

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

HERITAGE REPORTING CORPORATION

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1 A There is two upland fields that he has the
2 highly erodible designation.

3 Q And has SCS developed a highly erodible
4 determination for Mr. Brace for those two parcels?

5 A Yes, we did that in, I believe, 1988.

6 Q Okay. Mr. Steckler, I want to spend some
7 time talking about the restoration project that was
8 required of Mr. Brace following the enforcement
9 action.

10 Can you turn to Plaintiff's Exhibit 23?

11 A I have it.

12 Q And can you tell us what that is?

13 A That's a Natural Resources letterhead
14 stationery dated December 24; subject, wetland
15 restoration plan, that Mr. Brace request that I visit
16 the wetlands restoration site.

17 Q Now, can you explain why you visited the
18 restoration site?

19 A I was called by Mr. Brace to go out and
20 visually observe the excavator digging the trenches
21 that were described earlier by Mr. Lapp, and to -- my
22 understanding was I was supposed to, you know, kind of
23 check and see if the plan was being completed the way
24 it was designed, the way it was set up.

25 They sent me -- I called the Fish and

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1 Wildlife Service office at State College to be sure
2 this is what they wanted to happen, and I think I
3 talked to David Poppelman. He assured me that they
4 wanted a government representative to observe the work
5 being done for the restoration plan.

6 Q And can you turn to Plaintiff's Exhibit 24?

7 And what is this, Mr. Steckler?

8 A I wrote another short letter for the next
9 day I visited.

10 Q And why did you go back a second day?

11 A They were still working, and it hadn't been
12 completed in one day.

13 Q And when did you visit Mr. Brace's farm?

14 A For what we are referring to here?

15 Q Yes.

16 A December 23rd and 24th, both days. I even
17 have the time on this one, 10:30 in the morning.

18 Q Now, can you turn to Defendant's Exhibit
19 9(f)? That should also be in the notebook in front of
20 you. You can take a few minutes to look through the
21 exhibit.

22 (Witness reviews document.)

23 BY MS. COOK:

24 Q Can you tell the Court what this exhibit is,
25 Mr. Steckler?

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1 A Yes. Briefly, that's the pictures I took
2 the two days I was there. I took my camera with me
3 and documented the event on film.

4 Q And pictures of what, Mr. Steckler,
5 generally?

6 A The excavator performing the restoration
7 plan. I think you can see in the pictures where he is
8 digging out soil. I believe a couple of the pictures
9 even show some of the drain tile up on top of the
10 spoil piles after the excavator was through.

11 A Now, why don't we start with the first page.
12 If you can just briefly explain what these two
13 pictures represent.

14 A Those were pretty much taken right from the
15 Greenlee Road, I believe, looking west. I see some
16 trees down in there. It does show some recently
17 excavated soil, and it shows the Murphy tract.

18 Q And turning to the second page?

19 A It's a close-up picture of some of that soil
20 that was disposed and dug out. The second picture
21 down below, it's a little further from the road. I
22 parked the car and walked over there, so it's a closer
23 view of the Murphy tract.

24 Q So now that it's clear for the record, Mr.
25 Steckler, can you tell us which picture you are

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1 describing?

2 A I turn to the second series of photos.

3 Q Why don't we start from the beginning so
4 that we are clear for the record. On the first page,
5 can you tell us what the first picture at the top of
6 the first page is?

7 A That's a view of the Murphy farm looking
8 west from Greenlee Road. If you look quite a ways
9 down in the picture you can see the trenches that were
10 excavated rather recent, within a day or two.

11 Q And the picture at the bottom of page 1?

12 A Yeah, that's another view of the Murphy
13 tract just to the right of the one above. So I took
14 one picture like this and the next picture like that.

15 Q And turning to page 2, if you can explain
16 what the picture on the top of the page is.

17 A Well, here again, proceeding onto the Murphy
18 farm, I got some close-ups of the soil that had been
19 dug out, and that's the top picture. The ditches
20 aren't really -- you can barely see where the holes
21 were.

22 And then the bottom photo is another photo
23 looking west again.

24 Q And turning to page 3, can you explain the
25 picture at the top of page 3?

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1 A On the 24th of December, I took a picture of
2 the check dam that was to be installed.

3 Q Is there a picture of the -- excuse me, I'm
4 confused. Is there a picture of the check dam in that
5 top photo on page 3?

6 A Yes.

7 Q And can you explain where that check dam is?
8 Can you describe, is it possible to describe in more
9 detail?

10 A I knew roughly where it was because I had a
11 copy of the restoration plan, so I specifically went
12 over to look for it because it was on the restoration
13 plan. If I had the restoration plan, I could show you
14 where it was.

15 THE COURT: You're not looking at the same
16 picture the rest of us are.

17 BY MS. COOK:

18 Q Are you on page 3?

19 A Oh, I'm sorry.

20 Q I'm sorry, we must have two different --

21 THE COURT: No, he was on five.

22 THE WITNESS: Yes, I'm on 5.

23 MS. COOK: Okay.

24 THE COURT: Let's take our break now, and we
25 will resume at 1:30.

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1 the top of the page, can you explain -- excuse me.

2 What is this photograph?

3 A The restoration plan is being implemented on
4 the Murphy farm. I took this picture on 12-24-1996.
5 The photograph shows an excavator digging out the --
6 making trenches to dig out the subsurface tile line.
7 The picture shows some of the spoil piles had already
8 been leveled by a bulldozer. There were two pieces of
9 equipment there. You can see them both way in the
10 far. And I am standing on the Greenlee Road side of
11 the tract, the Murphy farm.

12 Q Now, Mr. Steckler, I'm going to have to ask
13 you to speak loudly, especially with this door open,
14 so we can hear you.

15 Can you now -- what is the photograph on the
16 bottom of page 1?

17 A This is at the other end of the -- on the
18 other road, South Hill Road looking south. The farm
19 left of the photograph shows one of the upland fields,
20 and then there is like two little strips of water that
21 run kind of through the photograph. The one to the
22 far left is the tributary, Elk Creek, and the one
23 there that has a few clumps of dirt on and so forth is
24 one of the ditches that had been dug and leveled, and
25 there is lots of water on the site. I think my letter

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STECKLER - DIRECT (RESUMES)

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1 says it rained on the night of the 23rd.

2 Q Now, turning to page 2, what is the
3 photograph on the top of page 2?

4 A This is from the same road, South Hill Road,
5 and the excavator is in the far -- looking south, the
6 excavator is digging trenches in the kind of lower
7 center in the picture.

8 Q And why would the excavator be digging a
9 trench in the center of the picture?

10 A That was to carry out the restoration plan.
11 As the plan was drawn, he was executing the
12 instructions on the restoration plan.

13 Q Now, what is the picture on the bottom of
14 page 2?

15 A This is kind of a close-up of the one at the
16 top. I walked up the tracks the excavator made in the
17 snow, and took a closer picture. It was only taken
18 minutes after the picture on the top.

19 Q On page 3, what is the picture on the top of
20 page 3?

21 A Another picture of the Murphy tract during
22 the restoration plan implementation. This one is from
23 Greenlee Road looking west. You can see -- on the
24 right side there is some spoil that's been dug out
25 from digging the ditches, and on the left side of the

STECKLER - DIRECT (RESUMES)

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1 photograph beyond, kind of beyond that one little
2 evergreen tree you also see another line of spoil
3 piles where there has been soil dug out.

4 Q What is spoil?

5 A I'm referring to -- once the trencher digs a
6 bucket of soil, swings it out, deposits it as the
7 spoil. Once it's out of the ditch, I refer to it as
8 spoil.

9 Q The picture on the bottom of page 3, what is
10 this picture?

11 A From the -- pretty much from the same road,
12 Greenlee Road, looking west. Maybe a little bit
13 closer up. It shows several spoil piles in a line
14 where the trenches have been dug.

15 Q Page 4, what is the picture on the top of
16 page 4?

17 A Close-up of some of these spoil piles. I
18 believe this one I walked down off of Greenlee Road
19 and got a close-up.

20 Q The picture on the bottom of page 4, what is
21 this picture?

22 A From Greenlee Road again looking west on the
23 Murphy tract. The very -- angling down from the
24 center of the photograph is again some spoil piles
25 that have been dug out according to the restoration

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1 plan.

2 Q Page 5, what is the picture on the top of
3 page 5?

4 A This is the check dam that was indicated in
5 the restoration plan.

6 Q And what is the purpose of placing the check
7 dam?

8 A To my recollection, the check dam was to
9 correct a change in a channel where part of the
10 channel was deeper than another part, and they were
11 afraid this was going to be a source of erosion in the
12 ditch, so that the check dam was installed to allow
13 the water to flow over this point without eroding a
14 lot of the ditch that was already there.

15 Q The picture on the bottom of page 5, what is
16 this?

17 A I believe that's from Greenlee Road. You
18 can see there again it's the restoration plan being
19 implemented. If you look down to the left center of
20 the picture you can see the little, small yellow dot.
21 That's the dozer leveling the spoil piles, kind of
22 between the two trees on the left side. There is two
23 pieces of equipment there. That's what I observed.
24 There was an excavator digging the soil, making the
25 spoil piles, and then there was the dozer leveling

STECKLER - DIRECT (RESUMES)

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1 them off.

2 Q And on page 6, the picture on the top, what
3 is this?

4 A A close-up of those trenches that I've been
5 describing, and this one you can see one piece of the
6 drainage tile laying on the left side of the -- kind
7 of a yellow piece of plastic pipe laying on the left
8 side there in the photograph.

9 Q And on the picture on the bottom of page 6?

10 A Another close-up. This happens to be -- it
11 looks like an intersection of several of the lines
12 that were dug out, and you can again see some of the
13 drainage, corrugated drainage pipe that's been dug
14 out.

15 Q How long did this process take?

16 A To my knowledge, the restoration work was
17 completed in two days.

18 Q Now, how would the restoration -- this
19 restoration work that was conducted, how would that
20 effect cropland on other areas on the Murphy farm?

21 A Well, my knowledge at the time was that the
22 restoration plan was to turn that particular 30-acre
23 site that was referred to in the restoration plan,
24 return it to the water conditions before up to 1984,
25 which I talked about. So it would return the

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1 A Well, I can't agree to that.

2 Q No, of course not.

3 A Because there was four or five other people
4 who worked in at office who have come and gone. I
5 didn't do every project in the whole office.

6 Q I can only ask you about projects you know
7 about, sir. Can you -- are you telling the Court
8 under oath today that not one of the projects you
9 worked on ever involved a drainage of property that
10 would qualify as a wetland under the definition given
11 us today under the Clean Water Act?

12 A I would say probably not. You could
13 probably find some if we absolutely went back through.

14 Q Good.

15 A At least some would be questionable.

16 Q Thank you.

17 A I mean, that's a little -- I can't evaluate
18 every project.

19 Q Absolutely.

20 Now, before 1984, there were actually
21 drainage ditches on Mr. Bracc's property, weren't
22 there?

23 A Yes.

24 Q So when you testified today that you
25 understood the restoration project -- the restoration

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1 to restore only conditions going back to 1984, you
2 were pretty much just repeating what Mr. Lapp said,
3 right?

4 THE COURT: Just pause before you answer
5 that question.

6 Yes, Ms. Cook?

7 MS. COOK: Can counsel clarify when he says
8 "property," what he is referring to?

9 MR. MARZULLA: The 30 acres, and I would be
10 happy to ask the question again, Your Honor.

11 THE COURT: Why don't you go ahead and
12 rephrase it then.

13 MR. MARZULLA: Yes.

14 BY MR. MARZULLA:

15 Q You testified earlier today that the
16 restoration plan for the 30 acres, which you observed
17 on December 23rd and 24th of 1996, was to restore the
18 property back to 1984, right? Is that what you said?

19 A Yes.

20 Q Okay. And in fact, that restoration plan
21 filled in ditches that were built before 1984, didn't
22 it?

23 A I really don't know the answer to that. I
24 didn't keep track of every ditch that was filled out
25 there, especially if we didn't have anything to do

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1 with it. So I don't really know.

2 Q Okay. Well, just a moment again, Mr.
3 Steckler, you agreed, and I want to make sure your
4 testimony is clear here, I thought you agreed with my
5 question when I said some of the drainage ditches in
6 the 30 acres were constructed before 1984.

7 Did you say yes to that?

8 A Yes, some of them had.

9 Q Absolutely. So when they got filled in, you
10 actually restored a condition that was pre-1984. Some
11 of the stuff that got filled in, the drainage ditches
12 --

13 A There were also ditches that weren't filled
14 in.

15 THE COURT: Pause before you answer. Yes?

16 MS. COOK: Your Honor, counsel is misstating
17 the testimony. There hasn't been any testimony that
18 said all of the drainages were refilled during the
19 restoration plan.

20 THE COURT: I think the line of questioning
21 is appropriate. Go ahead, Mr. Marzulla.

22 BY MR. MARZULLA:

23 Q Do you recall the question, sir?

24 A No.

25 Q Okay. Some of the drainage ditches that

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1 were filled in that you observed being filled in were
2 subject to the restoration plan were actually
3 constructed before 1984, weren't they?

4 A I think some of them were, yes.

5 Q Okay. Now let's talk about your soils map.
6 Would it be accurate to say that on occasion a soil
7 test done at a specific spot will, shall we say, fail
8 to confirm the soil that is shown on that map?

9 A That's correct. I did my research on that
10 subject.

11 Q Did you?

12 A So there is what they call mapping unit
13 variability.

14 Q Right. And making unit variability means
15 that on a large scale the map is pretty accurate, but
16 maybe not into a smaller scale, right?

17 A That's a true statement.

18 Q Okay. So when you look at the soils map,
19 it's a pretty good indication of what's probably
20 there, but it can be off as to a particular parcel or
21 a particular acre, can't it?

22 A It can be -- it may be off according to some
23 characteristics, and accurate in other
24 characteristics.

25 Q Right, because it's just a question of how