UNITED STATES
COURT OF FEDERAL CLAIMS

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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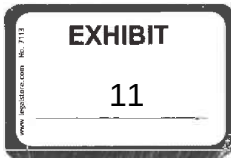

A That is correct.

Q Okay. And as you testified, the reason for putting the check dam in was to back up the water to create a higher water level in unnamed tributary A, right?

A It was to re-create the bottom of that unnamed tributary prior to its dredging.

Q Okay. Well, that was its function, its conceptual function, but its physical appearance was that it was a dam, right, against which water would back up?

A Well, it is a shallow draft dam. It is a check dam, and by check dam it's checking the water. It is not a wholesale damming of that tributary.

Q Right.

A And it's a very low and shallow feature in the bottom of that tributary. There is quite a bit of bedded bank remaining for flow.

Q Right. Now, you testified that Mr. Brace could come to the agency and talk about modification, but if that modification involved decreasing the hydrologic drive of this restoration plan, is it fair to say the agency would look at askance at such a proposal?

A I think what we would do is have a

discussion, and again this is all supposition, but if there was a need outside of the wetland area for drainage for crop production, things like that, we would look at what the alternatives would be, and see if we could formulate some sort of activity that would facilitate that drainage while trying to keep the wetland area in tact.

Q Okay. But the agency is not open to any alteration of the work that's done within the 30 acres?

A That is correct unless -- with the caveat -- again, all of that work was to correct very localized water issues. Those drain tunnels had very limited effect. Those drainage ditches that you referred to have very limited surface water effect within the wetland.

So the only issue may be the check dam. As I said earlier, that was a very shallow dam designed to replace the -- to bring back the original bottom, if you will, so that there wasn't excessive movement of water from the wetland out.

If that in fact was causing problems, then what we would look at is possibly upstream solutions or other ways to control that water, because, you know, there is a fall on the property, and water is

moving downhill. And so you may look at other ways to correct the issue if there in fact is one.

Q Okay. But you don't see any of those involving alternation of the work that was done under the restoration plan?

A No, because I don't see how the work that was done in the restoration plan would have had significant upstream effects.

Q Okay. And that modification would have to be approved both by EPA and the Justice Department, wouldn't it?

A Yes, I believe so.

Q It would involve a modification of the consent decree?

A Yes, I assume it would.

Q And under Justice Department regulations, to your knowledge, are consent decrees such as the ones in your cases also put out for public notice and comment?

A I honestly don't know the process --

Q You don't. Okay.

A -- of that.

Q Fine enough.

Would it be fair to say Mr. Brace would probably need to hire a lawyer to get this done?