

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA,)
Plaintiff,)

vs.) No.

ROBERT BRACE, ROBERT BRACE) 1:17-cv-00006-BR
FARMS, INC., et al.,)
Defendants.)

Deposition of ROBERT BRACE
Tuesday, January 9, 2018

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The deposition of ROBERT BRACE, called as a
witness by the plaintiff, pursuant to notice and the
Federal Rules of Civil Procedure pertaining to the
taking of depositions, taken before me, the
undersigned, Lance E. Hannaford, Notary Public in and
for the Commonwealth of Pennsylvania, at the offices
of U.S. Attorney's Office, 17 South Park Row, Erie,
Pennsylvania 16501, commencing at 9:14 o'clock a.m.,
the day and date above set forth.



APPEARANCES:

On behalf of the Plaintiff:

U.S. Department of Justice:

Laura J. Brown, Esquire

Brian Uholik, Esquire

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ALSO PRESENT:

Beverly Brace

- - -

1 Q Certification you are not doing work on
2 converted wetlands.

3 Do you recall ever having a season where
4 you did not plant any crop on Homestead farm in the
5 past ten years?

6 A No. One of the reasons is because planting
7 season comes, we will work 120, 130 hour weeks.

8 Q When is planting season. October? That is
9 harvest, excuse me.

10 A That wouldn't be a very good crop.

11 Q Harvest season is October?

12 A From about April 20th -- April 28th, I
13 would say, until May 10th is the best time. Anything
14 after that, anything after May 10th you will lose a
15 bushel a day. That's when we try to push.

16 Q When is harvest season?

17 A Harvest starts the last week of September
18 or first of October depending on your degree days.
19 This year was a cold year. If it gets colder, we will
20 have to move south to get crop raised.

21 Q Are there any oil and gas wells on the
22 Homestead property?

23 A Yes. There is one.

24 Q Do you know where it is?

25 A That was one drilled by another company.

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1 subsurface erosion we talked about. Tile is typical
2 in Erie County.

3 You have difference in soil every ten feet
4 when the glacier came through. You could have peat
5 here and gravel here. That is what tiling is about
6 throughout the continental United States. Without
7 tiling we don't have a decent farm.

8 Q The purpose of tile draining, part of it is
9 to remove water from the soil?

10 A If you have a spring, and there again,
11 that's why I say legislatively we hoped we could get
12 clarification what is a wetland and what isn't so we
13 could function.

14 Q Again, we are talking about any work that
15 you have done in what I hatched here in red on
16 Plaintiff's Exhibit 1. What we call the consent
17 decree area. You added tile drain after 2012. Is
18 that correct?

19 A Again, this first meeting was October 7th,
20 2011. That's what it says here. Again, we cleaned
21 the ditches. Again, in the second paragraph that is
22 when we were standing there on the road. They said
23 the government works slow, but go ahead and do this.
24 It is maintenance. And keep doing the drainage.

25 Q So did you also excavate ditches in the

1 consent decree area after 2012?

2 A The only ditch I know on that consent
3 decree, area that you call the consent decree area, is
4 what I pointed out. That is where they indicated you
5 go to here. You can do anything you want up to this
6 point. Do all the tiling. Raise anything you want.
7 That's why this was planted again. Then you put the
8 cease and desist on us. Then we had to abandon it
9 again.

10 Q So did you -- I'm not talking about
11 cleaning ditches -- excavate any ditches in the
12 consent decree area?

13 A I just told you none except the one they
14 told us to put it for the water coming around the
15 beaver dam could roll back into the ditch.

16 Q Who told you to put it there?

17 A Todd and the people who told us to do this.
18 This is your point of no return here.

19 Q Todd told you where to excavate a ditch?

20 A Yes.

21 Q Could you identify on this map?

22 A I did.

23 Q Can you draw it?

24 A It's there. Right here. See that?

25 Q Could you put a D there?

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1 foot of water and there shouldn't be from the lower
2 dams. Makes it look like it's wet when it's not.

3 (Thereupon, Plaintiff's Exhibit No. 20 was
4 marked for identification.)

5 Q You have been handed what has been marked
6 Plaintiff's Exhibit 20. This is an email that was
7 sent from Sherri Huntley to a series of people
8 including Erin Wilson who appears to work for maybe
9 some Congress person. Some Pennsylvania legislators,
10 Ron Bosworth, Ann Albright --

11 A Representative Mike Kelly. All right.

12 Q This is an email forwarding an email that
13 Neal Devlin sent to you on April 26, 2016. See that?

14 A Can I read this?

15 Q Yes.

16 A All right.

17 Q I want to direct your attention to the
18 third paragraph that Mr. Devlin writes to you that was
19 then later forwarded to this representative where it
20 says, "Based on this, it is my recommendation you
21 seriously consider having Eco Strategies or someone
22 come in to identify the close to 30 acre portion of
23 the Murphy farm from which we would remove, reinstall
24 tile drain and agree to reposition the check dam."
25 See that there?

1 A Yes.

2 Q So would you agree that if the check dam
3 needs to be repositioned, that means it was somehow
4 taken out of position?

5 A No. It wasn't. We was given permission to
6 clean the ditches. Again, this here is something that
7 I indicated forever. We had exclusionary property.

8 Q What is exclusionary property?

9 A Exclusionary property that was legally
10 drained prior to '77 or in '77, August 4th of '77.
11 Our property had a CW or PC, which you will see Andy
12 Johnson's report indicates where they are.

13 Those are areas the conservation district,
14 when I had this plan made, and when I started this
15 whole project in '76. The determination had to be
16 made in 84-'85 period.

17 When the '85 farm bill came out, I was
18 required to go to the conservation district, because I
19 already had a conservation plan. I was required to go
20 down there and have the determinations made. I had
21 all that. Nobody recognized the fact we were
22 completely legal.

23 The conservation district is where we were
24 supposed to go. Not to the Corps of Engineers. The
25 Corps of Engineers had final say with the EPA. But

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1 the conservation district in the '85 farm bill was
2 given authority to do what I'm telling you.

3 And when Todd came out here and after we
4 had this done, Todd said to me the EPA doesn't know
5 what to do. That's what they told me.

6 Again, I'm trying to explain to you why I
7 hired Andy Johnson. I said I shouldn't have to, but I
8 will do it. Andy Johnson, he's very credible, he's a
9 good person. I didn't have him talk to anybody. He
10 took the records. I wouldn't let him talk to Neil. I
11 wouldn't let him talk to anyone. That's the report we
12 have. We still have.

13 Q Do you understand what Mr. Devlin was
14 writing to you when he said, "Agree to reposition the
15 check dam," do you understand what he meant?

16 A We didn't reposition the check dams.

17 Q You don't know what he meant by that
18 statement in this email, that it is his recommendation
19 you seriously consider among other things
20 repositioning the check dam, you don't know what he is
21 referring to?

22 A We didn't reposition the check dams. I
23 just said they told us we could clean the ditches.
24 That check dam, like I said, because of the tile lines
25 that are plugged and the beaver dams in there, and the

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1 concrete on both Lane and Sharp Road is causing this
2 back water. And it creates another two foot of water
3 that shouldn't be in those ditches.

4 These are the things, whether you like to
5 hear them or don't like to hear them, I don't know.
6 The ecosystem is the one I went to them. It took me
7 quite a while or him quite a while to get that done.
8 But he agreed what I said and have been saying.

9 Q Did you follow Mr. Devlin's recommendation?

10 A Yes. We had a cease and desist after we
11 started to do what they said. This is why it's
12 puzzling to me.

13 Q You did reposition the check dams?

14 A No.

15 Q I want to talk about your allegations that
16 there has been an encroachment into the uplands on
17 your property as a result of the restoration. Are you
18 aware that is an allegation you made in this case,
19 correct?

20 A Yes.

21 Q If you could identify for me, and let's
22 take a look at Plaintiff's 1. Could you identify
23 where on the uplands there has been an encroachment?

24 A On this whole map?

25 Q Yes.