

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CITY OF OZARK, ARKANSAS, a municipal corporation

VS.

UNION PACIFIC RAILROAD COMPANY,
the ARKANSAS STATE HIGHWAY
& TRANSPORTATION DEPARTMENT
(an Agency of) The State of Arkansas,
TLB
AND THE ARKANSAS STATE HIGHWAY
COMMISSION

CIVIL ACTION NO:2:14-CV-02196-

**PLAINTIFF'S SUPPLEMENT EXHIBITS TO THE PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Comes now the Plaintiff, the City of Ozark, Arkansas, a municipal corporation by and through its undersigned counsel, Christopher D. Brockett of Sayre & Brockett, and for its Supplement Exhibits to the Plaintiff's Motion for Partial Summary Judgment filed herein on and even date herewith and does file Exhibit O through Exhibit P-19 as shown on the attached Table of Exhibits.

Respectfully submitted:

By: /s/ Christopher D. Brockett

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CERTIFICATE OF SERVICE

I, Christopher D. Brockett, hereby certify that a copy of the foregoing Amended Complaint has this date been served by U.S. Mail on the following:

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Done at Ozark, Arkansas, this 30th day of April 2015.

/s/ Christopher D. Brockett
Christopher D. Brockett

TABLE OF EXHIBITS

Exhibit A-1: Copy of deed from WM Hail to William Cureton

Exhibit A-2: Copy of deed transferring land from James F. Quaile and Frauk A. Quaile to Little Rock and Fort Smith Railway on March 14, 1876

Exhibit B: Copy of deed from John Hail & Sarah to William Hail

Exhibit C: Copy of deed from William Cureton to James F. Quaile

Exhibit D: Copy of deed from J.V. Boourland & Bonnie J. to Samuel Church

Exhibit E: Deed from Samuel Church to Jinnie to J.V. Bourland

Exhibit F: Deed from J.V. Bourland and Bonnie J. to Redmond R. Walting

Exhibit G: A copy of deed from Julia Walting to Martin Oliver

Exhibit H: A copy of a picture of the downtown area showing residences on the south side of the Defendant's tracks prior to the construction of the new Depot

Exhibit I: MoPac Track Right of Way Map, June 30, 1916, Pages 1-15

Exhibit J: A copy of Small Estate Affidavit of Nelsie Oliver

Exhibit K-1: June 5, 1940 Minutes from City Council

Exhibit K-2: May 8, 1951 Minutes from City Council

Exhibit K-3: December 11, 1956 Minutes from City Council

Exhibit K-4: December 22, 1957 Minutes from City Council

Exhibit L: Deposition of Monty Canady Page 19

Exhibit M-1: A copy of the Ordinance dated October 13, 1942

Exhibit M-2: A copy of the blue print

Exhibit M-3: Deposition of Harold Pickartz Page 25-26

Exhibit M-4: Deposition of Jimmy Bearden Page 19

Exhibit M-5: Picture showing 1942 Railroad spurs

Exhibit M-6: Picture showing Depot & Crossing

Exhibit M-7: Close up view of Oliver St. Crossing with vehicle at the crossing

Exhibit N-1: Station and Structures Map, August 15, 1946, Pages 1-12

Exhibit N-2: Enlarged Version of the Station and Structures Map, August 15, 1946, Pages 1-15

Exhibit O: Deposition of Dorothy Johnson Pages 10 and 16

Exhibit P-1: Deposition of Wallace Alston Pages 11, 16, 18, 20 and 21

Exhibit P-2: Deposition of Byron Rex Anderson Pages 12-13, pages 41-43

Exhibit P-3: Deposition of Jimmy Bearden Pages 9, 10, and 18

Exhibit P-4: Deposition of Bob Bonds Pages 9-15

Exhibit P-5: Deposition of Alice Brooks Pages 9 and 10

Exhibit P-6: Deposition of Monty Canady Pages 10-15

Exhibit P-7: Deposition of Ralph Johnson Pages 11-15

Exhibit P-8: Deposition of Dorothy Johnson Page 14

Exhibit P-9: Deposition of Brenda Mann Page 8

Exhibit P-10: Deposition of Harold Pickartz Pages 10 and 14

Exhibit P-11: Deposition of Andrew Post Page 8

Exhibit P-12: Deposition of Loye Randolph Pages 10-12

Exhibit P-13: Deposition of Philip Smith Pages 8, 9 and 11

Exhibit P-14: Deposition of Paul Stacy Pages 10 and 11

Exhibit P-15: Deposition of Robert Trotter Pages 11 and 12

Exhibit P-16: Deposition of Lonnie Turner Pages 6 and 7

Exhibit P-17: Deposition of Don Whitson Pages 8, 9 and 12

Exhibit P-18: Deposition of Shirley Wilson Pages 9-11

Exhibit P-19: Deposition of Harrison Allred Pages 27, 30-32

Exhibit Q-1: Deposition of Kenneth Smith Pages 10-13, 18-20, 22, 23-27

Exhibit Q-2: Copy of picture dated 1952

Exhibit Q-3: Zoomed in version of Copy of picture dated 1952

Exhibit Q-4: Copy of picture dated 1954

Exhibit Q-5: Zoomed in version showing structures on South side of railroad crossing

Exhibit Q-6: Substantially zoomed in version showing structures on South side of railroad crossing

Exhibit R: Deposition of Harrison Allred Pages 12, 13, 23 and 25

Exhibit S-1: Deposition of Jimmy Bearden Page 21

Exhibit S-2: Picture of 1955 Butane Tanks Move

Exhibit T: Deposition of Harrison Allred Pages 17, 26 and 32

Exhibit U: Deposition of Monty Canady Pages 19 and 20

Exhibit V: Deposition of Dorothy Johnson Page 17

Exhibit W-1: Deposition of Ralph Johnson Page 17

Exhibit W-2: Deposition of Truman Johnson Page 12

Exhibit W-3: Deposition of Philip Smith Page 12

Exhibit W-4: Deposition of Don Whitson Page 15

Exhibit X-1: Deposition of Truman Johnson Page 10

Exhibit X-2: Deposition of Harold Pickartz Page 17 and 18

Exhibit X-3: Deposition of Andrew Post Page 11

Exhibit X-4: Deposition of Joe Powell Page 12

Exhibit X-5: Deposition of Paul Stacy Page 11, 12 and 14

Exhibit Y-1: A copy of the February 1962 Map

Exhibit Y-2: Enlarged Version of the February 1962 Map

Exhibit Y-3: Deposition of Robert Trotter Page 18, 20 and 25

Exhibit Z: A copy of the Directory dated March 1962

Exhibit AA-1: Deposition of Robert Trotter Page 17 and 19

Exhibit AA-2: Deposition of Monty Canady Page 15

Exhibit AA-3: Deposition of Harold Pickartz Page 17-22

Exhibit BB: Deposition of Lonnie Turner Page 23 and 24

Exhibit CC: Deposition of Robert Trotter Page 13, 23, 24 and 27

Exhibit DD: Deposition of Steve Outlaw Pages 8 and 9

Exhibit EE: A copy of the 1965 Water Distribution Map

Exhibit FF: A copy of the ariel photo from 1965 with enlargement behind

Exhibit GG-1: Relocation Maps from Ozark Lock and Dam, March 1966

Exhibit GG-2: Copy of the Lis Pendens from June 1, 1968

Exhibit HH-1: A copy of John Burns deed

Exhibit HH-2: A copy of MOPAC's deed

Exhibit HH-3: A copy of Tom Kirkendoll's deed

Exhibit II: Google Maps showing the crossing

Exhibit JJ-1: FRA Crossing Inventory Reports 1970-2001

Exhibit JJ-2: FRA Crossing Inventory Reports Digital Map from Website

Exhibit KK-1: Deposition of Philip Smith Page 16

Exhibit KK-2: Deposition of Bill Brockett Page 9 and 11

Exhibit LL: A copy of the 1975 Map, Pages 1-6

Exhibit MM: 1976 Arkansas Map with a street index, Pages 1-12

Exhibit NN: A copy of the 1980 AH&TD Map, Pages 1-3

Exhibit OO: A copy of the 1980 Mickle-Wagner Assoc., Inc. Bike Route Map, Pages 1-3

Exhibit PP-1: Union Pacific's 2000 Map

Exhibit PP-2: Deposition of Vernon McDaniel, Pages 29 and 30

Exhibit O

Deposition of Dorothy Johnson Pages 10 and 16

Page 10

1 Q. Okay. Around that time, okay. Is that kind of
2 the last time period in which you would have had an
3 occasion to use that crossing?

4 A. Yes. I know there was a dump over there.
5 There were people that lived over there at one time.
6 But, no, I never was over there after my dad moved
7 his sawmill out.

8 Q. Okay. Wonderful. Can you kind of describe
9 what that road was like? I have heard it wasn't
10 asphalt. I heard it was, maybe, gravel?

11 A. It was a dirt road.

12 Q. Okay. Was it -- did you ever see anybody
13 maintaining it, that you recall?

14 A. Well, I don't remember because I was too young
15 to --

16 Q. Okay.

17 A. -- pay any attention to that if it did.

18 Q. What was your father's name?

19 A. Millard Rowe.

20 Q. Okay. Can you spell his first name?

21 A. M-i-l-l-a-r-d.

22 Q. Okay. And R-o-w-e?

23 A. R-o-w-e.

24 Q. Okay. Did he own that property, or did he
25 lease it from somebody?

1 your father's sawmill?

2 A. Practically, yeah.

3 Q. Okay.

4 A. Same area.

5 Q. Okay. Do you know how long your father had a
6 sawmill located down there?

7 A. I would say roughly about two year.

8 Q. Two years, okay. Was that -- so it would have
9 been, like, say, 1941 through 1943, something like
10 that?

11 A. Probably, uh-huh.

12 Q. Okay. So that was about the time of the --

13 A. Because he went to service in '45, and I think
14 he got rid of it before he went to service.

15 Q. Okay.

16 A. He went in the service in January of '45, so it
17 would have had to have been in '44.

18 Q. Okay. And I know I'm delving into your memory.
19 Do you remember what the crossing was made out of or
20 if there was any signs at the crossing location?

21 A. It seems like there was just a railroad
22 crossing, you know, one of these black and white
23 signs.

24 Q. A crossbuck?

25 A. There wasn't any light or anything. It was

Exhibit P-1

Deposition of Wallace Alston Pages 11, 16, 18, 20 and 21

1 Q. Yes, sir.

2 A. There was a pallet mill and sawmill there.

3 They built pallets, I think, is what they built
4 there.

5 Q. Okay.

6 A. And Mr. Rambo (phonetic) from Synergy Gas had
7 his butane tanks across the tracks there.

8 Q. Okay.

9 A. I don't know whether he owned the land or
10 leased it or what, but there were some big, you know,
11 butane tanks there.

12 Q. Okay. So what purpose would you have had to go
13 to the pallet mill?

14 A. No purpose. I would just go down there and
15 circle around and look at the river, you know, more
16 or less.

17 Q. And what purpose would you have to go to the
18 propane tanks?

19 A. Same.

20 Q. Same, okay.

21 A. It was on the way down. I would just make the
22 turn. I'm one of them that gets out and just circles
23 down a few times, you know.

24 Q. Right. When was the last time you would have
25 used that crossing?

Page 16

1 me that later, you know, they had a -- they
2 even had a jail in there. They had two or
3 three hangings out to the rear of it.

4 BY MS. JONES:

5 Q. You know, let me ask you something. You know,
6 you are talking about you would use that crossing to
7 go check the river level. Was there other ways to
8 get over to the river besides the crossing on the
9 east side of the depot?

10 A. Not that I know of. Just by foot, walking.

11 MS. JONES: Okay. All right.

12 EXAMINATION

13 BY MR. BROCKETT:

14 Q. I do have a question that brought up. So to
15 your knowledge there wasn't any other true crossings?

16 A. No, I don't remember anything else.

17 Q. Okay.

18 A. No. That was the main route in there.

19 Q. Okay. And if I was sitting at your house, and
20 you told me go to the dump, would you use street
21 names, or would you just --

22 A. I would say go to the dump, cross the track
23 down there by the depot.

24 Q. Okay. And do you remember some of the other
25 names of people that lived down there?

Page 18

1 Q. Okay. Are we talking 2001, or are we talking
2 1970?

3 A. Well, back when they closed it, that's when I
4 noticed it. You know, you couldn't go across it
5 anymore.

6 Q. Okay. Do you remember when they closed it?

7 A. No, I don't remember the year.

8 Q. Okay. So let's try and take it decade by
9 decade. In 1970 do you remember using the crossing
10 in the 1970s?

11 A. I used it until they closed it.

12 Q. Okay.

13 A. That's all I can tell you.

14 Q. All right. So if we said 2001 is when they
15 closed it, do you remember any time before 2001 not
16 being able to use the crossing?

17 A. Well, if you closed it 2001, I just noticed it
18 when they closed it, is all I can tell you.

19 Q. All right. So up until that time would you
20 have been able to use it?

21 A. I reckon.

22 Q. Okay.

23 A. You know, I assume you would. I mean, I didn't
24 use it -- I went across it until they blocked it.

25 Q. Okay.

1 Q. Is that your signature?

2 A. Yes.

3 Q. Okay. Do you remember signing that?

4 A. No, not right offhand.

5 Q. Okay.

6 A. Royce and I were friends, you know, and
7 everything, and I might have signed something, a
8 petition for him to run for judge one time.

9 Q. Okay. But you don't remember signing 257?

10 A. No, I don't really right offhand.

11 Q. Okay.

12 A. You know.

13 Q. Will you take a moment to read it so I can ask
14 you a few questions about it?

15 A. (Witness reviews document.) Okay.

16 Q. Okay. You wouldn't have -- if you had drafted
17 this yourself, you wouldn't have used the term
18 "Oliver Street," right, you would have used the dump
19 road?

20 A. No, the dump.

21 Q. Okay.

22 A. That's what everybody called it.

23 Q. Okay. And did you actually fish from the bank
24 right there?

25 A. Yeah, right on the bank.

1 Q. Okay.

2 A. Right where the sewer comes out.

3 Q. But you wouldn't have done that after 1970,
4 right, after the river changed its course?

5 A. No.

6 Q. Okay.

7 A. No.

8 Q. Did you ever launch a boat there?

9 A. No.

10 Q. Okay. And we talked about you did dump trash
11 at the city dump?

12 A. Yeah, I did.

13 Q. But you wouldn't have done that after 1970s?

14 A. No, no.

15 Q. Did you actually visit anyone living on any of
16 the houses on the other side?

17 A. No.

18 Q. Okay.

19 A. Just knew that they were there and knew of
20 them, and knew that one or two people, you know, that
21 lived there.

22 Q. Okay. Did you ever hike?

23 A. No.

24 Q. Okay. Did you ever shoot anything?

25 A. No.

Exhibit P-2

Deposition of Byron Rex Anderson Pages 12-13, pages 41-43

Page 12

1 Q. Do you remember when the lock and dam was
2 installed?

3 A. Uh-huh. About 19 -- oh, I'd say around '70,
4 '71, or something like that.

5 Q. Okay. So when you were a child and even up
6 through high school, the lock and dam had not been
7 installed?

8 A. That's correct.

9 Q. All right. And tell me, would you use that
10 crossing on a regular basis?

11 A. No. I mean, what is your definition of
12 "regular"?

13 Q. Well, have you ever used that crossing?

14 A. Yes.

15 Q. Okay. And during that period of time what
16 would you use that crossing for? Why would you use
17 it?

18 A. Oh, occasionally we would go down to the dump,
19 and occasionally we would go down and ride our horses
20 down there.

21 Q. Okay. Was there anything else down in that
22 area across the tracks besides the dump, that you
23 recall?

24 A. I just remember there was a barn down there at
25 one time, and when I was real, real young I can

Page 13

1 remember there might have been some other little
2 small buildings down there, but I don't remember a
3 whole lot about it. That was several years ago.

4 Q. Do you remember if those buildings were
5 occupied? Were they houses, or do you know?

6 A. I don't really remember.

7 Q. Okay. Besides the dump was there any other
8 site or structure or anything else down there?

9 A. Like I said, it's been a long time, but there
10 may have been a gas container down there, you know,
11 some kind of a natural gas container.

12 Q. Okay. At one time there was some gas tanks
13 kind of up on the railroad's property; is that what
14 you're talking about?

15 A. I can just vaguely remember. All I can do is
16 just vaguely remember. I just remember there might
17 have been a tank down there.

18 Q. Okay. When you say "a tank down there," how
19 far away from the tracks would that have been?

20 A. I can't even recall. I am just --

21 Q. Okay.

22 A. -- trying to answer the questions as best I
23 can.

24 Q. Fair enough. And I appreciate that.

25 A. That has been several years back.

1 different people. It says you have personally used
2 Oliver Street rail crossing either walking or
3 driving.

4 Okay. And as I recall your testimony, you
5 remember using it before the lock and dam was
6 installed?

7 A. Right.

8 Q. Do you remember if you walked or drove?

9 A. Both.

10 Q. Okay. And one of the reasons you would have
11 used the crossing then was to go horseback riding?

12 A. Correct.

13 Q. Would y'all take horses across in a trailer?

14 A. No.

15 Q. Were the horses --

16 A. Just rode the horses.

17 Q. Oh, you rode the horses across?

18 A. Yeah.

19 Q. Okay. All right. And then it says, May or may
20 not have included fishing. Do you know if you used
21 the crossing at that time to fish?

22 A. Like I told you earlier, we played down there
23 all of the time. We fished down there. We did
24 whatever -- you know, it was part of playing around
25 before it was dammed up.

Page 42

1 Q. Okay. But you said you could have crossed
2 anywhere, just not at the --

3 A. Before it was dammed up everything was grown
4 up, and that's the only way you crossed it.

5 Q. Okay.

6 A. After it was dammed up it was cleaned up, and
7 you could go wherever you wanted to.

8 Q. So before the river was dammed up, you say all
9 of the vegetation --

10 A. Yes, sir.

11 Q. -- on the river side of the tracks was grown
12 up?

13 A. Yeah.

14 Q. So the only way to get down to that area was
15 through the road that led down there?

16 A. Yes, sir.

17 Q. Okay.

18 A. Now, there were other trails to get to the
19 river. You could have gone probably 75 yards up on
20 the tracks and found a trail to get to the river.

21 Q. Okay.

22 A. So that wasn't the only place you could get to
23 the river. I don't want to leave that out there.

24 Q. Okay. So you would have crossed at this Oliver
25 Street and possibly other areas?

1 A. There was other areas to get to the river other
2 than that spot.

3 Q. Okay. And then did you ever launch a boat, use
4 the crossing to launch a boat?

5 A. I never myself. I don't think I ever launched
6 a boat.

7 Q. All right. But did you ever dump trash at the
8 city dump?

9 A. Probably I was with my dad.

10 Q. Okay. Do you specifically recall that or not?

11 A. Forty or fifty years ago, you know, I can
12 recall driving down there and there being a dump down
13 there, but I don't really remember if the trash came
14 out of the back of our car or not.

15 Q. Okay. And did you ever go across that crossing
16 to do hiking?

17 A. Sure.

18 Q. Okay. Shooting?

19 A. Yes.

20 Q. Sightseeing?

21 A. There wasn't much to see.

22 Q. Do you know anybody that went over there to
23 sightsee?

24 A. Well, I don't know.

25 Q. Okay.

Exhibit P-3

Deposition of Jimmy Bearden Pages 9, 10, and 18

1 A. Yes.

2 Q. And what year did you retire?

3 A. 2005.

4 Q. Okay. And do you know what year you came back
5 from National Guard?

6 A. Let's see, I went in '69, March of '69, and
7 come back in November of '69.

8 Q. Okay.

9 A. From basic training. The only other time that
10 I was gone was to basic camp or something like that,
11 once a year.

12 Q. Okay. Now, part of the lawsuit between the
13 city and the railroad concerns a crossing located
14 east of the depot in downtown Ozark. Are you
15 familiar with that location?

16 A. Yes.

17 Q. Okay. I think it's pretty well established at
18 this point that the crossing went to the old city
19 dump?

20 A. Well, that is one of the spots.

21 Q. And there was, F&S Lumber was there?

22 A. Yes.

23 Q. There were some propane tanks on the other side
24 of the tracks. There were some houses on the other
25 side of the tracks; is that right?

1 A. Yes, that's right.

2 Q. Maybe an old barn or something that was back
3 there?

4 A. Yes.

5 Q. Okay. What, if anything, did you use the
6 crossing for?

7 A. Basically for the dump yard.

8 Q. Okay.

9 A. And also for the lumber yard. We went down and
10 picked up their throwaway staves to stake tomatoes
11 with.

12 Q. Okay.

13 A. This, that, and the other. Fishing, dad used
14 to take me fishing when I was a kid down there quite
15 a bit, the mouth of the Gar Creek. In later years we
16 went back. After I got to where I could go by myself
17 I went and shot rats at the dump yard.

18 Q. Okay.

19 A. So I remember going down there several times.

20 Q. All of this would have been before 1970;
21 correct?

22 A. Yes.

23 Q. Okay. Did you do anything after 1970? And I
24 have picked 1970 because that's around about the time
25 that the dam got built and they flooded and change

1 better.

2 Q. Okay. Well, we will look at that. So I am
3 going to go to 271. And what do we see in 271?

4 A. That may be the barn right there.

5 Q. Okay. The barn might be it, okay. So 270.

6 A. This is the barn here, because here is the
7 crossing.

8 Q. Okay. I am going to put "Barn." Okay. So
9 the crossing is right --

10 A. Yeah, you can see it right there.

11 Q. Right here?

12 A. Yeah. It went straight across, and it would
13 have a dip on the other side. If you went left you
14 went into the field by the barn -- I mean right.

15 And if you go left, you go back down to the
16 tracks back to the lumber company, by the propane
17 tanks. And then the road forks right, and you went
18 down to the dump yard, and left you went on down to
19 where the residents were.

20 Q. Okay.

21 A. If you go on down to the dump yard and went
22 through it, it went on straight on over to where the
23 sewer line come out.

24 Q. Okay.

25 A. Where the fishing hole was.

Exhibit P-4

Deposition of Bob Bonds Pages 9-15

1 A. Yes, ma'am.

2 Q. Okay. Have you ever had occasion to use that
3 crossing?

4 A. Yes. Just, it wasn't on business but just to
5 go to the dump and stuff like that.

6 Q. Okay.

7 A. The dump was across the railroad track.

8 Q. Okay. So you used that crossing to access the
9 dump?

10 A. Yes, ma'am.

11 Q. That used to be kind of where the river is now?

12 A. That's right, yeah.

13 Q. Okay. Did you use it for any other thing --

14 A. No.

15 Q. -- other than getting to the dump?

16 A. No, ma'am.

17 Q. Okay. So can we agree that you haven't used
18 the crossing since, at least since the seventies when
19 the river got changed?

20 A. That's right.

21 Q. Okay. Is there anything when you were doing --
22 well, strike that. Okay. So this road was kind of
23 an old gravel road?

24 A. Yes, ma'am.

25 Q. Okay.

1 A. Yeah.

2 Q. Did you know what the street was called?

3 A. No, ma'am.

4 Q. Okay. Have you ever heard a street called
5 Oliver Street?

6 A. I've heard of Oliver Street, but I really don't
7 know if that was -- I don't know where it was at.

8 Q. Okay.

9 Q. All right. Well, thank you for your time, sir.
10 I appreciate it today. That's all of the questions I
11 have.

12 A. Okay.

13 MS. JONES: He may have some questions
14 for you.

15 EXAMINATION

16 BY MR. BROCKETT:

17 Q. I just have a couple.

18 A. Okay. I was just going to tell you a story
19 about the little pasture that was across the, from
20 the depot, between and the river.

21 Q. Uh-huh.

22 A. I mean, you don't -- this is just --

23 Q. It's part of it. Go ahead.

24 A. And friends of mine, well, the sheriff's boy,
25 Junior Crawford and Ramsey Clark (names phonetic) and

Page 11

1 people like -- they had their little horses there in
2 this little pasture.

3 And I have been with them, you know, go
4 across there just goofing off, and in this little --
5 there was quite a bit of room between the depot and
6 the river. In fact, above the old jail --

7 Q. Uh-huh.

8 A. -- going down that street there was a crossing
9 there. Houses was in that. There were houses in, on
10 the river.

11 John Adams, I remember one fellow that
12 lived there, but every time you get one of them
13 pretty good floods, you get up on the houses, you
14 know, but that was another crossing that I remember
15 back then.

16 Q. Was that the other crossing on this side of the
17 jail?

18 A. That's right.

19 Q. Was that the ferry crossing?

20 A. That's right. Yeah, you bet.

21 Q. Okay.

22 A. I remember ferry days.

23 Q. Well, the history is pretty interesting of
24 everything that's going on.

25 A. Yeah.

Page 12

1 Q. But you said, did you ride horses down south of
2 the railroad tracks?

3 A. Oh yeah, yeah.

4 Q. Okay. Do you remember when that was?

5 A. No, it was in the forties, I imagine.

6 Q. Okay.

7 A. It was forties and -- I got out of school in
8 '48 here.

9 Q. Okay.

10 A. I hadn't -- I told a lot of people I haven't
11 been a mile from the house since I was born.

12 Q. I understand.

13 A. And I was brush hogging back this fall, and I
14 brush hogged by this house. I just got to studying
15 it, well, I was born there 84 year ago.

16 Q. Oh wow.

17 A. Yeah.

18 Q. South of the railroad tracks do you remember a
19 company called F&S Lumber Company?

20 A. M&S.

21 Q. M&S?

22 A. That's --

23 Q. Is that south of the railroad tracks?

24 A. No, I don't, I didn't -- I didn't remember it
25 being south of the railroad track.

1 Q. Okay. Well, M&S, I understand, was north of
2 the railroad tracks?

3 A. That's right, yeah.

4 Q. Okay. Do you remember ever having a building
5 south of the railroad tracks?

6 A. I don't remember that.

7 Q. Okay.

8 A. No.

9 Q. Do you ever remember -- you mentioned a John
10 Adams. Do you remember any other houses south of the
11 railroad tracks?

12 A. No, I don't -- there was two houses, but I
13 don't remember who lived in this, the little brick
14 house there where you go down to the track.

15 Q. Uh-huh.

16 A. Oliver, a colored boy lived there.

17 Q. Okay.

18 A. But I don't know.

19 Q. Do you think his last name was Oliver?

20 A. I'm pretty sure it was, but I don't, I don't
21 really -- I don't really remember for sure --

22 Q. Sure.

23 A. -- his name.

24 Q. Okay. Do you remember -- if someone told you
25 to go to the dump or how do I get to the dump, how

1 would you describe it to them how to get there?

2 A. Oh, of course, it's changed now, but I would
3 tell them to go down past the River Street and go to
4 the, past the depot and first -- just to my memory I
5 would say a hundred yards below the -- I don't know.
6 It might have been further than that.

7 Q. Probably east of the depot?

8 A. East of the depot.

9 Q. Okay.

10 A. It might have been a little further than that,
11 but I don't know.

12 Q. Okay. And then just take a right?

13 A. Yeah.

14 Q. Okay.

15 A. Take a right and go right down there.

16 Q. Okay.

17 A. Well, it was a big deal for kids. I never did
18 do it, but to go down there, rats and things, and go
19 down there and shoot and everything. Of course, you
20 couldn't do that now, but city limits and everything,
21 but, you know.

22 Q. Okay.

23 A. I remember that was a big deal.

24 Q. What about gars?

25 A. Yes.

1 Q. Shooting gars?

2 A. Shooting gar there -- there is a lot of history
3 crossing the river here.

4 Q. Uh-huh.

5 A. The river bridge had seats on it, you know, and
6 you go across. You could sit down. There are a lot
7 of pictures. A lot of people have pictures, and I
8 don't even have one of them.

9 Q. Well, that's interesting.

10 A. Shooting gar with their rifle, .22 rifle.

11 Q. Okay.

12 A. In the summertime, you know. The river was
13 altogether different now than in those days, you
14 know.

15 Q. Sure, okay.

16 A. I was raised just south of the river, and we
17 farmed this bottom over here, peanuts back in the
18 forties.

19 And the kids swam in the river, you know,
20 after work, and they would just go down there. And
21 there was a pretty good sandbar, kind of like a
22 beach, you know, go out and swim in the evening and
23 everything.

24 Q. Okay. Do you know, other than the crossing to
25 the west of the old jail and the east of the depot,

Exhibit P-5

Deposition of Alice Brooks Pages 9 and 10

1 asking that a crossing be installed or reinstalled to
2 the east of the depot in downtown Ozark?

3 A. Read it in the paper.

4 Q. Okay. Had you ever used a crossing east of the
5 depot?

6 A. Yes.

7 Q. Okay. And I kind of understand it went to the
8 dump?

9 A. It was back in the early -- the latter part of
10 the forties and the early fifties.

11 Q. Okay. That's when you would have used it.

12 A. Yes.

13 Q. Did you use it after the fifties?

14 A. No.

15 Q. Okay. What did you use it for?

16 A. In our church we had a very poor family. We
17 had -- there were houses over there.

18 Q. Yes, ma'am.

19 A. And we had a very poor family, and I took food
20 and clothing to the children.

21 Q. Okay. Would you have had any other occasion to
22 use that crossing?

23 A. No.

24 Q. Okay. And have you -- I'm guessing you haven't
25 ever done any research to determine who put that

1 crossing in, for example?

2 A. No.

3 Q. Okay. Did you -- was it called, did it have a
4 name that people called it, or, like if someone was
5 going to tell you how to get to this family's house,
6 would that, how would they tell you to go there?

7 A. Well, the city dump was down there. We didn't
8 have pick up.

9 Q. Okay.

10 A. So the whole city just hauled their junk --

11 Q. Okay.

12 A. -- down there.

13 Q. So everyone kind of knows the street that led
14 to the dump?

15 A. Yeah.

16 Q. Did it they call it a name?

17 A. If they did I don't remember it.

18 Q. Okay. Have you ever heard of a street called
19 Oliver?

20 A. If I did I don't remember it.

21 Q. Okay.

22 MS. JONES: All right. Thank you so
23 much, ma'am. I appreciate your time today.

24 EXAMINATION

25

Exhibit P-6

Deposition of Monty Canady Pages 10-15

1 crossing that was alleged to be located east of the
2 depot in downtown Ozark. Are you familiar with the
3 crossing that I have just referred to?

4 A. Yes.

5 Q. Okay. Have you ever had an occasion to use
6 that crossing?

7 A. Yes.

8 Q. Can you tell me what occasions would have
9 brought you to use that crossing?

10 A. Mostly fishing.

11 Q. Okay. Can you tell me about what era you would
12 have used that crossing to go fishing?

13 A. Nineteen -- the first time was 1955.

14 Q. Okay.

15 A. That I remember going down there.

16 Q. Do you remember the last time?

17 A. Probably around 1970, I'm going to say.

18 Q. Now, I have heard about fishing, kind of using
19 the crossing to go fishing, and I have heard that a
20 lot of people went to a spot where the sewer dumped
21 into the river right at the dump. Is that where you
22 were going?

23 A. The mouth of Gar Creek, yes.

24 Q. Okay. Okay. And as I understand, that spot
25 somewhat disappeared after the river changed its

1 course; is that right?

2 A. After the dam?

3 Q. Yes, sir.

4 A. Yes.

5 Q. Okay. So that's probably why you put the last
6 time being around 1970 when the river changed and the
7 dam got built?

8 A. Yes.

9 Q. Okay. So after around 1970 you wouldn't have
10 had occasion to use the crossing; is that right?

11 A. I have used it. I think I used it around 1972.

12 Q. Okay.

13 A. When the river was down real low, myself and a
14 friend went over on the south side of the tracks and
15 dug some bottles where the old original dump used to
16 be.

17 Q. Okay.

18 A. The original dump was straight across from
19 where the crossing was. And later years it moved
20 down the river.

21 Q. Okay. So sometime around 1972?

22 A. Yes.

23 Q. Water was low enough that you could actually go
24 kind of dig up some of that stuff?

25 A. Yes, the river was -- they lowered it real low

1 one year, and we went down and dug bottles, which we
2 had done before the dam was completed.

3 Q. Okay. And is that the last time, around 1972,
4 when you were digging those bottles?

5 A. Yes.

6 Q. Okay. And you are not the first I've talked
7 with about this crossing, so I'm getting a good sense
8 that this was -- the street was kind of a gravel
9 road?

10 A. Yes.

11 Q. Okay. Do you remember if you, in the 1960s,
12 1970s if you called it a name, the street that went
13 over the crossing?

14 A. Everyone known it as Oliver Lane, that I
15 remember.

16 Q. Okay. So that's what you referred to it as
17 Oliver Lane?

18 A. Yes.

19 Q. And you wouldn't have any knowledge, would you,
20 of whether or not that was the official city name for
21 the street?

22 A. I figured it was called that because of the
23 people that lived down there, because two homes down
24 there had Olivers that lived in them.

25 Q. Okay. So there are some people that named

1 Oliver, so you thought that was why people called it
2 that?

3 A. Yes.

4 Q. Okay. So you wouldn't know if it was an actual
5 city street that met the requirements, the legal
6 requirements for a city to have a street; right?

7 A. No.

8 Q. Okay. Have you ever served on the city
9 council?

10 A. No.

11 Q. Have you ever served with an organization
12 called Main Street Ozark?

13 A. No.

14 Q. Do you have any -- have you been personally
15 involved with this lawsuit at all, helping with the
16 Complaint or anything like that, other than being a
17 fact witness on, as you are here today?

18 A. No.

19 Q. Okay. Was there anything about your use of the
20 crossing that we haven't discussed so far?

21 A. Rephrase that.

22 Q. Is there anything -- did you use the crossing
23 in any other way than what we've already discussed
24 here today?

25 A. To go down to haul trash to the dump.

1 Q. Okay. Anything else you can think of?

2 A. No.

3 Q. Okay.

4 MS. JONES: Well, I appreciate your
5 time. Thank you so much. Mr. Brockett may
6 have a few questions for you.

7 EXAMINATION

8 BY MR. BROCKETT:

9 Q. Can you describe what the crossing looked like
10 or what kind of crossing it was?

11 A. Well, it was like most all other crossings that
12 I remember in that, anywhere up and down the tracks,
13 which I lived on the tracks at Gar Creek.

14 It had the crossties fixed to where a
15 vehicle could go across it, other than just go across
16 a normal straight run track.

17 Q. Okay. Was there any signs that said railroad
18 crossing or stop signs or anything like that?

19 A. Yes.

20 Q. Okay. What kind of signs were there?

21 A. All I can remember is just an "x" railroad
22 crossing.

23 Q. So a saw buck?

24 A. Yes.

25 Q. The "x"?

1 A. Yes.

2 Q. Okay. Was there one or two, or do you
3 remember?

4 A. All I can remember is one that was when you
5 would go onto it.

6 Q. Okay. Do you remember any -- well, you
7 mentioned some houses. Do you remember how many
8 houses were down in that area?

9 A. Best I can remember, there is three: Tom
10 Oliver, and Josie Oliver, and Jim Kirkendall.

11 Q. Jim Kirkendall?

12 A. Barry Collins, the best I remember, lived, best
13 I can remember, lived north of the track, right just
14 in front of the --

15 Q. I want to show you what has been marked as
16 Exhibit 51 to the deposition. And Exhibit C is a
17 map, and have you ever seen that map before?

18 A. No.

19 Q. Okay.

20 A. Now, now, let me back up.

21 Q. Okay.

22 A. Let me look at it. Yes, I have seen a map with
23 this stuff on it, but I haven't looked at this map.

24 Q. Okay. Based on that map, does that look like a
25 representation of downtown Ozark?

Exhibit P-7

Deposition of Ralph Johnson Pages 11-15

1 A. I couldn't tell you that.

2 Q. Okay. Okay. And you're not -- at least right
3 now do you have any plans to testify about any
4 abstract opinion on anything in this case?

5 A. No, ma'am.

6 Q. Okay.

7 MS. JONES: And, Christopher, are you
8 planning on calling him in an abstract
9 capacity?

10 MR. BROCKETT: No.

11 MS. JONES: Okay.

12 BY MR. JONES:

13 Q. Now, there's been -- the crossing that's being
14 discussed is one that was east of the old railroad
15 depot. Do you, do you know where that crossing is?

16 A. Uh-huh.

17 Q. Okay.

18 A. Yes, I do. I'm sorry.

19 Q. Did you ever use that crossing?

20 A. Yes.

21 Q. Okay. Tell me about what you used that
22 crossing for.

23 A. In 19 -- It was '52 or '53, I'm not sure which.
24 I was 14 or 15 years old. My grandfather owned a
25 house up here on the corner of Commercial and 7th

1 street.

2 His wife decided she wanted a better house,
3 so he started tearing it down. And I was driving a
4 farm-all tractor with a trailer hauling the stuff
5 down to the dump.

6 Q. To the city dump?

7 A. The city dump, uh-huh.

8 Q. Okay. Now when we're talking about a road --
9 because we're talking about a road going across the
10 railroad tracks at the crossing; correct?

11 A. Yes.

12 Q. Okay. We're not talking about like a nice
13 asphalt road; right?

14 A. Oh goodness, no. We didn't even have asphalt
15 streets in Ozark then.

16 Q. So it was kind of an old dirt road --

17 A. Yes.

18 Q. -- that went there?

19 A. Yes.

20 Q. And the crossing, was it -- what was the -- do
21 you know what the materials were at the crossing?
22 Was it just kind of planks over the road, or what was
23 it?

24 A. I think it was mainly mud and dirt.

25 Q. Mud and dirt, okay. Okay. So that was in

1 1952, '53. Did you ever have an occasion to use it
2 since 1953?

3 A. I may have taken some stuff down to the dump,
4 yes, but I don't remember --

5 Q. Okay.

6 A. -- you know.

7 Q. And can we agree that sometime in the early
8 1970s the dump no longer existed because the river
9 was there?

10 A. You mean after it was dammed up and everything?

11 Q. Yeah.

12 A. Yes, very much so.

13 Q. So after the river was, kind of the course of
14 the river was changed would you have ever had an
15 occasion to use the crossing to go over anywhere?

16 A. Yeah, I might go over there and shoot turtles
17 or -- take my .22 and shoot turtles or something like
18 that.

19 Q. Okay. Do you know -- when is the last time you
20 did that?

21 A. I really have no idea.

22 Q. Okay.

23 A. I couldn't tell you at all.

24 Q. 1980's? 1990's? Give me a decade.

25 A. Late seventies.

1 Q. Okay, okay. Okay. So we can agree that
2 probably since the late seventies you wouldn't have
3 had an occasion to use that?

4 A. Never.

5 Q. Okay. All right. Sir, I'm guessing you don't
6 have any knowledge about anything with respect to the
7 Main Street Ozark? Would you know anything about
8 Main Street Ozark?

9 A. What do you mean "Main Street Ozark"?

10 Q. Do you know what Main Street Ozark is?

11 A. I think I do --

12 Q. Okay.

13 A. -- but I'm not sure.

14 Q. All right. Have you ever been on Main Street
15 Ozark board?

16 A. Oh no.

17 Q. Okay.

18 A. I know -- okay. I know what you're talking
19 about.

20 Q. Okay.

21 A. No, I have never been on anything on that.

22 Q. Okay. You wouldn't be able to testify about
23 anything about the city's current plans or anything
24 like that?

25 A. No idea at all.

1 Q. Okay.

2 A. No, ma'am.

3 MS. JONES: Christopher, was he on
4 your witness list only to testify about the
5 use of the crossing?

6 MR. BROCKETT: And the people that
7 lived down there, as far as what that area
8 was, and who lived down there, and what it
9 was used for.

10 MS. JONES: Okay.

11 BY MS. JONES:

12 Q. So before the 1970's, and we kind of used that
13 as kind of the, before the, the river changed its
14 course there was the city dump on the other side;
15 right?

16 A. Right.

17 Q. And there were some houses on the other side?

18 A. Yes.

19 Q. Do you know -- did you live over there?

20 A. No, ma'am. I lived right up here.

21 Q. Okay. Did you, did you have occasion to go
22 visit anyone that lived in those houses over there?

23 A. I wouldn't go over there and visit, but I knew,
24 I knew everybody that lived over there.

25 Q. Okay. So there were people that lived over

Exhibit P-8

Deposition of Dorothy Johnson Page 14

1 Q. Okay. You had mentioned that you know there
2 was houses over there or buildings; how do you know
3 that?

4 A. There were people that lived over there by the
5 name of Olivers.

6 Q. Okay.

7 A. And there was a -- I can't think of the man's
8 name that lived over there, but I remember him, a man
9 living over there.

10 Q. Okay.

11 A. Clark, I think, was his last name.

12 Q. Okay. How do you remember that, or why do you
13 know that?

14 A. I just remember seeing this man that lived
15 there when my daddy had the sawmill over there.

16 Q. Okay.

17 A. And then I would see the man in town.

18 Q. Okay.

19 A. And my family would visit with him.

20 Q. Okay.

21 A. And I knew that's where he lived.

22 Q. Okay. So --

23 A. But I had no reason to go over there.

24 Q. Well, that's fine. I mean, I know it wasn't,
25 like, behind a mountain?

Exhibit P-9

Deposition of Brenda Mann Page 8

1 Q. What did you do?

2 A. We had Jim Vardaman Furniture.

3 Q. Okay. What is your address, your home address?

4 A. 506 West River Street.

5 Q. Okay. And what is your best number to reach
6 you at?

7 A. (479)209-1109.

8 Q. Okay. And you have been listed by the city as
9 a fact witness regarding a crossing that had been
10 located east of the depot in downtown Ozark. Are you
11 familiar with such a crossing?

12 A. Yes.

13 Q. Okay. Tell me have you ever, have you ever
14 used that crossing?

15 A. Yes.

16 Q. Okay. What purpose would you have used that
17 crossing for?

18 A. There used to be a dump down there, and at
19 different times my father would have stuff from the
20 furniture store to, to take there. And I always
21 thought it was quite a treat to get to go with him.

22 Q. Okay. So about what time period would this
23 have been?

24 A. In the fifties.

25 Q. Okay. And as I understand, sometime in the

Exhibit P-10

Deposition of Harold Pickartz Pages 10 and 14

1 photograph.

2 (Exhibit No. 268 was marked.)

3 BY MS. JONES:

4 Q. Okay. So I think what you were telling us
5 before the deposition began is that this photograph
6 reflects the fact that there was no crossing at the
7 railroad tracks at Bell Street; is that right?

8 A. Yes, ma'am, it is.

9 Q. Okay. Do you have any familiarity with the
10 crossing located east of the depot?

11 A. Yes, ma'am.

12 Q. Okay. Can you tell me -- can you describe
13 where it was located?

14 A. Yes, ma'am, I can.

15 Q. Okay. Tell me that.

16 A. You can tell it's not at the end of Bell
17 Street. It would be at least 100 or 150 feet toward
18 the depot.

19 Q. Okay.

20 A. And it run at a diagonal rather than straight
21 across.

22 Q. Okay. What was that crossing made out of; do
23 you know?

24 A. I don't think it was blacktop. I don't
25 remember what it was.

1 lot about this crossing that I talked about east of
2 the depot, so I know that it was, for example, a
3 crossing that went to the city dump. Did you use it
4 to go to the city dump?

5 A. Oh yes, lots of times.

6 Q. Okay.

7 A. Yeah.

8 Q. What else did you personally use that crossing
9 for?

10 A. Well, one time I wasn't hauling my trash off
11 down there, I was shooting rats, I guess, but there
12 was a -- there was a house down there. They went
13 across there. But my personal use wasn't a whole
14 lot, but I saw a lot of it going across there from
15 right here where I worked.

16 Q. Okay.

17 A. Yeah.

18 Q. So you were working at that convenience
19 location?

20 A. Yeah, I was hauling fuel out of there.

21 Q. Okay. Now, I want to put you to a timeframe of
22 about 1970. So this would be after the dam had been
23 put up and the river kind of changed its course down
24 there.

25 A. Yeah.

Exhibit P-11

Deposition of Andrew Post Page 8

1 it for and approximately the year?

2 A. We were in that area in 1981 offloading tanks
3 off a railcar, and I would imagine -- the main reason
4 why we crossed the tracks then was really to park a
5 vehicle.

6 I also was in that area as a -- growing up
7 as a child I would go down to the river there for
8 fishing. I would also as a teenager.

9 And in my twenties I went over there to
10 harvest bamboo or cane. I call it cane. I think
11 technically it's bamboo, not a lot, but I would get
12 what a lot of people would think of as fishing poles.
13 We used it in the vineyard for training young vines
14 up.

15 Q. Okay. What's your date of birth?

16 A. It's 11-12-1959.

17 Q. Okay. So that makes you how old as we sit here
18 today?

19 A. I'm 55.

20 Q. Okay. So the -- the last time, then, as you've
21 kind of gone through the different times you might
22 have used that crossing, the most recent would have
23 been this '81 offloading tanks off of a railcar; is
24 that right?

25 A. That's the last time I can remember.

Exhibit P-12

Deposition of Loye Randolph Pages 10-12

1 Q. Arkansas Western. Okay.

2 A. Natural gas.

3 Q. Okay. And what did you do for them?

4 A. Well, I was hired out for truck driver and done
5 that for about five years, and then I transferred
6 down to the office here and done service work for
7 them.

8 Q. Okay. And did you retire from them?

9 A. Uh-huh.

10 Q. Okay. About what year?

11 A. In '98, I believe it was.

12 Q. Okay. Now, you have been listed by the city as
13 someone who might be able to speak to, speak about a
14 crossing that had been located east of the depot in
15 downtown Ozark.

16 A. Uh-huh.

17 Q. Do you know what I'm talking about?

18 A. Yes, ma'am.

19 Q. Okay. Did you ever have an occasion to use
20 that crossing?

21 A. Yeah, well, not for anything except going
22 fishing and things.

23 Q. Okay. And when you went fishing -- let me kind
24 of back up and say, I think it's been pretty well
25 established at this point that sometime in the late

1 1960s or very early 1970s the Army Corps of Engineers
2 moved the river and flooded it so that the river
3 changed its course a bit.

4 A. Yes.

5 Q. Did you go fishing before and after? Or kind
6 of using that as a temporal point, what time period
7 would you have gone fishing?

8 A. Well, after they done, after they worked on it
9 I didn't go fishing there anymore.

10 Q. Okay. Okay. So by the time, you know, the
11 1970s hit and they flooded it, you had no reason to
12 use that crossing?

13 A. No, I didn't have a boat or anything.

14 Q. Okay.

15 A. So I just...

16 Q. So all of your use of that crossing would have
17 been prior to the change in the river's course?

18 A. Yes.

19 Q. Okay. How often would you have gone fishing?

20 A. Oh, I would go fishing about every day.

21 Q. Okay.

22 A. I used to love to fish, but it's been a long
23 time since I have done it.

24 Q. Now, were you going to -- the sweet spot I keep
25 hearing about is the place where the sewer dumped

1 into the river, and it was right by the city dump,
2 that that was the good spot?

3 A. Well, they had -- I would go down the river, or
4 up the river from the sewer, from the dump.

5 Q. Okay.

6 A. I didn't want to eat anything coming out of
7 there.

8 Q. I think that's some good sense right there.

9 A. But, yeah, I remember the crossing, and I
10 remember there used to be a -- they called it kind of
11 a colored community up on the east end there.

12 Q. Uh-huh.

13 A. Three or four homes there. And there used to
14 be a big home. You could see it right, crossing the
15 river just right off there. Stub Pruitt (phonetic)
16 raised his family there. It was pretty active back
17 then.

18 Q. Okay. Can you say that name again?

19 A. Stub Pruitt.

20 Q. Stub Pruitt.

21 A. Now, I don't remember his given name. That's
22 all I ever heard.

23 Q. I'm not even going to ask the circumstances for
24 him to be called that. Did you call -- the road that
25 went across the crossing there --

Exhibit P-13

Deposition of Philip Smith Pages 8, 9 and 11

1 A. Yes, ma'am.

2 Q. Okay. And what did you do for a living?

3 A. I worked with my dad in the hardware store that
4 he owned.

5 Q. Okay. What was that?

6 A. Smith's Plumbing, Electric and Hardware.

7 Q. Okay.

8 A. We had a farm, cattle farm, also.

9 Q. Okay.

10 A. That I worked on, also.

11 Q. Now, this lawsuit concerns in part a crossing
12 that was located east of the depot in downtown Ozark.
13 Are you familiar with that crossing?

14 A. Yes, ma'am.

15 Q. Okay. Have you ever used that crossing?

16 A. Yes, ma'am.

17 Q. Okay. Tell me what occasion you would have
18 used that crossing for.

19 A. Well, the city dump was on the other side, on
20 the south side of the tracks.

21 Q. Okay.

22 A. And so to go to the dump to haul your trash off
23 you crossed the tracks.

24 Q. Okay. Any other occasion that you would have
25 used that crossing for?

1 A. Fooling around, lollygagging, you know, just
2 out exploring.

3 Q. Okay.

4 A. I mean, you know, it's the river. It's the
5 river, you know. You take all of the roads you can
6 whenever you're young and exploring the neighborhood.

7 Q. Okay. Now, I think it's been pretty well
8 established then, and I kind of understand that
9 sometime around the early 1970s the river was, the
10 course was changed when the Corps put in the
11 navigation way; right?

12 A. That's correct. They raised the water level in
13 what, sixty -- I'm not for sure, '68 or '69-ish.

14 Q. Okay.

15 A. The water started damming up. It consumed the
16 dump area.

17 Q. Right.

18 A. There were some houses, a couple of shotgun
19 houses.

20 Q. Uh-huh.

21 A. And another house down on the south side of the
22 tracks, also.

23 Q. Okay. So after kind of that '68 to early
24 seventies period of time, there wouldn't have been a
25 reason to cross the river to go to the dump because

1 Q. Okay.

2 A. And some asphalt in between it, the rail.

3 Q. Okay.

4 A. Just a place to jump the tracks. There was
5 also an LP, LP tanks.

6 Q. Right. And those were just on the other side
7 of the tracks.

8 A. Yeah, they were Floyd Irvin's, PX Sunoco.

9 Q. And you never worked for him, so you didn't
10 have an occasion to go over there to get on the, on
11 the tanks; right?

12 A. No.

13 Q. Okay. Did you ever hear of a street called
14 Oliver Street?

15 A. No, ma'am.

16 Q. Okay. As we sit here today, could you have
17 told me where Oliver Street was?

18 A. Then or now?

19 Q. Then?

20 A. No.

21 Q. Okay. Could you tell me now?

22 A. Yes.

23 Q. Okay. And --

24 A. It's where the signage was put up the other
25 day.

Exhibit P-14

Deposition of Paul Stacy Pages 10 and 11

1 Q. And were you a lineman for them, or did you do
2 something else?

3 A. Well, I was a -- I started out as a lineman. I
4 was a construction supervisor when I retired.

5 Q. Okay. You've been listed as a fact witness by
6 the city, which is what brings us here today with
7 you.

8 One of -- and, specifically, you have been
9 listed as a witness, as someone who could testify
10 regarding a crossing located in Ozark, Arkansas, and
11 that crossing was located east of the depot in
12 downtown Ozark. Are you familiar with that crossing?

13 A. I know where it is, but I don't know anything
14 about it, I mean.

15 Q. Did you ever use it?

16 A. No.

17 Q. Okay.

18 A. When I was young we went down on the river
19 fishing a couple of times, a few times, but as far as
20 using it later on, I never crossed it, never went
21 across it.

22 Q. Okay. So sometime when you were a kid you
23 fished there, but you didn't use it after that?

24 A. No.

25 Q. I'm sorry. Is that right -- I asked that

1 question in a bad way, so I want to reask it just to
2 make sure the answer is clear. You used it when you
3 were a child to go fishing, but not after that; is
4 that right?

5 A. That's right.

6 Q. Okay. Did you, did you call it by any sort of
7 name, the road that went over the crossing when you
8 were a kid?

9 A. No.

10 Q. Okay. Did you ever hear of a street called
11 Oliver Street?

12 A. I have heard of it, yes.

13 Q. Okay. Is it something you've heard of recently
14 when this lawsuit started getting talked about, or
15 had you heard about it since you were a kid?

16 A. Well, I had heard about it when I worked at the
17 gas company, but I never, I was never down there on
18 it. I mean, I never.

19 Q. Okay.

20 A. I knew it was there, but I never knew anything
21 about it.

22 Q. Okay. And did you know where it was located?

23 A. I knew it was down by the depot.

24 Q. Okay.

25 A. I mean, you could see it, and there was a

Exhibit P-15

Deposition of Robert Trotter Pages 11 and 12

1 Q. Yes. We will make sure to give this back to
2 you. So I am going to mark this as -- I'm just using
3 a sticky so it won't do anything.

4 A. Okay.

5 Q. Exhibit 264.

6 (Exhibit No. 264 was marked.)

7 BY MS. JONES:

8 Q. I will ask you about that here in a minute.

9 A. And at the fire department I was fire chief for
10 the last 25 years.

11 Q. Okay. Did I ask you your address?

12 A. Yes.

13 Q. Okay. Thank you. I'm sorry. You are not the
14 first person I have spoken with today, so I always
15 have to remember did I ask him.

16 This lawsuit involves allegations in part
17 regarding a crossing located east of the depot in
18 downtown Ozark. Do you recall such a crossing?

19 A. Yes, ma'am.

20 Q. Okay. Did you ever have an occasion to use the
21 crossing?

22 A. Several times.

23 Q. Okay. Tell me what occasion would have made
24 you use that crossing, and if you can what time
25 period it was.

1 A. Well, back before the Corps of Engineers come
2 in and took the property it was the city dump down
3 there. Everybody used it.

4 Q. Yes, we have heard about the city dump. So,
5 you would have gone across that crossing to go down
6 to the dump?

7 A. Right.

8 Q. And it was possibly the late sixties, early
9 seventies when the Corps went in and changed the
10 river?

11 A. I don't remember the year but it was there in
12 the late fifties, early sixties.

13 Q. Okay. Did you have an occasion to use the
14 crossing after the Corps came in?

15 A. To my knowledge, no, unless we had some fires
16 over there.

17 Q. Okay. Do you have any -- I guess let's look at
18 the time period after, say, 1970, so that's clearly
19 going to be after the Corps came in and the river had
20 changed.

21 Would you have had -- do you recall ever
22 going across the tracks for any fires or anything
23 after 1970?

24 A. The timeframe, I couldn't verify that.

25 Q. Okay. Okay. But as we sit here, you don't

Exhibit P-16

Deposition of Lonnie Turner Pages 6 and 7

1 A. Okay. I was raised at Turner Bend.

2 Q. Okay.

3 A. I went to school at White Oak, and then when I
4 finished grade school we come into Ozark. Turner
5 Bend is about 15 miles north of here.

6 Q. Okay.

7 A. And I left, oh, in the '62 when I graduated
8 from high school I went to Arkansas Tech. This was
9 still my home of record.

10 And then I went into the service, and I was
11 in the service for two years and down in Georgia and
12 over at Vietnam, and back to law school at Rogers,
13 and then I graduated in '71 and moved down here and
14 been here ever since.

15 Q. Okay. Can you give me your current home
16 address?

17 A. Yes, I think I can. Thirteen -- it's either
18 Highway 64 West or -- 1339 Highway 64 West, I believe
19 it is.

20 Q. Okay. And what is the best phone number to
21 reach you?

22 A. 667-2155 in the daytime and 667-3875 at night.

23 Q. Okay. Now, this lawsuit involves allegations
24 regarding a crossing that existed east of the depot
25 in downtown Ozark?

1 A. Yes.

2 Q. Do you know where that location is?

3 A. I do.

4 Q. Can you tell me, have you had an occasion to
5 use that crossing?

6 A. I have.

7 Q. And can you tell me what occasion would have
8 caused you to use that crossing?

9 A. Well, whenever I came down, when I come down
10 and stay all night with my cousin when I was in
11 school, and we would go down there and shoot rats --

12 Q. Okay.

13 A. -- at the city dump. That would have been the
14 first time I had ever been down there.

15 Q. Okay. Do you recall the last time you had ever
16 been?

17 A. Oh, no, I don't recall the date for you, but it
18 would have been after the dam went in, and Floyd Owen
19 (phonetic) had his butane tanks down there. And it
20 would have been sometime during that time period
21 before they, after they took them out.

22 Q. Did you say it was after they took out the
23 tanks?

24 A. Uh-huh.

25 Q. Okay.

Exhibit P-17

Deposition of Don Whitson Pages 8, 9 and 12

1 Q. Yep.

2 A. And I worked there for a while. I worked --
3 one of those places that I worked in Clarksville was
4 for my uncle. He had the Ford dealership down there.

5 Other than that, I started in 1967 teaching
6 automotive mechanics at the vocational school here in
7 Ozark.

8 Q. Okay. And what is your home address?

9 A. 406 North 18th.

10 Q. What is the best phone number to reach you?

11 A. 667-1294.

12 Q. Okay. And when you were asked to come here
13 today you were asked to search and see if you had any
14 documents that were responsive to six questions. Did
15 you look and see if you had anything?

16 A. I don't have anything.

17 Q. Okay. Thank you. I appreciate you for
18 checking that for me. One of the issues in this
19 lawsuit concerns a crossing that had been located
20 east of the depot in downtown Ozark. Are you
21 familiar with that location?

22 A. Yes, ma'am.

23 Q. Okay. And I believe a lot of people kind of
24 refer to it as the way that they would get to the
25 dump?

1 A. Exactly.

2 Q. Okay. And I understand from speaking with your
3 wife that you may have had occasion to use it to go
4 down to the dump yourself?

5 A. Yes, ma'am.

6 Q. Okay.

7 A. I have many times.

8 Q. Okay. And did you use it for anything other
9 than to go to the dump?

10 A. Yes.

11 Q. What?

12 A. When I was a kid I used to go take my .22 and
13 go down there. And off of the end of the dump down
14 there there was always rats and what have you.

15 Q. Uh-huh.

16 A. We would sit up there sometimes and shoot rats.
17 If the river was backed up where there was backwater
18 there, there was always turtles and gar, and we would
19 go down there and shoot turtles and gar, just for
20 the, just for the fun of it.

21 Q. Okay. Any other reason you would have used
22 that crossing?

23 A. Not until, not until later.

24 Q. Okay. And tell me what was, what you would
25 have used it for later.

1 Q. Okay.

2 A. But I can't.

3 Q. And have you ever served in an organization
4 called Main Street Ozark?

5 A. No.

6 Q. Okay. Have you ever had any conversations with
7 anyone from Union Pacific Railroad about the crossing
8 at issue?

9 A. No, ma'am.

10 Q. Okay.

11 MS. JONES: All right. Thank you so
12 much. That's all I have. Mr. Brockett may
13 have some for you.

14 EXAMINATION

15 BY MR. BROCKETT:

16 Q. Mr. Whitson, do you remember past F&S Lumber
17 Company, were there any houses?

18 A. Yes. There were houses, across the tracks,
19 yes.

20 Q. Do you remember how many?

21 A. There was probably, I don't know exactly,
22 probably four or five, and they weren't what you
23 would call, you know, grand houses. They were
24 across-the-tracks type houses.

25 As a matter of fact, at one time, and I

Exhibit P-18

Deposition of Shirley Wilson Pages 9-11

1 Q. Have you ever served on an organization called
2 Main Street Ozark?

3 A. No, I have not.

4 Q. You have been listed by the city as a witness,
5 and that's what has brought you here today. And in
6 particular you have been listed as someone who may
7 have knowledge of a crossing located east of the
8 depot in downtown Ozark. Do you know where I'm
9 referring to?

10 A. Yes, I do.

11 Q. Okay. Have you ever used that crossing?

12 A. Yes.

13 Q. Okay. Can you tell me what occasion made you
14 used that crossing?

15 A. I used it many times.

16 Q. Okay.

17 A. From the time I was probably five years old.
18 That was where the city dump was.

19 Q. Okay.

20 A. I lived in Alice (phonetic), which wasn't in
21 the city limits, but that was our closest dump area.

22 Q. Okay.

23 A. And we would -- at that time and point you
24 could burn your trash.

25 Q. Uh-huh.

1 A. But you couldn't burn cans, you couldn't burn
2 glass, so about once a month we took our refuge to
3 the dump.

4 Q. Okay.

5 A. And I would ride in the back and make sure
6 nothing blew out the back of the truck.

7 Q. Okay. Was there any other reason you would
8 have had to use that crossing, other than the dump?

9 A. Probably -- personally, no.

10 Q. Okay.

11 A. No.

12 Q. And I think so far I haven't met anyone that --
13 well, let me strike that. As I understand it,
14 somewhere between '68 and maybe the early seventies
15 the Corps came in and changed the course of the river
16 and flooded where the dump was. Is that your
17 understanding?

18 A. Yes, yes.

19 Q. Okay.

20 A. Absolutely.

21 Q. So once the dump no longer existed, you didn't
22 have a reason to use that crossing; is that right.

23 A. I actually have walked across it. --

24 Q. Okay.

25 A. -- with my son to go fishing.

1 Q. Okay.

2 A. In the past we have done that, uh-huh.

3 Q. And when is the last time you would have done
4 that?

5 A. Well, he is 47, a long time ago.

6 Q. Okay. So can you give me a decade, like not
7 since the seventies, not since the eighties?

8 A. Not since the eighties probably.

9 Q. Okay. All right. And do you know the street
10 that went across the crossing back in, you know, the
11 eighties and before, did you call it by name?

12 A. Actually, my dad would never say he was going
13 to the dump.

14 Q. Okay.

15 A. He just didn't like that term, and he would
16 say, Tomorrow we are going to Oliver Street.

17 Q. Okay.

18 A. And that's -- that was how that it was --

19 Q. Okay. So you referred to it as Oliver Street?

20 A. Yes, that's all I ever knew it as.

21 Q. Okay.

22 A. Yes.

23 Q. And you -- would you agree with me that
24 although you heard your dad refer to it as Oliver
25 Street, you don't know that that was the legal name

Exhibit P-19

Deposition of Harrison Allred Pages 27, 30-32

1 Q. Okay.

2 A. They hauled lumber from the sawmill down there
3 across it.

4 Q. Okay. Do you have any idea of how long that
5 crossing had been there?

6 A. I don't have any earthly idea.

7 Q. Okay.

8 A. That colored community down there, in my
9 estimate, had been there several years. The city
10 dump had been there several years before the gas
11 tanks and the pallet plant were ever put in there.
12 I'm sure the crossing was put in there for their
13 purposes.

14 Q. Okay. Mr. Allred, I am going to show you
15 what's -- it's part of Exhibit 51.

16 A. Son, I've got very poor eyesight, you may have
17 to point things out to me.

18 Q. That's fine.

19 A. I have just got one eye and 40 percent in it.

20 Q. Okay. This is Exhibit D to Exhibit 51; okay?
21 And it states that it's City of Ozark, Arkansas house
22 numbers, and it's dated March of 1962. Have you ever
23 seen anything like that before?

24 A. House numbers?

25 Q. A house numbers book?

1 plumbing, no.

2 Q. Okay. Did you have indoor water?

3 A. That, I can't be sure of.

4 Q. Okay.

5 A. That, I can't be sure of.

6 Q. Okay.

7 A. I'm not a hundred percent.

8 Q. As we sit here today, can you, would you like
9 to speculate on it; do you think you had indoor
10 water?

11 MS. JONES: Object to form.

12 A. If you want me to speculate, no, there wasn't
13 no indoor water. It was all open.

14 Q. Okay.

15 A. Except the office building.

16 Q. Oh, okay.

17 A. For me to speculate that there was water at the
18 pallet plant, and there was a water line across the,
19 under the railroad track at one time.

20 Q. Uh-huh.

21 A. And the sewer line went under the railroad
22 track. They used to dump the raw sewage in the
23 river.

24 Q. Yes, sir.

25 A. It went under the railroad track, made a quick

1 turn to the left, went down by our storage plant,
2 made a quick right and went straight to the river.

3 And there was a four- to six-inch line THAT
4 went across that ditch. It was a deep ditch. And we
5 always thought that was the water line that went to
6 the colored community.

7 Q. Okay.

8 A. But I -- this is speculation. I don't know
9 that for a fact.

10 Q. And that's fine. What do you base your
11 speculation on?

12 A. Well, we had a water faucet at our storage
13 plants down there.

14 Q. Okay.

15 A. I never used it. I can't swear that there was
16 ever any water in it. It was there for emergency
17 purposes only, which we never needed -- I never
18 needed to use it.

19 Q. Okay.

20 A. So I don't know. And I think it hooked onto a
21 water line right up there next to this horse barn.

22 Q. Okay.

23 A. If that was the water line I was telling you
24 about a while ago crossing that ditch.

25 Q. Uh-huh.

1 A. The pallet plant was built right on top of it.

2 Q. Okay.

3 A. And it would have went straight on down to that
4 colored community. They had to get their water
5 somewhere. My guess would be there is nobody living
6 that's ever crossed that railroad track more than I
7 have.

8 Q. I would probably agree with that. Thirty-four
9 years, that's a long time to be moving back and
10 forth.

11 A. That's for the gas company besides what I went
12 across it going back and forth to the pallet plant.

13 Q. That's true. So close to 40 years?

14 A. Closer, give or take a couple or three years.

15 Q. Okay. Based on the time that you were using
16 that, do you have an opinion based on your use of it
17 as far as do you believe that was a public use or
18 private use?

19 MS. JONES: Object to form.

20 A. Public.

21 Q. You can go ahead and answer.

22 A. Do what?

23 Q. You believe it was public?

24 A. Public use, yes.

25 Q. Why would you, why would you say that?