

**Jurisdictional Determination-Agricultural Drainage Ditch,
Robert Brace & Sons Farm, Waterford, PA**

(September 2011 to June 2013)

September 8, 2011 Site visit at Brace Farm Waterford, PA

A site visit was conducted with USACE and Erie County Conservation District Personnel Joseph Hudson and Earl Brown. Mr. Brace indicated that Beavers had dammed portions of Elk Creek which has caused additional flooding and inundation to his adjacent agricultural fields inhibiting him from farming them. He had contacted Officer Darin Clark of the Pennsylvania Game Commission who agreed to help him remove the Beaver dams. After inspecting the channels that Bob Brace requested we look at to determine permit requirements or exemptions from Clean water Act permits requirements under maintenance of agricultural drainage ditches. I told Bob Brace to request a Jurisdictional Determination from the USACE once the Beaver Dams were removed.

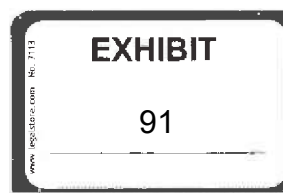
September 12, 2011 email to Brace from Todd Lutte

Mr. Robert Brace and Ms. Ronda Brace

Per our phone conversation from a few weeks back and my last site visit I want to relay our discussions about the work which you wish to perform on your Waterford farm. During the site visit I provided you with an aerial photo depicting a polygon outlining the 30 acres of jurisdictional wetlands which was part of the consent decree. As that CD states this 30 acres is the extent of jurisdictional waters subject to Section 404 of the Clean Water Act on areas which are subject to the C.D. generally south of South Hill Lane and west of Greenlee road. Due to the presence of Beaver Dams that have developed on the property water has backed up and you desire to remove these dams. This activity may be undertaken provided there is no discharge of dredge or fill material to Waters of the US and is done in compliance with the directions of the PA Fish and Boat Commission and the US Army Corps of Engineers and the Erie County Conservation District. Due to the beaver dams, water has backed up the channel which crosses South Hill Lane and as a result sediment has accumulated within the channel further blocking the culvert which flows under South Hill Lane. It is our understanding that once the beaver dams are removed you wish to clean the channel and the culvert so that the water, which is currently encroaching into your agricultural fields, can drain properly. Authorization for those agricultural ditch maintenance activities is not required from this office and may also be authorized under the Corps of Engineers nationwide permits. To verify the necessity of a permit I have been in contact with Mike Fodse of the US Army Corps of Engineers Pittsburgh District 412-395-7575 who is willing to meet you on site to discuss the above mentioned activities.

If you have any questions please let me know.

Thanks



October 7, 2011 email to Brace from Michael Fodse

Mr. Robert Brace

Since our meeting at your property in Waterford Pennsylvania, I spoke with Officer Darin Clark of the Pennsylvania Game Commission. Mr. Clark confirmed that the PA Game Commission would assist in the removal of the beaver dams by mechanical means. During our site visit we observed multiple Beaver Dams that were constructed on your property. Removal of these dams does not require a permit from the US Army Corp of Engineers provided there is no discharge of dredge or fill material to Waters of the United States. The US Environmental Protection Agency provided us with an aerial photo depicting a polygon outlining the 30 acres of jurisdictional wetlands which was part of the consent decree. As that C.D. states this 30 acres is the extent of jurisdictional waters subject to Section 404 of the Clean Water Act and must be maintained as wetlands. The U.S. Army Corp of Engineers believe that the 30 acres of Waters of the United States, identified in the C.D. refer to wetlands only and not the watercourses that provide hydrology to this wetland. Therefore, once the Beaver Dams have been breached The US Army Corps of Engineers will need to conduct a Jurisdictional Determination on the channel to determine if activities (dredging) within it would require a permit under the Clean Water Act.

Due to the beaver dams, water has backed up in this channel and caused sediment to accumulate within the channel further blocking a culvert used to access another agricultural field. It is our understanding that once the beaver dams are removed you wish to clean the channel and the culvert so that the water, which is currently encroaching into your agricultural fields, can drain properly. A General Permit 7 would need to be obtained by the Erie County Conservation for the culvert if the channel was determined to be waters of the Commonwealth and or United States. Depending on the extent of maintenance activities in this channel, a permit may be required from the USACE and PA DEP contingent upon the decision made during the Jurisdictional Determination. The Department of Environmental Protection will also need to be contacted to determine if a permit under Chapter 105 of the State Environmental Code is required to breach the Beaver Dams.

Do not hesitate to contact me if you have any additional questions or need to discuss further.

Michael M. Fodse
Regulatory Project Manager
Pittsburgh District, Corps of Engineers
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May 30, 2012 email to Michael Fodse from Robert Brace

Michael,

With the assistance of the PA Game Commission, we have removed the beaver dams that were creating drainage problems in my farm ditches on my Waterford farm. In follow-up to your instructions of last October's letter, I was wondering if you would be available sometime in the near future to revisit my farm to make your jurisdictional determination? Should you need to contact me via telephone, I may be reached at (814)796-2174.

Thank you,

Robert Brace

July 24, 2012 Site visit a Brace Farm Waterford, PA

Todd Lutte of the United States Environmental Protection Agency (USEPA), and I conducted a Jurisdictional Determination on an unnamed tributary to Elk Creek and Elk Creek, on Bob Brace and Sons farm in Waterford, Erie County, Pennsylvania. Also in attendance was; Rhonda Brace/McAtee, Robert Brace, his two Sons and, Ron Bosworth of Senator Mary Jo White's office.

We met the Brace and Ron Bosworth at the Brace Farm Building on Greenlee road and then proceeded to the intersection of Elk Creek and Lane Road. At the time of the inspection Elk Creek at the point of Lane Road upstream Elk Creek was significantly impaired by heavy amounts of sediment. The stream was widened and straightened. The channel did not exhibit stream characteristics but linear wetland characteristics including a vegetated bottom.

I asked Bob Brace if the Jurisdictional Determination was for Elk Creek from the point we were standing on Lane Road upstream in the direction of the Agricultural fields? Bob confirmed that this was the case.

Bob Brace's sons walked Todd and I along the unnamed tributary to Elk Creek south of Lane Road. This channel seemed manipulated (channelized) and did not exhibit stream characteristics (riffle/pool). Todd and I discussed the stream characteristics and decided that this channel including the portion of Elk Creek which receives this channel to Lane Road was a previously manipulated agricultural drainage ditch.

Bob Brace asked if He was able to prohibited from impacting the 30 acre Consent Decree wetland if he went through CWA permitting process including mitigating for unavoidable impacts? Todd and I did not know the exact restrictions of the Consent Decree and told him we would check with our respective Offices of Council and get him the answer.

Note: While walking the unt to Elk Creek Todd and I misidentified this channel on the mapping. We later realized that this channel is within the area identified by USEPA mapping as being within the 30 acre wetland area by the Consent Decree.

July 31, 2012 email to Michael Fodse from Rhonda Brace/McAtee

Mike,

As you requested, Randy logged the distance of the farm ditch that you and Todd viewed last week at our Waterford farm. It came out at approximately 9/10 of 1 mile. This was logging it from Sharp Road, running it down to and across Lane Road and ending at Greenlee Road. We would all like to thank you and Todd for taking the time to come up to our area and assist us in helping to resolve our problem. To that end, are we still correct in our understanding that a letter will be compiled establishing that all the property outside of the delineated acreage identified by you and Todd will be labeled as operating under the farming exemption, allowing us to clean the ditches and perform normal farming operations as needed without a permit in perpetuity? Will you also be able to provide an accompanying map identifying the ditch and farming areas?

Also, as briefly discussed at the conclusion of our visit, my father would like confirmation regarding the farming exemption on the ditches that you and Todd viewed this past Spring in Garland, PA. Would you also be able to provide written confirmation in that regard?

Again, thanks again for all your assistance. Please don't hesitate to contact me if you need anything further.

Rhonda McAtee

June 27, 2013

On site Meeting with Brace Farms, PAFC, USEPA, PADEP Senator Toomey, Congressman Mike Kelly, Congressman Thompson, PA Representative Aizzarro, PA Representative Huthesonm, PA Representative Kathy Rapr