

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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4 UNITED STATES OF AMERICA,)
5 Plaintiff,)
6 vs.) No.
7 ROBERT BRACE, ROBERT BRACE) 1:17-cv-00006-BR
8 FARMS, INC., et al.,)
9 Defendants.)

10 Deposition of ROBERT BRACE
11 Tuesday, January 9, 2018
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14 The deposition of ROBERT BRACE, called as a
15 witness by the plaintiff, pursuant to notice and the
16 Federal Rules of Civil Procedure pertaining to the
17 taking of depositions, taken before me, the
undersigned, Lance E. Hannaford, Notary Public in and
for the Commonwealth of Pennsylvania, at the offices
of U.S. Attorney's Office, 17 South Park Row, Erie,
Pennsylvania 16501, commencing at 9:14 o'clock a.m.,
the day and date above set forth.

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 U.S. Department of Justice:

4 Laura J. Brown, Esquire

5 Brian Uholik, Esquire

6 Sarah Buckley, Esquire

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12 On behalf of the Defendants:

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24 ALSO PRESENT:

25 Beverly Brace

- - -

I-N-D-E-X

EXAMINATION BY:

PAGE:

Ms. Brown

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Mr. Kogan

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- - -

1 consent decree area after 2012?

2 A The only ditch I know on that consent
3 decree, area that you call the consent decree area, is
4 what I pointed out. That is where they indicated you
5 go to here. You can do anything you want up to this
6 point. Do all the tiling. Raise anything you want.
7 That's why this was planted again. Then you put the
8 cease and desist on us. Then we had to abandon it
9 again.

10 Q So did you -- I'm not talking about
11 cleaning ditches -- excavate any ditches in the
12 consent decree area?

13 A I just told you none except the one they
14 told us to put it for the water coming around the
15 beaver dam could roll back into the ditch.

16 Q Who told you to put it there?

17 A Todd and the people who told us to do this.
18 This is your point of no return here.

19 Q Todd told you where to excavate a ditch?

20 A Yes.

21 Q Could you identify on this map?

22 A I did.

23 Q Can you draw it?

24 A It's there. Right here. See that?

25 Q Could you put a D there?

1 A Because the agreements I had made with
2 Mr. Marsh back in '76, I had a handshake agreement
3 with Mr. Marsh, it would benefit both of us. I had
4 the opportunity to buy this property whenever that
5 opportunity came up.

6 Q I want to talk about the handshake
7 agreement.

8 A The handshake agreement was in '76 when I
9 started that ditching.

10 Q With whom?

11 A Mr. Marsh.

12 Q So I think that are there several Marshes?

13 A This is Senior Marsh.

14 Q The father of the person you purchased it
15 from.

16 A Yes.

17 Q The handshake agreement allowed you to do
18 what?

19 A Allowed me to put this ditch in up through
20 here through the Marsh property. This is the Marsh
21 property. And allowed me to put the ditch in there.
22 I could clean this area up that was brush and stuff I
23 had put in the conservation plan that allowed me or
24 should have to have exclusionary property on that
25 part.

1 Q Was there ever a written agreement with
2 Mr. Marsh about the use of his property?

3 A Mr. Marsh and I, we were neighbors, I grew
4 up with Richie and Jimmy. I talked to Jimmy a few
5 months ago a couple times. "Bob, what you and my dad
6 done, you are the only people who will ever know."
7 That's what I'm saying and have been saying. He
8 agreed to let me use this property until we wanted to
9 buy it and purchase it. And I grew up with him. They
10 rode horses there.

11 Q So Jimmy -- did Mr. Marsh, who you had the
12 handshake agreement with, what was his first name?

13 A That was Richie.

14 Q Did he have two sons?

15 A Yes. Richie and Jimmy.

16 Q And when did the senior Richie, when did he
17 pass away?

18 A I can't tell you for sure the date.

19 Q '90s?

20 A I can't tell you the date. But Jim and
21 Rich, they knew they were leery of the government like
22 so many people are. So they said, "We will just sell
23 it to you, then we won't have a problem."

24 Q You said the handshake agreement was so
25 that you could dig the ditch that borders the Marsh

1 property?

2 A Yes. I indicated this several times. This
3 to me is very important. This here is an irrigation
4 ditch put in in the '50s. And all this here is the
5 back side of that.

6 This here ditch starts here and goes across
7 the culvert on Sharp Road. This comes up around and
8 bypasses what you guys called Elk Creek which I don't.
9 This has been flooded now. It's been flooded for 60,
10 70 years.

11 Q Where is the irrigation ditch, if you could
12 highlight it in yellow.

13 A It's the one here, the ditch that comes up
14 through. The ditch we keep talking about.

15 Q That goes all the way down?

16 A The agricultural ditch. This has been
17 flooded like I said, when the beaver come in there in
18 the '30s and '40s, that's been flooded. I have an
19 affidavit stating that. This is wet. I never denied
20 it.

21 Q Are you saying you dug this ditch?

22 A Yes.

23 Q What year?

24 A This here. Again, when they put this dam
25 in in the '50s, my uncle used this for irrigation.

1 Then the bypass, all this water come around this end
2 of the dam.

3 Q Just for the record, the witness is
4 referring to parcel ID31016063.00100, which is
5 actually the property north of what we have been
6 identifying as the Marsh site?

7 A This a man in New York owns this now. I
8 have an agreement with him to keep this channel open.
9 But this here, I guess, had been flooded all these
10 years. I have an affidavit when I started this.
11 There is never no bed and bank in any of that. I
12 testified to that.

13 Q Your handshake agreement with Richie Marsh,
14 Sr., was allowing you to dig or excavate that ditch
15 that begins up at the parcel above his property and
16 then down through it?

17 A Yes. Because the beaver in here, again
18 being this here was a dam that was put in there years
19 and years ago, Jim and I agreed that this would help
20 both of us. This would make his property better, make
21 our property better. He said do what you need to do
22 to get it productive.

23 When the law changed in '85, that is when I
24 went to the conservation district, when I did these
25 other properties, and I have and should have an

1 exclusionary deal on this corner that is a CW.

2 Q What did the Marshes use the property for?

3 A This here, again, that is what those
4 pictures you have there, Earl, Brace and Sons farmed
5 this here for years.

6 Q Where?

7 A On this part east of Sharp Road over to
8 this area where there was a fence and this was
9 pasture.

10 Q So the entire -- from Sharp Road to the
11 black line that bisects the Marsh property?

12 A This here is the township line.

13 Q Is it your representation they farmed from
14 Sharp Road to the township line?

15 A That had been farmed. It had been farmed
16 for a century. The pictures should verify it.

17 Q We will talk about the picture in a second.

18 So the Marshes farm it or your family?

19 A Mr. Marsh is an attorney. Mr. Marsh was my
20 uncle's attorney. We were neighbors. As I indicated
21 before, the Marsh property we are talking about,
22 Mr. Marsh bought it through a tax sale the way I took
23 it years and years and years ago.

24 Then Earl and Brace and Sons, until he
25 bellied up, my cousin bellied up and been bankrupt or

1 whatever you want to call it, chapter 12 bankruptcy
2 about the time, about '85 or something when this all
3 changed. That's when I went and had this confirmed,
4 and this needed a CW. I knew this here was brushed in
5 that needed to be clarified.

6 Q Did they stop farming when they went belly
7 up?

8 A No. They took hay off it for a long time.
9 He did until a year ago he hauled --

10 Q Who is he?

11 A My cousin Buck. He hauled down to the
12 mushroom farm down in Butler or somewhere down on 19,
13 he's a couple years older than I am. He's had
14 financial troubles for the last a good long time.

15 Q Did you ever have any written agreement
16 with any of the Marshes about your use of the
17 property?

18 A No. I didn't.

19 Q You purchased the property from the Marshes
20 in 2012?

21 A Yes. Around then.

22 Q And you purchased it, personally? That's
23 the property Robert H. Brace owns?

24 A Yes.

25 Q Do you recall the purchase price?