

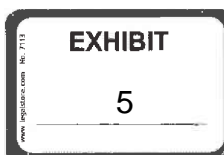
UNITED STATES COURT OF FEDERAL CLAIMS

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 CLERK: All rise.

2 (Whereupon, at 12:00 Noon, the hearing in
3 the above-entitled matter was recessed, to reconvene
4 at 1:30 p.m., this same day, Thursday, January 13,
5 2005.)

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1 A F T E R N O O N S E S S I O N .

2 (1:39 p.m.)

3 THE CLERK: All rise.

4 THE COURT: Please be seated.

5 I see we have moved to modern ways of
6 cooling the courtroom.

7 All right, let's resume with this witness.

8 Mr. Steckler, I will just remind you that you are
9 still under oath.

10 THE WITNESS: Yes, Your Honor.

11 Whereupon,

12 LEWIS L. STECKLER

13 having previously duly sworn, was recalled
14 as a witness and was examined and testified further as
15 follows:

16 MS. COOK: Your Honor, we apologize for the
17 exhibits, and we will begin again with Exhibit 9 now
18 that we all have the same copy in the same order.

19 THE COURT: Okay.

20 DIRECT EXAMINATION (Resumes)

21 BY MS. COOK:

22 Q Mr. Steckler, if you could turn to Exhibit
23 9(f).

24 A I'm already there.

25 Q And starting on page 1, the photograph on

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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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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

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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

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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 hydrology and return the water table to '94 condition.

2 Q And so how would the restoration project
3 then affect the other cropland on the Murphy farm, the
4 remaining acres?

5 A Well, the upland fields would still be
6 upland fields. We could look at the contour map.
7 Those fields rise significantly above the surface in
8 that area. I've looked at contour maps, and I was on
9 site. You can see in some of the pictures that the
10 upland fields rise sharply from the wetland.

11 This is very similar to a lot of area in
12 Erie County. We have glaciated topography that was
13 laid down 10,000 or 20,000 years ago, and you may have
14 a swamp or a wetland in one locale, and you can go the
15 length of this room and be walking up the field that's
16 all gravel, so it can change very rapidly in Erie
17 County.

18 These uplands both have gravely soil types.
19 There would still be adequate depth in these fields
20 to grow crops. I don't know exactly how high in
21 elevation these fields are above the wetland, but it's
22 10 - 20 feet in my estimation.

23 Q So changes in hydrology in the wetlands, how
24 would that affect the ability to grow crops on the
25 uplands?

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1 A It would change it very little. You're
2 talking about the two upland fields.

3 Q Now, how would the restoration affect
4 cropland in the Homestead farm?

5 A Here again, I didn't go to the Homestead
6 farm the day I was up there. But to the best of my
7 knowledge, that farm -- the drainage on that farm
8 shouldn't have been effected very slightly, if at all,
9 because the main channel of Elk River, which is the
10 tributary we have been discussing, talking about, that
11 channel was left undisturbed, it was left open for the
12 restoration, and that's the main drainage point for
13 all the drainage of both tracts.

14 So this main stream channel was not touched
15 during the restoration. It was left open. So to my
16 knowledge without being requested to go there and
17 inspect it, there was no -- no watering wells were put
18 in or anything to check the water levels. So I would
19 assume the drainage would be effected very little.

20 Q Now, let's just say if there were --
21 hypothetically, if there were changes in the Homestead
22 farm, in the wetness and the hydrology of the
23 Homestead farm, what are some of the causes, what
24 could be potential causes of those changes?

25 A Well, there is any number of things that can

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1 happen. We can have just wet years, several years of
2 heavy rainfall. If there is additional conditions if
3 possibly we had beavers. We have -- I have
4 investigated cases where muskrats have dug into the
5 tiles. Woodchucks have dug into the tile line. It's
6 very common for underground drain lines to get plugged
7 up with roots and vegetation.

8 So you would have to -- normally if we get
9 calls for assistance, this is the kind of things that
10 I'm looking for to see why a drainage system isn't
11 working.

12 You do have to check the outlet to make sure
13 the outlet is free flow. If the outlet is not free
14 flowing, then you see what's causing the water to back
15 up. Or you can walk up the end of the tile line from
16 the outlet, and sometimes you may see water bloating
17 up under the ground. Well, this tells me then that
18 the plastic pipe has gotten plugged somewhere.
19 Woodchuck or roots or somehow it's caved in.

20 So that there can be many causes for a
21 drainage system to not work as it's initially
22 installed, especially the older -- the older they get
23 the more chances are of something to go wrong.

24 Q Now, you were talking about beavers. Let's
25 just say there were beaver dams put in. Where would

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1 you notice the effect from the beaver dam or the
2 presence of beavers?

3 A They are probably likely to dam up one of
4 the main water sources, the tributary out there, or
5 one of the unnamed tributary. They don't normally
6 build a dam where there is no flowing water, so that
7 would be the first place to check.

8 Q Now, the remaining acres on the Murphy farm
9 separate from the 30 acres, what is the access to
10 those remaining acres, Mr. Steckler?

11 A Well, the one field right in the center, I'm
12 not sure exactly what we have been referring that to,
13 the amoeba-shaped field, is that it? That has quite a
14 long exposure to South Hill Road.

15 The other field that's in the southwest
16 corner, to my understanding there is a farm access
17 road along the western boundary of the property.
18 That's how I got to the field. I drove my own car
19 back on that little road.

20 Q Mr. Steckler, if you can turn to Defendant's
21 Exhibit 8.

22 A Eight. I went the other way.

23 MS. COOK: Your Honor, we realize that these
24 are not very good copies, and we have had better
25 copies made over the lunch break of Defendant's

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