



United States Department of the Interior  
FISH AND WILDLIFE SERVICE

Suite 322  
315 South Allen Street  
State College, Pennsylvania 16801

February 7, 1989

Ms. Carroll S. Lesik  
County Executive Director  
USDA-ASCS  
RD#5, Route 19  
Waterford, PA 16441

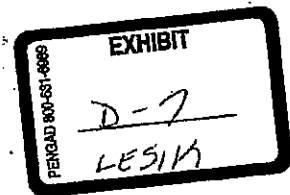
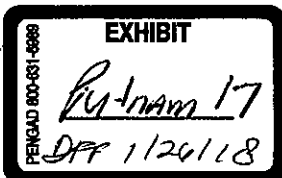
Dear Ms. Lesik:

The Fish and Wildlife Service has reviewed materials submitted by Mr. Robert Brace, R.D. #1, Waterford, PA to support his request for a commenced determination for a wetland conversion project on his farm in Waterford Township, Erie County, PA.

The requirements to qualify for an exemption from the swampbuster provisions of the Food Security Act of 1985 under the exemption for projects that were started, but not completed prior to December 23, 1985, are listed in 6CP.

Pertinant Sections Are Listed Below:

- 40 A 3 3 Show that the activity proposed for commenced determination has been actively pursued.
- A Efforts toward the completion of the conversion activity must have continued on a regular basis since initiation of the conversion except for delays because of circumstances beyond the person's control.
- 40 B 5 C Only wetlands for which construction has begun or to which the contract or purchased supplies and material relate may qualify for a commenced determination.
- G The conversion of a wetland may be determined by the COC to be commenced, if either of the following apply:
  - 1 Any of the construction activities that would convert the wetland were actually started before December 23, 1985.
  - 2 The person applying for benefits has expended or legally committed funds either by



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entering into a contract or by purchasing construction supplies or materials for the direct purpose of converting the wetland before December 23, 1985.

Mr. Brace has submitted 38 separate receipts to document expenditures and a number of ASCS documents verifying that ASCS paid for portions of the work completed prior to 1985. Careful analysis of these materials is necessary to determine if Mr. Brace's situation meets the requirements for exemption from the swampbuster provision of the Food Security Act.

In our analysis of the materials submitted by Mr. Brace, we note that there are no copies of contracts made prior to December 23, 1985, that would commit funds to do any work after December 23, 1985. There are no plans showing where the work listed in the receipts was completed or what work was planned for the future. There are no receipts for materials purchased prior to December 23, 1985 that would be installed after that date.

Table I. Summary of receipts submitted by Robert Brace to document wetland conversion work.

<u>Year of Work</u>	<u>Amount Paid to Contractor</u>
1977	5,740.49
1978	2,338.43
1979	3,202.40
1980	none
1981	2,170.00
1982	3,010.00
1983	none
1984	none
1985	none
1986	4,469.55
1987	8,054.40
Total Paid	28,985.27
Total Paid Prior to 1985	16,461.32
Total Paid After 1985	12,523.95

Of all of the ASCS documents, it appears that the only ones that could be relevant are a payment of \$1,384 for drainage in 1977 and \$1,000 for drainage in 1978. In 1979, \$940 was paid for sod waterways and in 1984, \$1,008 was paid to grade, relevel, seed crop areas, and open ditches following flood damage. None of these activities would relate to wetland conversion. Furthermore, we could not identify the specific areas where this work was conducted based on the information submitted.

The points at issue in this determination are: 1) Did construction start on all of the areas applied for prior to December 23, 1985; 2) were supplies purchased for the conversion; and, 3) was a contract made to perform work?

It is also up to the person applying for the exemption to show that efforts toward the completion of the conversion occurred on a regular basis since initiation of the conversion except for delays because of circumstances beyond the persons control. There are no receipts or documents submitted for any work related to wetland conversion for the years of 1983, 1984 or 1985.

A review of aerial photographs of the property further substantiates the fact that work prior to 1983 was primarily directed toward conversion of wetlands on the north side of South Hill Road. Even work in the channel of Elk Creek south of South Hill Road facilitated drainage on the north side of the road.

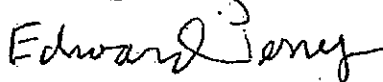
The fact that most of the wetland areas south of South Hill Road maintained their wetland characteristics after the last channel excavation in 1982 until they were cleared and tilled in 1986 provides additional support to the argument that work prior to 1983 would not convert the wetlands.

#### Summary of Recommendations

While Mr. Brace has submitted documents supporting payments of over \$28,000 to contractors for work on his property he has not submitted any information to support his request for an exemption from the swampbuster provisions of the Food Security Act of 1985 under the exemption for projects commenced prior to December 23, 1985.

There are no plans, no contracts and no receipts for materials that would qualify for a commenced exemption. There are no receipts for any work after 1982 that would qualify for the commenced exemption. Even the criteria of "regular progress" is not met because there was no work documented between 1982 and 1986. Work done prior to 1983 converted specific wetlands into crop production and they can be properly labeled converted wetlands. These areas are primarily located north of South Hill road. The wetland areas south of South Hill Road were not converted until 1986. Work in these areas should not be exempted from the swampbuster provisions.

Sincerely,



Edward W. Perry  
Acting Supervisor