UNITED STATES COURT OF FEDERAL CLAIMS

ROBERT BRACE,

Plaintiff,

v.

Docket No. 98-897L

UNITED STATES,

Defendant.

Pages:

1 through 197/300

Place:

Washington, D.C.

Date:

January 11, 2005

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EXHIBIT

JOSEPH BURAWA - DIRECT

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- 1 A Well, I know from looking back at some of the
- 2 material, but, again, retired and now starting my 16th year,
- 3 I don't have any material to look into, but, in '77, I'm
- 4 pretty sure was the first, '78 again, and then he had an
- 5 emergency conservation measures request because of flooding
- 6 and debris that we had. I believe that was in '84.
- 7 Q Okay. Could you take a look at Plaintiff's
- 8 Exhibits P-2 through P-5 just very briefly? It's No. 2 and
- 9 3, 4, and 5 in your binder there.
- 10 A Well, I think -- is this the map with the costing?
- 11 Q Actually, it would be under No. 2, under the tab
- 12 2.
- 13 THE COURT: Tab No. 2, sir.
- 14 THE WITNESS: On that side?
- 15 THE COURT: Tab No. 2.
- 16 THE WITNESS: Oh.
- 17 (Pause.)
- 18 MS. COLELLA: Your Honor, may I approach the
- 19 witness?
- 20 THE COURT: You may.
- 21 THE WITNESS: I had the wrong number. Two doesn't
- 22 have anything.
- BY MS. COLELLA:
- Q It would be Tab 2, starting with 2, 3, 4, 5.
- 25 A Thank you.

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- 1 determination. The farmer cleaned it up and submitted his
- 2 receipts, and we made payment to clean it up.
- 3 Q Thank you. Mr. Burawa, as of 1975, when you were
- 4 working at the ASCS, did you understand the Clean Water Act
- 5 to impose any restrictions on the assistance that you were
- 6 providing to farmers under the Agricultural Conservation
- 7 Program?
- 8 A No --
- 9 THE COURT: Pause, please. Pause, sir.
- 10 Yes?
- 11 MS. FLORENTINE: It calls for a legal conclusion,
- 12 Your Honor. Objection.
- 13 THE COURT: I think the way it was framed, it
- 14 doesn't call for a legal conclusion. It's asking more in
- 15 terms of policy or other types of communications that may
- 16 have occurred at the agency, so I'll take it as meaning that
- 17 and only his understanding, not a legal conclusion.
- 18 All right, sir.
- MS. COLELLA: Correct, Your Honor.
- 20 THE COURT: Rephrase the question, please.
- BY MS. COLELLA:
- Q Mr. Burawa, as of 1975, did you understand, in
- 23 your work at the ASCS, was it your policy that the Clean
- 24 Water Act imposed any restrictions on your work there in
- 25 assisting farmers?

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- A Well, there was restrictions in the Act. I think
- 2 the only thing we ever got in -- on the Act itself was a
- 3 congressional record that was in the Act, but no.
- 4 Interpretation in our office was that farmers were exempt
- 5 from the Act at that time, and so we just done things like
- 6 we always done.
- 7 Q And you continued to operate under that
- 8 interpretation in your office when Mr. Brace received the
- 9 assistance from 1977 to 1984?
- 10 A That's right.
- 11 Q Okay. Can you turn to Plaintiff's Exhibit P-30 in
- 12 your binder, please? It's No. 30.
- 13 (The document referred to was
- 14 marked for identification as
- Plaintiff's Exhibit No. 30.)
- 16 THE WITNESS: 30?
- 17 BY MS. COLELLA:
- 18 Q Mm-hmm. All the way almost to the end of the
- 19 binder.
- 20 A Okay. I quess I've got it.
- 21 Q And can you tell me what that is?
- 22 A Well, this is an expert witness report for Brace
- 23 Landscapes and a number.
- 24 Q Okay.
- 25 THE COURT: All right. Before he goes on, go

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JOSEPH BURAWA - CROSS

- 1 enforcement case?
- 2 A Yes, I did.
- 3 Q And now were you called to testify by the United
- 4 States or Robert Brace?
- 5 A By Robert Brace.
- 6 Q Mm-hmm. And isn't it true that one of the reasons
- 7 that you have decided to testify here today is that you want
- 8 to do the right thing?
- 9 A That's the way I feel, yes. I believe that was my
- 10 answer because I was asked if I'd get any compensation from
- 11 Robert Brace to come in and so forth, and I says, yeah, I'll
- 12 come down, but I just want expenses because I think you're
- 13 doing the right thing. I think he left an area that looked
- 14 bad and looks a lot better today, and I know he won the case
- 15 in District Court in Erie, where I testified at that case
- 16 also.
- 17 Q Mm-hmm. Now, as you just talked about in your
- 18 direct examination, you did not draft your report, did you?
- 19 A Not the 247 report. The 245 that comes before
- 20 that, but there isn't a copy of that one in here.
- Q Oh, I'm sorry. Let me ask the question again.
- 22 You did not draft the expert report that Plaintiffs have
- 23 admitted as Exhibit 30?
- 24 A Oh. No, I did not.
- 25 Q Okay. And now you said in your deposition that

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