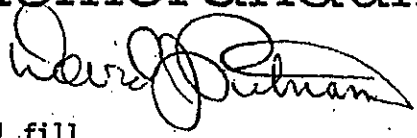


UNITED STATES GOVERNMENT

memorandum



DATE: December 2, 1987

REPLY TO
ATTN OF: David Putnam, Fish and Wildlife Biologist

SUBJECT: Chronology of Events - Robert Brace illegal fill

TO: Files

Chronology of Events

May 1, 1987

Andy Martin, Pennsylvania Game Commission (PGC), reported that Mr. Brace had called the Game Commission requesting removal of beavers from his property in Waterford Township, Erie County. When Andy arrived, he observed that Mr. Brace had channelized a portion of Elk Creek and was draining a large wetland tract. Andy reported the matter to our office.

May 4, 1987

Charles Kulp, Supervisor, Fish and Wildlife Service, reported the matter to Mr. James Pabody, Inspector, Corps of Engineers (COE), Buffalo District, Cleveland, Ohio via telephone. We emphasized the importance of quick action and volunteered to meet on-site as soon as possible.

May 5, 1987

Kulp confirmed the telephone report with a letter sent by regular mail and electronic mail to Colonel Daniel Clark, COE, Buffalo, New York. Copies were sent to the Pennsylvania Department of Environmental Resources (DER), Meadville and Harrisburg, and EPA, Philadelphia.

May 8, 1987

Biologist Putnam, FWS, met on-site with Mr. Brace; James Carter, Pennsylvania Fish Commission (PFC); Andy Martin, PGC; James Pabody, COE; and Tom Delfonso, PA DER; to view the unauthorized work.

May 11, 1987

Kulp wrote a letter to Colonel Clark summarizing the Service's assessment of the May 6th meeting and our review of existing information. Kulp stated that "this is the most serious wetland violation that we have seen in Pennsylvania in recent years". EPA was requested to join in the resolution of the case by copy of the letter.

June 16, 1987

Putnam wrote to Jim Pabody and transmitted a draft wetland map prepared for the site. Up to 200 acres of wetlands could be affected by the project. FWS urged the COE to move forward with

PENGAD 800-851-6998

EXHIBIT

Putnam 9

DFR 11/26/18

EXHIBIT

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OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

☆ GPO : 1983 O - 421-526 (9176)

CD-FRC0013119

this case and restated the concerns voiced in our May 11th letter. (No C&D had been issued yet).

July 15, 1987

EPA issued a FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE to Mr. Brace signed by Greene A. Jones, Director, Environmental Services Division. The order directed Mr. Brace to submit information regarding the project, a restoration plan, and an estimated date for completion of the restoration. EPA solicited Mr. Brace's voluntary compliance with the order.

July 16, 1987

Kulp wrote to Mr. Eugene Thompson, State Director, ASCS, and Mr. James Olson, State Conservationist, SCS, advising them of the Brace matter and requesting that they advise Mr. Brace of the possible implications of his wetland conversion project (as related to the Farm Bill). Kulp also suggested that a meeting between FWS, SCS and ASCS would be beneficial. (No response to these letters was ever received).

July 17, 1987

Edward Perry, Acting Supervisor, FWS, sent a certified letter to Mr. Brace advising him of the Swampbuster provisions of the Food Security Act of 1985, the 404 program and the State wetland program.

July 23, 1987

COE, Buffalo, issued Cease and Desist order to Mr. Brace ordering him to refrain from further wetland filling.

August 19, 1987

Putnam attended a meeting with Mr. Brace; Mr. Andrew Connor, (Mr. Brace's attorney); Jed Callen, EPA attorney; and Jim Butch, EPA 404 Enforcement; to discuss the case and outline EPA's position.

August 31, 1987

PA DER, Jamestown, issued a Notice of Violation to Mr. Brace advising him of his need for a DER permit for work in wetlands and requesting a plan for restoring the site.

September 11, 1987

Mr. Brace and some of his friends have posted about 20,000 acres of land. If individuals wish to hunt on the posted land, they must send a form letter to Congressman Ridge protesting the Brace matter. The Congressman has received over 300 petitions and is interested in the progress of the case. In response to these letters, Mark Holman of Congressman Ridge's office called to discuss the matter. Putnam discussed the Service's position on illegal wetland fills in general, and the Brace case in particular.

October 2, 1987

Putnam discussed the issue of the sportmen's letters with Greg Grabowicz of the PGC. The PGC has also been receiving copies of the letters to Congressman Ridge. Grabowicz stated that the PGC is not impressed by "blackmail tactics".

November 18, 1987

A meeting between Mr. Brace and agency representatives was held on site. FWS, COE, EPA, DER, PFC and PGC were represented. Representatives from Congressman Ridge's staff and the Landowners Association were also in attendance.

After a tour of the site and an explanation of the project by Mr. Brace, several restoration alternatives were discussed. FWS will meet with SCS to discuss a restoration plan that will protect the regulated wetlands and not interfere with draining of existing agricultural operations.

November 18, 1987

Putnam attended the Erie County Council of Sportsmen Clubs to discuss wetland values and the Service's involvement in the 404 program.

Issues

Mr. Brace has been draining and filling wetlands on his property since the late 1970's. Much of his past work has been to convert wetlands to agriculture. The latest project involves draining some of the wettest areas on the property. Mr. Brace has stated that the purpose of this work has been for farming, a golf course, or a housing development, depending on to whom he was talking.

Since most of the trees have been left in some of the areas, at least part of the area appears to be proposed for housing development or a golf course.

Mr. Brace has stated that the wetlands were created by beavers. Our examination of the soils, and aerial photography dating back to 1939, indicates that these areas have been wet for a very long period of time, possibly since the last glaciation of the region (10,000 years ago).

Mr. Brace has also claimed that he is restoring old drainage ditches. There are some old ditches that were blasted in the area and some wooden tile that was placed at the "turn of the century" but the previous drainage effort was apparently unsuccessful. This project clearly goes beyond the scope of maintenance. The intent of this project is to convert wetlands to uplands.

FWS position

Our primary concern is seeking a rapid restoration of the wetlands. We will fully support the enforcement actions taken by regulatory agencies.

Agencies' position

Mr. Brace faces possible enforcement action by EPA, COE, DER, PGC and PFC. All of the agencies have expressed an interest in reaching one resolution to the matter. All agencies recognize this as one of the most significant illegal wetland destruction activities in Pennsylvania in recent years.

Public interest

Mr. Brace and the Northwest Pennsylvania Landowners Association have posted about 20,000 acres of land. If an individual wants to hunt on these lands they must sign a form letter to Congressman Ridge protesting the 404 enforcement action. This has generated considerable public interest in this case. While over 300 individuals have signed the form letters, a lot of the sportsmen resent being blackmailed. Based upon second-hand reports it appears that the landowners' association has not received a very accurate picture of the 404 program. We need to clear up some of the misinformation.

Political interest

I have had three telephone discussions with Congressman Ridge's staff. The Congressman is very interested in the case because it has affected a large number of his constituents. The Congressman's staff have been very objective and professional. A copy of Congressman Ridge's response to the petitioners is attached. We have not heard from any State politicians to date.

Outlook

We will work with Mr. Brace and the agencies to reach a reasonable resolution to this case.

Mr. Brace has indicated on several occasions that he intends to fight this case in court. Based on our experience it appears that the government has a very good case. The high public interest generated by Mr. Brace will give our wetland protection efforts a significant boost when the case is successfully resolved.