

**APPENDIX A — Kentucky Court of Appeals
March 24, 2017 Opinion Affirming Orders about
Master Commissioner Deed and CR11 Sanction**

Rendered: March 24, 2017; 10:00 A.M.
Not to Be Published

**COMMONWEALTH OF KENTUCKY
COURT OF APPEALS**

NO. 2012-CA-000384-MR

**PATRICIA RAGLAND MCGEHEE
AND RICHARD MCGEHEE APPELLANTS**

**APPEAL FROM HARDIN CIRCUIT COURT
v. HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 06-CI-01508**

**COMMONWEALTH OF KENTUCKY, APPELLEE
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS**

**OPINION
AFFIRMING
** ** ***

**BEFORE: KRAMER, CHIEF JUDGE; D. LAMBERT
AND J. LAMBERT, JUDGES.**

**LAMBERT, D., JUDGE: Patricia Ragland McGehee
and Richard McGehee bring this appeal from two
orders entered by the Hardin Circuit Court in favor
of the Kentucky Transportation Cabinet (“KYTC”).
Specifically, the McGehees ask this Court to review
the Hardin Circuit Court’s ruling authorizing the
Master Commissioner of the Hardin Circuit Court to**

execute a deed of conveyance and whether the Hardin Circuit Court properly imposed sanctions on them pursuant to Rule 11 of the Kentucky Rules of Civil Procedure (“CR”). After careful review of the record, we find no error and affirm.

I. FACTUAL AND PROCEDURAL HISTORY

This appeal stems from a petition filed by the KYTC on August 21, 2006, seeking to condemn a portion of the real property owned by the McGehees. The KYTC sought to extend Kentucky Highway 3005 to meet the Western Kentucky Parkway, a project colloquially known as the “Ring Road Extension.” This project necessitated the KYTC exercise its power of eminent domain over a 7.7 acre portion of the 85-acre tract owned by the McGehees.

The McGehees—particularly Patricia—have a fierce attachment to this property, it having been Patricia’s childhood home. Following an eligibility study submitted on September 11, 2006, their property was accepted onto the National Register of Historic Places. The McGehees vehemently opposed the KYTC’s exercise of eminent domain, utilizing nearly every conceivable avenue for resistance.

The KYTC moved for an interlocutory order for possession of the subject portion of the McGehees’ property on October 17, 2006. The McGehees filed an answer and counter-claim on October 19, 2006. The Hardin Circuit Court¹ held a bench trial on the

¹ For the sake of clarity, due to the various courts deciding multiple issues in this matter, this Court intends its use of the phrase “trial court” to refer to the Hardin Circuit Court.

motion from December 14 through December 19, 2007.

While awaiting ruling on the KYTC's motion for an interlocutory order, the McGehees filed an original action² in Franklin Circuit Court on April 2, 2008, seeking a declaration of rights. The Franklin Circuit dismissed the complaint, holding that the McGehees lacked standing to pursue a claim challenging the construction project under KRS 45A.245. The McGehees appealed that ruling, and this Court affirmed the Franklin Circuit.³

The trial court issued its ruling on the interlocutory order on May 30, 2008 (though the order was not entered until June 2, 2008). The trial court held that the KYTC had satisfied its statutory burden of proving entitlement to condemn the property under KRS 416.540-416.680, and further held that the McGehees had failed to meet their burden of proving the KYTC had acted in bad faith, committed fraud, or abused its discretion (which would have precluded condemnation). The order noted that it was final and appealable as to the issues of the KYTC's right to condemn and right to immediate entry, leaving the issue of compensation to be resolved later.

The McGehees filed a motion pursuant to CR 59.05 to alter, amend, or vacate, on June 17, 2008,

² This action was designated as Franklin Circuit Court Civil Action No. 08-CI-00608.

³ The unreported opinion affirming the Franklin Circuit Court action was issued on January 14, 2011, by this Court in 2009-CA-00611-MR.

and before the trial court could issue a ruling on the motion, the McGehees filed a Notice of Appeal on June 26, 2008. Due to the pending CR 59.05 motion, this Court dismissed the appeal as premature.⁴ The trial court, having regained jurisdiction following the dismissal of the McGehees first appeal in the Hardin Circuit Court action, issued an order denying the CR 59.05 motion on August 6, 2008. The McGehees filed their second Notice of Appeal in the Hardin County action on August 20, 2008.

On appeal, the McGehees presented two arguments to this Court. First, they argued that the KYTC had failed to issue proper service of process. Second, they argued that the trial court erred in ruling that the KYTC had the right to condemn the subject property. In an unreported opinion rendered on February 19, 2010,⁵ this Court affirmed the trial court's ruling in its entirety, specifically affirming that the KYTC had offered sufficient proof to merit condemnation and that the McGehees had offered insufficient proof of bad faith, fraud, or abuse of discretion, on the part of the KYTC. The McGehees then sought discretionary review, which the Kentucky Supreme Court denied.⁶

With the matter once again within the trial court's jurisdiction, the KYTC moved for possession. On March 3, 2011, the trial court granted the motion and authorized the Master Commissioner to execute a deed of conveyance.

⁴ 2008-CA-001231-MR.

⁵ 2008-CA-001568-MR.

⁶ 2010-SC-000317-DR.

At this point, the McGehees filed an action in the Federal District Court for the Western District of Kentucky on March 15, 2011. Their complaint sought a declaratory judgment and an injunction to prevent enforcement of the trial court's judgment. The District Court denied the initial request for injunctive relief, and then again denied the same relief upon subsequent motion by the McGehees.

The District Court ordered the parties to mediate on September 6, 2011, which resulted in a settlement agreement. The settlement agreement not only established the amount of compensation the McGehees would receive from the KYTC, but also contained language that released their claims in the Hardin County action. The settlement agreement also recognized the validity of the trial court's interlocutory judgment: "[T]itle to such property is vested in KYTC pursuant to the Interlocutory Judgment entered in the [Hardin County] action immediately referenced above...."

The KYTC moved the trial court on December 23, 2011, to enforce the September settlement agreement from the federal mediation. The District Court dismissed the federal matter as settled on January 6, 2012. On January 9, 2012, the trial court ordered the KYTC to remit the settlement proceeds to the Hardin Circuit Clerk's Office, and within seven days of such transfer, the McGehees were to execute a deed of conveyance, or if they failed to do so, the Master Commissioner was to execute a deed of conveyance.

The trial court also issued two orders on February 6, 2012. The first was an order concluding

that the settlement agreement was enforceable. The second was an order imposing Rule 11 sanctions on the McGehees personally, after the trial court concluded that any pleadings filed after the KYTC's right to take was conclusively established by this Court were so filed for the impermissible purpose of delay or harassment.

At the same time, the McGehees had filed an appeal to the Sixth Circuit Court of Appeals, arguing the settlement agreement was not binding due to duress. The Sixth Circuit ultimately affirmed the District Court's dismissal, agreeing that the settlement was a binding contract. The McGehees moved the Sixth Circuit for rehearing, which was denied on May 6, 2013, at which time the federal rulings became final.

The McGehees filed the instant Notice of Appeal on February 24, 2012,⁷ seeking this Court to review the propriety of the trial court's orders directing the Master Commissioner to execute the deed, and the imposition of sanctions. However, after the filing of the initial brief, the McGehees relieved their counsel of further representation, and have proceeded *pro se* from that point, including filing a supplemental brief asserting various attacks on the trial court's prior conclusion that the KYTC had the right to condemn the property.

II. ANALYSIS

⁷ Though the Notice of Appeal was filed in 2012, this Court did not act immediately in order to allow the federal litigation to conclude and ensure the issues had fully ripened for our review.

**A. THE TRIAL COURT ACTED WITHIN ITS
AUTHORITY WHEN ORDERING THE MASTER
COMMISSIONER TO EXECUTE THE DEED**

The McGehees contend that the trial court abused its discretion by ordering the Master Commissioner to execute the deed while their unsuccessful federal appeal was pending. A judicial action is an abuse of discretion when it is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Miller v. Eldridge*, 146 S.W.3d 909, 914 (Ky. 2004).

The trial court had already made the requisite statutory findings necessary to allow condemnation. Further, this Court had affirmed those findings, making them the binding law of the case. “The law of the case doctrine is ‘an iron rule, universally recognized, that an opinion or decision of an appellate court in the same cause is the law of the case for a subsequent trial or appeal however erroneous the opinion or decision may have been.’” *Brooks v. Lexington-Fayette Urban County Housing Auth.*, 244 S.W.3d 747, 751 (Ky. App. 2007) (quoting *Union Light, Heat & Power Co. v. Blackwell’s Adm’r*, 291 S.W.2d 539, 542 (Ky. 1956)). This Court specifically held in 2009-CA-01568-MR that the trial court “did not err in entering an interlocutory order condemning the property.” That conclusion, under the law of the case doctrine, became inescapably binding on the trial court, depriving the trial court of any discretion to act in a manner inconsistent with the ruling. The trial court was thus authorized only to enforce the ruling.

Statute empowers the circuit courts to provide for the conveyance of condemned property to the condemnor to the extent condemned. KRS 416.610(2)(d). Further, the Master Commissioner is authorized by statute to execute deeds of conveyance pursuant to orders of the circuit court. KRS 426.570; KRS 426.571.

In light of this authority, this Court must conclude that the trial court acted in a manner consistent with established precedent and other binding authority. The trial court did not abuse its discretion in ordering the execution of the deed by the Master Commissioner.

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN IMPOSING SANCTIONS ON THE MCGEHEES

Rule 11 does not provide any substantive right to a party, but rather is a procedural mechanism by which courts can prevent and/or punish abusive litigation practices. *Lexington Inv. Co. v. Willeroy*, 396 S.W.3d 309, 312 (Ky. App. 2013). While the rule itself does not provide language establishing a standard of review, case law has provided such. See *Clark Equip. Co., Inc. v. Bowman*, 762 S.W.2d 417 (Ky. App. 1988). First, a reviewing court examines the trial court's findings of fact for clear error. *Id.* at 421. Next, the reviewing court examines the trial court's legal conclusions that a given behavior amounts to a violation *de novo*. *Id.* Finally, the reviewing court examines the nature and severity of the sanction imposed for abuse of discretion. *Id.*

The McGehees only contend that the trial court made erroneous conclusions in its order imposing sanctions on them. Therefore, our review will be confined to the first element of the *Clark Equipment* test. The McGehees take specific issue with the trial court's finding that they had continued to engage in motion practice after the decision that the taking was appropriate had become final. They argue this finding was in error because the issue of the propriety of the taking was still pending in federal court.

However, the trial court's May 2008 order became final following the Kentucky Supreme Court's denial of discretionary review. The KYTC did not move for sanctions, as a part of its motion for the deed, until well after the state court ruling had become final. Also noteworthy, the McGehees attached to their response to the KYTC's motion for the deed a voluminous affidavit detailing the entire procedural history of the litigation, which the trial court referred to as a "47 page diatribe," that failed to state any basis for preventing the execution of the deed aside from the ill-fated federal appeal. Further, the McGehees contend that the affidavit was filed to highlight not whether the KYTC had the right to take, but rather the issue of whether the KYTC had complied with the various federal statutes in selecting the location of the Ring Road Extension. However, the issue of compliance with those statutes is a component of the determination of the right of the KYTC to take. The affidavit, which the McGehees attempt to characterize as asserting separate issues, in reality serves as an attempt to relitigate settled and concluded issues.

Substantial evidence exists in the record that supports the trial court's findings, in the form of multiple and voluminous pleadings filed in opposition to the KYTC's already well-established right to condemn. The trial court was within its authority, after reviewing the documents filed by the McGehees, to determine that they served no purpose other than to delay or harass.

C. THE MCGEHEES' SUPPLEMENTAL BRIEF PRESENTS NO JUSTICIABLE ISSUES

The McGehees' *pro se* supplemental brief offers primarily conclusory allegations and little in the way of binding authority. It asserts challenges to the trial court's findings that the KYTC had the right to condemn, which, as this Court noted above, is part of the law of the case. It asserts challenges to the settlement agreement, which by this point, has been approved by both the Western District Court and the Sixth Circuit in addition to the trial court. Finally, it asserts an unpreserved error that one of the many judges to have issued rulings on this case should have recused, but the ruling about which the McGehees complain was not made by the same judge they contend was impermissibly biased.

The allegations in the supplemental brief amount to a collection of settled issues and an unpreserved claim for which no relief exists even had it been preserved. There are simply no justiciable issues presented therein.

III. CONCLUSION

This Court, having carefully reviewed the record,
and finding no error, hereby affirms the trial court.

ALL CONCUR.

Brief for Appellants:

Robin R. Slater
Lexington, Kentucky

Brief for Appellee:

John F. Estill
Maysville, Kentucky

Supplemental Briefs For
Appellant:

Patricia McGehee, *pro se*
Elizabethtown, Kentucky

Richard McGehee, *pro se*
Elizabethtown, Kentucky

**APPENDIX B — Supreme Court of Kentucky
August 16, 2017 Order Denying Discretionary
Review**

**SUPREME COURT OF KENTUCKY
2017-SC-000195-D
(2012-CA-000384)**

**PATRICIA RAGLAND MCGEHEE
AND RICHARD MCGEHEE MOVANTS**

**V. HARDIN CIRCUIT COURT
 2006-CI -01508**

**COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS RESPONDENT**

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court
of Appeals is denied.

Wright, J., not sitting.

ENTERED: August 16, 2017.

**/s/ John D. Minton Jr.
CHIEF JUSTICE**

**APPENDIX C — Hardin Circuit Court
January 9, 2012 Order finding settlement
agreement is enforceable herein, Plaintiff to
pay settlement proceeds, condition for Master
Commissioner Deed, and Plaintiff to show
notice for hearing CR 11 motion**

**COMMONWEALTH OF KENTUCKY
HARDIN CIRCUIT COURT
DIVISION III
CIVIL ACTION NO. 06-CI-01508**

**COMMONWEALTH OF KENTUCKY, PLAINTIFF
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS**

VS. ORDER

**PATRICIA RAGLAND MCGEHEE, ET AL.
DEFENDANTS**

Motion having been made by Plaintiff for an order that this Court enforce the settlement agreement between the parties in United States District Court, Western District of Kentucky, Civil Action No. 3:11CV, and for an order that the settlement proceeds be paid to the Clerk of this Court, and that Defendants or the Master Commissioner deliver a deed of conveyance for the property described in the Interlocutory Judgment herein, and for attorney's fees in prosecuting such motion, and the Court being otherwise sufficiently advised,

**IT IS HEREBY ORDERED that the Plaintiff's
Motion is hereby SUSTAINED, and the Court finds**

that the settlement agreement between the parties as adopted by the United States District Court, Western District of Kentucky, Civil Action No. 3:11CV, is enforceable herein, and Plaintiff shall pay to the Clerk of this Court settlement proceeds of \$400,000.00, provided that such settlement proceeds shall be held pending further motion and finding by the Court that the Defendants have abided by the terms of such settlement agreement. *Counsel have advised this court that the federal court has declined to set aside the settlement.*

IT IS FURTHER ORDERED that should Defendants fail to deliver to the Plaintiff a general warranty deed conveying the property described in the Interlocutory Judgment herein, within seven (7) days of payment of the settlement proceeds to the Clerk of this Court that upon being notified by Plaintiff of such failure, the Master Commissioner of this Court shall deliver a deed for such property without warranty. IT IS FURTHER ORDERED that ~~Plaintiff shall recover from Plaintiff the sum of \$ _____ for its reasonable attorneys fees in bringing this motion, and any costs advanced to the Master Commissioner for preparation or execution of a deed thereby.~~ *the Plaintiff show notice for any CR11 motion it chooses to make with proper documentation of any costs claimed.*

ENTERED This 4th day of January, 2012.

/s/ KELLY MARK EASTON
Hon. Kelly Mark Easton
Judge, Hardin Circuit Court

ENTERED: 1-9-12

15a

ATTEST: LORETTA CRADY, CLERK
HARDIN CIR/DIST COURT
BY /s/ R NALLEY D.C.

CLERKS CERTIFICATE

I hereby certify that I have served a true copy of
the forgoing on all parties herein by mailing same,
postage prepaid, to the following:

copies to:

Hon. John F. Estill	<i>Hon. Bryan Bennett</i>
24 W. Third Street	<i>111 E. Main Street</i>
Maysville, KY 41056	<i>Campbellsville, KY 42718</i>

~~Hon. W. Henry Graddy, IV~~
~~103 Main Street, P.O. Box 4307~~ /s/ KME
~~Midway, Kentucky 40347~~

Dated this 9th day of January, 2012.

/s/ LORETTA CRADY BY R NALLEY
Clerk, Hardin Circuit Court

**APPENDIX D — Hardin Circuit Court
February 6, 2012 Order finding settlement
agreement is enforceable herein, Plaintiff to
pay settlement proceeds, condition for Master
Commissioner Deed, and hearing for attorney
fees**

**COMMONWEALTH OF KENTUCKY
HARDIN CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 06-CI-01508**

**COMMONWEALTH OF KENTUCKY, PLAINTIFF
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS**

VS. ORDER

**PATRICIA RAGLAND MCGEHEE, ET AL.
DEFENDANTS**

Motion having been made by Plaintiff for an order that this Court enforce the settlement agreement between the parties in United States District Court, Western District of Kentucky, Civil Action No. 3:11CV, and for an order that the settlement proceeds be paid to the Clerk of this Court, and that Defendants or the Master Commissioner deliver a deed of conveyance for the property described in the Interlocutory Judgment herein, and for attorney's fees in prosecuting such motion, and the Court being otherwise sufficiently advised,

**IT IS HEREBY ORDERED that the Plaintiff's
Motion is hereby SUSTAINED, and the Court finds**

that the settlement agreement between the parties as adopted by the United States District Court, Western District of Kentucky, Civil Action No. 3:11CV, is enforceable herein, and Plaintiff shall pay to the Clerk of this Court settlement proceeds of \$400,000.00, provided that such settlement proceeds shall be held pending further motion and finding by the Court that the Defendants have abided by the terms of such settlement agreement.

IT IS FURTHER ORDERED that should Defendants fail to deliver to the Plaintiff a general warranty deed conveying the property described in the Interlocutory Judgment herein, within seven (7) days of payment of the settlement proceeds to the Clerk of this Court that upon being notified by Plaintiff of such failure, the Master Commissioner of this Court shall deliver a deed for such property without warranty. IT IS FURTHER ORDERED that Plaintiff shall recover from Plaintiff the sum of \$ *to be determined after hearing* for its reasonable attorneys fees in bringing this motion, and any costs advanced to the Master Commissioner for preparation or execution of a deed thereby. ~~IT IS ALSO ORDERED that the affidavit of Richard McGehee shall be stricken from the pleadings, and the Clerk shall return same to counsel for Defendants.~~

ENTERED this 31st day of January, 2012.

/s/ KELLY MARK EASTON
Hon. Kelly Mark Easton
Judge, Hardin Circuit Court

FILED IN OFFICE: 2-6-12

18a

ATTEST:
LORETTA CRADY,
HARDIN CIR/DIST CLERK
BY /s/ R NALLEY D.C.
cc: J. Estill B. Bennett

CLERKS CERTIFICATE

I hereby certify that I have served a true copy of
the forgoing on all parties herein by mailing same,
postage prepaid, to the following:

Hon. John F. Estill
24 W. Third Street
Maysville, Kentucky 41056

Hon. Hon. Bryan Bennett
111 E. Main Street
Campbellsville, Kentucky 42718

Dated this 6th day of February, 2012.

/s/ R NALLEY
Clerk, Hardin Circuit Court

**APPENDIX E — Hardin Circuit Court
February 6, 2012 Findings of Fact, Conclusions
of Law and Order for \$1,100 CR11 sanction**

**HARDIN CIRCUIT COURT
DIVISION III
CASE NO. 06-CI-01508**

**COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS PETITIONER**

**VS. FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

**PATRICIA RAGLAND MCGEHEE
RICHARD MCGEHEE RESPONDANTS**

*** * * * ***

This matter is before the Court for the unpleasant and thankfully rare task of assessing sanctions for violation of CR 11. An examination of the tortured history of this dispute is necessary for a proper application of CR 11 to the circumstances.

This action was for an exercise of eminent domain, a special statutory proceeding with a limited purpose of determining the right to take and an amount of compensation. KRS 416.540 *et seq.* The right to take for the well-established purpose of road construction was hotly contested. The determination of this Court of the Commonwealth's right to take was appealed, that decision was affirmed (2008-CA-001568), and discretionary review was denied by the Kentucky Supreme Court.

CR 11 issues began when the Respondents engaged in motion practice after the decision on the right to take had become final. The entry of a deed for the property was delayed for months as the Respondents continued their assault. They asked the Court to allow new claims to be asserted, including questionable claims regarding various federal law claims relating to the property. As this Court would not allow these reargued and new issues to further delay the matter (See Order entered June 24, 2011), the Respondents sought action in federal court.

In federal court, after injunctive efforts failed, an agreement was reached, including the amount to be paid as compensation for the taken property. Predictably, the Respondents sought then to invalidate that agreement claiming duress by the federal judge, among other things. That effort was rejected by the federal court.

When the Petitioner sought to finalize this case including payment of the agreed upon amount, the Respondents' counsel, Hank Graddy, withdrew. The Respondents hired current counsel to file a "Response to Motion for Deed." Attached to that motion was a forty- seven page affidavit by the Respondent Richard McGehee, which is a diatribe rehashing all of the proceedings, including those in federal court.

CR 11 prohibits filing matters with the Court unless they are well founded in fact and by law. A primary function of the rule is to penalize actions when undertaken for the improper purposes of harassment or unnecessary delay. When the long history of this matter is studied and the most recent

filing is viewed in that light, it cannot be seen as anything but a further effort to delay and to harass the opposing party, and the court so finds. While the Court recognizes the belief of the Respondents that they fight on principle, the Court notes the important public policy in favor of finality of the resolution of court cases.

CR 11 requires the Court to impose an appropriate sanction. A hearing on the CR 11 matter was conducted on January 31, 2012. Having considered the information provided and the arguments of counsel, the Court finds that \$1100 is a reasonable for the Petitioner's attorney's fee and expenses directly related to the offending filing by the Respondents.

This sanction may be imposed against the attorney or the clients or both under CR 11. It is not coincidence that Mr. Graddy withdrew from the representation of the Respondents after five years of sticking with them and that this was immediately followed by further ill-advised efforts at delay and harassment by the Respondents. Given the short time frame of the events from Mr. Graddy's withdrawal and the appearance by the current counsel for the Respondents, it is clear that the Respondents sought out an attorney to hear their continued complaints about this whole matter and to file the affidavit that they had prepared.

It is significant that the Petitioner does not ask that the sanction be imposed on the attorney, after counsel were able to have a conversation about the circumstances of the motion. The Court will impose the sanction against the Respondents only. While

Richard McGehee signed the affidavit for the response, Patricia McGehee is as responsible in the hiring of counsel to represent them both, such that the motion and affidavit would be filed.

This matter was made final by the Order dated January 31, 2012, addressing the remaining issue of the compensation to be paid. This order provides the required separate analysis for the entry of CR 11 sanctions at the conclusion of this case.

THEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that the Petitioner shall and does hereby recover from the Respondents, Richard McGehee and Patricia McGehee, jointly and severally, the sum of \$1100 as sanctions for violation of CR 11.

So Ordered this 2nd day of February, 2012.

/s/ KELLY MARK EASTON
Judge, Hardin Circuit Court
Division III

ENTERED: 2-6-12
ATTEST: LORETTA CRADY, CLERK
HARDIN CIR/DIST COURT
BY /s/ R NALLEY D.C.
CC: *J. Estill*
B. Bennett

**APPENDIX F — Hardin Circuit Court
June 2, 2008 Interlocutory Order and
Judgment**

**HARDIN CIRCUIT COURT
DIVISION II
CIVIL CASE NO. 06-CI-01508**

**COMMONWEALTH OF KENTUCKY PLAINTIFF
TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS**

**VS. INTERLOCUTORY ORDER AND
 JUDGMENT
 PURSUANT TO KRS 416.610 (2)**

**PATRICIA A. RAGLAND MCGEHEE
AND RICHARD MCGEHEE,
HER HUSBAND DEFENDANTS
132 ARNOLD LANE
ELIZABETHTOWN, KENTUCKY 42701**

**Upon examining the record herein, the Court
finds:**

**(1) That all the parties hereto are before the
Court; that the Defendants filed their Answer and
Counterclaim to Petition purportedly challenging the
Plaintiffs right to condemn twenty-three (23) days
after they were served with summonses; that this
Court overruled Plaintiffs motion to dismiss
Defendants' challenge to the Plaintiffs right to
condemn; that. on December 14, 17, 18, and 19. 2007,
the Court held a hearing on the issue of the right to
condemn; that the parties have filed memorandums**

in support of their positions; that this Court has reviewed all memorandums and other pleadings filed herein; that the Defendants failed to prove the Plaintiff abused its discretion, acted in bad faith, or committed fraud in deciding its need to acquire portions of the property of the Defendants; that the Defendants' challenge to the Plaintiffs right to condemn is dismissed because the Defendants failed to prove the Plaintiff abused its discretion, acted in bad faith, or committed fraud in deciding it needed to acquire portions of the property of the Defendants; that it is necessary that the Plaintiff acquire the property described in the Petition and again below; and that the Plaintiff has the authority to condemn the said property;

(2) That the Plaintiff under the provisions of KRS 416.540-416.680 is entitled to condemn the lands and materials hereinafter described;

(3) That the Report of Commissioners conforms to the provisions of KRS416.580;

**IT IS, THEREFORE, ORDERED AND
ADJUDGED:**

(1) That the Plaintiff may take possession of said land and materials for the purpose set forth in the Petition upon the payment of all costs of this action and payment of the amount awarded by the Commissioners (\$261,500.00) to the Defendants or to the Clerk of this Court.

(2) That if no exceptions are filed within thirty (30) days from the date of this judgment, the Master Commissioner of this Court shall execute a deed

conveying the title to the following described lands and materials to the Plaintiff in conformity with this judgment:

PARCEL NO. 12

Being a tract of land in Hardin County, Kentucky located approximately 600 feet southeast of the intersection of Gaither Station Road and the proposed centerline of KY 3005 (Ring Road), and more particularly described as follows:

Beginning at a point 217.73 feet right of KY 3005 (Ring Road) at Station 106+39.90; thence N 34°47'05" E a distance of 396.68 feet to a point 178.00 feet left of KY 3005 (Ring Road) at Station 106+67.21; thence S 54°03'45" E a distance of 369.49 feet to a point 175.00 feet left of KY 3005 (Ring Road) at Station 110+00.00; thence S 41°44'21" E a distance of 231.50 feet to a point 175.00 feet left of KY 3005 (Ring Road) at Station 112+00.00; thence S 28°43'02" E a distance of 346.65 feet to a point 175.00 feet left of KY 3005 (Ring Road) at Station 115+00.00; thence S 9°43'29" E a distance of 225.98 feet to a point 111.01 feet right of Arnold Road at Station 48+73.55; thence S 61°33'18" E a distance of 165.05 feet to a point 64.79 feet right of Arnold Road at Station 47+49.92; thence S 41°36'04" E a distance of 84.38 feet to a point 39.10 feet right of Arnold Road at Station 46+80.00 (End Control Access); thence S 41°36'04" E a distance of 61.50 feet to a point 25.62 feet right of Arnold Road at Station 46+20.00 (Begin Control Access); thence S 41°36'04" E a distance of 65.93 feet to a point 11.16 feet right of Arnold Road at Station 45+55.67; thence N 54°43'46" W a distance of 1433.14 feet to a point 217.73 feet right of KY 3005

(Ring Road) at Station 106+39.90 and the POINT OF BEGINNING, and containing 7.77 acres (338,630 square feet).

The above described Parcel No. 12, Tract A, is being acquired as permanent right of way in fee simple and not merely for highway or right of way purposes.

PARCEL NO. 12, TRACT A

Being a tract of land in Hardin County, Kentucky located approximately 40 feet north of Arnold Lane and 350 feet east of the proposed centerline of KY 3005 (Ring Road), and more particularly described as follows:

Beginning at a point 35.73 feet right of Arnold Road at Station 46+65.00 thence; N 35°44'09" E a distance of 14.27 feet to a point 50.00 feet right of Arnold Road at Station 46+65.00; thence S 54°15'51" E a distance of 30.00 feet to a point 50.00 feet right of Arnold Road at Station 46+35.00; thence S 35°44'09" W a distance of 21.01 feet to a point 28.99 feet right of Arnold Road at Station 46+35.00; thence N 41°36'04" W a distance of 30.75 feet to a point 35.73 feet right of Arnold Road at Station 46+65.00 and the POINT OF BEGINNING, and containing 0.01 acres (529 square feet).

The above described Parcel No. 12, Tract A, is being acquired as a temporary easement for the purpose of constructing slopes; and the said temporary easement terminates and reverts upon completion of same.

Being portions of the property that Irvin H. Ragland, by and through his Attorney-in-Fact

Patricia A. Ragland, conveyed to Patricia A. Ragland, single, in the Deed dated February 28, 1991, and recorded in Deed Book 703, Page 384, in the office of the County Clerk of Hardin County, Kentucky.

(3) That the Plaintiff takes hereby the fee simple title to Parcel No. 12 and not merely for right of way purposes; and that the Plaintiff takes hereby a temporary easement to Parcel No. 12, Tract A, for the purpose of constructing slopes, which temporary easement terminates and reverts upon completion of same.

(4) That the owner of the property herein shall vacate the same and deliver full and complete possession of the property, which is the subject of this litigation, to the Plaintiff upon the payment of the Commissioners Award herein to the Clerk of this Court and that the Sheriff of this County is authorized and directed to evict said owner upon failure to vacate the property herein on or after the date of the payment of the compensation awarded by said Commissioners. Said property owner shall pay all costs of said eviction and for which costs, execution shall issue. All other costs shall be paid by the Plaintiff.

(5) This interlocutory judgment is final and appealable as to the issue of the right to condemn and the right to immediate entry.

This 30 day of May, 2008.

/s/ JANET P. COLEMAN
Senior Judge
Hardin Circuit Court

28a

Division II

ENTERED: 02 June 08

ATTEST: LORETTA CRADY, CLERK

HARDIN CIR/DIST COURT

BY /s/ C NEWTON D.C.

Copy to: W Dean

W Graddy IV

P Wicker

If the owner has filed answer or pleading putting in issue the right of

the petitioner to condemn the property or use and occupation thereof sought to be condemned, the Court shall, without intervention of jury, proceed forthwith to hear and determine whether or not the petitioner has such right.

The Defendants' pending motion to again continue the Bench Trial on the right to condemn is based primarily on issues relating to discovery. The parties have engaged in interrogatories, request for production of documents, inspection of documents, depositions and open records requests concerning the limited issue of Plaintiff's right to condemn for a period in excess of one (1) year. The Court is under a statutory obligation to hear and determine the Petitioner's right to condemn "forthwith" as provided in KRS 416.610(4), respecting the parties right to adequately prepare for such Bench Trial. The Court is satisfied that the parties have adequate opportunity for discovery and preparation for the Bench Trial scheduled for December 14-17, 2007.

Wherefore, it is hereby ordered that the Defendant's motion to continue the Bench Trial is overruled.

So Ordered this 6th day of Dec., 2007.

/s/ KEN M HOWARD
Judge, Hardin Circuit Court
Division II

ENTERED: 11 Dec 07
ATTEST: LORETTA CRADY, CLERK
HARDIN CIR/DIST COURT

31a

BY /s/ C NEWTON D.C.

*Copy to: W Dean
W Graddy
P Wicker*

This matter is now before the Court on motion of the Defendants to compel answers to the Defendants' revised interrogatories propounded to the Plaintiff on or about August 24, 2007. Plaintiff's responses and/or objection to Defendants' interrogatories (revised) dated October 4, 2007, provided responses to Interrogatory No. A, B and C to which there is no motion to compel by the Defendants. As to Interrogatory No. D the Plaintiff objected in part and without waiving said objections identified potential witnesses as those same individuals as identified in response to Interrogatory No. C as persons with knowledge of this matter. As to Interrogatory No. 1, 2 and 3 the Plaintiff objects setting forth eight separate legal grounds in support of its objection.

The Court has reviewed this file and notes the following events:

A. This action began with the filing of the Complaint on August 21, 2006;

B. The Defendants filed their Answer and Counterclaim on October 19, 2006; The Court overruled the Plaintiffs motion for interlocutory order and Plaintiffs motion to strike the answer and counterclaim of the Defendant as being late on January 2, 2007;

C. The Court overruled the Defendants' motion to dismiss the Complaint for insufficiency of process on January 2, 2007; The Plaintiff filed its Answer to the Defendants Counterclaim on January 8, 2007:

D. A Trial before the Court on the Plaintiffs' right to condemn was scheduled for July 18. 2007;

E. By order dated August 29, 2007, the Trial before the Court originally set for July 18, 2007 was rescheduled for December 14, 2007.

Civil Rule 33.01 provides that each party may propound a maximum of thirty interrogatories to the other party with each subpart of an interrogatory being counted as a separate interrogatory. The revised interrogatories of the Defendants and their

subparts propounded on or about August 24, 2007, clearly exceed the maximum number of thirty. The Defendants have not requested nor have been approved by this Court to propound interrogatories in excess of the limit of thirty. Thus, the Defendants revised interrogatories constitute an undue burden on the Plaintiff due to said excessive number of interrogatories and subparts.

Although not legally necessary, the Court provides the following comments on some of the other grounds in support of Plaintiffs' objections to the revised interrogatories as guidance for the parties in the event that additionally revised interrogatories may be propounded by the Defendants in this case. The Plaintiffs objection contained in paragraph "b" on page 8 of Plaintiffs responses and/or objections to Defendants interrogatories is not persuasive. This Court overruled Plaintiffs motion to strike the Answer and Counterclaim of the Defendants as late on January 2, 2007 and as such does not constitute a proper basis for objecting to discovery. The Plaintiffs objection contained in paragraph "c" beginning on page 8 claiming the Defendants have not properly challenged the Plaintiffs right to condemn or take portions of their property is not supported by the pleadings in this case and thus does not constitute a legal basis for objecting to discovery request.

Wherefore, it is hereby Ordered that the Defendants motion to compel answers to the revised interrogatories is overruled.

So Ordered this 30th day of Nov., 2007.

35a

/s/ KEN M HOWARD

Judge, Hardin Circuit Court
Division II

ENTERED: 11-30-07

ATTEST: LORETTA CRADY, CLERK
HARDIN CIR/DIST COURT

BY /s/ C NEWTON D.C.

*Copy to: W Graddy
W Dean*

believe were not addressed in the brief filed by their previous counsel on or before 20 days from the date of entry of this Order. Appellee may then file a ten-page supplemental appellee's brief on or before 20 days from the date a supplemental appellants' brief is filed. No further briefing shall be permitted. Upon the filing of the supplemental briefs or the expiration of the time provided for filing such, the appeal shall be submitted to a panel of this Court for determination of its merits.

Additionally, the Clerk of this Court is DIRECTED to RETURN as DEFICIENT appellants' *pro se* reply brief, which was submitted on March 20, 2014. The reply brief is signed by only one appellant. Appellants are WARNED that any future motions, briefs, or other pleadings filed with this Court must be signed by both appellants since they are proceeding *pro se*. Any filings that do not comply with this directive shall be returned as unfiled to appellants at their address of record and may result in further sanctions as merited.

ENTERED: Apr 08, 2014.

/s/ Glenn E. Acree
CHIEF JUDGE, COURT
OF APPEALS

**APPENDIX J — Master Commissioner's deed of
Hardin Circuit Court
Civil Action No. 06-CI-01508**

Doc ID: 008571940004 Type: DEE
Kind: COMMISSIONERS DEED
Recorded: 02/21/2012 at 03:36:14 PM
Receipt#: 2012-00002450
Page 1 of 4
Fees: \$20.00 Tax: \$400.00
Hardin County Clerk
Kenneth L. Tabb Clerk
BK 1359 PG 1063-1066

MASTER COMMISSIONER'S DEED

WHEREAS, in the action of the Hardin Circuit Court, Civil Action No. 06-CI-01508, an Interlocutory Judgment was entered on June 2, 2008, the Plaintiff, the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways, was determined to be entitled to possession and title to the real property described below; and

WHEREAS, the parties thereafter entered a settlement agreement as the result of a settlement conference held on September 6, 2011, before the United State District Court for the Western District of Kentucky, at Louisville (Case No. 3:11-cv-00160-JGH), such settlement agreement being adopted as a final settlement by order of the Court therein; and

WHEREAS, by Order entered by the Hardin Circuit Court in Civil Action No. 06-CI-01508, the Master Commissioner of the Hardin Circuit Court was directed to execute a deed of conveyance to the

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET, DEPARTMENT OF
HIGHWAYS; and

WHEREAS, the consideration for the conveyance
has been paid to the Clerk of the Hardin Circuit
Court, pursuant to Order of the Hardin Circuit
Court.

NOW, THEREFORE, THIS DEED, made and
entered into this 13 day of Feb, 2012 by and between
Paul Musselwhite, Master Commissioner of the
Hardin Circuit Court, for and on behalf of the
Defendants, Patricia A. Ragland McGehee and
Richard McGehee, her husband, parties of the first
part, and the COMMONWEALTH OF KENTUCKY,
for the use and benefit of the TRANSPORTATION
CABINET, DEPARTMENT OF HIGHWAYS, party
of the second part.

WITNESSETH:

That in accordance with the Interlocutory
Judgment and subsequent Orders entered in Hardin
Circuit Court, Civil Action No. 06-CI-01508, and in
consideration of the \$400,000.00 sums paid by
second party pursuant to the settlement agreement
between the parties in United State District Court
for the Western District of Kentucky, at Louisville,
Case No. 3:11-cv-00160-JGH, party of the first part
has bargained and sold, and does hereby grant and
convey, unto the party of the second part, its
successors and assigns forever, the following real
property and real property rights in connection with
the Highway Project, identified as Ring Road

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Extended, State Project No. FD04 C047 65893 01R ,
to wit:

Parcel No. 12
Fee Simple

Being a tract of land in Hardin County, Kentucky
located approximately 600 feet southeast of the
intersection of Gaither Station Road and the
proposed centerline of KY 3005 (Ring Road), and
more particularly described as follows:

Beginning at a point 217.73 feet right of KY 3005
(Ring Road) at Station 106+39.90; thence N34°47'05"
E a distance of 396.68 feet to a point 178.00 feet left
of KY 3005 (Ring Road) at Station 106+67.21; thence
S 54°03'45" E a distance of 369.49 feet to a point
175.00 feet left of KY 3005 (Ring Road) at Station
110+00.00; thence S 41°44'21" E a distance of 231.50
feet to a point 175.00 feet left of KY 3005 (Ring Road)
at Station 112+00.00; thence S 28°43'02" E a
distance of 346.65 feet to a point 175.00 feet left of
KY 3005 (Ring Road) at Station 115+00.00; thence S
9°43'29" E a distance of 225.98 feet to a point 111.01
feet right of Arnold Road at Station 48+73.55; thence
S 61°33'18" E a distance of 165.05 feet to a point
64.79 feet right of Arnold Road at Station 47+49.92;
thence S 41°36'04" E a distance of 84.38 feet to a
point 39.10 feet right of Arnold Road at Station
46+80.00 (End Control Access); thence S 41°36'04" E
a distance of 61.50 feet to a point 25.62 feet right of
Arnold Road at Station 46+20.00 (Begin Control
Access); thence S 41°36'04" E a distance of 65.93 feet
to a point 11.16 feet right of Arnold Road at Station
45+55.67; thence N 54°43'46" W a distance of
1433.14 feet to a point 217.73 feet right of KY 3005

41a

(Ring Road) at Station 106+39.90 and the POINT OF BEGINNING.

The above described parcel contains 7.77 acres.
(338,630 sq. ft.).

It is understood between the parties hereto and made a covenant herein that the above described property is conveyed in fee simple.

Parcel No. 12A
Temporary Easement

Being a tract of land in Hardin County, Kentucky located approximately 40 feet north of Arnold Lane and 350 feet east of the proposed centerline of KY 3005 (Ring Road), and more particularly described as follows:

Beginning at a point 35.73 feet right of Arnold Road at Station 46+65.00 thence; N 35°44'09" E a distance of 14.27 feet to a point 50.00 feet right of Arnold Road at Station 46+65.00; thence S 54°15'51" E a distance of 30.00 feet to a point 50.00 feet right of Arnold Road at Station 46+35.00; thence S 35°44'09" W a distance of 21.01 feet to a point 28.99 feet right of Arnold Road at Station 46+35.00; thence N 41°36'04" W a distance of 30.75 feet to a point 35.73 feet right of Arnold Road at Station 46+65.00 and the POINT OF BEGINNING.

The above described parcel contains 0.01 acres. (529 sq. ft.). It is the specific intention of the grantors herein to convey a temporary easement to the property described above for the purpose of

constructing slopes and entrances; said easement terminates and reverts upon completion of same.

The above described parcels being a portion of the same property conveyed to First Parties by Irvin H. Ragland, single, by deed dated February 28, 1991, and duly recorded in Deed Book 703, page 384, in the office of the County Clerk of Hardin County, Kentucky.

This proposed public highway improvement for which the above described property is being acquired is identified as Ring Road Extended, State Project No. FD04 C047 65893 01R, the plans for which are on file in the office of the Transportation Cabinet in Frankfort, Kentucky. The acquisition of right of way on this project was authorized by Transportation Cabinet Official Order No. 103359. This project (the main line) is a partially controlled access highway, as required to be set forth in Section 6 of the Kentucky Administrative Regulations, (603 KAR 5:120). The remaining property of the first party is not a part of the main line and access to such property shall be by permit.

TO HAVE AND TO HOLD said property unto the party of the second part, its successors and assigns forever, with all the rights and privileges thereunto belonging as hereinafter more particularly set forth.

Said conveyance is made by the Master Commissioner only in his official capacity and does not imply any personal liability therefor. The parties to said action, whose title is passed by this

conveyance, are the Defendants in Hardin Circuit Court, Civil Action No. 06-CI-01508.

IN TESTIMONY WHEREOF, the party of the first part has hereunto set his hand this 9 day of February, 2012.

/s/ Paul Musselwhite
Hon. Paul Musselwhite
Master Commissioner
Hardin Circuit Court

EXAMINED AND APPROVED IN OPEN COURT
THIS 13th DAY OF February, 2012.

/s/ KELLY MARK EASTON
Hon. Kelly Mark Easton
Judge, Hardin Circuit Court

CERTIFICATE

COMMONWEALTH OF KENTUCKY)
HARDIN CIRCUIT COURT)

The Master Commissioner of the Hardin Circuit court, produced the foregoing Deed of Conveyance to the COMMONWEALTH OF KENTUCKY, for the use and benefit of the TRANSPORTATION CABINET, which was examined by and approved by the Court, and the said Commissioner acknowledged same to be his true act and deed; wherefore, the same was ordered to be and is hereby certified to the property office for record.

This the 14th day of Feb., 2012.

44a

/s/ R NALLEY DC

Clerk, Hardin Circuit Court

Prepared by

Paul Musselwhite

120 East Dixie

Elizabethtown, KY 42701

I, Kenneth L. Tabb, County Clerk of
Hardin County, Kentucky, hereby certify
that the foregoing instrument has been
duly recorded in my office.

/s/ Kenneth L. Tabb

By: LUCY-JANE RECTOR, dc

**APPENDIX K — KYTC's proposed Settlement
Agreement and Mutual Release in United
States District Court for the Western District of
Kentucky, Case
No. 3:11-cv-00160-JGH**

**SETTLEMENT AGREEMENT
AND MUTUAL RELEASE**

**THIS SETTLEMENT AGREEMENT AND
MUTUAL RELEASE entered this 7th 13th day of
October, 2011, by and between the Commonwealth of
Kentucky, Transportation Cabinet, Department of
Highways, by and through its Secretary Michael W.
Hancock "KYTC"), Richard McGehee and Patricia
McGehee ("the McGehees"), and the United States of
America, Army Corps of Engineers and Federal
Highway Administration (collectively "USA").**

**WHEREAS, KYTC initiated Hardin Circuit
Court, Civil Action No. 06-CI-01508 against the
McGehees to acquire in fee simple certain real
property owned thereby and further to acquire a
temporary construction easement, all as described in
the pleadings in such civil action and depicted on the
plans filed therein; and**

**WHEREAS, the McGehees initiated Franklin
Circuit Court, Civil Action No. 08-CI-00608 against
the KYTC, alleging violation of the Kentucky Model
Procurement Code and that the KYTC had taken the
McGehees access to Valley Creek without
compensation, such suit being dismissed by the
Franklin Circuit Court on jurisdictional grounds,
affirmed by the Court of Appeals, and denied**

discretionary review by the Kentucky Supreme Court; and

WHEREAS, the McGehees also filed a complaint against the KYTC, U.S. Army Corps of Engineers, and the Federal Highway Administration with the United States District Court for the Western District of Kentucky, at Louisville (Case No. 3:11-cv-00160-JGH), alleging violation of several federal and state statutes, including the National Historic Preservation Act concerning the McGehee property (listed on the National Register of Historic Places as the Fannie Harrison Farm), and the National Environmental Policy Act, the Uniform Relocation Assistance and Real Property Acquisition Policies Act, the Administrative Procedure Act, and regulations promulgated pursuant thereto; and

WHEREAS, the KYTC, pursuant to the ORDER FOR EVICTION AND FOR COSTS AND AUTHORIZING MASTER COMMISSIONER'S DEED, entered by the Hardin Circuit Court in Civil Action No. 06-CI-01508 on March 3, 2011, sought to evict the McGehees from the subject property of the Hardin Circuit Court action and to demolish their home and contributing structures to construct the Ring Road extension; and

WHEREAS, the KYTC and the McGehees agree to settle the issue of compensation due the McGehees from KYTC in Hardin Circuit Court, Civil Action No. 06-CI-01508; and

WHEREAS, the parties further intend to compromise and settle in full all remaining claims between them, whether arising from the allegations

contained or legal authority cited in any of the pleadings in the federal or state cases referred to above, and any appeals of such cases.

NOW THEREFORE, for and in consideration of the payment from KYTC to the McGehees as provided for herein, and in further agreements contained herein, the parties do hereby agree as follows:

1. KYTC will pay to the McGehees the sum of Four Hundred Thousand Dollars (\$400,000).

2. In consideration of the payment above, the receipt and sufficiency of which is hereby acknowledged, the McGehees do hereby release in full and forever discharge the KYTC, the United States Army Corps of Engineers and the Federal Highway Administration, and all other known or unknown officers, agents or employees of such governmental agencies, of and from any and all past, present, or future claims and demands which the McGehees have or claim to have, for or in any manner growing out of the taking of their property located in Hardin County, Kentucky, including damage or demolition of any improvements thereon, and loss or compensation for a claimed right of way to Valley Creek, or otherwise related to any of the civil actions set forth above, or past or future appeals thereof. KYTC and USA do hereby similarly release and discharge McGehees, and KYTC specifically releases any claims it may have under prior Court order for costs incurred, or other claims for rent or other damages. This release and discharge is a fully binding and complete settlement among all parties to this agreement.

3. The McGehees shall have continued access to the subject real property, which is the subject of Hardin Circuit Court, Civil Action No. 06-CI-01508 until October 14, 2011, at 11:59 p.m., in order to remove personal estate or property and improvements. Although title to such property is vested in KYTC pursuant to the Interlocutory Judgment entered in the action immediately referenced above, including all improvements located thereon, the parties agree that the McGehees may remove all such improvements as they determine appropriate or feasible prior to such date, at their own cost and expense, and without direction or supervision from KYTC. On October 15, 2011, the McGehees shall surrender and vacate the premises to KYTC without further legal process, and upon failure to so vacate the premises the McGehees may be removed at the request of KYTC by any law enforcement agency. Regardless of the completion of such relocation of the improvements and whether or not completed, the KYTC may enter the premises on October 15, 2011, and remove the improvements by whatever method or means is expeditious and promotes the immediate construction of the highway project, without liability or damages to McGehees for the demolition and/or damages to such improvements.

4. The McGehees have undertaken the relocation of their improvements prior to this agreement, and without the direction, permission and/or supervision of the KYTC, but with written notice to the KYTC provided August 19, 2011. KYTC consents to the relocation of the McGehees' improvements as part of this agreement and in order to compromise the claims between the parties. The McGehees hereby

agree to hold harmless and indemnify the KYTC, its officers, agents and employees, for all claims and/or liability to any person or entity, including any federal, state, or local governmental agencies, on account of the condition of the relocated property, the relocation of the structures or the negligence of the McGehees, their agents, contractors, or employees, including any costs and attorneys fees incurred by KYTC, provided that KYTC agrees to accept such premises on October 15, 2011 "as is", the parties agreeing and acknowledging that McGehees are not responsible for the removal of the remaining septic system, remaining water wells, tree, and fences. After relocation, KYTC shall refrain from entering on or upon the McGehees remaining property, including their residence, barn, garage, and all other structures..

5. Without the McGhees admitting wrongdoing, and without KYTC assigning fault thereto, the McGehees further acknowledge that they have commenced relocation of the improvements prior to entry of this agreement, but with notice to the KYTC provided August 19, 2011, and therefore the McGehees hereby voluntarily waive any claims for relocation housing benefits, moving expenses or relocation expenses due from KYTC under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §4601, et seq.) or the Kentucky Relocation Act codified at KRS 56.610, et seq., and the Kentucky Administrative Regulations promulgated pursuant thereto (600 KAR 3:010), and release KYTC from any claims thereunder.

6. McGehees shall have permanent access to their remaining property by the relocated Arnold Lane, as shown on the Right Of Way Plans delivered to Richard McGehee by the KYTC as part of Civil Action No. 06-CI-01508 in Hardin Circuit Court. Specifically, this access will be at the temporary easement shown at the right side of Sheet No. R11, revised March 9, 2006, and at the left side of Sheet R13, revised January 18, 2006. The access entrance to the relocated McGehee property shall consist of crushed stone approximately twelve (12) feet wide and having an area of seventy-one (71) square yards. At all times during the construction of Ring Road, the KYTC shall provide reasonable access to the relocated property.

7. KYTC will execute an agreed order to disperse the Commissioners' Award of \$261,500.00 as ordered to be deposited with the office of the Hardin Circuit Clerk by the Hardin Circuit Court in Civil Action No. 06-CI-01508. Such amount is to be offset or applied to the agreed upon settlement amount set forth above, which will be reduced by the amount of the Commissioner's Award once dispersed.

8. The Commissioner's Award of ~~\$261,500.00~~ ~~\$262,500.00~~ \$261,500.00 /s/ RS and the remaining agreed upon settlement of One Hundred Thirty Seven ~~eight~~ eight /s/ RS Thousand Five Hundred Dollars (~~\$138,500.00~~) ~~\$137,500.00~~ \$138,500.00 /s/ RS for a total of \$400,000.00 due hereunder shall be paid by KYTC to McGehees, by and through their attorney, at the date of closing herein, within fourteen (14) days of surrender of the premises by the McGehees.

9. At the said closing herein, upon such above-referenced payment, McGehees shall execute and deliver a deed of conveyance for the subject right of way in fee simple absolute and any necessary temporary easements, provided that the parties may agree to allocate some portion of the amount paid hereunder to the consideration for such deed, and some other portion of such payment to consideration for settlement of McGehees' claims against KYTC.

10. United States District Court for the Western District of Kentucky, at Louisville, Case No. 3:11-cv-00160-JGH, shall be DISMISSED, with prejudice, upon surrender of the subject premises and deed to the subject property by McGehees and payment of \$400,000 due hereunder by KYTC.

11. Upon dismissal of the federal action as described in the immediately preceding paragraph, KYTC shall cause Hardin Circuit Court, Civil Action No. 06-CI-01508 to be DISMISSED, with prejudice.

12. Each party shall bear its own costs and attorneys fees herein incurred.

WITNESS our hands the day and date above first written.

/s/ W H Graddy
Hon. W. Henry Graddy, IV,
Counsel for Plaintiffs McGehee

/s/ Richard McGehee
Richard McGehee, Plaintiff

/s/ Pat McGehee

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Patricia McGehee, Plaintiff

Regina Edwards, Assistant U.S. Attorney,
For USA

Michael W. Hancock,
Cabinet Secretary
KYTC

**APPENDIX L — KYTC'S January 4, 2012
Motion to Dismiss as Settled in United States
District Court for the Western District of
Kentucky, Case
No. 3:11-cv-00160-JGH**

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

**PATRICIA A. RAGLAND MCGEHEE, ET ALS.
PLAINTIFFS**

VS. CIVIL ACTION NO. 3:11CV00160

**U.S. ARMY CORPS OF ENGINEERS, ET ALS.
DEFENDANTS**

**DEFENDANT TRANSPORTATION CABINET'S
MOTION TO DISMISS AS SETTLED**

*** * * * ***

Come the Defendant, Commonwealth of Kentucky, Transportation Cabinet, Department of Highways, and the Defendant, Mike Hancock, in his official capacity as Secretary of the Commonwealth of Kentucky, Transportation Cabinet (hereinafter collectively referred to as "the Defendant Transportation Cabinet"), by counsel, and moves the Court for an Order of Dismissal, as settled, with prejudice.

In support hereof, the Defendant Transportation Cabinet states that this Court entered an Order herein on October 7, 2011, determining that the proposed Settlement Agreement and Mutual Release was the valid and enforceable agreement between

the parties herein. Thereafter, the Defendants executed such agreement on October 13, 2011, a copy of such agreement being attached hereto as Exhibit A.

The Plaintiffs have apparently discharged their counsel herein, although there has been no formal substitution of counsel. However, Hon. Bryan E. Bennett entered his appearance in Hardin Circuit Court, Civil Action No. 06-CI-01508, and advised the undersigned counsel that he would be representing the Plaintiffs in the above-styled action as well.

The Defendant Transportation Cabinet has a motion pending in the Hardin Circuit Court condemnation action to pay the proceeds of the settlement herein to the Hardin Circuit Clerk, and for an order authorizing the Master Commissioner to execute a deed of conveyance for the real property taken. This motion is necessitated by the refusal or failure of the Plaintiffs to cooperate or otherwise comply with the terms of the settlement agreement. The Plaintiffs herein have further filed a response alleging that such Plaintiffs were under "duress at the time of the mediation that led to the settlement and are challenging the Settlement Agreement that was approved in The Federal District Court." However, no such motion or other pleading has been filed by Plaintiffs herein.

WHEREFORE, the Defendant Transportation Cabinet states that there are no further issues herein, and it is appropriate to dismiss this action, with prejudice as settled, each party to bear its own costs and attorneys' fees.

Respectfully submitted,
/s/ John F. Estill
John F. Estill
Fox, Wood, Wood & Estill
24 West Third Street
Maysville, KY 41056
Telephone: (606) 564-5585
Email: jestill@fwweattorneys.net

Counsel for the Defendants, Commonwealth
of Kentucky, Transportation Cabinet,
Department of Highways and Secretary Mike
Hancock

CERTIFICATE OF SERVICE

This is to certify that the forgoing has been served electronically upon Hon. W. Henry Graddy, IV, 103 Main Street, P.O. Box 4307, Midway, Kentucky 40347 and Hon. Regina S. Edwards, Chief, Civil Division, U.S. Attorney's Office, Western District of Kentucky, 510 W. Broadway, Louisville, Ky 40202, by U.S. Mail, postage prepaid, upon Hon. Bryan E. Bennett, 111 East Main Street, Campbellsville, Kentucky 42718, this 4th day of January, 2012.

/s/ John F. Estill
Fox, Wood, Wood & Estill

**APPENDIX M — United States District Court
for the Western District of Kentucky's
January 9, 2012 Order of Dismissal in
Case No. 3:11-cv-00160-JGH**

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

**PATRICIA A. RAGLAND MCGEHEE, ET ALS.
PLAINTIFFS**

VS. CIVIL ACTION NO. 3:11CV00160

**U.S. ARMY CORPS OF ENGINEERS, ET ALS.
DEFENDANTS**

.....
ORDER OF DISMISSAL

This Court having entered an Order on October 7, 2011, determining Plaintiff's proposed Settlement Agreement and Mutual Release to be the valid and enforceable agreement between the Plaintiffs herein, the Plaintiffs and counsel having thereafter executed such agreement, the Plaintiff having filed appropriate motions to enforce such agreement before the Hardin Circuit Court, in Civil Action No. 06-CI-01508, and Plaintiff having moved the Court to dismiss this action with prejudice, as settled, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED THAT this action is hereby **DISMISSED**, with prejudice, as settled, all parties to bear their own costs and attorneys' fees herein incurred.

57a

ENTERED this ____ day of _____,
2012.

/s/ John G. Heyburn II
John G. Heyburn II, Judge
United States District Court

January 6, 2012

Tendered by:
John F. Estill
Fox, Wood, Wood & Estill
24 W. Third Street
Maysville, Kentucky 41056
(606) 564-5585

**APPENDIX N — McGehees' April 28, 2014 ten-
page supplemental brief to the Kentucky Court
of Appeals without appendices.**

**COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
2012-CA-000384**

**PATRICIA RAGLAND MCGEHEE
AND RICHARD MCGEHEE APPELLANTS**

**v. APPEAL FROM HARDIN CIRCUIT COURT
 CIVIL ACTION NO. 06-CI-01508**

**COMMONWEALTH OF KENTUCKY, APPELLEE
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS**

**SUPPLEMENTAL BRIEF FOR APPELLANTS
PATRICIA RAGLAND MCGEHEE AND RICHARD
MCGEHEE**

**Submitted by
/s/ Pat Ragland McGehee
/s/ Richard McGehee
Pat Ragland McGehee and Richard McGehee
Historic Fannie Harrison Farm
P O Box 2725
Elizabethtown, KY 42702-2725
email: RLMcgehee@msn.com
PRO SE APPELLANTS**

Certificate required by CR 76 .12(6)

The undersigned does hereby certify that copies of this Supplemental Brief For Appellants Patricia Ragland McGehee And Richard McGehee were served upon the following named individuals by registered mail on 28th day of April, 2014 the original and 5 copies to the Clerk of the Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; and copies to Hon. Kelly Mark Easton, Judge, Hardin Circuit Court, Justice Center, 120 East Dixie Avenue, Elizabethtown, Kentucky 42701; and to Hon. John Estill, Fox, Wood, Wood & Estill, 24 West Third Street, Maysville, Kentucky 41056, Counsel for Appellee.

/s/ Pat Ragland McGehee

/s/ Richard McGehee

Pat Ragland McGehee and Richard McGehee

STATEMENT OF POINTS AND AUTHORITIES

I. Road Construction Does Not Make Our Case Moot 1

Lowe v. Commonwealth, No. 2012-CA-000046-MR (Ky. Ct. App. June 21, 2013) 1

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APPENDIX A

I. Road Construction Does Not Make Our Case Moot

Hardin Circuit Court's failure to maintain the status quo while dealing with the legal issues qualifies for appellate review as palpable error, see *Lowe v. Commonwealth*, No. 2012-CA-000046-MR (Ky. Ct. App. June 21, 2013):

Pursuant to *Martin*, an "error so fundamental as to threaten a defendant's entitlement to due process of law" meets the requirement of palpable error.

MGM Grand Detroit, LLC v. Community Coalit. For Empowerment Inc., 633 N.W.2d 357, 465 Mich. 303 (2001) makes clear that court can require restoration of the status quo even after completion of construction as:

It not only is common sense, but also a well-established legal principle, that a

party can not obliterate an opponent's appeal, on the basis of mootness, by so changing the status quo during the appeal (remarkably enough in this case by building the very casino that was at issue in the appeal while the appeal was pending) that they can then argue it is impossible to return to the situation that existed when the appeal was filed. The United States Supreme Court, no less, has said as much. In Jones v. Securities and Exchange Comm., 298 U.S. 1, 15-18, 56 S.Ct. 654, 80 L.Ed. 1015 (1936), our nation's highest Court said:

The rule is well settled, both by the courts of England and of this country, that where a suit is brought to enjoin certain acts or activities, for example, the erection of a building or other structure, of which suit defendant has notice, the hands of the defendant are effectively tied pending a hearing and determination, even though no restraining order or preliminary injunction be issued.

* * *

The conclusion to be drawn from all the cases is that after a defendant has been notified of the pendency of a suit seeking

an injunction against him, even though a temporary injunction be not granted, *he acts at his peril* and subject to the power of the court to restore the status, wholly irrespective of the merits as they may be ultimately decided.

We concur with the United States Supreme Court, reinforced in this conclusion by the fact that there is no contrary authority in our jurisprudence.^[5]

[5] Also instructive is *West v. Secretary of the Dep't of Transportation*, 206 F.3d 920 (C.A.9, 2000). In this case, there was a dispute regarding the building of a highway. A builder argued the case was moot because the construction for stage 1 of the highway was already complete. The court rejected this argument, noting that if completion of construction was the test, parties could merely ignore the requirements of the law, build its structures before a case gets to court, and then hide behind the mootness doctrine. The Court concluded that "[s]uch a result is not acceptable."

KYTC repeatedly acknowledges⁸ our efforts for injunctions, so the trespassing road can be removed.

⁸ For one example see pages 9 and 10 of KYTC's March 4, 2014 Brief of Appellee.

The reversal in Watson v. Smith, No. 2006-CA-001046-MR (Ky. Ct. App. July 27, 2007) requires encroachment removal even if it was made in good faith as:

On appeal, the Watsons argue that the court erred in its choice of remedy. They contend that, absent a legal basis for estoppel, an owner is entitled to an injunction for the removal of trespassing structures, and that the finding of good faith was an insufficient basis for allowing the encroaching sidewalk to remain.

It is a well-established principle of law that an owner is entitled to an injunction for the removal of trespassing structures. It was enunciated in Kentucky in an unpublished case dating from the late nineteenth century, which stated, "[t]here is no such law or equity that would compel the owner of land to surrender his title because another had made improvements upon it by mistake." *Crain v. Hargis*, 1873 WL 11139, 6 Ky. Op. 410 (Ky.1873).

Our historic buildings can be returned to their original locations to restore the historically significant spatial organization to "*cogently reflect the period of time in which the important events took place*" (Appendix D).

II. Hardin Court's Master Commissioner Deed Is Null and Void

Our January 3, 2012 Response to Motion for Deed (Appendix E) established we "*object to the motion for a Commissioner's Deed*". Our present state appeal challenges the 2012 Hardin Court order (Appendix A or B) that finds Hardin Court can enforce KYTC's proposed "settlement agreement" from our U.S. District Court action.

On March 15, 2011 we initiated Case 3:11-cv-00160-JGH in U.S. District Court, against the U.S. Army Corps of Engineers, the Federal Highway Administration, and KYTC (Appendix F). We filed to have U.S. District Court require all these parties to comply with federal protective laws that require projects with federal involvement (such as USACE permits) to avoid or minimize adverse impacts to historic properties, like our historic Fannie Harrison Farm, (paragraph 16 in Appendix F). Enforcement of federal protective laws to "*properly assesses alternatives*" to avoid or minimize adverse impacts to our historic farm would eliminate or change Ring Road Extended 4-7010.00 project design authorized by Official Order 103359 (Appendix G), which is the basis of Hardin Circuit Court Civil Action No. 06-CI-01508, see *Commonwealth, Dept. of Highways v. Salmon Corp.*, 489 S.W.2d 32 (Ky. Ct. App. 1972),

We recognize the necessity to be able to make adjustments in plans, as they relate to the details of construction, but we cannot accept the proposition that land not officially designated for condemnation can be condemned simply

on the basis of decisions at the engineering level. Nor are we convinced that it is administratively unreasonable to require that the official order be changed when a change in the plans calls for condemnation of land other than that designated in the original order.

Our federal motion (Appendix F) was dispositive of this condemnation case, but the subject was not the "right to take". Hardin Court recognized this dispositive nature of our U.S. District Court action in Hardin Court's May 25, 2011 order (Appendix H).

Hardin Court's June 24, 2011 Order (Appendix I) admits its only jurisdiction as, "*The only issue remaining for this proceeding is one of compensation for the property taken.*" Only U.S. District Court had jurisdiction to enforce KYTC's proposed "settlement agreement" as in Aro Corp. v. Allied Witan Co., 531 F.2d 1368 (6th Cir. 1976),

It is well established that courts retain the inherent power to enforce agreements entered into in settlement of litigation pending before them. Kukla v. National Distillers Products Co., 483 F.2d 619 (6th Cir. 1973); Cia Anon Venezolana De Navegacion v. Harris, 374 F.2d 33 (5th Cir. 1967); All States Investors, Inc. v. Bankers Bond Co., 343 F.2d 618 (6th Cir. 1965). This court in All States Investors quoted with favor from Melnick v. Binenstock, 318 Pa. 533, 179 A. 77 (1935), as follows:

A compromise or settlement of litigation is always referable to the action or proceeding in the court where the compromise was effective; it is through that court the carrying out of the agreement should thereafter be controlled. Otherwise the compromise, instead of being an aid to litigation, would be only productive of litigation as a separate and additional impetus.

...We hold, therefore, that the district court had jurisdiction to enforce the settlement agreement in this case.

It was disingenuous for KYTC to ask (Appendix J) Hardin Court on December 28, 2011 to enforce their proposed "settlement agreement" from our U.S. District case as not settled while asking U.S. District Court on January 4, 2012 to dismiss our case as settled (Appendix K). However, in KYTC's haste to dismiss our U.S. District case with prejudice, KYTC lost their ability to attempt to overcome our challenges to their proposed "settlement" by the only court that had jurisdiction.

By U.S. District Court denying our injunction motions to maintain the status quo to allow time for discovery and litigation of alternative road locations off our historic farm, the case never got to discovery or litigation of our issues (p 5 and 8 of Appendix L).

Additionally, Hardin Court ignores the fact that item 9 of KYTC's proposed Settlement Agreement and Mutual Release leaves an essential element for future agreement that makes the "settlement" not enforceable in any court as,

9. At the said closing herein, upon such above-referenced payment, McGehees shall execute and deliver a deed of conveyance for the subject right of way in fee simple absolute and any necessary temporary easements, provided that the parties may agree to allocate some portion of the amount paid hereunder to the consideration for such deed, and some other portion of such payment to consideration for settlement of McGehees' claims against KYTC. (see ROA Vol. X p 1468-1469 in Appendix M)⁹

However, the reversal in Walker v. Keith, 382 S.W.2d 198 (Ky. Ct. App. 1964) stated that for a contract to be enforceable it must "leave nothing to be agreed upon" as follows:

As said in Williston on Contracts (3rd Ed.) Vol. 1, section 45 (page 149):

"Although a promise may be sufficiently definite when it contains an option given to the

⁹ Also, KYTC's proposed Settlement Agreement and Mutual Release does not provide for a Master Commissioner's Deed or for any remedy to breach by USACE, FHWA, KYTC or McGehees, Appendix K.

promisor, yet if an essential element is reserved for the future agreement of both parties, the promise gives rise to no legal obligation until such future agreement. Since either party, by the very terms of the agreement, may refuse to agree to anything the other party will agree to, it is impossible for the law to fix any obligation to such a promise."

We accept this because it is both sensible and basic to the enforcement of a written contract. We applied it in Johnson v. Lowery, Ky., 270 S.W.2d 943, page 946, wherein we said:

"To be enforceable and valid, a contract to enter into a future covenant must specify all material and essential terms and leave nothing to be agreed upon as a result of future negotiations."

Hardin Court entered an order on January 9, 2012 and entered two orders on February 6, 2012 (Appendices A, B, and C). Briefs and documents submitted by counsels have many incorrect entered dates for these 2012 Hardin Court Orders.

For jurisdiction Johnson v. Com., 17 S.W.3d 109 (Ky. 2000) states,

As a general rule, except with respect to issues of custody and child support in a domestic relations case, the filing of a notice of appeal divests the trial court of jurisdiction to rule on any issues while the appeal is pending. Hoy v. Newburg Homes, Inc., Ky., 325 S.W.2d 301 (1959) (trial judge had no jurisdiction to enter an order permitting the filing of an amended complaint); Monsour v. Humphrey, Ky., 324 S.W.2d 813 (1959) (trial judge had no jurisdiction to enter an order amending the judgment); Louisville & N.R. Co. v. Paul's Adm'r, 314 Ky. 473, 235 S.W.2d 787 (1950) (trial judge had no authority to supplement the record on appeal).

We entered a state Notice of Appeal on February 3, 2012 (Appendix N). This Appeal No. 2012-CA-000243-MR was not dismissed as premature until July 9, 2012 (Appendix O). During this time Kentucky Court of Appeals had jurisdiction. Also on February 3, 2012, we entered Notice of Appeal in 6th Circuit which did not relinquish Federal jurisdiction of our dispositive motions until Mandate on May 28, 2013 (Appendices P, Q and R). However, on February 13, 2012, without having jurisdiction, Hon. Easton signed approval of a Master Commissioner deed (Appendix S)¹⁰ in Hardin Circuit Court to enforce the "settlement" just as KYTC requested in their December 28, 2011 motion (Appendix J). Therefore,

¹⁰ KYTC acknowledges this Master Commissioner deed on page 11 of their brief. On the deed, Hardin Circuit Court Clerk on February 14, 2012 shows Hardin Court ordered it certified to the property office.

Hardin Court abused its discretion to enforce KYTC's proposed "settlement" from U.S. District Court while this Court of Appeals and 6th Circuit Court of Appeals had jurisdiction. Kentucky Court of Appeals still holds jurisdiction by Appeal No. 2012-CA-000384-MR entered February 24, 2012 (Appendix T).

III. Hardin Circuit Court Civil Action No. 06-CI-01508 must be reversed due to the court's conflict of interests.

Our counsel, Graddy, objected to Hardin Court's denial to continue the trial one month in order to complete discovery and his objection was preserved (see VR No. 1 in Appendix U). Graddy objected that a "forthwith" trial *"does not suspend the rules of civil procedure and the right to due process"*. Graddy again reminded the court it was proceeding under protest on December 17, 2007 (see VR No. 2 in Appendix U).

On November 27, 2007, Ken Howard became a judge and took our case from Judge Coleman as his first case. On November 30, Judge Howard overruled our motion to compel KYTC to answer claiming the interrogatories were too numerous (Appendix V). Then Graddy requested to reduce his two-part questions, so the number would be acceptable by the court's counting criteria (VR No. 3 in Appendix U). Nevertheless, Judge Howard's order of December 11, 2007 complained that pre-trial issues had gone on for over a year and the requirement for "forthwith" did not allow continuance of the trial (Appendix W). Hardin Court failed its duty to require KYTC to produce (Appendix X) all relevant and admissible evidence, see *United States v. Nixon*, 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974) which states

the Fifth Amendment guarantees due process of law as "*It is the manifest duty of the courts to vindicate those guarantees, and to accomplish that it is essential that all relevant and admissible evidence be produced.*" It was disingenuous for Judge Howard to prevent completion of discovery by complaining pre-trial issues had been going on in excess of one year when Hardin Court did not establish a "forthwith" schedule for completion of pre-trial issues.

When KYTC filed their petition in August 2006, Ken Howard was Hardin County Attorney. Therefore, according to KRS 177.082 County attorney to represent Department of Highways in condemnation proceedings -- Petition (Appendix Y), he would have been directly involved in our condemnation. Since Judge Howard had not disqualified from taking the case, Graddy had to request him to recuse. Despite this request, he refused claiming he already made his own due diligence review of potential conflicts of interest and determined there was nothing that would create even "*an appearance of a conflict on behalf of all parties here*" (VR No. 4 in Appendix U). However, the reversal in Carter v. Com., 641 S.W.2d 758 (Ky. Ct. App. 1982) ruled KRS 26A.015 requires disqualification regardless of the judge's claims he was not biased (bottom p 2 and most of p 3 in Appendix Z). Thus, Judge Howard further committed reversible error.

Later Judge Howard had to recuse due to his being on the Board of Directors of the Elizabethtown Industrial Foundation, (see VR No. 5 and 6 in Appendix U). The relation of the Elizabethtown Industrial Foundation to Ring Road Extended 4-

7010.00 project being on our historic farm was exposed in a newly discovered series of KYTC emails. These emails revealed KYTC has the project on our farm as "ability of Mrs. Ragland [McGehee] to relocate and sell the remainder of her farm, located next to the CSX railroad and Western Kentucky Parkway and now would front the proposed extension to the E-town Industrial Foundation" (bottom p 3 and top p 4 of Appendix AA). KYTC assisting Elizabethtown Industrial Foundation to acquire the remainder of our protected historic farm is fraud, bad faith, or abuse of discretion.

Despite Judge Howard's belated recusal, his previous orders had actually and substantially prejudiced our case. Preventing completion of discovery was a denial of due process so serious as to render the entire trial fundamentally not fair (see VR No. 1 in Appendix U).

Even the appearance a judge has a bias requires reversal as the U.S. Supreme Court reversal of In re Murchison, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955):

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be

defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." Tumey v. Ohio, 273 U. S. 510, 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice." Offutt v. United States, 348 U. S. 11, 14.

Just as the U.S. Supreme Court found the need for reversal of In re Murchison, Hardin Circuit Court Case 06-CI-01508 must be reversed.

IV. Trial Court's CR 11 Sanctions Must Be Reversed.

Our January 3, 2012 Response to Motion for Deed (Appendix E) objected to sanction of attorney fees since my affidavit was for the legitimate purpose to litigate in Federal District Court as, "*Richard McGehee's affidavit demonstrates that his position is not taken for an improper purpose but is an attempt to litigate his case.*" Our federal case was not "the right to take" but for enforcement of federal protective laws to "*properly assesses alternatives*" to

avoid or minimize adverse impacts to our historic farm.

KYTC's March 4, 2014 brief at pp. 12 -13 misrepresents my affidavit in Hardin Court as, *"attempted to relitigate each and every point which was addressed in the Interlocutory Order and Judgment and this court's order affirming"*. However, our January 3, 2012 Response to Motion for Deed (Appendix E) notified Hardin Court of our preparations to challenge KYTC's proposed Settlement Agreement and Mutual Release as we *"are challenging the Settlement Agreement that was approved in The Federal District Court."* supported with "an affidavit prepared by and executed by Richard McGehee for the Federal District Court Action". Furthermore, the start of my affidavit clearly states its purpose as *"it is not reasonable that the McGehees would voluntarily give up what is dear to them for any mediated settlement. Our determination to protect our historic farm is strengthened by ..."* and goes on to cite pages of issues that have strengthened our determination to challenge this in Federal Court (Appendix BB).

Gaiardo v. Ethyl Corp., 835 F.2d 479 (3d Cir. 1987) cautions against the use of Rule 11 when it is improperly brought to harass a party into dropping a case as:

The use of Rule 11 as an additional tactic of intimidation and harassment has become part of the so-called "hardball" litigation techniques espoused by some firms and their clients. Those practitioners are

cautioned that they invite retribution from courts which are far from enchanted with such abusive conduct.³ A court may impose sanctions on its own initiative when the Rule is invoked for an improper purpose. Lieb, 788 F.2d at 157.

KYTC's March 4, 2014 brief asking more sanctions on p 15 for a frivolous appeal is a repeat (Appendix CC) this court denied on July 9, 2012 (Appendix O). Just as in *Walters v. Smith*, No. 2011-CA-001026-MR (Ky. Ct. App. July 5, 2013), "*The fact that our opinion did not declare the appeal frivolous was a good indication, by necessary implication, that we did not consider the appeal frivolous or we would not have wasted judicial resources considering the merits.*"

Conclusion

Unless our pending motion to submit a traditional twenty-five page *pro se* brief and subsequent traditional five page *pro se* reply brief is granted, we cannot pursue all our arguments and we do not waive such arguments.

McGehees ask this Court to do the following: (1) declare null and void the Master Commissioner Deed (Deed Book 1359 Pages 1063 -1066, Appendix S), which was ordered and approved by Hardin Court, (2) require KYTC to promptly remove Ring Road Extended (4-7010.00 or segments 4-7010.10 and 4-7010.50) that encroaches on our historic farm including our historic road to and across Valley Creek, (3) require KYTC to monthly reimburse

McGehees for the costs of restoration of the Historic Fannie Harrison Farm to its condition prior to road construction, (4) reverse the trial court's order of CR 11 sanction against us and issue sanction against KYTC. (5) find KYTC acted in fraud, bad faith, or abuse of discretion by construction of Ring Road Extended without first resolving the legal issues of acquisition of right of way, (6) KYTC's condemnation action against McGehees be dismissed with prejudice, (7) attorney fees and expenses, (8) Appellants also seek any additional relief as the court deems appropriate.

Submitted by
 /s/ Pat Ragland McGehee
/s/ Richard McGehee
 Pat Ragland McGehee and Richard McGehee
 Historic Fannie Harrison Farm
 P O Box 2725
 Elizabethtown, KY 42702-2725
 email: RLMcgehee@msn.com
 PRO SE APPELLANTS

**APPENDIX O — Selections *National Register
Eligibility Study of Ragland Farm, Gaithers
Station Road, Hardin County, Kentucky* by
Mary McClinton Clay, September 11, 2006**

**NATIONAL REGISTER ELIGIBILITY STUDY
OF
RAGLAND FARM
GAITHERS STATION ROAD
HARDIN COUNTY, KENTUCKY**

Prepared for:
W. Henry Graddy, IV
W.H. Graddy & Associates
Railroad Street
Midway, Kentucky

Prepared by:
Mary McClinton Clay, MAI
218 Main Street
Paris, Kentucky
September 11, 2006

Page 4:

The proposed transportation route acquires the improved front portion of a prime excellent example of early-20th century Depression era middling farmstead with an intact complex of improvements, as well as spatial organization and land patterns of the landscape as they evolved from 1906 to 1950.

Page 28:

Because of the declining economics of Depression era farming as described above, it was necessary for the farming operation to be as efficient as possible in order that the farmer, with limited resources, could

conduct the enterprise with minimal assistance beyond that of his family. The design of the operation with respect to the arrangement of the dwelling, farm improvements, gardens, and fields were in response to this need. The arrangement was not only typical of Hardin County, but other areas of Kentucky, as well. It provided for every aspect of the farm families' needs—a place to raise and store for later consumption or sale poultry, meat, milk, grain, tobacco, vegetables, and fruit. These were the products raised on the Ragland Farm during the period of significance for both consumption and sale.

The subject is "a typical turn of the century farmstead which contains a frame bungalow dwelling adjacent to a barn, corn crib, poultry house, smoke house, granary."²² According to Thomas Clark, "the sentimental image of the historic Kentucky farm would be barren indeed without the inclusion of its satellite buildings. These were comprised of the chicken house, the smokehouse, wagon shed, corn crib, and hog lot. Most important of all was the big old long waistee barns, some of log construction, many of riven paling board, and all with their hallways, harness rooms, tool sheds, stables, and gaping hay lofts. There could be no clearer documentation of the past..."²³

Page 81:

Fifty years after its period of significance (1920-1950), it is still in basically in the same condition as it was in from 1927, when Fannie Harrison purchased it, until her death in the early 1950s.

**APPENDIX P — Patricia A. Ragland's 1991
deed**

Book 703 Page 384

Deed

THIS DEED OF CONVEYANCE made and entered into on this the 28th day of February, 1991, by and between IRVIN H. RAGLAND, single, individually, and by and through his Attorney-in-Fact, PATRICIA A. RAGLAND, by virtue of Power of Attorney filed for record in Deed Book 688, Page 64, in the Hardin County Court Clerk's Office, whose mailing address is 132 Arnold Lane, Elizabethtown, Kentucky 42701, party of the first part, and PATRICIA A. RAGLAND, single, whose address is 132 Arnold Lane, Elizabethtown, Kentucky 42701 party of the second part,

WITNESSETH: That for and in consideration of the love and affection which first party has for second party, his daughter, and for the further consideration of second party taking care of first party and providing first party with a home for his lifetime, and for no monetary consideration, the party of the first part does hereby grant, bargain, transfer, sell, and convey, unto the party of the second part, in fee simple, her heirs and assigns, the following described real estate, located in Hardin County, Kentucky, to-wit:

A certain tract of land, being Tract No. 3, as per division of the Henry Jump farm, described as follows:

Beginning at a stone near a telephone pole 33 feet from the center of the L & N.R.R. and corner to Peak; thence S71 E (old call 70½) 100 $\frac{4}{5}$ poles to a stake, corner in Lot No. 2; thence S 30 W 147 $\frac{4}{5}$ poles to a stone in the road, corner to Clarkson and Allen; thence N 56½ W105 $\frac{4}{5}$ poles to the L & N right-of-way, thence with the east line of same N 33¼ E 122 poles to the beginning, containing 85 acres.

Parties of the first part also convey to parties of the second part the right of way of a passway. Retained in deed a road 20 ft. wide and running from the gate at the L& N.R.R. to the creek.

Being the property which first party, Irvin H. Ragland, acquired title by inheritance from Fannie Harrison by virtue of will duly probated and filed for record in Will Book J, Page 229, in the Hardin County Court Clerk's Office. Fannie Harrison obtained title to the above property by virtue of deed from Martin and Cecilia Perry, dated November 23, 1927, recorded in Deed Book 84, Page 288, in the aforesaid Office.

BOOK 703 PAGE 385

This conveyance is made subject to any easements apparent or of record, any applicable restrictive covenants of record, all public roads and streets, and any applicable provisions of the planning and zoning laws, restrictions and regulations of appropriate jurisdiction, as well as provisions of the Hardin County Kentucky Development Guidance System.

TO HAVE AND TO HOLD the above-described real estate, together with all the appurtenances and improvements thereunto belonging unto the party of the second part, in fee simple, her heirs and assigns, forever, and with covenant of GENERAL WARRANTY.

Both first and second parties, by their execution of this instrument, do hereby certify that the full, fair market value of the above property is \$51,200.00. Second party enters into this deed for the sole purpose of satisfying the consideration certification requirement by KRS.

IN TESTIMONY WHEREOF, witness the hands of both first and second Parties on the day and year first above written.

/s/ Irvin Ragland

IRVIN H. RAGLAND

/s/ Patricia A. Ragland

IRVIN H. RAGLAND, by and through
his Attorney-In-Fact, Patricia
A. Ragland, by virtue of a Power
of Attorney filed for record in

84a

Deed Book 688, Page 64, in the
Hardin County Court Clerk's Office
/s/ Patricia A. Ragland
PATRICIA A. RAGLAND
STATE OF KENTUCKY
COUNTY OF HARDIN

The foregoing Deed was SIGNED and
ACKNOWLEDGED and the above consideration
certification SUBSCRIBED and SWORN TO before
me, a Notary Public, by IRVIN H. RAGLAND, single,
both individually and by and through his Attorney-
in-Fact, Patricia A. Ragland, by virtue of a Power of
Attorney filed for record in Deed Book

BOOK 703 PAGE 386

688, Page 64, in the Hardin County Court Clerk's
Office, and by PATRICIA A. RAGLAND, single, to be
their free voluntary act and deed, this the 28th day of
February, 1991.

/s/ Cathy Hammond
NOTARY PUBLIC,
MY COMM. EXPIRES: 2-18-1993

This deed prepared by:
Lewis & Preston
102 West Dixie Avenue
P O Box 863
Elizabethtown, Kentucky 42702
/s/ Paul M Lewis
PAUL M. LEWIS

WITHOUT A TITLE OPINION
WITHOUT A LEGAL SURVEY OF THE PROPERTY

85a

FEE PD. ST 3.00 CLERK 7.50
DEED TAX _____
LODGED AND RECORDED
THIS

Mar 4 3:02 PM '91
DAVID L LOGSDON
HARDIN COUNTY CLERK
BY. /S/ K CHAPPELL DC

**APPENDIX Q — Selection from pages 1 and 3 of
Charles J. Taylor, Delineation of Ground-Water
Basins and Recharge Areas for Municipal
Water-Supply Springs in a Karst Aquifer
System in the Elizabethtown Area, Northern
Kentucky. U.S. Geological Survey Water-
Resources Investigations Report 96-4254, (1997)**

Two springs in southeast Hardin County, Kentucky, Elizabethtown Spring (also known locally as City Spring) and Dyers Spring (Gaithers Station Spring), are used as the primary sources of municipal water for the City of Elizabethtown (fig. 1). About 1.4 Mgal/d is withdrawn from Elizabethtown Spring and about 567 Kgal/d is withdrawn from Dyers Spring during periods of highest consumptive use (Robert Best, Manager, Elizabethtown Water Plant, oral commun., 1995).

Conduit-dominated karst aquifers are widely recognized as being much more sensitive to groundwater contamination or degradation resulting from certain land-use practices than are typical granular and fractured-rock aquifers (Field, 1990). ...

Because of the concern for the increased potential for contamination and degradation of these two water-supply springs, the U. S. Geological Survey, in cooperation with the Kentucky Division of Water, Department of Environmental Protection, Natural Resources and Environmental Protection Cabinet, conducted an investigation to delineate the recharge areas of Elizabethtown and Dyers Springs and to gain a better understanding of the distribution and boundaries of the ground-water basins in the karst aquifer system in the

Elizabethtown area. This report presents the results of that investigation, which used a hydrogeologic-mapping approach that included potentiometric map interpretation and dye-tracing tests.

The information presented in this report is intended to aid water-supply managers and State regulators in developing a water-supply management and protection plan for Elizabethtown and Dyers Springs and to illustrate the use of hydrogeologic mapping methods to investigate the characteristics of karst aquifer systems.

**APPENDIX R — Selections from KYTC's Ring
Road Extension study November, 1987**

**RING ROAD EXTENSION
Hardin County
KENTUCKY TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
DIVISION OF PLANNING
November, 1987**

RING ROAD EXTENSION HARDIN COUNTY

I. PURPOSE

This study identifies an alignment that extends Ring Road (which skirts Elizabethtown, Hardin County) from US 62 to the Western Kentucky Parkway (WKP). It also discusses the need for an extended section between WKP and US 31W. This extension is expected to open the undeveloped area to development both industrial and residential.

II. EXISTING CONDITIONS

At present, Ring Road begins at US 62 East just inside the Elizabethtown Urban Limits (as shown in Exhibit 1) continuing counterclockwise around Elizabethtown to US 62 West. It is a two-lane rural facility on four-lane right of way with the exception of a 1.5 mile 4-lane (undivided) section between Bewley Hollow Road and I-65.

III. SYSTEMS

Existing Ring Road is on the Federal-aid Urban and State Secondary Systems. The route is also

classified as a Minor Arterial Street on the 1987 Functional Classification System.

The proposed extension from US 62 to US 31W is outside the urban boundary (see Exhibit 2) and would be placed on the Federal-aid and State Secondary Systems and classified a Rural Major Collector.

IV. PROPOSED ALIGNMENT

Utilizing a USGS quadrangle map, 1986 aerial photography, field reconnaissance along with as-built plans, the alignment shown on Exhibit 3 was developed. The alignment includes interchanges at WKP and I-65, with the remaining crossroads at grade. A grade separation and at-grade crossing of the CSX Railroad are also addressed. Gaithers Station Road will have to be relocated to achieve better sight distance. In the area of the railroad, several transmission lines cross the alignment. In these areas, the profile was held as close to the existing ground line as possible (assuming 22' transmission line height) to obtain the necessary clearance. ...

A. Section I

Section 1 begins at the US 62 - Ring Road Intersection as shown in Exhibit 3, traversing east crossing the CSX Railroad at grade or with a grade separation. The eastern terminus is a full diamond interchange with WKP, approximately 2.3 miles south of the US 31W Bypass Interchange.

This section is 1.80 miles in length and has the following cost breakdown. ...

B. Section 2

This section begins at the proposed Ring Road – WKP Interchange and continues southeast crossing Glendale Road approximately 2.3 miles from its interchange with the US 31W Bypass. The proposed 2.08-mile alignment ties into I-65 with a diamond interchange to allow for an eventual at-grade intersection with US 31W. The location of the proposed interchange with I-65 permits future extensions to occur with minimal damage..

This proposed extension from WKP to US 31W presents a major problem with the existing weigh station on I-65 (just north of the proposed interchange). First, the ramp lengths required for the Ring Road Interchange overlap into the weigh station ramps. Even if the interchange were moved further south, the ramps of each interchange would be too close. Secondly, the extension of Ring Road to US 31W would give the trucks an alternate route to using the mandatory weigh station on I-65. Therefore, if Ring Road is extended to US 31W, the existing I-65 weigh station would need to be relocated with a minimum estimated cost of \$2,000,000. ...

V. TRAFFIC

The existing (1986) and design year (2010) traffic estimates were provided by the Division of Mass Transportation. The truck percentages were

furnished by the Division of Planning's Traffic Section.

The traffic (refer to Exhibits 5 and 6) illustrates that if the extension ends at the WKP, 2010 ADT is 3,480 vehicles per day (vpd). Whereas, if the proposed extension is constructed to US 31W, the 2010 ADT for Section 1 would be 11,040 vpd. Therefore, from a traffic standpoint, the logical eastern terminus for the proposed Ring Road Extension is US 31W. Ramp volumes for I-65 and the WKP Interchanges with the extension are attached in the Appendix.

VI. INTERCHANGE SPACING

The Federal Highway Administration requires an interchange spacing of 1 mile in urban areas and 3 miles in rural areas. The proposed Ring Road extension - I-65 Interchange is outside the urban boundary and is approximately 1.5 miles to the nearest interchange (assuming the weigh station is relocated). However, it can be strongly argued that this area is quickly urbanizing and that a 1-mile spacing should apply. This report does not include a weave analysis for either interchange.

VII. CONCLUSIONS

The proposed Ring Road Extension from US 62 to the WKP (Section 1) shown in Exhibit 3 has a 4-lane average right of way width of 225 feet. Several variations of cost estimates were prepared for this section and are located in Table 1 of the Appendix. Since the proposed roadway profile indicates the need for a large volume of borrow material, this

study recommends constructing two lanes on a 4-lane graded section (see Exhibit 4) with an at-grade CSX Railroad crossing. The estimated cost of Section 1 with this description is \$6,539,000 with 3,480 vpd in the year 2010.

The proposed Ring Road Extension from the WKP to US 31W, if constructed, increases the traffic on Section 1 to 11,040 vpd in the year 2010. The construction of Section 2 (WKP to US 31W) greatly enhances the feasibility of Section 1 from a traffic standpoint.

Again, the problem presented with Section 2 is the unavoidable relocation of the weigh station on I-65 which just recently received new weighing equipment. Section 2 with the same typical section as Section 1 has an average right of way width of 225 feet, length of 2.08 miles and an estimated cost of \$8,202,000. The cost includes \$2,000,000 for the weigh station relocation.

The total Ring Road Extension project from US 62 to US31W would cost approximately \$14,741,000 with an average right of way width of 225 feet. ...

EXHIBITS

**APPENDIX S — December 13, 2005 Official
Order 103359 for Ring Road Extended Item No.
4-7010.00.**

**Commonwealth of Kentucky
Transportation Cabinet**

Division of Right of Way Official Order No. 103359

**SUBJECT: Hardin County, Item No. 4-7010.00
FD04 0047 6589301R
Ring Road Extended
Acquisition of Right of Way**

**The Transportation Cabinet has determined that the
subject project is a needed public highway
improvement.**

Whereupon, it is ordered that:

- 1. The subject project is hereby authorized and
shall be constructed in accordance with plans
and specifications or revisions thereof on file
in the Transportation Cabinet Office,
Frankfort, Kentucky.**
- 2. The Transportation Cabinet is hereby
authorized and directed to acquire right of way
needed for this project according to the
alignment and widths shown on the plans or
revisions thereof; and is authorized to
institute condemnation proceedings for
acquisition of such right of way if necessary.
Title to all property acquired for this project
will be in accordance with Official Order No.
56202 dated September 3, 1958.**

Transportation Cabinet funds are hereby authorized to be used for approved purposes for this project pursuant to Chapter 177 of the Kentucky Revised Statutes.

3. The acquisition of right of way for this project is hereby declared to be for a public use and is necessary for construction, reconstruction and maintenance of an adequate system of highways.

Signed and approved this the 13 day of December, 2005.

Approved as to form

And Legality:

/s/ [?]

Office of Legal Services

/s/ Bill Nighbert

Bill Nighbert

Acting Secretary of Transportation

Approved for ROW use

Date 11/22/05

I, as Official Custodian of the Official Order Book of the Transportation Cabinet of Kentucky, do hereby certify that this is a true and correct copy of Official Order No. 103359

/s/ Robert J. Scott

APPENDIX T — Locations of the five stream crossings of U.S. Army Corps of Engineers Nationwide Permit 14, ID No. 200600639-lcp, along Ring Road Extension Item No. 4-7010.00.

preliminary
SUMMARY OF SECTION 404 IMPACTS
Hardin County
Ring Road Extension
Item No. 4-7010.00

Station 74+00

See sheet R5, 7

(1) -

Construct 171 linear feet of 10 foot X 4 foot box culvert under the road. The inlet and outlet areas of the box culvert will have Class III channel lining and will impact an additional 89 feet. A total of approximately 260 feet of ephemeral stream will be impacted measuring 0.023 acres. The drainage area at the culvert pipe is 161 acres.

Station 96+92

See Sheet R9 -

Construct a 310 linear foot by 110 foot wide 3-span bridge over Valley Creek. No direct impacts to the perennial stream will occur. Pier I and pier 2 will be set outside of the ordinary high water and: and cyclopean rip-rap measuring 2 feet thick will be used around the abutment slopes to reduce scour during large flood events. The drainage area at the proposed bridge is 50.2 square miles. Should a temporary crossing be necessary for the above construction, the

contractor will be responsible for contacting the Corps for a permit.

Station 124+44.26

Construct 157 linear feet of double 10 foot X 7 foot box culvert under the road. The inlet and outlet areas of the box culvert will have Class III channel lining and will impact an additional 123 feet. A total of approximately 280 feet of blueline stream will be impacted measuring 0.05 acres. The drainage area at the box culvert is 1.51 square miles.

Bacon Creek Road

Station 52+13.91 –

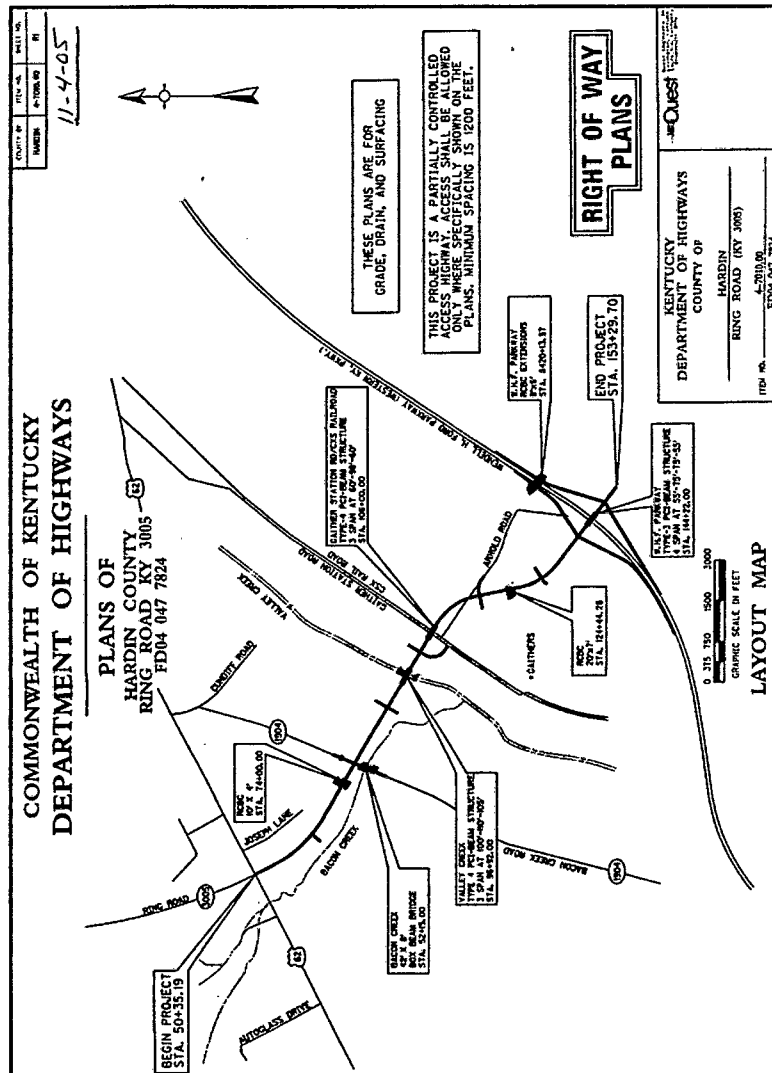
Construct 82 linear feet of 42 feet wide X 10 feet tall three sided arch bridge that will replace an existing 12 foot X 8 foot RCBC under the road. The inlet and outlet areas of the bridge will have Class III channel lining and will impact an additional 92 feet. A total of approximately 174 feet of blueline stream (Bacon Creel) will be impacted. Approximately 0.03 acres of blueline stream will be impacted by the removal of the existing RCBC and placement of new 3 sided arched bridge. The drainage area at the bridge is 2.59 square miles.

Wendall Ford Parkway

Station 8420+13.46 –

Construct by extending an existing 8 feet X 6 feet box culvert 34 linear feet left and 24 linear feet right under the road. A total of approximately 56 feet of blueline stream will be impacted measuring 0.01 acres. The drainage area at the box culvert is 1.34 square miles.

Note: Any additional section 404 impacts requiring the appropriate Army Corps of Engineers Permits ie. use of coffer dam structures or temporary crossings, will be the responsibility of the contractor to obtain.



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DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE
CORPS OF ENGINEERS
P.O. BOX 59
LOUISVILLE, KENTUCKY 40201-0059
FAX: (502) 315-6677
<http://www.lrl.usace.army.mill>

June 27, 2006

Operations Division
Regulatory Branch (South)
ID No. 200600639-lcp

Daniel R. Peake
Commonwealth of Kentucky Transportation Cabinet
Department of Highways
200 Mero Street
Frankfort, Kentucky 40622

Dear Mr. Peake:

This is in response to your request for authorization to construct 3 culverts and 2 bridges for the purpose of extending Route 3005 (ring Road) in Elizabethtown, Hardin County, Kentucky. (Hardin County, Item No. 47010.00, Ring Road Extension) The information supplied by you was reviewed to determine whether a Department of the Army (DA) permit will be required under the provisions of Section 404 of the Clean Water Act.

Your project is considered a discharge of backfill or bedding material for a road crossing. The project is authorized under the provisions of 33 CFR 330 A Nationwide Permit (NWP) No. 14, Linear

Transportation Crossings, as published in the Federal Register January 15, 2002. Under the provisions of this authorization you must comply with the enclosed:

1. Terms for Nationwide Permit No. 14;
2. Nationwide Permit General Conditions; and
3. Water Quality Certification (WQC) Conditions for Nationwide Permit No. 14 dated March 17, 2002, issued by the Kentucky Division of Water.

Once you obtain your certification, or if no application was required, you may proceed with the project without further contact or verification from us. The enclosed Compliance Certification should be signed and returned when the project is completed. This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2007. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this nationwide permit.

A copy of this letter is being sent to the Division of Water.

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If you have any questions, please contact me by writing to the above address, ATTN: CELRL-OP-FS, or by calling (502) 315-6684. Any correspondence on this matter should refer to our ID No. 200600639-lcp.

Sincerely,
/s/ Larry C. Parker
Larry C. Parker
Regulatory Specialist
Regulatory Branch

Enclosure

NATIONWIDE PERMIT CONDITIONS

General Conditions: The following general conditions must be followed in order for any authorization by a NWP to be valid:

...

3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in elective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

...

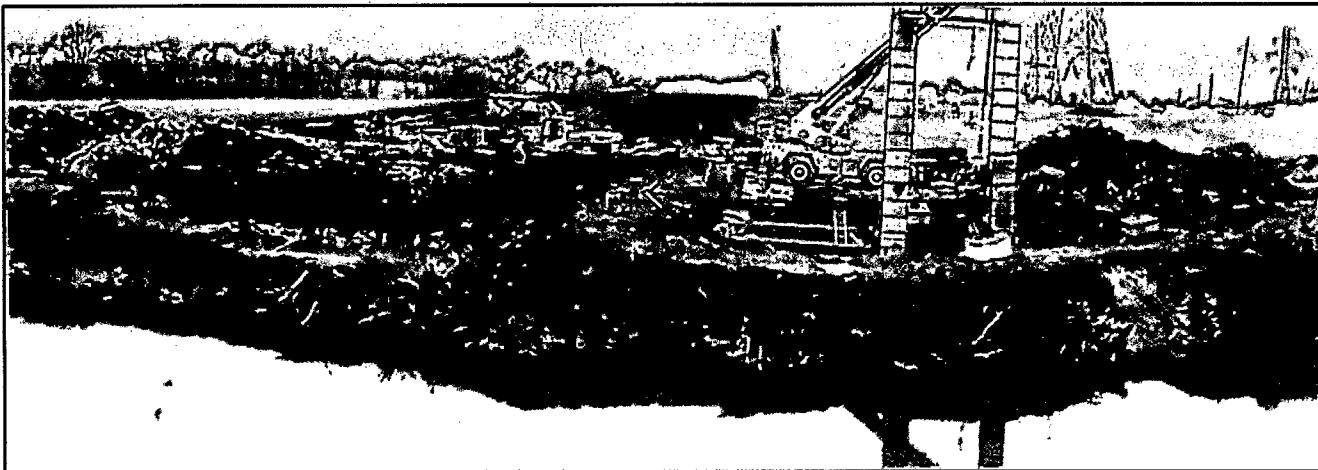
12. Historic Properties. No activity, which may affect historic properties, listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325, Appendix C. The

prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

...

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

...



Construction site at Ring Road Extension crossing of Valley Creek.
Photo by Richard McGehee February 23, 2008.

**APPENDIX U — Selection from a chain of
March 24 to April 6, 2004 emails between KYTC
Project Manager Gary Valentine and KYTC
officials in Frankfort regarding moving the
project onto the Ragland farm.**

Alts 4 and 6 were detailed and presented to the project development team on October 18th, 2002. Much discussion took place about Alternate 6 acquiring all the farmstead structures along the frontage of an 85 acre farm identified as being owned by a Ms. Patricia Ragland. The discussions amounted to indirect impacts (40ft embankment running parallel with their frontage within a couple hundred feet) with the original alternatives and alternate 4 and the direct impacts of alternate 6. The PDT decided to recommend alternate 6 because of the cost savings and the ability of Ms. Ragland to relocate and sell the remainder of her farm (located next to CSX railroad and WKP and now would front the proposed extension) to the E-town Industrial Foundation or re-build on her farm.

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**APPENDIX V — Selections from August 23,
2007 *Notice to Begin Work* for Ring Road
Extension segment Item. No. 4-7010.10 from US
62 to Gaither Station Road that had been let
July 27, 2007.**

**TRANSPORTATION CABINET
Frankfort, Kentucky 40622
www.kentucky.gov**

August 23, 2007

**FAULKNER CONSTRUCTION LLC
4623 ILLINOIS AVENUE
Louisville, KY 40213**

**RE: NOTICE TO BEGIN WORK - Contract ID
#071144
AWARD AMOUNT - \$ 7,003,250.00
LETTING DATE - July 27, 2007
AWARD DATE - August 09, 2007
HARDIN COUNTY, FD04 047 7121, A
DISTANCE OF 1.46 MILES
BRIDGE WITH GRADE, DRAIN & SURFACE**

Dear Contractor:

**We are enclosing for your record a copy of the
executed contract on the subject project. This is your
notice to proceed with the contract work.**

**Work shall begin not later than September 22,
2007, which is thirty (30) days from the date of this
notice, except when the Standard Specifications
and/or bid proposal, which will be a part of the
contract documents, dictate otherwise. Please inform**

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the District Engineer at once .as to your plans for beginning work on this project.

The contract time established for the completion of this project is 225 Working Days.

Sincerely yours,
/s/ Steve Waddle
Steve Waddle, Director
Division of Construction Procurement

SW/MM

CC: DIVISION OF ACCOUNTS
DIVISION OF CONSTRUCTION
DIVISION OF MATERIALS
DISTRICT ENGINEER
CONTRACTORS ASSOCIATION
HARTFORD FIRE INSURANCE COMPANY
VALLEY FORGE INSURANCE COMPANY

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Contract ID: 071144

Page 5 of 89

CONTRACT ID – 071144

ADMINISTRATIVE DISTRICT - 04

PROJECT(S) IDENTIFICATION AND
DESCRIPTION:

COUNTY - HARDIN

PCN - DE04730050744

FD04 047 7121

RING ROAD (KY 3005) EXTEND RING ROAD
FROM US 62 TO GAITHER STATION ROAD, A
DISTANCE OF 1.46 MILES. BRIDGE WITH
GRADE, DRAIN & SURFACE. SYP NO. 04-
07010.10.

GEOGRAPHIC COORDINATES LATITUDE
37°40'00" LONGITUDE 86°54' 00"

COMPLETION DATE(S) AND LIQUIDATED
DAMAGES ESTABLISHED:

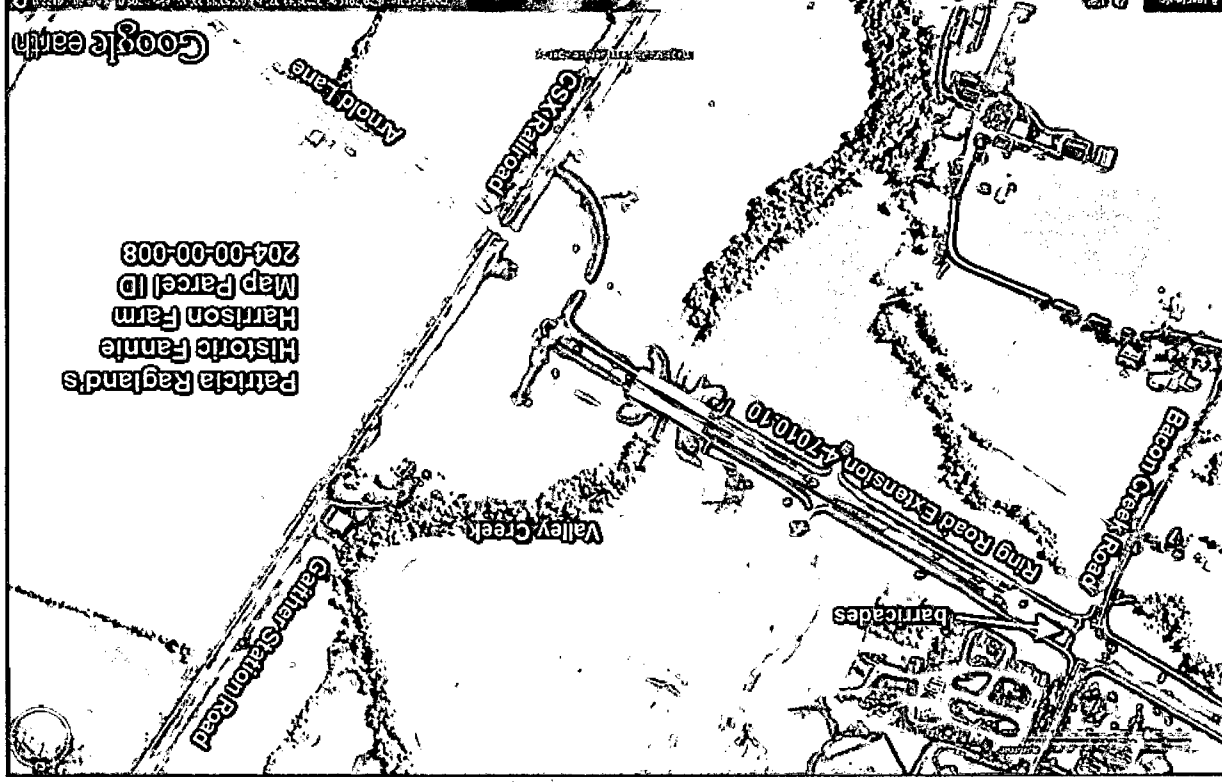
225 WORKING DAYS

APPLIES TO ENTIRE CONTRACT

SEE STANDARD SPECIFICATIONS FOR
LIQUIDATED DAMAGES

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APPENDIX W — August 30, 2010 image of
constructed Ring Road Extension segment
Item No. 4-7010.10.





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**APPENDIX Y — November 1, 2010 letter from
KYTC to our Hon. Graddy requiring a global
settlement in order to keep the historic
farmstead buildings.**

Fox, Fox, Wood & Estill
Attorneys at Law
24 West Third Street
Maysville, Kentucky 41056
(606) 564-5585
Facsimile (606) 564-6734

November 1, 2010

Hon. W. Henry Graddy, IV
103 Main Street
P.O. Box 4307
Midway, Kentucky 40347
VIA EMAIL AND BY US MAIL

RE: Transportation Cabinet vs. McGehee

Dear Mr. Graddy:

This is to follow up on our phone conversation this date. You are to advise me by the close of business tomorrow if the McGehees will permit the Transportation Cabinet's right of way personnel to inspect the interior of their home to conduct an evaluation of relocation benefits due. Without question, the evaluation will be more accurate and favorable to your clients should a full inspection be undertaken. Should you not advise me tomorrow that the interior inspection will be permitted, then I will instruct the Transportation Cabinet to proceed with

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its relocation evaluation. Regardless, your clients will be receiving a notice to vacate.

You have also advised that your clients would like to have the improvements on the property moved. If you would like to negotiate the relocation of the house or other buildings, it will need to be part of a global settlement of damages for the taking. You may have made a demand to Bill Dean during the prior proceedings, but I am not aware of any demand by your clients, and would ask that you send same to me immediately.

I hope to resolve this controversy with you and can assure our good faith negotiations in this matter.

Best regards
/s/ John F. Estill
John F. Estill

JFE

cc: Dean Loy

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**APPENDIX Z — Selection from KYTC's July 29,
2011 Notice to Contractors.**

PART 1

**TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
DIVISION OF CONSTRUCTION PROCUREMENT
FRANKFORT, KENTUCKY
POSTED: July 29, 2011
NOTICE TO CONTRACTORS**

**BIDS WILL BE RECEIVED ELECTRONICALLY
THROUGH THE BID EXPRESS BIDDING
SERVICE UNTIL 10:00 AM (EASTERN DAYLIGHT
TIME) ON FRIDAY, AUGUST 19, 2011.
THEREAFTER, BIDS WILL BE CHECKED IN THE
DIVISION OF CONSTRUCTION PROCUREMENT
AND POSTED ALONG WITH THE ENGINEER'S
ESTIMATE ON THE FOLLOWING WEBSITES:
WWW.TRANSPORTATION.KY.GOV AND
WWW.BTDX.COM.
THE PROJECTS ARE FOR THE
IMPROVEMENT OF:**

CALL 308 CONTRACT TD 111328

HARDIN COUNTY

**JL03 047 3005 NEW ROUTE: RING ROAD (KY
3005) EXTEND RING ROAD (KY 3005) FROM
GAITHER STATION ROAD TO THE WESTERN
KENTUCKY PARKWAY, A DISTANCE OF 2.67
MILES. GRADE & DRAIN WITH ASPHALT
SURFACE.**

SYP NO. 04-07010.50.

**Appendix AA — KYTC's project information for
remainder of Ring Road Extension Item No. 4-
7010.00 as segment Item No. 4-7010.50 that was
let on August 19, 2011.**

Project Information for 111328

Item: 4-7010.5

County1: HARDIN

County2:

Section Supervisor: Bagby, Brandon R.

**Contractor: SCOTTY'S CONTRACTING AND
STONE LLC of BOWLING GREEN, KY**

**Federal/State Project Number: JL03 047 3005 NEW
ROUTE**

Route: RING ROAD (KY 3005) From To HARDIN

**Description: EXTEND RING ROAD (KY 3005)
FROM GAITHER STATION ROAD TO THE
WESTERN KENTUCKY PARKWAY**

Dollar Analysis

Contract Amt: \$13,123,215.06

Change Orders: \$256,390.46

Total Contract Amount: \$13,379,605.52

Amount Remaining: \$272,935.71

Percent Complete: 97.96%

Project Dates

Letting: 8/19/2011

Work Order: 11/9/2011

Awarded: 10/18/2011

Began: 11/17/2011

Completed:

Formal Acceptance: 9/4/2014

Available at

**[http://pmttoolbox.kytc.ky.gov/Program_Code_Results_
TED3.asp?PCN=111328](http://pmttoolbox.kytc.ky.gov/Program_Code_Results_TED3.asp?PCN=111328)**

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**Appendix BB — December 1, 2011 check hiring
Hon. Bryan Bennett.**

PATRICIA R. OR RICHARD L. McGENEE 00-74		3262
132 W. ARNOLD LN. ELIZABETHTOWN, KY 42701		31-0013 301
Dec. 1, 2011		
Pay to the Order of	Bryan Bennett	\$ 1,000.00
One thousand		Dollars
PNCBANK		
PNC Bank, N.A. 001		
For	legal services retainer	Richard M. Dehee
3262		
3262	\$1,000.00	12/02/2011

**Appendix CC — Selections from the 1993
*Commonwealth of Kentucky Wellhead
Protection Program***

**The Commonwealth of Kentucky
Wellhead Protection Program**

by
**Kentucky Department for Environmental Protection
Division of Water, Groundwater Branch**

**Submitted to the U.S. Environmental Protection
Agency in fulfillment of the requirements of Section
1428 of the Safe Drinking Water Act.**

February 1993

Page 19: Specific management strategies are discussed in the Management Approaches section. Remedial action zones are established to protect the well or spring from unexpected contaminant releases and to minimize that likelihood by locating certain high-risk activities outside of the more sensitive WHPAs.

Page 34: WHPA-3 is the boundary marking the outer limits of the recharge area. This boundary is not required in certain circumstances due to specific aquifer characteristics. Management controls in WHPA-3 should direct the siting of incompatible potential sources of groundwater contamination outside of the recharge area and implement best management practices for existing sources. Pollution prevention strategies and public education will be

the most effective management tool for protecting WHPA-3.

Pages 35-36: All of the information associated with WHP such as locations of water sources, contaminant sources and dimensions of WHPA boundaries will be stored with other groundwater data in the states geographic information system (GIS) and in parameter specific databases. The GIS system is capable of plotting several different types of information in a scaled map format. The Groundwater Branch maintains databases that track groundwater quality, sources, and tracing results. This information is also plotted on 1:24,000 scale topographic maps for quick reference. This information will be used to direct the future siting of potential contaminant sources away from PWSs. All of this information is available to the public.

**Appendix DD — Kentucky Division of Water
Joseph A. Ray's February 23, 2004 comments on
KYTC's location of the Ring Road Extension.**

February 23, 2004

On February 13, 2004, a Kentucky Department of Transportation (DOT) meeting was held at Elizabethtown, Kentucky, concerning the proposed extension of "Ring-road" to the Western Kentucky Parkway. The proposed interchange and part of the Ring-road extension lie within the Dyers Spring (AKA "Gaithers Spring" or "Gaithers Station Spring") groundwater basin, which is part of the municipal water supply for Elizabethtown.

Quest/Rudy Engineers, consultants for DOT, propose at least nine simplified retention basins for runoff from the new highway and interchange. These basins are sized to contain a 10,000-gallon tanker spill for enhanced emergency response. The basins discharge to drainage ditches terminating in karst depressions.

One of the depressions, in which two constructed drainage-ways will terminate, is a perennial karst window named Gaithers Karst Window (Mull and others, 1988; Taylor, 1997). This spring is 3000 ft east of Dyers spring and has been quantitatively dye-traced to the water supply spring in 5 hours at a discharge of 4.7 ft³/s (3-1-85) and 24 hours at a low-flow of 0.53 ft³/s (9-30-85). The interval between the leading edge and peak concentration of the dye cloud was as little as 48 minutes (Mull and others, 1988). This indicates that the conduit flow of groundwater between the karst window and the water-supply spring (including any introduced contaminant) can

be rapid and efficient. Consequently, Gaithers Karst Window (ID# 9000-2693) is an extremely vulnerable site within the Dyers Spring basin and deserves special attention during the construction and operation of a major highway intersection.

At the DOW meeting, Groundwater Branch personnel recommended:

- Lining new basins and ditches with covered geo-textile fabric for dispersing recharge to help limit new soil collapses.
- Development of contingency plans for inspecting and repairing any soil collapses within these constructed basins and ditches.
- Consideration of the use of native vegetation in these constructed drainage ways and fencing/gating retention basins to deter mowing crews for optimal maintenance of vegetative cover.
- Provision of roadbed aggregate to retention basins to maintain an all-weather access for emergency response.

The observed soil depth in Gaithers Karst Window is a minimum of 10 ft. After reviewing geologic maps, the entire proposed construction site is **not** within the localized area of deep residual soil to the east, which limits the development of karst features and hydrogeological sensitivity. Therefore collapse potential within the project and along the bottom of constructed drainage is high. These collapses may become exceptionally vulnerable hydrologic features

which may short-circuit assumed soil-infiltration rates and adsorption of contaminants.

Additional recommendations include:

- The depth of constructed drainage basins and ditches should be minimized as much as possible. The deeper the cut of the basin and ditch increases the likelihood of cover collapse within those areas. Interception of runoff by soil collapses bypasses the advantages of soil infiltration.
- For the two constructed drainage ways connected to Gaithers Karst Window, a series of retention basins should be considered, perhaps including a widening and shallowing of these features in order to store and infiltrate as much runoff water as possible. An optimal goal would be that little or no runoff water empties into the karst window.

Joseph A. Ray, P.G.
Groundwater Hydrologist, III
Groundwater Branch
Division of Water

References Cited:

Mull, D.S., Smoot, J.L., and Leibermann, T.D., 1988, Dye tracing techniques used to determine groundwater flow in a carbonate aquifer system near Elizabethtown, Kentucky: USGS Water-Resources Investigation Report 87-4174, 95 p.

Taylor, C.J., 1997, Delineation of groundwater basins and recharge areas for municipal water-supply springs in a karst aquifer system in the Elizabethtown area, northern Kentucky: USGS Water-Resources Investigation Report 96-4254, 22 p.

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Appendix EE — September 24, 2014 Google Earth image of Ring Road Extension showing relationship to Dyers Spring (Gaithers Station Spring), Gaithers Karst Window, and the Historic Fannie Harrison Farm.

