

# UNITED STATES COURT OF FEDERAL CLAIMS

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ROBERT BRACE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No.: 98-897L
	)	
UNITED STATES,	)	
	)	
Defendant,	)	

Pages: 600 through 897  
Place: Washington, D.C.  
Date: January 13, 2005

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## HERITAGE REPORTING CORPORATION

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ROBERT BRACE, )

Plaintiff, )

v. )

UNITED STATES, )

Docket No.: 98-897L

Courtroom 5, Room 505  
National Courts Building  
717 Madison Place, N.W.  
Washington, D.C.

Thursday,  
January 13, 2005

The parties met, pursuant to adjournment, at  
9:06 a.m.

BEFORE: HONORABLE FRANCIS M. ALLEGRA  
Judge

APPEARANCES:

For the Plaintiff:

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For the Defendant:

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C O N T E N T S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
<u>For the Defendant:</u>					
Jeffrey D. Lapp	605	625	694	696	
Lewis L. Steckler	698				
	724	742	756 773		
George F. Silver	775	828	871 886		

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1 out of the wetland area and discharge that into  
2 unnamed tributary B.

3           And so what we had was you could put in a  
4 plug in it. Basically they are no longer taking the  
5 surface water out of that wetland system.

6           Q     Now, what was the goal of this restoration  
7 plan?

8           A     The goal of this restoration plan was to  
9 restore the hydrologic drive back to this wetland  
10 system, and we used a target date of 1984. So it was  
11 to remedy those activities which had occurred from  
12 1984 onward.

13          Q     And why back to 1984?

14          A     The information, if I recall at the time  
15 that the enforcement coordinator had was that the  
16 activities had occurred in 1985 forward, and also  
17 usually what we do is when we look for remedies is  
18 like we use a five-year limit that we go back to and  
19 try to get remedy for.

20          Q     And in terms of the goal of the restoration  
21 plan, what area of the property was intended to be  
22 impacted, or in your opinion, would be impacted by the  
23 restoration?

24          A     The intent and in my opinion the extent of  
25 impact of this restoration was solely on the 30-acre

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1 wetland tract.

2 Q Would it be possible for Mr. Brace to  
3 approach the agency concerning modifying this  
4 restoration plan?

5 A Certainly.

6 Q And under what circumstances or how would  
7 that be likely to occur?

8 A If maybe there was need for relief in other  
9 areas of the parcel or something like that outside  
10 this 30 acres, you know, that would have been  
11 something that we would work with Mr. Brace, you know,  
12 to try to correct.

13 Q And does that remain true to this day?

14 In other words, if Mr. Brace felt that the  
15 restoration was impacting more than the 30 acres,  
16 could he approach the agency about modifying the  
17 restoration plan?

18 A Certainly.

19 Q Now I want to talk for a moment about some  
20 of the exemptions to the Clean Water Act, and in a  
21 slightly different context than we have before.

22 But looking again at the Attachment A  
23 restoration plan attached to the consent decree, I  
24 notice a amoebic-like blank area in the center of the  
25 Murphy farm parcel that does not contain hatch marks.

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1           A     I think that if let's say, and again I'm  
2 giving you a scenario because we're talking about  
3 hypotheticals at this point, but if there was an issue  
4 with facilitative drainage off of one of his upland  
5 agricultural crops, that would be something that we  
6 could sit down, see what the issues are. Perhaps get  
7 other folks who are, you know, versed in this, you  
8 know, from either the federal or state entities, and  
9 possibly come up with a plan that would help him.

10                     And so whether he would need a consultant  
11 for that, it depends on the magnitude. Whether he  
12 could perform that work himself, again it would depend  
13 on the magnitude.

14                     It could be a simple dip-out of an upland  
15 drainage ditch. I don't know. So without really  
16 knowing the context of what we are trying to do, it's  
17 tough for me to say how many folks would need to be  
18 there to be part of that cure.

19           Q     Well, how about if what we are trying to  
20 cure is water backing up across South Hill Road onto  
21 the Homestead property?

22           A     Okay. Then again we would have to look at  
23 what the root causes for that would be. It could be  
24 that perhaps the ditches that are moving water off of  
25 those agricultural fields are not sufficient in size.

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1 It could be that maybe the culvert underneath the  
2 road is blocked.

3 Again, without having, you know, these  
4 conversations in a real world context, and being able  
5 to look at what the root causes were, it's very  
6 difficult for me to give you a real answer.

7 Q Okay. EPA is not in the business of helping  
8 Mr. Brace unblock or design ditches for the Homestead  
9 property, is it? I thought we were talking about  
10 modification of restoration plan.

11 A I think that EPA is in a position to assist  
12 an help citizens who have issues. And although we may  
13 not be the answer if there was an issue, we would  
14 certainly try to find someone who could answer that  
15 issue.

16 Q Okay, who at EPA would Mr. Brace go to to  
17 talk about the failure to operate his drainage system  
18 on the Homestead property?

19 A That would be myself.

*E. P. H. Jeff Lapp*

20 Q That would be you? And that's part of your  
21 job description, to help with drainage that's not on  
22 wetlands, that doesn't effect wetlands?

23 A It would be because of the past history that  
24 we have had that that would be something that he could  
25 talk to me, and then I would try to figure out who the