Nursery has failed to achieve the final requirement for federal override and the Secretary should refuse to override the State's Objection.

III. CONCLUSION

For the reasons established above, the State of Ohio, Department of Natural Resources respectfully requests that the Secretary dismiss Appellant's Consistency Appeal for good cause pursuant to either 15 CFR 930.129(a)(2) or 15 CFR 930.129(a)(5) or, in the alternative, uphold and refuse to override the State's Consistency Objection, as Appellant has failed to present sufficient evidence that its proposed activity is consistent with the purposes and objectives of federal Coastal Zone Management Act.

Further, the State respectfully requests that the Secretary expressly advise the Corps that, pursuant to CZMA regulations, it may not issue any after the fact approval of this partially completed project nor any approval for the proposed completion of this project. The Corps has recently notified the press that it will "carefully review" the final decision of the Secretary in this appeal "before making an informed decision on how to proceed" regarding Barnes Nursery's partially completed and unauthorized project. (State's Final Brief, Corps Email, April 1, 2003, Exhibit LL) Such a reminder from the Secretary is particularly necessary given that the Corps has publicly stated that "it is unclear what would be done with the unfinished irrigation channel," and Barnes Nursery has already informed the press that it hopes to maintain and continue to use the unauthorized project. (State's Final Brief, *Toledo Blade* and *Sandusky Register* newspaper articles, April 1, 2003, Exhibit CC)

Finally, though the State of Ohio recognizes that the Secretary does not have the authority to order that the Corps require the Appellant to restore the unauthorized project area to its preconstruction condition, it is not beyond the authority of the Secretary to recommend to the Corps that the project area be restored to the condition it was in prior to the occurrence of Barnes Nursery's unauthorizable activities. On the basis of the unanimous positions of every other Federal

and State agency with authority over this project, the State of Ohio requests that the Secretary take such action. If the project can not be authorized by the Corps, it is an elementary deduction for the Corps to make within its own authority, that the channel can not continue to exist, unauthorized and unauthorizable, within the waters of the State of Ohio and the United States of America.

Respectfully submitted,

JIM PETRO
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

We hereby certify that a true copy of the foregoing **Final Brief of the State of Ohio, Department of Natural Resources**, was served by Regular U.S. Mail, postage prepaid, this 4th day of April, 2003, to:

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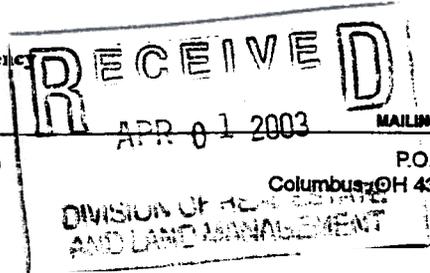
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INTEROFFICE COMMUNICATION

TO: Kim Baker, Ohio Department of Natural Resources

FROM: John Mack, Wetland Ecologist, 401/Wetland Section, through Randy Bournique,
Manager, 401/Wetland Section *R. Bournique*

DATE: March 25, 2003

CC: Laura Fay, DSW, Cynthia Frazzini, AGO, Dan Martin, AGO

RE: Ohio EPA comments on the CZMA Consistency Appeal of Barnes Nursery, Inc.

The Ohio Environmental Protection Agency (Ohio EPA) received an after-the-fact Section 401 Certification application to authorize the construction of a 1500 foot long by 50 foot wide by 5 foot deep water storage channel and to side cast spoil from this excavation in a high quality barrier-beach lagoon coastal marsh in Lake Erie (Sheldons Marsh).

The Ohio EPA has determined that Sheldons Marsh is a Category 3 wetland under Ohio Administrative Code (OAC) Rule 3745-1-54. Category 3 wetlands have superior hydrologic, habitat, and/or recreational functions. Sheldons Marsh is superior in all three respects: it is one of only three remaining, hydrologically unrestricted barrier-beach lagoon wetlands in Ohio; it is documented breeding and migratory habitat for waterfowl and migratory songbirds; the barrier beach has been designated critical habitat for the Great Lakes piping plover; it is habitat for other state and federal threatened and endangered species; and, it is a well known and highly utilized nature preserve.

The Ohio EPA proposed to deny the Section 401 Certification application submitted by Barnes Nursery, Inc. and Barnes Nursery, Inc. filed a timely request for an adjudication hearing before an Ohio EPA hearing examiner contesting the proposed denial. The hearing in this matter is scheduled to begin on April 7, 2003. After the hearing, the hearing examiner will prepare a Report and Recommendation to the Director of the Ohio EPA and a final decision will be made regarding the proposed denial.

Given the pendency of the state proceeding and the close nexus of facts between the hearing at Ohio EPA and the CZMA consistency appeal, we are unable to comment in more detail at this time.

Bob Taft, Governor
Maureen O'Connor, Lieutenant Governor
Christopher Jones, Director

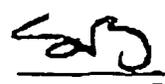
**BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of: : Case No. 02-CT-007
: :
BARNES NURSERY, INC., : :
: :
Applicant. : :
: :

BARNES NURSERY, INC.'S PREHEARING STATEMENT

Barnes Nursery, Inc. hereby gives notice that it does not intend to prosecute its appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This will certify that a copy of Barnes Nursery, Inc.'s Prehearing Statement was sent on this 28thth day of March 2003 to the following:

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Attorney for Barnes Nursery, Inc.

Nursery halts bid to take water from bay Firm drops appeal in irrigation project

By Steve Murphy, staff writer

HURON, Ohio - The owners of Barnes Nursery yesterday dropped their fight to win state approval to complete a half-finished irrigation ditch into the Sandusky Bay.

The company was scheduled for a hearing next week before the Ohio Environmental Protection Agency on its appeal of the agency's decision to deny a water quality permit.

Opponents of the project had argued that the partially dug canal could destroy wetlands in the nearby Sheldon Marsh State Nature Preserve.

Sharon Barnes, wife of nursery owner Robert Barnes, said the company decided to cut its losses after spending "hundreds of thousands of dollars" on the irrigation project since 2000.

"It is certainly important to our company, our family, our employees, but we also know that it could be years in appeals, and at the end, be nowhere different than where we are now," she said.

Mrs. Barnes also cited a slowing economy as a factor. She said the company "will take a different direction" that could include scaling back operations.

"It's a good possibility, but not for sure," she said. "We're looking at other alternatives. We haven't decided anything."

About 150 full-time, permanent employees work for the nursery, plus as many as 50 seasonal workers.

The Army Corps of Engineers granted Barnes a permit in June, 2000, to dig a 60-foot wide channel into the bay, then ordered the company to stop work a month later. The federal agency later revoked the permit, then gave the company permission in December, 2001, to complete the project, subject to water-quality certification from Ohio EPA.

In April, 2002, the state agency denied Barnes's application for a Section 401 water-quality certification, and the company appealed.

The channel would supply 350,000 gallons of water a day from east Sandusky Bay to the nursery in Huron.

In its denial of the permit, EPA cited more than a dozen sections of the Ohio Administrative Code that it said would be violated by completion of the project. The agency said the nursery failed to demonstrate a compelling need for the irrigation ditch or that the project would not harm nearby wetlands and endangered species in Sheldon Marsh.

Mrs. Barnes disputed the state's findings on the wetlands.

"We've spent a considerable amount of resources to show, with good science and good reporting, that we have done nothing negative to impact it," she said.

Heather Lauer, a spokesman for the EPA, said the agency was caught off guard by the nursery's withdrawal of its appeal.

"A lot of people here were surprised," she said. "People are talking over what the next steps are going to be."

Ms. Lauer said the Corps of Engineers' decision gave Barnes a choice: Apply for the water-quality permit through EPA or restore the site of the ditch to its original condition.

Mike Montone, the Corps of Engineers' project manager who is handling the Barnes Nursery case, could not be reached for comment yesterday.

Ms. Lauer said it was unclear what would be done with the unfinished irrigation channel.

Mrs. Barnes said the company hopes to continue using the ditch.

"What the canal offers us is a seven-day reservoir right now of irrigation water, and the only way this reservoir gets filled is when the bay fills up with water ... mostly through the energy of water moving into the bay with the wind," she said.

With Lake Erie's water levels down, "there were many days last year there would have been little or no water in the intake channel if that canal hadn't been there," she said.

SANDUSKY REGISTER

[FROM INTERNET PAGE 4/1/03]

Barnes drops OEPA appeal after 3 years

By Ann Richardson, staff writer

After a series of unsuccessful bids to build an irrigation channel through Sheldon Marsh State Nature Preserve, Barnes Nursery officials have decided not to argue their case before the Ohio Environmental Protection Agency at an April 7 hearing in Columbus.

Spokeswoman Sharon Barnes said Barnes Nursery will not pursue its case to build an irrigation channel through Sheldon Marsh State nature Preserve. (Register file photo)

Barnes Nursery spokeswoman Sharon Barnes announced Monday the company decided not to pursue further its appeal with the OEPA.

"The company has carefully weighed the cost, particularly the human resource cost, of pursuing this matter and decided it is not in the best business interest of the company to go forward," Barnes said in a prepared statement faxed to the Register Monday.

Last spring, the OEPA denied the nursery's permit application to allow it to continue its work on an irrigation ditch already begun on Barnes' property. The nursery appealed the decision.

The issue has been hotly contested since the nursery first received permission to build the channel from the U.S. Army Corps of Engineers in June 2000.

The Corps rescinded its approval a year later -- launching the two-year battle between Barnes Nursery and OEPA -- after the channel was partially constructed, because of possible damage to Sheldon Marsh, classified as one of the most pristine wetlands in the state.

Barnes estimated that the three-year fight has cost the company \$250,000 to \$300,000.

"I personally spent huge amounts of time on the permit application process," she said. "The most disappointing part of the whole thing has been the process itself."

"The fact that we've made this decision is a relief," Barnes said.

Barnes said the company can now move forward with other plans for the business.

"Rather than using our resources for a lengthy appeal process, we will be concentrating our efforts toward redirecting the company's future," Barnes said.

Barnes was optimistic about the company's future, despite the disappointing outcome of the appeal.

"Where the company goes will be our decision -- without this hanging over our heads, we can concentrate on the future," Barnes said.

"We were able to grow and expand before because we had access to lake water. We've never said we would close -- we're still a viable company. But this will have an impact on our business -- it will change our volume, how we order, what we choose to grow," Barnes said.

"We're starting to gather a team to look at some long and short-term plans. We're still committed to this area," Barnes said. "But the lack of water will change how we do business."

Barnes said the canal did no harm to the marsh.

"Barnes Nursery will always maintain that our hydrology project, completed on private property, in no way negatively impacted the adjacent state nature preserve. In fact, we have shown the project's positive effect on the coastal marshland," Barnes said.

Barnes, whose husband, Bob, owns the nursery, has said the channel, which provides irrigation for about 15 of the nursery's 100 acres, saved several acres in the summer of 2001.

According to the OEPA, digging the channel has affected 5.05 acres of Sheldon Marsh's 463 acres.

"Even if it was five out of 5,000, the fact is that when you're talking about an ecosystem that is of a quality that Sheldon Marsh is -- the very fact that it is so diverse and it is rare in Ohio -- we try not to lose any acreage," OEPA spokeswoman Heather Lauer said last April.

Mike Mantone, U.S. Army Corps of Engineer spokesman for the Buffalo District, did not return Register phone calls.

OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF GEOLOGICAL SURVEY

MEMORANDUM

DATE: 2 April, 2003
TO: KIM BAKER, REALM
FROM: DON GUY, Lake Erie Geology Group
RE: Consistency Appeal of Barnes Nursery, Inc.

Page references refer to the December 3, 2002 letter from Barnes to Holt.

Page 2, paragraph 4 – A short channel and ponds were constructed along the south side of the marsh before 1968 (figure 1). A north-south channel, about 500 feet long and 10 to 15 feet wide, was added in the early 1970s (figure 2) as noted in Barnes' letter of December 3, 2002. Between 1973 and 1997 there was little change to this north-south channel (figure 3). By August 21, 2000, this north-south channel had been widened and extended northward and westward, and a second north-south channel had been excavated 250 to 300 feet east of the first north-south channel (figure 4). This second channel extends more than 450 feet northward and is about 15 feet wide. Sediment excavated from the second channel appears to have been sidecast to either side of the channel, forming two low, intermittent ridges that rise above lake level (figures 4 and 5).

Natural drainage features south of the marsh in East Sandusky Bay trend at compass headings of 5 to 45° (north northeast) (figures 6 and 7). This drainage pattern extends into the marsh creating an irregular shoreline where drainage divides form promontories extending beneath lake level. To the extent that the excavated channels mentioned above trend northward, they approximate this natural drainage pattern. However, the long ditch and dike that extend generally east west truncate this natural drainage pattern (figures 6 and 7).

At one time a meandering channel, locally known as the Black Channel, extended along the backside of the barrier beach. This channel is shown on Judson's (1926) map of the East Bay Sporting Club (figure 8) and on the 1937 aerial photograph. A second meandering channel located about 1200 feet south of the Black Channel can also be seen on the map and aerial photograph. As migration of the barrier beach covered the Black Channel in the mid 1980s, exchange of water between lake and marsh transferred to this second channel, and another channel formed along the backside of the barrier beach provides for exchange of water with the eastern part of the marsh. These channels are clearly visible on aerial photographs taken on August 21, 2000 and on April 4, 2001 (figures 9 and 10).

Page 3, paragraph 3 - Vegetation may provide protection from erosion due to surface run off. However, vegetation does not provide long-term protection from wave attack. At present lake levels, even small waves generated by northerly winds blowing across the shallow open water of the wetland have caused local erosion along the face of the "dike" (figures 11 and 12). At higher

lake levels, especially during storm surges generated by northeast storm winds, wave activity will be greater and erosion will likely occur even if the dike is vegetated.

Formation of wave-cut scarps is not restricted to the dredged sediment making up the dike or to unvegetated clays. In the mid-1980s, a similar low (about 0.5-foot-high) wave-cut scarp in cohesive clays was observed amid wetland vegetation in several locations along the shoreline on the south side of the wetland.

Page 5, paragraph 3 - The first quote from Stout and others (1943) is correct. The second quote omitted the word "water"; the text reads:

"Possibilities: The chief water resources are the Huron River and Lake Erie".

Stout, W., Ver Steeg, K., Lamb, G.F., 1943, Geology of water in Ohio: Ohio Geological Survey Bulletin 44, p 279.

Please note that the authors describe the Huron River or Lake Erie as possible water sources, but do specifically recommend them as sources.

Later in the appellant's paragraph, the appellant quotes material extracted from a paragraph in chapter 1 of Stout and others (1943). The full paragraph reads (material quoted by the appellant is in boldface type):

*"At present, **water in large quantities is indispensable** for our great industrial plants, for sanitary purposes, and for domestic consumption. It is also of vital interest for flood and drought control; for its effect upon erosion; **for support of soil moisture for plant growth**; for its usefulness on the farm, dairying, **irrigation, spraying, etc.**; for military purposes both in peace and war; for air conditioning of homes, stores, and factories; for recreational purposes; for wild life both in the streams and on the land; and for the maintenance of scenic beauty in cascades, falls, streams, lakes, and reservoirs. Civilization is more and more dependent on this great natural resource."*

Stout, Wilbur, 1943, The Water Supply of Ohio, Chapter 1, pp. 17-18 in Stout, W., Ver Steeg, K., Lamb, G.F., 1943, Geology of water in Ohio: Ohio Geological Survey Bulletin 44, 694 p.

Please let me know if you have any questions regarding this material.

encl: Scanned images (pdf file) of pertinent pages from Stout and others, 1943 Figures 1 to 12.

cc: Cynthia Frazzini, AG
Constance Livchak, Division of Geological Survey
Thomas Berg, Division of Geological Survey

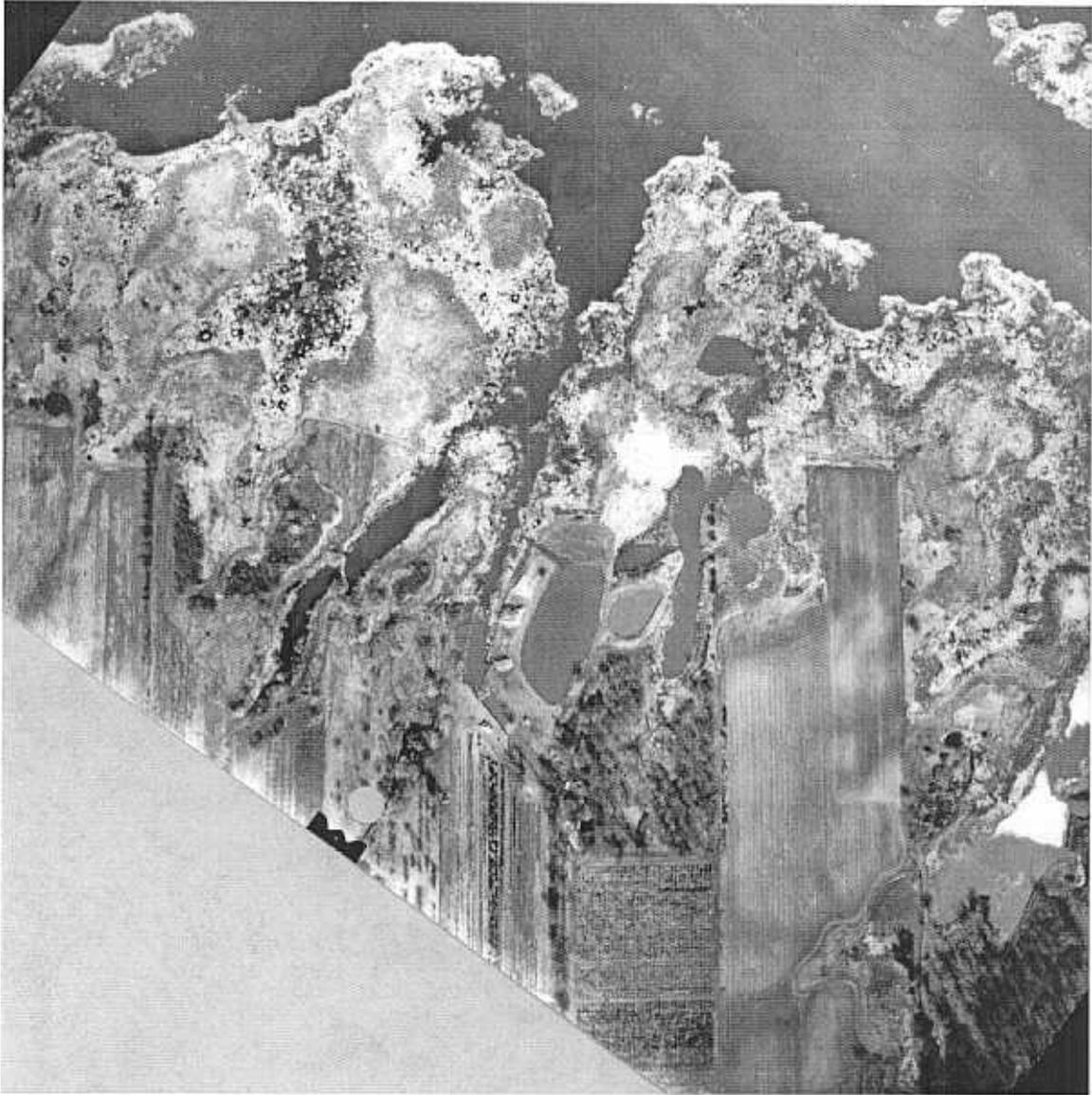


Figure 1.- Aerial photograph showing channel and ponds in 1968. Lake level was about 571.4 feet (IGLD 1985).



Figure 2. – Aerial photograph showing channel in 1973. Lake level was about 573.9 feet (IGLD, 1985).



Figure 3. – Aerial photograph showing channel in 1997. Lake level was about 573.5 feet (IGLD 1985).

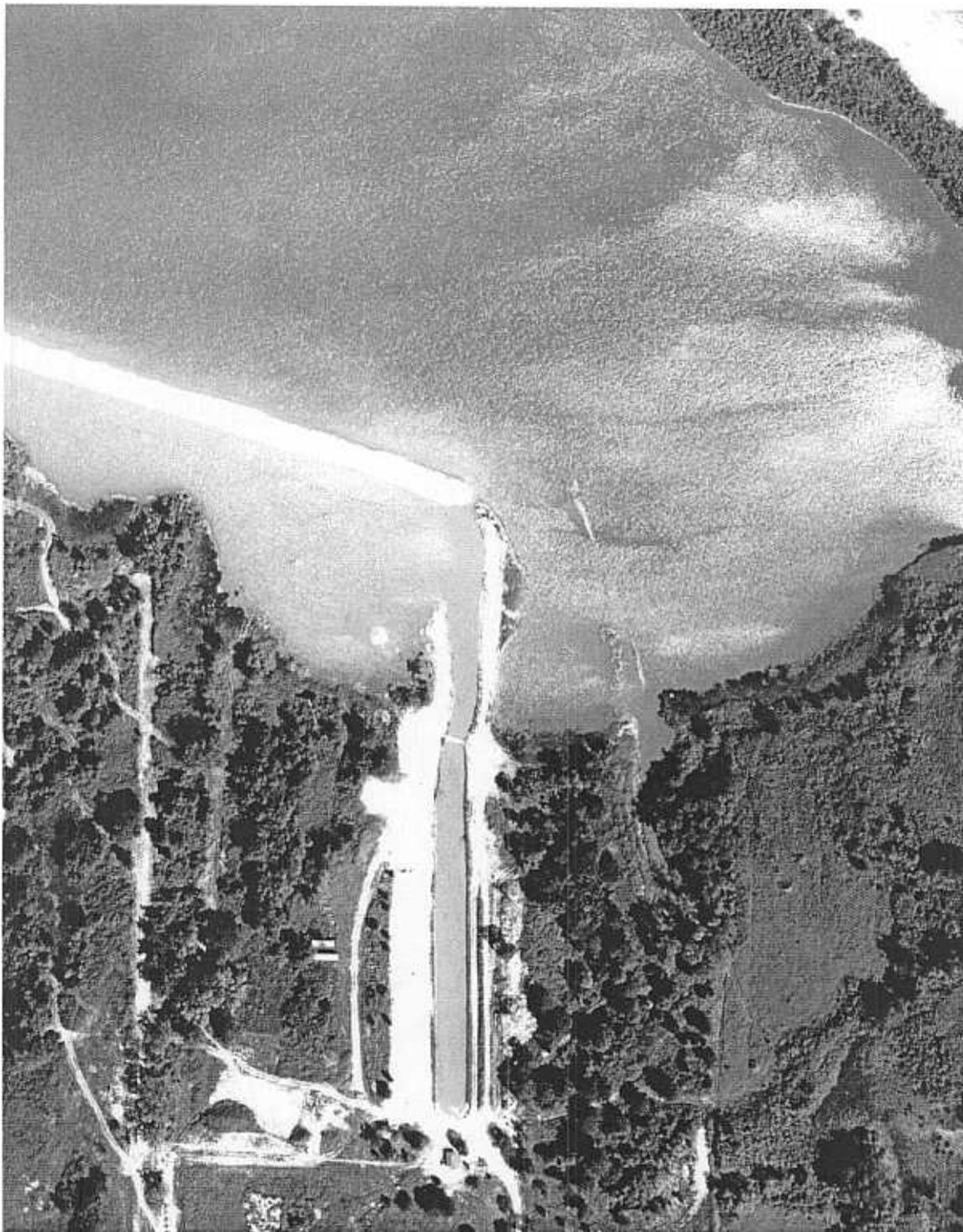


Figure 4.-- Aerial photograph taken August 21, 2000 showing second channel excavated to east of main channel. Note sediment sidecast along channel. Lake level was about 571.8 feet (IGLD 1985).

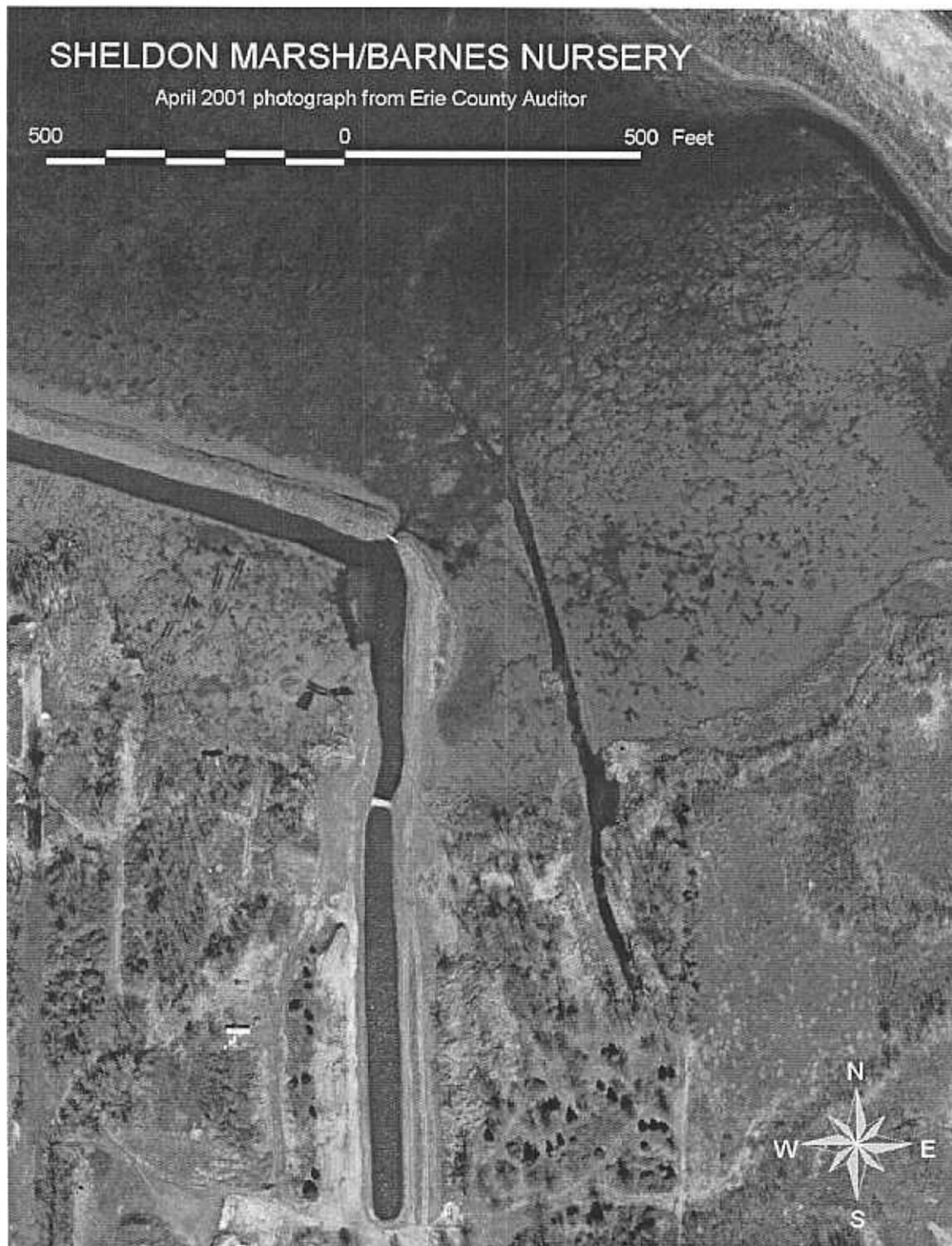


Figure 5.-- Aerial photograph taken April 4, 2001 showing second channel excavated to east of main channel. Lake level was about 571.1 feet (IGLD 1985).



Figure 6.--Section of Huron 7.5° quadrangle map showing topography and drainage pattern south of marsh.

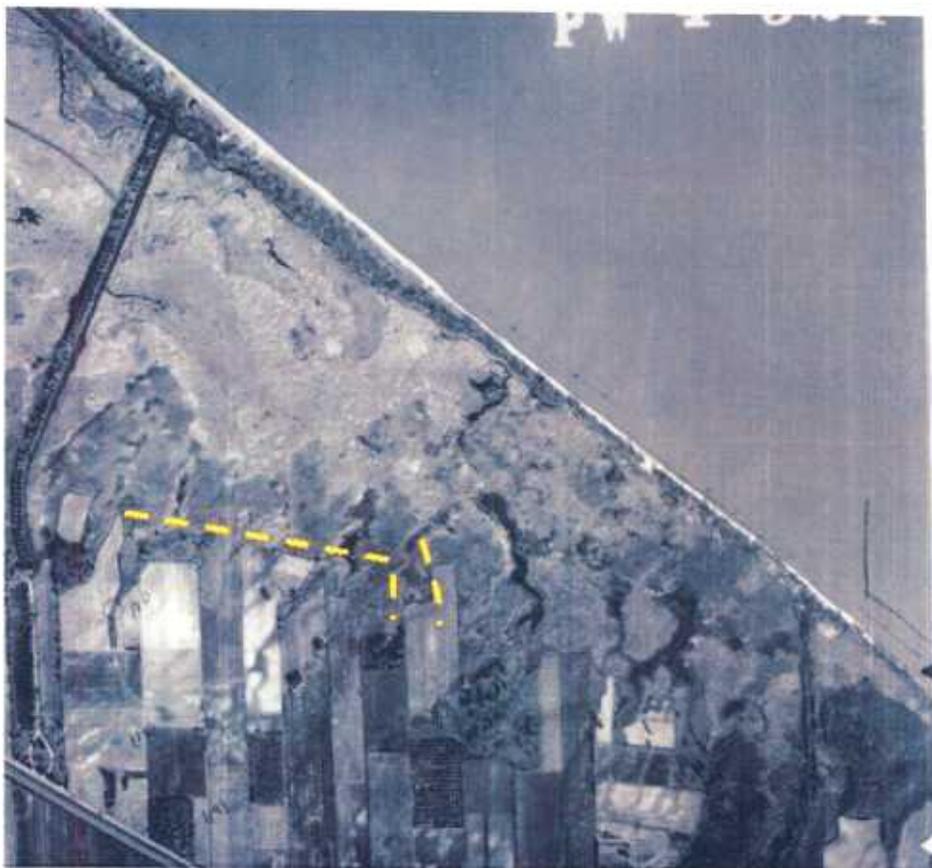


Figure 7.-- Aerial photograph taken October 31, 1937 showing drainage pattern in and south of marsh. Dashed lines show approximate location of channels excavated in 2000. Lake level was about 569.9 feet (IGLD 1985).

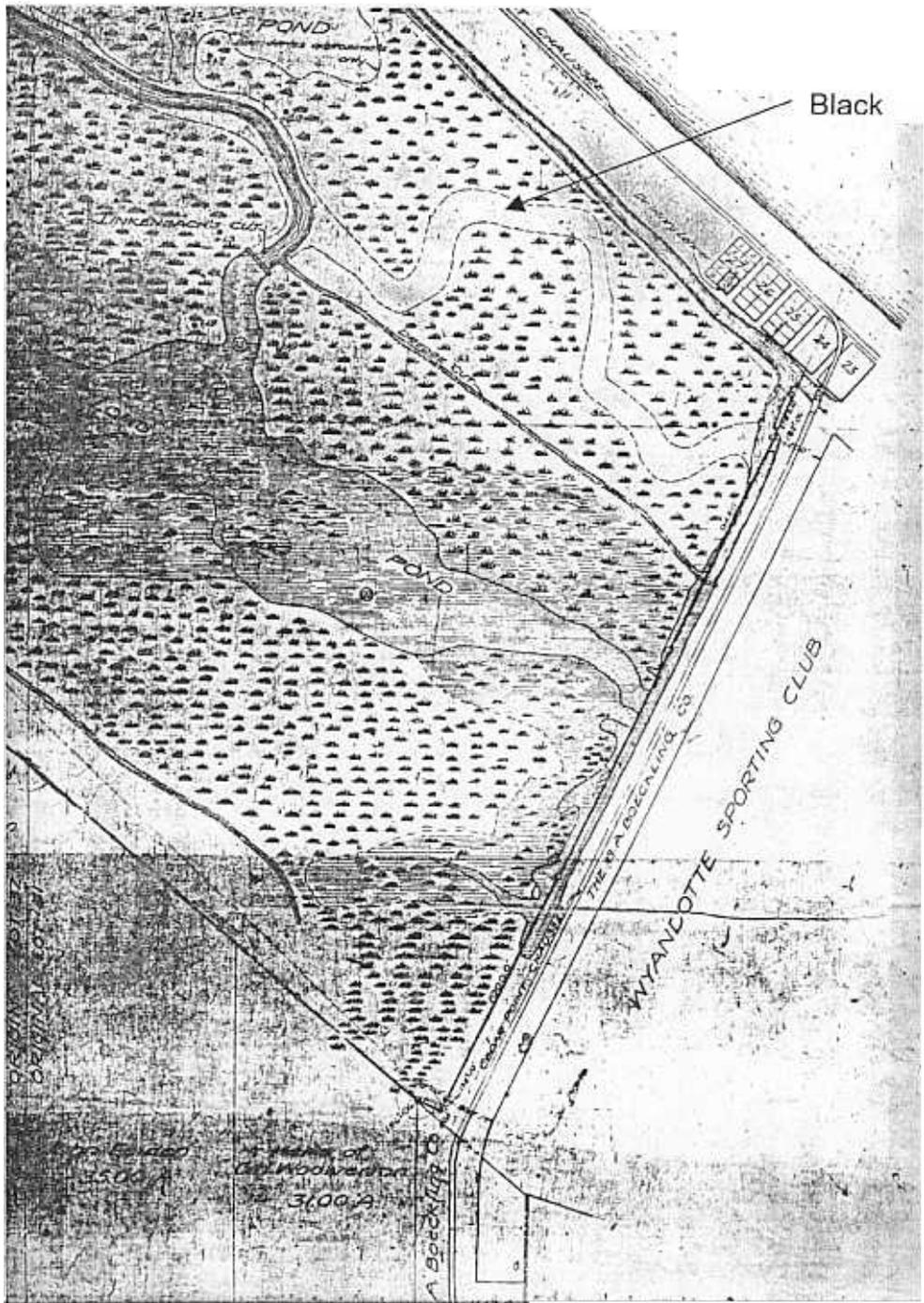


Figure 8.-- Location of Black Channel as shown on C.A. Judson's (1926) survey of East Bay Sporting Club. Note location of Long Pond relative to present day channels in Sheldon Marsh.



Figure 9. -- Aerial photograph taken August 21, 2000 showing channel extending south-southeast from Willow Drive causeway. Lake level was about 571.8 feet (IGLD 1985).



Figure 10. -- Aerial photograph taken August 21, 2000 showing channel developed along the back side of the barrier beach at Sheldon Marsh State Nature Preserve. Lake level was about 571.8 feet (IGLD 1985).



Figure 11.-- Photograph of wave-cut scarp eroded into clay along north side of dike. The 0.5-foot-high scarp is just below the sparsely vegetated (grass), dissected clay surface and just back of the vegetated surface. Photograph taken December 10, 2001.



Figure 12.-- Photograph of wave-cut scarp eroded into clay along the north side of the dike. The blue pen is resting on the 10- to 12-inch-high, near-vertical face of the scarp. Photograph taken December 10, 2001.

STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF GEOLOGICAL SURVEY
RALPH J. BERNHAGEN, CHIEF

BULLETIN 44

**GEOLOGY OF WATER
IN OHIO**

by

**Wilber Stout, Karl Ver Steeg,
and G. F. Lamb**

COLUMBUS

1943

Reprinted without revision 1968

THE WATER SUPPLY OF OHIO

By Wilber Stout

INTRODUCTION

A plentiful supply of water made the area, now Ohio, attractive to the aborigines, who from the evidence in old earthworks, maintained their homes here for centuries. The land was mostly in heavy forests or in rich pastures and supported a wealth of plant and animal life which provided these simple people with food and shelter. The streams then gave a copious supply of clear pure water, contributed, through fish and mussels, a part of the sustenance, and supplied a means of transportation and travel by canoes. The Great Miami, the Scioto, and the Muskingum valleys, more especially, appear to have been lands of plenty where this early civilization passed through several cycles of change.

The area was first known to the white man through adventurers down the Ohio River and along the south shore of Lake Erie. In early days many pioneers came into the territory by water, that is, they came down the Ohio River by flatboat or traveled along the lake front by sailboat, then traveled inland by foot or by horseback. These hardy men, through necessity, soon turned the power of water to profitable account by the erection of grist mills, sawmills, paper mills, blast furnaces, water forges, carding mills, woolen factories, tanneries, powder mills, furniture factories, and other industries. As examples, the Wolf Creek grist mill was built in 1790, the Hopewell blast furnace in 1804, the Little Beaver Creek paper mill in 1805, the Dillon and Mosquito Creek forges in 1809, etc.

For years after settlement of the State commerce with outside areas was carried on nearly entirely through use of the larger streams, the Mahoning, Muskingum, Scioto, Ohio, and Mississippi rivers, as the arteries of trade. The common carriers were at first flatboats and keelboats but these soon gave way to steamboats and towboats. The steamboat, Orleans, made its maiden trip on the Ohio River in 1811 and the towboat, Conder, began plying the trade in 1835. Next, water was responsible for much internal development and improvement to the State through the formation of the canal systems inaugurated in 1825 and eventually including 813 miles of waterway. It was yet much used in 1880 for industrial purposes as Sherman states that there were still about 1,000 dams in Ohio.

At present, water in large quantities is indispensable for our great industrial plants, for sanitary purposes, and for domestic consumption. It is also of vital interest for flood and drought control; for its effect

upon erosion; for support of soil moisture for plant growth; for its usefulness on the farm, dairying, irrigation, spraying, etc.; for military purposes both in peace and war; for air conditioning of homes, stores, and factories; for recreational purposes; for wild life both in the streams and on the land; and for the maintenance of scenic beauty in cascades, falls, streams, lakes, and reservoirs. Civilization is more and more dependent on this great natural resource.

THE PROVIDENCE OF NATURE

TOTAL RAINFALL

The Creator was good to us in Ohio in supplying, on the average, 37.97 inches of rainfall each year. In general, the moisture is quite well distributed throughout the year, that is, there are few long periods of drought or flood. Such a supply of water is ample to sustain the people living here; to supply industries, large and small; to maintain soil moisture for plant and animal life; to aid in sanitation; and to serve in many other ways in supporting a progressive civilization. This great heritage of water supply is ours and it should be properly used and sacredly conserved.

Just what does 37.97 inches of rainfall mean? It amounts to:

23.67 gallons per square foot
 1,031,048 " " acre
 659,870,866 " " square mile
 27,228,271,351,673 " for State of 41,263.03 sq. miles

Average Run-off of Streams in Ohio

Stream	Period of record	Drainage area sq. mi.	Average discharge sec.-ft.	Annual run-off in inches
Mahoning-Youngstown	1921-40	899	823	12.42
Muskingum-McConnelville	1921-40	7,411	7,224	13.24
Hocking-Athens	1916-40	944	1,017	14.66
Scioto-Higby	{ 1930-35 1937-40	5,129	3,967	10.49
Miami-Hamilton	{ 1910-18 1927-40	3,639	3,457	12.90
Maumee-Waterville	{ 1921-35 1939-40	6,314	4,233	9.10
Sandusky-Fremont	{ 1923-35 1938-40	1,248	876	9.53
Cuyahoga-Independence	{ 1921-22 1927-35	709	653	12.50
Grand-Madison	{ 1922-35 1938-40	587	618	14.25

Average annual run-off from the 26,880 square miles = 11.55 inches.

FLORENCE

Population: 150

Streams: Florence lies on the glaciated, moderately rolling Mississippi Valley Plain, one and one-half miles south of the beach ridge of old Lake Maumee, at an elevation approximating 825 feet, and one-half mile northeast of Chappel Creek.

Glaciation: Both the Illinoian and Wisconsin glaciers passed over the area but in general left only a thin and patchy coating of drift, averaging less than 20 feet.

Floor level: Chappel Creek lies at an elevation of about 785 feet and the village at 825 feet.

Rocks: The Berea sandstone lies closely below the level of the village and may provide small supplies of water. The underlying Bedford and Ohio shales yield little or no water.

Sulphur water and brine: Sulphur water, if any, will be encountered in the Bedford and Ohio shales and brine in the lower carbonate rocks.

Present supply: The supply, 1941, is from common wells.

Possibilities: The water resources are confined to the Berea sandstone and to Chappel Creek.

HURON

Population: 1,827

Streams: Huron lies on the flat, glaciated Lake Plain, just south of Lake Erie, west of the mouth of the Huron River, and at an elevation approximating 590 feet. (Lake Erie 573 feet.)

Glaciation: Both the Illinoian and Wisconsin ice sheets passed over the area. In general, locally, the drift is thin, less than 20 feet.

Floor level: No buried valleys are known in the area.

Rocks: The underlying rocks are the hard, fissile shales of the Huron member of the Ohio formation. These shales are practically devoid of water, and the underlying Delaware and Columbus limestones yield only small supplies.

Sulphur water and brine: All deep tests encounter sulphur water and then brine.

Present supply: Filtered water from the Lake is used, 1941.

Possibilities: The chief water resources are the Huron River and Lake Erie.



Ohio Department of Natural Resources

BOB TAFT, GOVERNOR

SAMUEL W. SPECK, DIRECTOR

To: Kim Baker
From: Gary Obermiller
Date: 03-13-03
Re: Coastal Consistency comments

In response to the supplemental information filed by Barnes Nursery in the Consistency Appeal, I have the following comments,

- Page 4, Appendix L-2 with John Ahl's information on man-made islands is new to me.
- Page 6, the figures on utilizing county water differs from figures submitted in previous documents.

It may not be relative to this particular procedural issue but there are several false statements within the new document that may have been addressed in previous comments but I will submit them again.

- Page 2 under Plant Species: The channel may act as a barrier to colonies of phragmites south of the channel but no mention is made of the phragmites that is colonizing on the spoil dike which will promote a rapid spread of phragmites directly into the interior of Sheldon Marsh during low water levels as we are experiencing now.
- Page 3, second paragraph: Claim that vegetation has held dike in place is false. We have photographs of the gradual erosion on the north face of the dike into Sheldon Marsh State Nature Preserve.
- Page 4, second paragraph: The appellants claim that there is water in the channel only when there is water in the marsh is false. In August of 2002 during drought conditions with a set up of south winds the marsh was entirely without water and the channel retained a consistent level of water during the entire month.



Ohio Department of Natural Resources

BOB TAFT, GOVERNOR

SAMUEL W. SPECK, DIRECTOR

James R. Morris • Chief

Division of Water

MEMORANDUM

To: Kim Baker, REALM
From: Jim Raab, Division of Water JR
Date: March 12, 2003
Subject: Barnes Nursery

I have looked through the Barnes' Consistency Appeal letter dated December 3, 2002 as requested. I have the following comments concerning that letter:

The letter states that Tibboles drilled 3 wells in 1983 and that well logs are on file with our office. I have searched our water well log database and paper well log files. We do not have the well records for Barnes Nursery in our files. Well logs should have been filed by Tibboles but were never filed. I have left numerous messages for Tibboles Well Drilling but have not received a return call.

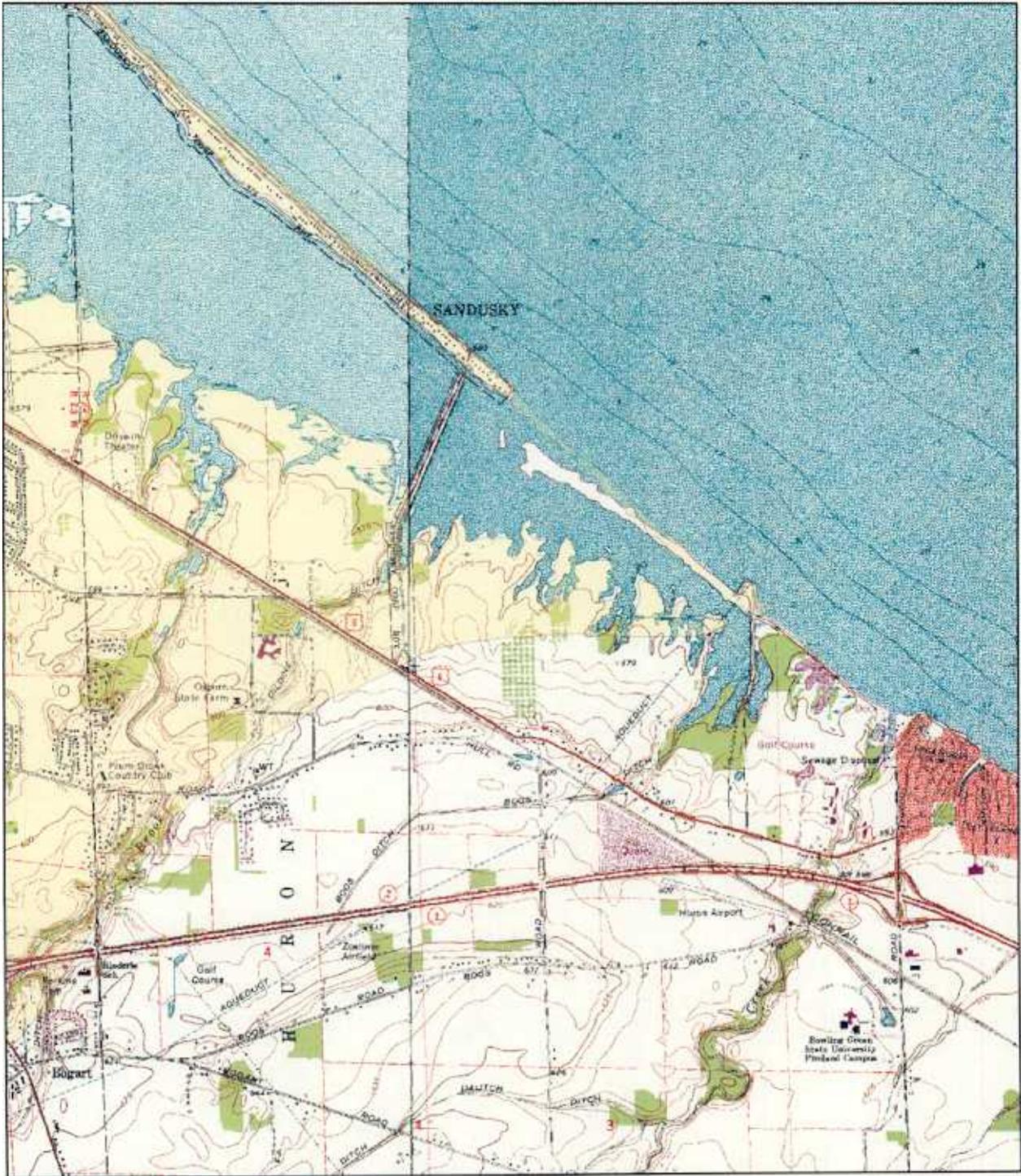
We know this is a marginal area for water quality from the carbonate (limestone) aquifer. We were not aware that Barnes had tried to drill water wells since we never received the well logs. On page 5 of the December 2 letter, it states that each of the 250-foot deep wells produced "only a trace of water and sulfur gas from the shale bedrock." These wells might not have been drilled deep enough to penetrate an adequate thickness of the carbonate aquifer present below the shale.

The publication referenced on Page 5 of the letter (Ohio Department of Natural Resources, Division of Geological Survey Bulletin No. 44, Geology of Water in Ohio) was written in 1943. The geology of this region changes west of Huron. The shale bedrock thins in a westerly direction. We have newer maps of the ground water resources for Ohio. The Ground Water Resources map for Erie County, published in 1986, does show the Barnes property in a marginal ground water area but they are close to the contact where the carbonate aquifer yields a few hundred gallons per minute. The state aquifer map, which was completed in 2000, indicates that the carbonate aquifer has the potential of yielding 25-100 gallons per minute on the northwestern edge of the Barnes Nursery property. I have enclosed a map showing where we have mapped the carbonate aquifer having the potential of yielding 25-100 gallons per minute. I believe the boundary cuts through the northwestern edge of the Barnes Nursery. Even though the water might not be adequate for human consumption without treatment, we do not know if it would be adequate for irrigation water. Without any conclusive data, we recommend that a well be drilled on the northwestern side of the Barnes' property and a pumping test be conducted. A water sample can also be collected and analyzed.

If you have any questions, please let me know.

cc: Cynthia Frazzini, REALM
John Bartley, REALM

Location and Yield of the Carbonate Aquifer



Legend

YIELD

 25 - 100 gpm



From: John & Kim Marshall [marshall@johnstown.net]
Sent: Friday, February 21, 2003 3:28 PM
To: bill.moody@dnr.state.oh.us; scott.zody@dnr.state.oh.us;
paul.baldrige@dnr.state.oh.us; david.mackey@dnr.state.oh.us;
randy.bournique@epa.state.oh.us; cfrazzini@ag.state.oh.us
Cc: nancy.strayer@dnr.state.oh.us
Subject: Barnes Nursery news

Gary Obermiller, DNAP, met with Jack Meyers, Erie County Sanitary Engineer, yesterday to discuss the transition of the NASA pump station to the Erie County Engineer's Office for water supply purposes. The Erie County Engineer's office indicated to Gary that they anticipate that the pump station will be on-line for use by fall, and that the Engineer's office would be more than willing to construct a tap into the aqueduct on Barnes Nursery property to provide raw water for the nursery operation.

This development appears to be a viable alternative for water supply to the nursery, would cost considerably less than bringing water from the existing Erie County water plant and would give Barnes Nursery a source of untreated (nonchlorinated) water.

FYI

Kim

From: Bob Puzak [mailto:Robert.M.Puzak@nasa.gov]
Sent: Friday, February 28, 2003 8:06 AM
To: Jack Meyers
Subject: Re: Rye Beach Intake

The agreement probably will not allow any modifications to the existing piping system unless approved by NASA. I am sure when the time comes we can deal with that issue in the agreement.

Bob

At 03:49 PM 02/27/2003 -0500, you wrote:

>Hi Bob

>

>Gary Obermiller, ODNR asked me to work up a cost to sell tap and raw water
>to Barnes Nursery. If we are able to get an agreement with NASA Federal
Gov

>to use this intake, pump station and raw water line....do you see any
reason

>that would prevent Erie County from selling raw water directly from the
>aqueduct for irrigation purposes?

>

>Sincerely,

>

>Jack R. Meyers, P.E.

>Erie County Sanitary Engineer

>554 River Road

>P.O. Box 549

>Huron, OH 44839

>(419) 433-7303 - phone

>(419) 433-6214 - fax



STATE OF OHIO WATER WITHDRAWAL FACILITY REGISTRATION

SEND TO: OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RESOURCES
WATER RESOURCES DEVELOPMENT SECTION
1900 MOUNTAIN SQUARE COURT, BLDG. E-3
COLUMBUS, OHIO 43224-1336
(614) 265-6750

JUN 19 2001

02091

AUTHORITY: Ohio Revised Code Section 1521.16 requires that any owner of a facility, or combination of facilities, with the capacity to withdraw more than 100,000 gallons of water daily, register such facilities with the Ohio Department of Natural Resources, Division of Water.

100,000 Gallons Per Day (GPD) = 0.1 Million Gallons Per Day (MGD) = 4200 Gallons Per Hour (GPH) = 70 Gallons Per Minute (GPM)

Detailed directions are on a separate instruction sheet. Please type or print the following information:

1. OWNER OF WATER WITHDRAWAL FACILITY

Owner's Name <u>ROBERT W. BARNES</u>	Contact Person (If other than owner) <u>JARRET S. BARNES</u>
Company Name <u>BARNES NURSERY, INC.</u>	Company Name <u>BARNES NURSERY, INC.</u>
Mailing Address <u>3511 W. CLEVELAND ROAD</u>	Mailing Address <u>3511 W. CLEVELAND ROAD</u>
City, State, Zip <u>HURON OH 44839</u>	City, State, Zip <u>HURON, OH 44839</u>
SIC (Standard Industrial Classification)-4 digit <u>0181</u>	Phone <u>(419) 433-5525</u>
Phone <u>(419) 433-5525</u>	Phone <u>(419) 433-5525</u>

The annual withdrawal report form should be sent to : Owner Contact person (Check one)

2. WATER USE

Estimate percentage of the total water use from all sources for each type of use for both ground water and surface water.
Total water use for both ground and surface water = 100%; GW = Ground water; SW = Surface water

WATER USE			WATER USE		
	GW%	SW%		GW%	SW%
Public Water Supply			Mineral Extraction		
Community			Coal		
Non-community			Oil		
(OEPA # _____)			Salt		
Agricultural			Sand and Gravel		
Livestock Watering			Limestone		
Crop Irrigation			Other _____		
Nursery/Turf/Landscaping		<u>100%</u>	(Please specify)		
Industrial			Miscellaneous		
Process Water			Recreation/Amusement		
Cooling Water			Water Quality Remediation		
Power Generation			Heating/Cooling		
Nuclear			Domestic		
Thermoelectric			Fish Hatchery		
Hydroelectric			Dewatering		
			Golf Course Irrigation		
			Other _____		
			(Please specify)		

RECEIVED
JUN 20 2001
CENTRAL DIVISION OF WATER
WATER RESOURCES SECTION

3. WATER WITHDRAWAL FACILITY CAPACITY

Total withdrawal capacity of the facility: 1,584 GPD or (MGD) (Circle one) (Running full, 24 hours)

NOTE: Total withdrawal capacity is the sum of the withdrawal capacity for all wells and surface water intakes combined.

Was construction of this facility completed before January 1, 1990? Yes No

Name of facility Barnes Pump #1 BARNES NURSERY AL

4. SUPPLY SOURCES

GROUND-WATER SOURCES	SURFACE-WATER SOURCES
Total number of wells <u>0</u>	Total number of surface-water intakes <u>1</u>
Total withdrawal capacity of all wells _____	Total withdrawal capacity of all intakes <u>1,584</u>
GPD or MGD (Circle one)	GPD or <u>(MGD)</u> (Circle one)

FOR EACH WELL
PROVIDE THE FOLLOWING:

FOR EACH SURFACE-WATER INTAKE
PROVIDE THE FOLLOWING:

A. Owner's well number N/A
Well capacity _____ GPD or MGD (Circle one)
Well log number (or copy of well log) _____
Well depth _____ (ft) Well diameter _____ (in)

A. Owner's intake number 1
Intake capacity 1.584 GPD or MGD (Circle one)
Name of body of water EAST SANDUSKY BAY LAKE

AQUIFER UTILIZED (Check one)

SOURCE UTILIZED (Check one)

- Sand
- Sandstone (SS)
- Sand and gravel
- Limestone (LS) /Dolomite
- Shale (Sh)
- Interbedded SS, LS, Sh
- Underground mine
- Other _____

- River, stream, or drainage ditch
- Lake, pond, quarry, or reservoir
- Other _____

LOCATION OF WELL

LOCATION OF INTAKE

County _____
Township _____ Section _____
Nearest City or Town _____
Provide written description of well location.

County Erie
Township Huron Section _____
Nearest City or Town Sandusky - Huron (exactly midway)
Provide written description of intake location.

our intake channel is located on the north center of the Barnes Cleveland Road property, with free construction to body of water intake elevation 1.5' above low water datum

ERIC
AL

B. Owner's well number N/A
Well capacity _____ GPD or MGD (Circle one)
Well log number (or copy of well log) _____
Well depth _____ (ft) Well diameter _____ (in)

B. Owner's intake number N/A
Intake capacity _____ GPD or MGD (Circle one)
Name of body of water _____

AQUIFER UTILIZED (Check one)

SOURCE UTILIZED (Check one)

- Sand
- Sandstone (SS)
- Sand and gravel
- Limestone (LS) /Dolomite
- Shale (Sh)
- Interbedded SS, LS, Sh
- Underground mine
- Other _____

- River, stream, or drainage ditch
- Lake, pond, quarry, or reservoir
- Other _____

LOCATION OF WELL

LOCATION OF INTAKE

County _____
Township _____ Section _____
Nearest City or Town _____
Provide written description of well location.

County _____
Township _____ Section _____
Nearest City or Town _____
Provide written description of intake location.

C. Owner's well number N/A
Well capacity _____ GPD or MGD (Circle one)
Well log number (or copy of well log) _____
Well depth _____ (ft) Well diameter _____ (in)

C. Owner's intake number N/A
Intake capacity _____ GPD or MGD (Circle one)
Name of body of water _____

AQUIFER UTILIZED (Check one)

SOURCE UTILIZED (Check one)

- Sand
- Sandstone (SS)
- Sand and gravel
- Limestone (LS) /Dolomite
- Shale (Sh)
- Interbedded SS, LS, Sh
- Underground mine
- Other _____

- River, stream, or drainage ditch
- Lake, pond, quarry, or reservoir
- Other _____

LOCATION OF WELL

LOCATION OF INTAKE

County _____
Township _____ Section _____
Nearest City or Town _____
Provide written description of well location.

County _____
Township _____ Section _____
Nearest City or Town _____
Provide written description of intake location.

(Note: Use additional sheets if necessary)

(Note: Use additional sheets if necessary)

Supply Sources Continued:

D. Owner's well number N/A
 Well capacity _____ GPD or MGD (Circle one)
 Well log number (or copy of well log) _____
 Well depth _____ (ft) Well diameter _____ (in)

AQUIFER UTILIZED (Check one)

- | | |
|---|---|
| <input type="checkbox"/> Sand | <input type="checkbox"/> Shale (Sh) |
| <input type="checkbox"/> Sandstone (SS) | <input type="checkbox"/> Interbedded SS, LS, Sh |
| <input type="checkbox"/> Sand and gravel | <input type="checkbox"/> Underground mine |
| <input type="checkbox"/> Limestone (LS) /Dolomite | <input type="checkbox"/> Other _____ |

LOCATION OF WELL

County _____
 Township _____ Section _____
 Nearest City or Town _____
 Provide written description of well location.

D. Owner's intake number N/A
 Intake capacity _____ GPD or MGD (Circle one)
 Name of body of water _____

SOURCE UTILIZED (Check one)

- | |
|---|
| <input type="checkbox"/> River, stream, or drainage ditch |
| <input type="checkbox"/> Lake, pond, quarry, or reservoir |
| <input type="checkbox"/> Other _____ |

LOCATION OF INTAKE

County _____
 Township _____ Section _____
 Nearest City or Town _____
 Provide written description of intake location.

5. LOCATION OF WATER USE

State OHIO County ERIE Township HURON Section _____

Provide written description of location of water use. If more than one water use location exists, attach separate sheets providing the above information for each.

Water is used to irrigate a landscape nursery & container growing operation. The Garden Center and some of the planting beds are 30' higher than lake levels. The location of water use is carefully graded, tiled, stoned and is well maintained.

6. TYPE AND LOCATION OF DISCHARGE POINTS

Estimate percentage of water discharged to the following:

- | | |
|--|---|
| <input type="checkbox"/> Recharge Well | <input type="checkbox"/> Land Application |
| <input type="checkbox"/> On Site Sewage Disposal | <input type="checkbox"/> Recycling Basin |
| <input type="checkbox"/> Ground-water Recharge Basin | <input type="checkbox"/> Wetland |

~~40-60%~~ Pond, Lake, or Reservoir Name The Barnes Intake Reservoir flows to East Sandusky, Bar
 River, Stream, or Drainage Ditch Name _____
 Other _____
 (Please specify)

Location of Discharge Facility

State OHIO County ERIE Township HURON Section _____

Provide written description of location of discharge facility. If more than one point of discharge exists, attach separate sheets providing the above information for each.

The discharge facility is the intake reservoir located on the north central part of the Barnes Nursery Cleveland Road farm.

Please complete a water withdrawal facility location sketch on page 4.

7. STATEMENT OF AFFIRMATION

I hereby certify that to the best of my knowledge the information submitted herein, is true, accurate and complete.

Owner or authorized representative's signature

Calvin Barnes

Date

6/20/01



**STATE OF OHIO
WATER WITHDRAWAL
FACILITY REGISTRATION
ANNUAL REPORT FORM**

**SEND TO: OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER
WATER RESOURCES SECTION
1939 FOUNTAIN SQUARE COURT, BLDG. E-1
COLUMBUS, OHIO 43224-1385
(614) 265-6735**

AUTHORITY: Ohio Revised Code Section 1521.16 requires that any owner of a facility, or combination of facilities, with the capacity to withdraw more than 100,000 gallons of water daily, register such facilities and file an annual report with the Ohio Department of Natural Resources, Division of Water.

Water Withdrawal Report for the Year Ending December 31, 2001

According to our records,

The **CONTACT** is listed as:
JARRET S. BARNES
BARNES NURSERY, INC
3511 W. CLEVELAND RD
HURON , OH 44839
 Phone: 419/433-5525

Make Corrections Below

The **OWNER** is listed as:
ROBERT W. BARNES
BARNES NURSERY, INC
3511 W. CLEVELAND RD
HURON , OH 44839
 Phone: 419/433-5525

Make Corrections Below

Please make any corrections or changes to the listed OWNER and CONTACT information in the space provided to the right of the address.

Facility Name and Withdrawal Mode: Please make any changes next to the well or intake number(s).

BARNES NURSERY
 Registration Number: 02091
 Well Number:

Registration Date: 6/25/2001
 Intake Number: PUMP#1

Eric

RECEIVED
FEB 14 2002
ODNR/DIVISION OF WATER
WATER RESOURCES SECTION



Ohio Department of Natural Resources

BOB TAFT, GOVERNOR

SAMUEL W. SPECK, DIRECTOR

James R. Morris • Chief

Division of Water

December 20, 2002

Dear Water Withdrawer:

Enclosed is your 2002 annual report form for the water withdrawal facility that is registered with the Ohio Department of Natural Resources, Division of Water. You are listed as the contact person for this facility. As legally required by Section 1521.16 of the Ohio Revised Code, all registered facilities must submit annual reports listing actual water withdrawals and return flows. Please complete and return the report to the Division of Water by **March 1, 2003**. For your convenience, a postage-paid, return envelope is enclosed. The **instructions** for completing the annual report form are on the reverse side of this letter.

All registered facilities are encouraged to accurately meter or measure their water withdrawals and return flows. Realizing that not all facilities have this capability, those without metering devices should provide the information to the best of their ability. Keeping records throughout the year should facilitate the completion of the annual withdrawal reporting requirement.

Thank you for your cooperation. If you have questions, please call Jason Remich of the Division of Water at (614) 265-6744. For additional information and annual report forms please visit the Division of Water's web site at:

<http://www.dnr.state.oh.us/water/waterinv/wwfrprog/>

Sincerely,

A handwritten signature in cursive script that reads "James R. Morris".

James R. Morris, P.E.
Chief, Division of Water

JRM/jdr
Attachment
Reporting Instructions on Back

cc: David Cashell, Division of Water
Joan Weiser, Chief Counsel

Cynthia K. Frazzini

From: Montone, Michael G LRB [Michael.G.Montone@LRB01.usace.army.mil]
Sent: Tuesday, April 01, 2003 5:36 PM
To: annrichardson@sanduskyregister.com; jallen@morningjournal.com; smurphy@theblade.com
Cc: SharonLBar@aol.com; Steven D. Bell; 'Frazzini, Cindy'; Paul.Baldrige@dnr.state.oh.us; megan_sullivan@fws.gov; Gorski.Wayne@epamail.epa.gov
Subject: Barnes Nursery, Response to Newspaper Reporters
Importance: High

Ann, Rich and Steve,

I received a voice mail messages from each of you regarding Barnes Nursery while I was out of the office yesterday. You requested comments from the Corps regarding reports that Mr. Barnes is allegedly terminating his appeal process with respect to the Ohio Environmental Protection Agency (OEPA) denial of Section 401 Water Quality Certification (WQC) for his project, and how the Corps will respond.

On December 7, 2001 we issued a PROVISIONAL Department of the Army permit to Barnes Nursery, authorizing Mr. Barnes to maintain the existing irrigation channel with proposed modifications and mitigation measures to compensate for the temporary and permanent impacts to waters of the US along the southern shoreline of East Sandusky Bay, adjacent to, and south of Sheldon Marsh State Nature Preserve.

This Department of the Army permit is provisional until a Coastal Zone Management, Federal consistency determination (CZM) has been issued by the Ohio Department of Natural Resources and WQC has been issued by the OEPA. According to our records, both of these state approvals have been denied and Mr. Barnes is engaged in two separate appeal processes.

At this time, we have not received any correspondence from Mr. Barnes, or any state or federal agency addressing a final decision for either of these appeal processes. If the Corps should receive any correspondence from a state or federal agency notifying us of a final decision with respect to CZM or WQC, we will carefully review the agency's decision, and all elements of the project, before making an informed decision on how to proceed.

A summary of past Corps actions on this file including the Environmental Assessment documenting our rationale for issuing a provisional permit can be viewed at <http://www.lrb.usace.army.mil/orgs/reg/upd200002170.htm>

Thank you,

Mike Montone