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

UNITED STATES OF AMERICA, :
Plaintiff :
 :
v. : Civil Action Nos.:
 : 1:90-cv-002229 and
 : 1:17-cv-0006
ROBERT BRACE, ROBERT BRACE :
FARMS, INC. and ROBERT :
BRACE and SONS, INC., :
Defendants :

Deposition of EDWARD LEWANDOWSKI, taken before
and by Sonya Hoffman, Notary Public in and for the
Commonwealth of Pennsylvania on Wednesday, November
29, 2017, commencing at 9:05 a.m., at the offices
of Knox McLaughlin Gornall & Sennett, P.C., 120
West Tenth Street, Erie, PA 16501.

Reported by Sonya Hoffman
Court Reporter

Ferguson & Holdnack Reporting, Inc.
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Robert Brace

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1 E D W A R D L E W A N D O W S K I, first
2 having been duly sworn, testified as follows:

3

4

DIRECT EXAMINATION

5

BY MR. KOGAN:

6

7

Q. Well, good morning all. Thank you for attending.
8 Mr. Lewandowski, can you state your full name for the
9 record, please.

10

A. Edward Lewandowski.

11

Q. And when you were -- you are retired now, sir?

12

A. Yes. 15 years.

13

Q. And you're still happy about being retired?

14

A. Pretty much, yes, because I liked my job quite a
15 bit, you know.

16

Q. Yes. Did you or did you not previously work for
17 the U.S. Department of Agriculture?

18

A. Yes. That's who I worked for.

19

Q. May I ask for how many years?

20

A. 47 years and seven months.

21

Q. And for which division did you work?

22

A. Department of Agriculture.

23

Q. Which division of the Department of Agriculture?

24

A. Division, meaning?

25

Q. Solar Conservation Service, which is --

1 A. The Natural Resource Conservation Service. Yeah.
2 They used to be Solar Conservation and they changed it to
3 Natural Resource Conservation Service.

4 Q. Do you recall what years you worked there.

5 A. I started in 19 -- I got on in 1959 and I retired
6 in 2006. Yeah.

7 Q. Okay. 2006, did you work exclusively for NRCS, or
8 formally SCS, or did you work for any other division of the
9 U.S. --

10 A. It started -- the agency was Solar Conservation
11 Service. They changed it several years later to National
12 Resource Conservation Service.

13 Q. Right. But you didn't work for any other division
14 of USDA?

15 A. No. No. The same Department of Agriculture.

16 Q. When did you first come into contact with
17 Mr. Brace and his farm in Waterford?

18 A. Oh, man. I can't remember that. That was a long
19 time ago. I don't remember.

20 Q. Okay. Do you remember -- okay. Now, when you
21 were working for NRCS, formerly SCS, what was your job task?
22 What were --

23 A. I was a conservation technician, and they had a
24 program called the Agriculture Conservation Program that was
25 held by the -- or they -- the ASCS office was one of the --

1 the Agriculture Stabilization Conservation Office, they were
2 the ones who handled a lot of the farm programs. We didn't
3 handle the farm program, but we were a technical agency to
4 do the technical work.

5 Q. So ASCS was more along the lines of finance?

6 A. Yes. That's where to go to -- that's where the
7 money -- where the programs were. And they sent the money
8 out to the farmers.

9 Q. So they would offer farmers financing to do
10 certain activities.

11 A. Well, they had practices that they -- that they --
12 for the farm program there was practices for like tile
13 drainage, conservation ponds, strip cropping, and there was
14 cost-sharing. And the farmers, they'd get -- the farmers
15 could get paid cost-sharing to do the -- like to do the tile
16 drainage, you know --

17 Q. Right.

18 A. -- for about half of the cost. They government
19 would pay half and they would pay half.

20 Q. Okay. And --

21 A. But we would lay it out. But the farmers would
22 have to go and they have to apply for this. They have to
23 apply for -- they have to make an application. It's called
24 a referral.

25 They go to the office to the ASCS office. We're

1 located in one building. They would go the ASCS office and
2 they would sign up for whatever program that they wanted.
3 And tiling is one of the main programs in a lot of several
4 counties.

5 And then we would get their referral in our office
6 that they wanted tile drainage, you know. And then we'd
7 contact the farmer and we'd go out and lay out the job.

8 Q. Now, you said you began in the 1970s, or '60s did
9 you say?

10 A. I got permanent -- I started in 1957 right out of
11 high school. Right out of high school. And then I got -- I
12 was a temporary employee and then I got permanent in '59,
13 1959.

14 Q. Okay. And --

15 A. And the office was at 23rd and State Street in
16 Erie.

17 Q. That was convenient.

18 A. Yeah. It was good. But then they moved out to
19 Waterford after 15 years or something like that.

20 Q. Now, you said that tile drainage was a main
21 program.

22 A. That was a main program for -- yes.

23 Q. So tiling and drainage --

24 A. Underground --

25 Q. -- of land.

1 A. For cropland. Only cropland.

2 Q. Croplands.

3 A. No other kind of land. No wetlands. No pastures.

4 It has to be -- just for cropland.

5 Q. Well, who made the determination for the USDA --

6 A. I don't know.

7 Q. -- whether it was a wetland or not a wetland?

8 In other words when were you engaged in --

9 A. The wetland?

10 Q. In other words, if you would explain the process
11 it would be very helpful.

12 A. I really don't know.

13 Q. The tile drainage, if a farmer wanted tile
14 drainage --

15 A. Yes.

16 Q. -- can you explain the process that would ensue.
17 What would the farmer have to do? What would ASCS do after
18 the request?

19 A. A lot of farmers have a lot of problems on their
20 cropland.

21 Q. Right.

22 A. You know, they want to get out there early in the
23 spring. So they're -- they have a lot of wet areas. So
24 they would go to the office, the ASCS office, which was in
25 the same building that they were in, and they would file --

1 they would have an application made, a referral.

2 Q. Right.

3 A. So they would take the referral and then -- a lot
4 of farmers would do that early in the spring. A lot of
5 farmers do that, you know; then we'd get a whole bunch of
6 referrals. Most of them were all tile drains, you know, but
7 we got other ones. Like they wanted a pond for stock water
8 and diversions and strip cropping, but the main one was tile
9 drainage.

10 So we'd go out and we'd contact the farmer -- or
11 he usually would call us to schedule us to go out there to
12 lay it out. We'd lay it out with flags, the drainage
13 systems. But we'd walk over the whole -- only on cropland,
14 not --

15 Q. When you say "cropland", what do you mean, land
16 that's being used for crops, not pastureland?

17 A. No. Just cropland, which is -- they got to be a
18 cropland for two out of the last five years.

19 Q. What happens if the farmer wanted -- you know, the
20 cropland in only one form of farming. Correct?

21 A. Yeah.

22 Q. And pasturing is another form of farming.
23 Correct?

24 A. Well, all farmers have pastureland, mostly.

25 Q. Right. And some -- they use it for cattle.

1 Correct?

2 A. Yeah.

3 Q. Or they use it for livestock.

4 A. Yeah. But they only specify that they just use
5 that for cropland.

6 Q. Right. But if you wanted to ditch out pastureland
7 just like you were to ditch out cropland, it's for different
8 purposes, but both of them relate to farming. Is that not
9 correct?

10 MR. UHOLIK: Objection to form.

11 MR. KOGAN: Noted.

12 A. I know what you're getting at.

13 Q. Well, the bottom line is they were ranchers. I've
14 represented -- just for the record, I've represented
15 ranchers and farmers in different parts of the country.

16 A. Okay. But --

17 Q. So I'm trying to figure out in the east --

18 A. Here in the east, here in this county and here in
19 this area as far as -- this is for the whole state that I'm
20 aware of, they wouldn't pay for pasture improvement. Years
21 ago they would, you know, pasture improvement. But after
22 the Clean Water Act and to protect the wetlands, you know,
23 they -- it changed.

24 Q. Right. But I'm talking now -- we're talking
25 about --

1 A. There was no tiling that this -- that would be
2 cost-sharing on pastureland. They wouldn't pay for that.
3 It was ineligible.

4 Q. Eligible for financing.

5 A. Eligible, however you take it.

6 Q. Well, eligible for ASCS. Correct?

7 A. Yeah. For the program.

8 Q. For the financial program.

9 A. Yeah. But maybe in other areas, maybe it would
10 be, you know.

11 Q. Right. But the point is is that we're talking
12 about two different forms of farming, pasturing and
13 cropping. Correct?

14 MR. UHOLIK: Objection to form.

15 Q. Those are both forms of farming.

16 MR. KOGAN: Noted.

17 Q. Yes, sir, or --

18 A. Say that again.

19 Q. Okay. I will be slower. Pasturing and cropping
20 are two different forms of farming.

21 A. Two different forms of farming.

22 Q. There's beef cattle and livestock farming.

23 A. Yes.

24 Q. And there's cropping.

25 A. All right. Yes.

1 Q. Both are forms of farming. Correct?

2 A. I got you. Yeah.

3 Q. Now, tiling was used to --

4 A. Improve.

5 Q. -- to improve through ditching and through --

6 A. Drainage.

7 Q. Drainage.

8 A. Yeah. But, see, a lot of the wetlands --
9 whoever -- I mean, the wetlands are usually there's
10 cattails, there's wetland plants. And usually the soil type
11 in the pastureland is usually a Class 4, 5 classification
12 where they have a little bit of topsoil and hardpan
13 underneath there.

14 Q. Right.

15 A. It's not really prime farmland because you don't
16 have a lot of root growth or plants.

17 Q. When you say "prime farmland", are you talking
18 about prime farmland for pasturing or --

19 A. No. Prime farmland for cropland. Like gravel, if
20 you have a gravel field or a gravel cropland, that's --
21 that's a -- that's great. You know, that's the best
22 farmland you have, gravel, you know, because you have a good
23 drainage.

24 Q. Right. But what about for plants that use a lot
25 of water like cabbage or onions? I mean, those are planted

1 on wet fields, too; aren't they?

2 MR. UHOLIK: Objection to form.

3 MR. KOGAN: Noted.

4 A. Not to my knowledge.

5 Q. Because there is a lot of -- there was a lot of
6 cabbage and onion farming in this --

7 A. Yeah. But usually --

8 Q. -- area.

9 A. -- usually the wetlands are --

10 (Court reporter interrupts proceedings.)

11 A. No one is going to plant the crop in a wet area,
12 you know, where it's wet all the time. They're not going to
13 do it.

14 Q. Well, are we talking now, 2017, or are we talking
15 about 1960, '70s or '80s?

16 MR. UHOLIK: Objection to form. Compact.

17 A. As long as I've been there since 1957.

18 Q. Well, there had to be some type of notion of
19 planting in wet areas because --

20 A. Well, let's put it this way, I haven't -- in all
21 my years, I haven't gone in the pasture field and laid out
22 tile. The program didn't call for it. It didn't. That was
23 not eligible.

24 And when farmers want to improve their
25 pastureland, they can -- maybe a lot of them will put a

1 couple of pieces of tile down on their own, but they would
2 pay for it.

3 Q. Right.

4 A. The government wouldn't pay for it through the
5 programs.

6 Q. Right. But never --

7 A. Pastureland was not eligible for drainage.

8 Q. It was not eligible for financing for drainage.

9 A. Through the ASCS program.

10 Q. Right.

11 A. The Agricultural Conservation Program where
12 they -- where the farmers sign up and to get cost-sharing,
13 that's the conservation program. And that would not -- a
14 pasture field would not be eligible.

15 Q. As of what year? Do you recall?

16 A. All my years that I've been there.

17 Q. Okay. Because I'm --

18 A. This is the -- and actually, to be honest with
19 you, you know, I -- farmers don't usually -- they don't all
20 tile their pasture field. They're not going to waste the
21 money or the time to do that. They use that time and money
22 for croplands.

23 Q. Okay.

24 A. This is what I've been associated with.

25 Q. Okay. Based on your expertise on knowing, why is

1 tiling used, Mr. Lewandowski?

2 A. For drainage.

3 Q. For drainage.

4 A. Absolutely.

5 Q. Okay. Now, why would a farmer go to the -- go to
6 the length, go to the extent to create -- to install tile
7 drainage in lieu of just clearing out a ditch?

8 A. In lieu of?

9 Q. In other words, you can just create a ditch for
10 drainage or you could install tiling. Why would one install
11 tiling?

12 A. Well, a ditch is an open ditch.

13 MR. UHOLIK: Objection to form.

14 A. It's a good question. Tiling is, at the minimum,
15 you got to put at least 2 1/2 feet of depth. And when you
16 tile the field, you have -- you do -- you use a lot of tile
17 drainage. It's too -- there's a lot of footage.

18 Q. So therefore what you're kind of pointing to, I
19 think, is the difference between surface drainage and
20 subsurface drainage. Correct?

21 MR. UHOLIK: Objection to form and
22 characterization.

23 Q. Are you -- these guys like --

24 A. Yeah. Surface water is a ditch, you know.

25 Q. Right. And then there are subsurface water flows.

1 Right?

2 A. Yeah. Some get some subsurface water. Sure. But
3 mostly all the farmers that I dealt with all these years,
4 they're not interested in their pastureland, they want
5 everything on their cropland, because they want to be able
6 to get out there in the springtime and start planting.

7 Q. Right.

8 A. So when we lay out tile systems, like in Erie --
9 the primary soil type in Erie County, we lay those lines out
10 like 50 -- 30 to 50 feet apart. We put a main line in there
11 and all these laterals. We tile the whole field. And
12 you're talking about 5-, 6-, 7,000 feet of tile.

13 Q. Now, how would you determine where the tile is
14 placed?

15 A. Well, you can see the wet areas. Usually, if you
16 got slopes -- you're field is going to have slopes. And
17 usually right where the break is you get some springs
18 sometimes -- some springs to come out. So we always cut --
19 go above the slope to capture the water before it has a
20 chance to break out.

21 Q. Now, how close did you install tiling to streams
22 and other creeks or anything like that?

23 A. Well --

24 Q. Was there a rule of thumb that you used?

25 A. No. As long as -- you know, usually you'd have a

1 stream here and right over here you'd have a -- probably
2 a -- usually farmers leave a 20-foot area of grass because
3 if he plows and everything and the sediment gets down there
4 and then we go to the edge of the grass pretty much.

5 Q. Now, do you ever place tiling where it abuts a
6 stream or a creek or --

7 A. No.

8 Q. -- other water?

9 A. Usually not. No.

10 Q. So there's usually a buffer, you're saying, a
11 buffer of at least 20 to 25 feet?

12 A. Usually. Yeah. And then the tile drain is
13 probably going to -- in the water course. That's where you
14 got to run that tile. Chances are, you know, if you got a
15 low area, you know, where all the water runs down through
16 there, you usually have a -- it's a watercourse that goes
17 down through there.

18 So that's where you got to run your -- a lot of
19 cases, that's the only place you can get an outlet at the
20 time is to that low area where you have a stream or a
21 watercourse.

22 Q. Right. So in order to properly diagram where
23 tiling should be placed and then to identify the proper
24 depth and the pitch of the tiling, you need to know a little
25 bit about the hydrology of the fields; don't you?

1 MR. UHOLIK: Objection to form.

2 Q. Do you need to know anything about the hydrology
3 of the fields on which you are designing tile drainage
4 systems?

5 A. The only indications that you actually have is
6 what the farmer tells you. You know, he got -- and
7 actually, you can go out there and see all the wet spots.
8 You can see all the -- where the springs are coming out the
9 sides of the hill.

10 So to capture a spring, you want to go above that
11 area so you -- because the water is going to flow, you know,
12 with the slope, so you got to cut it off with the tile
13 system, but you go around it -- around and above the spring.
14 And you have a lot of little places where they break out at
15 different elevations.

16 So a lot of times you got to keep -- you got to
17 have a pattern system to capture the whole system. One line
18 might capture this area, but then down over here you have
19 some more breakage until you got to run tiling. And then in
20 the springtime when the water is flowing and you get a lot
21 of precipitation, you know, you get a lot of breaking out.
22 And as the tile wears down and the warmer weather comes and
23 you got less precipitation, it dries up itself.

24 But when the farmers want to get out early in the
25 springtime, they want to capture all those wet spots so they

1 can get out there to plow and plant.

2 Q. Now, what materials did you use for the tile
3 drainage when you installed it, because I know there was
4 wood tile drainage at one point; wasn't there?

5 A. Yeah. Way back in --

6 MR. UHOLIK: Objection to form.

7 A. -- 1918.

8 Q. Was there a wood tile drainage in the past, sir?

9 A. Yes.

10 Q. And what era of time? What period of time?

11 A. I have no idea.

12 Q. Did it extend to the -- to the best of your
13 knowledge, did it extend into the 20th Century?

14 A. I have no idea.

15 Q. Did you come across in your practice wood tile --

16 A. No.

17 Q. -- that -- you didn't come in any contact with any
18 wood tile?

19 A. No. No.

20 Q. So what material did you install as tile drainage?

21 A. Well, I didn't install it.

22 Q. You weren't the installer?

23 A. No. I laid it out.

24 Q. So you created a schematic, a design.

25 A. Yes.

1 MR. UHOLIK: Objection to form.

2 Q. Did you create a design only -- did you create a
3 design for each tiling system for a particular farmer's
4 fields or field?

5 A. A diagram for each system that we laid out.
6 There's a diagram for each of them.

7 Q. Was a system limited to a specific field, or did
8 it encompass several fields that may have been contiguous?

9 A. I don't follow you.

10 Q. When you installed -- or when you designed a tile
11 drainage --

12 A. Let me interrupt you here. A lot of farmers have
13 several fields. So we'll work on this field; we'll get this
14 done. He maybe will sign up for 10,000 feet or whatever,
15 you know, and then work on this farm and then maybe another
16 farm that he was. We work on different fields, different
17 systems.

18 Q. Are they --

19 A. Independent. Yes.

20 Q. -- independent of each other or sometimes do they
21 work together?

22 MR. UHOLIK: Objection to form. Compound.

23 A. What do you mean work together?

24 Q. If a farmer has several fields and you designed a
25 system for that farmer.

1 A. For each field.

2 Q. Well, is each field --

3 A. Each field is different. They have different
4 layouts depending on the slope and where the wet -- where
5 the water -- where the drainage problems are.

6 Q. So each field --

7 A. Has a -- it's a separate system.

8 Q. Do the separate systems work together? When you
9 designed them --

10 A. They work individually. They work individually.

11 Q. But were they designed -- did you ever design a
12 system to work from one field to the next?

13 A. No. They're individual systems.

14 Q. So if a farmer's fields --

15 A. You know, a farmer has various croplands.

16 Q. Right.

17 A. And we prepare conservation plans.

18 Q. Right.

19 A. And we have aerial maps of their farm and the
20 boundaries. And this is what we do also, I believe. We do
21 a lot of conservation planning. That's our prime --

22 Q. What does that mean, sir, conservation planning?

23 A. Well, conservation planning is, you know, their
24 cropping systems. Usually they already have their cropping
25 systems. Okay. To answer your question, I'm not sure I

1 understand it.

2 Q. Okay. When you say a "conservation plan", what
3 does the word conservation -- what did the word conservation
4 mean when you used the term conservation plan?

5 A. The word conservation is conservation.

6 Q. Okay. I'll ask another question: Are you aware
7 of the distinction between conservation and preservation --

8 MR. UHOLIK: Objection to form.

9 Q. -- in the environmental context?

10 A. I can't answer that. I can't answer that.

11 Q. Okay.

12 A. I don't know what we're getting to. The only
13 thing I --

14 Q. When you installed -- or rather when you designed
15 tile drainage systems for farmers, did the farmer in each
16 case have a conservation plan?

17 A. No. If the farmers have a conservation plan, they
18 have to request it. They're known as cooperators. They
19 have to go to the conservation district in each area and
20 they have to apply for a conservation plan and they become
21 cooperators. They're cooperators with the county, you know.

22 Q. With the county --

23 A. But the conservation district does that.

24 Q. -- with the county conservation district.

25 A. Yeah. So we get their application. We go and we

1 meet -- meet with them and then we get their -- we get their
2 boundaries of the farm that they have so we can order maps
3 for the farm.

4 Q. Right.

5 A. So we get a photograph of their farm. And so we
6 go out there and we delineate the fields with them, you
7 know.

8 Q. When you say "delineate", in what sense do you
9 mean delineate?

10 A. Well, the cropland, the pastureland, wildlife
11 land, wood land.

12 Q. Okay.

13 A. So we get the map and we have the whole farm, you
14 know, mapped out. And we go with them and we walk over the
15 farm and he tells us some of the problems that he wants to
16 take care of in the future.

17 Q. What criteria did you use to determine whether a
18 portion of the farm was wetland or pastureland or wildlife?

19 A. We didn't do that.

20 Q. Who made that determination?

21 A. He did. The farmer told me this is wildlife, this
22 is wood. You can see it.

23 Q. Right. But you didn't technically look to a
24 source for that determination?

25 A. No. The --

1 MR. UHOLIK: Objection to form.

2 A. -- farmer tells us what it is.

3 Q. Did you look to a legal source for a definition --

4 A. No.

5 Q. -- of pastureland, farmland, cropland?

6 A. No.

7 Q. No.

8 A. We just went by what the farmer told us.

9 Q. Okay.

10 A. Or showed us on a map, because we had a map. And
11 we'd blow it up. And then when we prepared the plan, it's a
12 booklet form, he has a copy and we have a copy.

13 Q. Right. Right. But I'm trying to get to the
14 question, if you were -- you were doing all this evaluation
15 for purposes of qualifying -- determining whether the farmer
16 was qualified or not qualified for ASCS funding?

17 A. No.

18 MR. UHOLIK: Objection. Foundation.

19 MR. KOGAN: Question. That was a question.

20 Q. Okay. So the purpose for doing this type of
21 evaluation -- the purpose was to determine if there was a
22 conservation plan worthy of approval from USDA.

23 What was the purpose of your evaluation?

24 A. The purpose of a plan was so that he could have a
25 map of his farm.

1 Q. Right.

2 A. And then he would show us, you know, the problems
3 that he had and wet areas that he would take care of in the
4 future. He might want a stock-water pond for his cattle,
5 but he don't want it right now, but he might do it in 10
6 years of five years from now.

7 Q. Right.

8 A. And we'll look at that site and we'll say -- you
9 know, we'll look at it and see whether it's feasible to do
10 it or not. All of the stuff is looked at by us because
11 we're trained to see whether a good pond site is going to be
12 good for a stock-water pond in a pasture, you know.

13 Q. Right.

14 A. And whether the site is good. And usually it's
15 pretty good because they can either dig a hole and have
16 water coming up.

17 Q. So these conservation -- were these conservation
18 plans -- therefore, they had a short view and then a longer
19 view --

20 MR. UHOLIK: Objection to form. Compound.

21 Q. -- as far as duration of time?

22 A. Yeah. There's -- he might say that he might do it
23 between now and maybe in five or six years depending on
24 finances or whatever, you know. But we looked at it to
25 see -- you know, because he says, well, I'd like to have

1 some water in my pasture.

2 So we looked at it and said this is not a bad --
3 this is a good site, so we put it on the plan map. And we
4 draw it in there with a symbol. And in the write-up it
5 says, you know, Pond, Field No. 2.

6 Q. Right. But did you look at and review and
7 evaluate farmlands tied to a proposed conservation plan that
8 had a vision going out 10 years or more?

9 A. Yeah. That's --

10 MR. UHOLIK: Objection to form. Compound.

11 A. This is a long-term plan.

12 Q. I'm sorry, sir. Was that a yes that a
13 conservation plan could have a vision of 10 years or more
14 even?

15 A. Sure.

16 Q. And USDA would approve -- including yourself,
17 officials from USDA would review this type of conservation
18 plan. Correct?

19 MR. UHOLIK: Objection to form. Speculation.

20 Q. You would have --

21 A. Let's put it this way: He may never even do this,
22 you know. All the stuff that we put on the plan, he may not
23 even do this.

24 Q. But it's preapproved, sir. Is that not correct?

25 A. It doesn't have to be approved. We'll put it --

1 he tells us what he's kind of interested in.

2 Q. Right.

3 A. We'll go by what he wants; not what I want. If I
4 see a nice site there, I might tell him that's a pretty good
5 site, you know. And he might go along with that or he goes,
6 no, I'm not going to build that, so I don't put it on the
7 plan.

8 But mostly -- most of the time, I put in the plan
9 that if you ever decide -- I got the symbol in there and the
10 write-up, we'll say this is a good site for a stock water
11 pond. He may not ever do it, but we're making that
12 determination.

13 Me, as a planner, I'm making that determination
14 that site is a good site if you want to build a stock-water
15 pond. And a lot of guys they'll say, oh, yeah, I never
16 thought about that, so we're going to build a pond.

17 Q. Okay. But if you disapproved of something -- did
18 you ever disapprove of a proposal in a conservation plan?

19 A. Well, anything that's in that plan has already
20 been determined. You know, somebody else --

21 Q. By some USDA official?

22 A. Yes. One of our -- one of our other people that
23 would have made the plan. We have a lot of people in the
24 office -- well, not a lot, and everybody does conservation
25 plans, you know.

1 Q. Right.

2 A. We all have a goal. We all have a -- we have to
3 do so many every year, you know.

4 Q. Right. But when you -- I'm sure that's a
5 tremendous burden.

6 A. No. It's not a burden. It's great. We like
7 doing it.

8 Q. But it keeps you all busy all the time.

9 A. Yeah.

10 Q. Or it did.

11 A. Yeah.

12 Q. Well, the conservation plan indicated that the
13 farmer was a cooperator you previously stated.

14 A. Yes.

15 Q. And what does --

16 MR. UHOLIK: Objection.

17 Q. -- that mean, a cooperator?

18 A. That means he cooperates with the conservation
19 district to implement his plan eventually, you know.

20 Q. Yes.

21 A. That's what he's saying though, pretty much.

22 Q. Right. But does a conservation plan qualify the
23 farmer for any aid --

24 A. No.

25 Q. -- from ASCS?

1 A. No.

2 MR. UHOLIK: Objection. Speculation.

3 A. No. You don't have to have -- to be a cooperator
4 to get funds for any practices.

5 Q. Did you -- so then what benefit did a conservation
6 plan, having one, have?

7 A. That's up to the farmer. You know, if he requests
8 one, that's up to the farmer. He don't have to have a plan
9 to be a recipient of the program -- the farm program.

10 Q. So in other words, a farmer can undertake -- was a
11 farmer able to undertake activities --

12 A. Without having a plan.

13 Q. -- without having a plan?

14 A. Yes.

15 Q. And without getting USDA funding. Correct?

16 MR. UHOLIK: Objection to form. Compound.

17 A. Well, if he does it.

18 Q. Was USDA funding necessary for a farmer to pursue
19 the conservation plan?

20 A. No. He could -- he could -- he didn't have to
21 have a plan, yet he could do tiling and get cost-sharing.
22 He could put in a pond to get cost-sharing. He doesn't have
23 to have a plan.

24 Q. But he also doesn't have to seek USDA funding.
25 Correct?

1 MR. UHOLIK: Objection to form.

2 A. Right. And some farmers don't.

3 Q. They want -- they sell finance.

4 A. Yeah. They'll hire a contractor to build them a
5 pond or build -- or stockpile the pond or do drainage on
6 their own.

7 Q. So if a farmer had both pastureland --

8 MR. KOGAN: Compound question in advance.

9 MR. UHOLIK: Objection.

10 Q. If a farmer had one field cropland, another field
11 pastureland, okay, what would that farmer typically do in
12 your experience?

13 MR. UHOLIK: Objection to form. Compound and
14 foundation.

15 A. I'm not the farmer.

16 Q. No. I understand. But in your experience, you've
17 dealt with a lot of farmers and you've dealt with farmers
18 with different fields. Is that correct?

19 A. All the farmers that -- in my 47 years, they would
20 improve their cropland. They would want to improve their
21 cropland if they had a problem. If that cropland had a
22 problem. If it didn't have a problem, he wouldn't do
23 nothing.

24 Q. But farmers would -- didn't you previously say
25 that some farmers also tried to improve their pastureland?

1 MR. UHOLIK: Objection to form. Characterization.

2 Q. If I'm incorrect in stating that, please correct
3 me.

4 In your experience, Mr. Lewandowski, did you come
5 across farmers who wanted to improve their pasturelands?

6 A. In a sense, the only -- and we've done this many
7 times. We put in the improvement of a stock-water pond
8 because in a lot of pasturelands you have a lot of springs
9 coming out of the soil, and we capture the springs with
10 tile. We run it to a collection tank. And out of the
11 collection tank, you have a pipe going into a trough.

12 Q. Yes.

13 A. And that's a very popular practice.

14 Q. So are you saying, Mr. Lewandowski, that tiling is
15 undertaken on pastureland?

16 A. Just to capture the springs because you have to
17 have water in a dry period of time for the cows so they can
18 drink water. That's necessary.

19 Q. Well, let me ask you this, sir: Is it not also
20 necessary if the fields -- to keep the fields wet enough so
21 that the grass is green enough for the cows and other
22 livestock to eat sometimes tile drainage is necessary?

23 MR. UHOLIK: Objection, compound. Objection,
24 foundation.

25 MR. KOGAN: Compound, compound, compound.

1 A. I never ran into that, you know.

2 Q. In this area you haven't run into that.

3 A. Yeah. I haven't.

4 Q. So --

5 A. The only thing we ever did in the pastureland was
6 spring developments. That's what I just explained.

7 Q. To develop a spring, but not a stock pond.

8 A. Well, in a lot of cases there's some pasture that
9 don't have any springs.

10 Q. Right.

11 A. They're just low land. They're -- you know, they
12 have -- they're Class 4 lands. Class 1 is gravel. Class 4
13 is -- it has a little bit of topsoil and it's heavier land,
14 you know. It's not the best for crops or anything.

15 So you see some of that, I mean, where it's not
16 super wet, you know, or anything like that.

17 Q. But if it's wet, if there's pastureland that's
18 wet, and the farmer wanted to use it for pastureland --

19 A. A lot of times it's a low area and they clean out
20 the ditches, you know, and there's little ditches there that
21 they clean out.

22 Q. So they clean out the ditches but they don't
23 install tiling.

24 A. Right. In my experience, the only tile that gets
25 installed is for the spring developments, to capture the

1 springs.

2 Q. Right. And that's distinct from a stock pond, to
3 create a stock pond.

4 A. A stock pond.

5 Q. Yes. You had mentioned just before to tile --

6 A. Okay. There's some areas where they just dig out
7 a hole in the pastureland because it's low and it's flat and
8 the water comes up or seeps up to the ground level, and then
9 they'll have the cows go in there and drink water. Once the
10 cows get in there and get water, they chop it all up, you
11 know, and they don't like that.

12 Q. So sometimes --

13 A. Sometimes that happens a lot -- well, not a lot,
14 but.

15 Q. But if there was tile drainage installed
16 subsurface, that water wouldn't be at the surface, correct?
17 It would help to drain the water from the surface so that
18 the cows can --

19 MR. UHOLIK: Objection.

20 MR. KOGAN: Compound.

21 MR. UHOLIK: Objection, speculation. Objection,
22 foundation.

23 Q. In your experience, Mr. Lewandowski.

24 A. Normally, the ground is pretty heavy ground. It's
25 pretty heavy soil.

1 Q. Right.

2 A. In the past, you know, there was some farmers that
3 did some tiling in there, but I wasn't aware of it, but I
4 had heard people saying that they filled it with gravel.
5 They dug a hole because they wanted to drain some of those
6 pastures and they put gravel in there, so they drained the
7 pastures. Pasture improvement, you know.

8 Q. So there were different ways of draining then.

9 A. Yeah. I would think so, you know. The trouble
10 is, that's improvement to a pasture.

11 Q. So that's an improvement of the land?

12 A. To some extent it would be an improvement.

13 Q. From a USDA perspective?

14 A. From my perspective.

15 MR. KOGAN: I'm going to give you a five-minute
16 break at this point because I have to go back and
17 confer. So we're off the record.

18 (Recess taken.)

19 BY MR. KOGAN:

20 Q. Mr. Lewandowski, your explanations were very
21 helpful thus far this morning.

22 And I do want to ask you: When you were working
23 on Mr. Brace's farm, Waterford farm, were you aware that
24 there were several fields that were part of that one farm?

25 MR. UHOLIK: Objection, speculation.

1 Q. How did you view Mr. Brace's fields that were tied
2 to his Waterford farm? Was it a single farm?

3 MR. UHOLIK: Objection, foundation.

4 Q. Okay. When you began to work on Mr. Brace's farm,
5 did you consult any documents?

6 A. No.

7 MR. UHOLIK: Objection, foundation.

8 Q. Were you --

9 A. The farm that you're referring to is what farm?

10 Q. The Waterford farm. The one off of Greenlee Road
11 and Sharp Road and Lane Road.

12 MR. UHOLIK: Objection, foundation.

13 A. Isn't that Charlie? Wasn't that Charlie's? Okay.
14 That's -- that's -- see, I don't know too much of that.

15 Q. Okay. Well, I just want to see if I can help you
16 with recalling and --

17 A. Now, I can -- I can remember that somewhat.

18 Q. But I can also show you a document that might help
19 you. Were you aware that Mr. Brace had a soil and water
20 conservation plan.

21 MR. UHOLIK: Objection.

22 A. I didn't -- I wasn't aware of that.

23 Q. Okay. Well, I'd like to enter into evidence
24 Defendant's Exhibit No. 1 for today, which consists of the
25 Robert Brace Soil & Water Conservation Plan purchased from

1 Charles T. Brace's father dating back to 1962.

2 MR. UHOLIK: Are you gong to have that marked for
3 identification?

4 MR. KOGAN: Oh, yes.

5 (D-1 Lewandowski - Soil & Water Conservation
6 Plan - marked for identification.)

7 Q. Please take your time looking at that.

8 A. (Witness complies.) Charles. Okay. This is a
9 conservation plan like we have. The map is not really
10 clear, is it? It doesn't show any time. This was a long
11 time ago.

12 Q. Yes, sir. It was. But if you would take a look
13 at that map on there.

14 A. I did.

15 Q. Well, we can refer to that together.

16 A. Well, I'm not familiar with it now, I mean.

17 Q. Okay.

18 A. When I -- you know.

19 Q. No. No. Of course, but it seems to show, does it
20 not that --

21 A. See this is a soil map. You don't have a plain
22 map. But go ahead. Go ahead. What were you saying?

23 Q. We'll get to that.

24 A. All right.

25 Q. But does that map not show -- does that map show

1 that there were several fields on Mr. Brace's farm?

2 A. Yeah.

3 Q. Now, for purposes of tiling --

4 A. Right now, the symbols are soil types.

5 Q. Right. But are there crop types in there?

6 A. Here it is. Here it is. Okay. This is what
7 we're looking at. I mean, I don't remember. You know, it's
8 been a long time.

9 Q. Of course. I understand. But does it show, based
10 on your read of this map and of the general language of the
11 plan, that there's more than one field?

12 MR. UHOLIK: Objection to form.

13 Q. Is there more than one field indicated in this
14 conservation plan, sir?

15 A. I don't see the farm boundaries -- the farm
16 boundaries.

17 Q. Okay.

18 A. I can't delineate the farm boundaries.

19 Q. Okay.

20 A. I mean, I can't delineate them. I can't see them.

21 Q. Okay. Then let me give you a slightly clearer
22 picture of the boundaries that's more updated in time.

23 A. Okay.

24 (D-2 Lewandowski - Color map - marked for
25 identification.)

1 Q. I'd like to enter into evidence D-2 Lewandowski.

2 A. So this is it right here. Right?

3 Q. Yes.

4 A. I didn't know that. Okay. It come down to here.

5 It's got a hay land over here, hay land over here. Yeah.

6 There's several fields here. Yeah, that's a field here.

7 Okay.

8 What's your question?

9 Q. Okay. My question is that based upon your review
10 of the map tied to the conservation plan, which is
11 Defendant's Exhibit D-1 Lewandowski and comparing it to the
12 new exhibit D-2 L for Lewandowski, do you see several
13 fields --

14 A. Yes.

15 Q. -- comprising the Brace Farm in Waterford?

16 A. Uh-huh.

17 Q. Okay. When, if you can recall --

18 A. They're labeled 26 and then at 10 and I can't read
19 the other one. I don't know about that one there, but
20 there's one that's not labeled that I can see. It shows a
21 tile system planned out by Johnson. Yeah. They're right
22 there. There's no number on that field, but that's --
23 there's got to be a field number there.

24 Q. That will become clearer when we --

25 A. Okay. Then to answer your question, yeah, because

1 I see a hay field, a number -- is that 18? No. It's 8.
2 And the 6 it says hayfield. And there's one with all the
3 tile on it. There's a -- I can't see a number on that, but
4 maybe it's a two that's right over here. Maybe that's a
5 two. But to answer your question, yeah, I can distinguish.

6 Q. If I may reach over, the other documents in here,
7 I believe, talk about different fields. See right there?

8 A. Yeah.

9 Q. That lists everything, and it's a bit more
10 specific.

11 A. Yeah. But you said wildlife and then field drains
12 and pastures. 7 to 5 is pasture. The guy who did this
13 plan, Johnson, he died. He was a teacher at Waterford.

14 MR. KOGAN: Counsel, as we did in the prior
15 depositions of witnesses, if it were to take
16 longer than a few -- if it's a longer document,
17 what we did is we stopped the clock and went off
18 the record while the witness could study the
19 document.

20 Just to be consistent with prior practice --

21 MR. UHOLIK: That's fine.

22 MR. KOGAN: We can go off then.

23 (Recess taken.)

24 BY MR. KOGAN:

25 Q. We're back on. Mr. Lewandowski, I know this is an

1 old document and it's been a long time since you've looked
2 at it, and we appreciate you taking the time now to try to
3 refresh yourself and familiarize yourself with it.

4 Does that document, that conservation plan for
5 Robert Brace which had been acquired from Charles Brace
6 dating back to 1962 in updated form, compound, does it show
7 different types of fields for different uses?

8 MR. UHOLIK: Objection, foundation. And just a
9 quick question: Mr. Lewandowski, have you ever
10 seen this before?

11 THE WITNESS: No.

12 Q. Based, upon your review -- your short review of
13 this plan, does it show cropland and pastureland fields?

14 MR. UHOLIK: Objection, vague.

15 Q. Are there fields indicated in this conservation
16 plan that are devoted to pasture farming and crop farming?

17 A. Pasture farming?

18 Q. Pastureland for cattle, for livestock. Does it
19 say pastureland anywhere in this plan?

20 A. Yeah. It says pasture renovation.

21 Q. Okay. It says -- Mr. Lewandowski, are you saying
22 that the plan indicates that a field or fields were
23 dedicated to pastureland?

24 A. See, I can't see the field numbers. They're not
25 clear that I can say. I can see 6, State land, I can see --

1 I think it's 8. 6 and 9 hay land management. There was
2 9 -- well, if this map is the -- the write-up that's got to
3 correspond with what you have here.

4 Q. Yes. So is that a yes answer or a no answer?

5 A. As far as I can see it is, yeah.

6 Q. Yes. Your answer is yes there are pastureland on
7 this conservation plan?

8 MR. UHOLIK: Objection, characterization.

9 Q. Does the conservation plan show pastureland?

10 A. That's what I'm trying to find out. I can't
11 see -- I can't see some of this stuff here because it's not
12 legible.

13 Q. But does the chart indicate pastureland, sir? And
14 does it designate a field number?

15 MR. UHOLIK: And if you're going to -- objection.

16 If you want to ask him about a specific page or
17 something, if you could point it out to him
18 because we're just sort of --

19 MR. KOGAN: Well, I'm asking the witness. The
20 witness just said that there's pasturelands.

21 Q. What fields, Mr. Lewandowski, are designated as
22 pasturelands on the document?

23 A. I ran through it again, but I'm just
24 double-checking. I just see one field that says pasture
25 mowing. And that's Field No. 7, but I can't find Field No.

1 7 on here.

2 Q. Okay.

3 A. See, there's 10, 4. See, nothing -- I guess
4 they -- I don't know, what's that say on there? It's not
5 very clear.

6 Q. Okay. So you've concluded that there's at least
7 one or more pasturelands in this conservation plan,
8 Mr. Lewandowski. Is that correct?

9 MR. UHOLIK: Objection, characterization.

10 A. The only thing I can see is you got Field No. 7,
11 and I can't find Field No. 7. I think it's this right in
12 here (indicating) because it says -- I mean, it just seems
13 like hay land and -- but I can't see -- if this is 6, this
14 is supposed to be 8, this is probably the pastureland in
15 there.

16 Q. May I take a look at that.

17 A. But I can't see a number. It's not clear. I
18 mean, if I'm going to answer a question, I got to definitely
19 see what I'm saying.

20 Q. Yeah. It looks like here is a 7 because you can
21 see the 7 blown -- the 7 is hooked around right there.

22 A. It's not clear though.

23 Q. Okay.

24 A. But it --

25 Q. Does it correlate to Field 7 on the chart, sir?

1 MR. UHOLIK: Objection, vague.

2 A. It doesn't say the acreage. It says 5 acres.
3 Field No. 7 says 5 acres.

4 Q. So suffice it to say that we have the conservation
5 plan shows at least one pasture -- field devoted to pasture.

6 A. One field that I could see.

7 Q. And the chart and the map needs further clarity.

8 A. Absolutely.

9 MR. UHOLIK: Yeah. I just was to ask you: Mr.
10 Lewandowski, can you see Field 7?

11 THE WITNESS: I can't see Field 7.

12 MR. UHOLIK: Okay. That's all I wanted to know.

13 Q. In this particular image --

14 A. You know, if I'm going to make a call there, I've
15 got to --

16 Q. I understand.

17 A. I've got to see what I'm saying.

18 Q. We can get you an enlarged picture of that if you
19 like, and we'll submit that to counsel subsequent to this
20 deposition --

21 A. Uh-huh.

22 Q. -- so that you can reaffirm and correlate to the
23 chart.

24 Okay. So Mr. Brace had a conservation plan
25 evidently for his farm in Waterford.

1 A. Charlie Brace did.

2 Q. Right. Robert Brace --

3 MR. UHOLIK: Objection to foundation.

4 Q. And Robert Brace had acquired that plan.

5 A. Okay.

6 Q. And that is a matter of record.

7 A. Okay.

8 Q. So when you went to Mr. Brace's farm -- and what
9 year was it that you were designing a tile drain system? Do
10 you recall?

11 A. I don't remember the year. I mean, that was --

12 Q. '80s, '70s?

13 A. No. It was the -- '70s? I didn't answer that
14 one. I don't know. It's been a long time, you know.

15 Q. Well, we can --

16 A. I can't even remember being there.

17 Q. Okay. Do you remember designing a tile system for
18 him?

19 A. No.

20 (D-3 Lewandowski - Deposition of Edward
21 Lewandowski, April 14, 1991 - marked for
22 identification.)

23 Q. Okay. Let me enter into evidence now -- again,
24 this is a long document, so we'll give you a little time to
25 refresh. This is your testimony that you had provided to

1 the United States District Court in 1991 in the original
2 case brought by the US EPA.

3 And in it as exhibits is -- or are a copy of the
4 referral for technical determination, in addition a copy of
5 a tile installation report laid out by you by name, and a
6 Construction Data Tile and Structures Installed report, and
7 what looks to me like -- and looks to anybody like a
8 hand-drawn design diagram of the system at that time.

9 A. Yeah. That was a PA-19 Form that we had. An open
10 quoted form.

11 Q. And then a picture.

12 A. I remember that.

13 Q. Which is not very clear from this. So I'd like to
14 enter into evidence as Exhibit D-3 Lewandowski, and I will
15 go off the record immediately so you can just breeze through
16 this to get a sense.

17 MR. UHOLIK: Just for the record, I know you said
18 it was his testimony to the court. I don't
19 believe he actually testified in court. Are you
20 referring to his --

21 MR. KOGAN: Deposition testimony.

22 MR. UHOLIK: His first deposition?

23 MR. KOGAN: Not a trial deposition.

24 MR. UHOLIK: I believe it's from April 14, 1991.

25 So we're marking that D-3.

1 (Recess taken.)

2 BY MR. KOGAN:

3 Q. We're back on, Mr. Lewandowski.

4 A. Yeah.

5 Q. Do you recall after reviewing some of the
6 information from your prior testimony when you had worked on
7 the Brace farm tile drainage system? What period of time?

8 Are we talking about back in the 1970s or 1980s --

9 MR. UHOLIK: Objection, compound.

10 Q. -- based on those documents?

11 A. I don't remember.

12 Q. Okay. So you don't remember anything about that
13 diagram that's in your handwriting?

14 A. No.

15 MR. UHOLIK: Objection, foundation.

16 Q. Well, Mr. Lewandowski, let me ask you: Does your
17 name appear on any of those exhibits?

18 A. Well, I didn't look through them.

19 Q. Okay. Here. Let's note here for purposes of the
20 record a Tile Installation Report -- now, please note for
21 the record that was an Exhibit 6 to Docket Document 182 --
22 ECF 182.

23 MR. UHOLIK: It's Bates stamped.

24 Q. Which is stamped. And that this document was
25 submitted already into evidence in a pleading in this

1 litigation currently.

2 Mr. Lewandowski, do you see your name written at
3 the bottom of this Tile Installation Report?

4 A. Yeah. I did it.

5 Q. And does it say 7/77 or presumably 1977 next to
6 your name?

7 A. Yes.

8 Q. Is it fair to state that you had worked on this
9 tile drainage system on Mr. Brace's farm at least beginning
10 in 1977?

11 A. Yeah. That's when I completed it.

12 Q. You completed it in 1977.

13 A. Yeah.

14 Q. Now, the diagram that is on Bates stamped 182-6,
15 is that diagram in your handwriting, sir?

16 A. No.

17 MR. UHOLIK: Objection, characterization.

18 A. I don't know. That's hard to say. It's not on
19 the right paper, though. Well, maybe it was, but okay.

20 Q. And actually, this document was also --

21 A. Yeah. It looks like -- yeah, it's my writing.

22 Yeah. I'd say in some form, but it didn't have the lines in
23 there.

24 Q. Could you relate that diagram to the map, D-2
25 Lewandowski from today? Do you have any idea where this

1 might be correlated and what field you may have been working
2 on?

3 A. Oh, man. It doesn't say the road or nothing.
4 Creek?

5 MR. UHOLIK: Objection, vague.

6 A. It's really nothing that I can really pinpoint.

7 Q. Nothing you can pinpoint here.

8 A. But when -- in this conservation plan map, like
9 this is one from -- in our office and copied, it should be
10 on there, you know, because we always -- when we get the
11 form back, we always put it in red where the field is and
12 where we put the tile.

13 Q. Okay. Now --

14 A. Wait a minute. It shows -- it shows this system
15 here being right over here (indicating), from what I can
16 see.

17 Q. Is it near a road?

18 A. Yeah. It's a road right here. It's probably this
19 road right here.

20 Q. Is it this area? And I'm pointing to D-2.

21 A. Yeah. I would say it's probably this area here.

22 Q. So are we talking near Lane Road as depicted on
23 Exhibit D-2 Lewandowski?

24 A. Yeah. It looks like this is the intersection
25 right here, and this is that lower road -- no, but let's

1 see. Yeah. This looks like it right here.

2 Q. So that would be --

3 A. Yeah. This would be it right here. So that would
4 probably be right in this field here (indicating).

5 Q. Okay. Now, if we were to look at the exhibits
6 tied to Bates 182-6, which is Exhibit D-3 Lewandowski, the
7 last one, it says -- two of the sheets talk about a steel
8 pipe in addition to a plastic drain.

9 What would you -- do you recall what a steel pipe
10 would be used for?

11 MR. UHOLIK: Let me just jump in with an
12 objection. If you're going to ask the witness
13 about documents, just give him the documents and
14 ask him. You're characterizing -- you're
15 testifying on your own.

16 MR. KOGAN: Well, I'm not.

17 Q. Mr. Lewandowski, do you see a reference on that
18 document -- in this document here to different materials,
19 different pipe materials?

20 MR. UHOLIK: And for the record, we're referring
21 to documents that are Bates stamped CD-FRC0003664
22 and 3666.

23 MR. KOGAN: Which have already been submitted into
24 evidence as Exhibit 6 CDF 182.

25 A. This is the referral. These aren't the same.

1 This is a different form and this is a different form.

2 Q. Yeah.

3 A. Okay. Yeah. It says 880 feet corresponds with
4 this, and we went underneath the road. That's why we used
5 steel pipe underneath the road 30 feet. It doesn't say 30
6 feet there. Oh, we had 6-inch pipe. They put in 50
7 actually. I don't know why they put in 50. Okay. It
8 should have been 30.

9 But anyways -- yeah, this referral corresponds
10 with this form. So what are we -- where are we now?

11 Q. The question is: Okay, do you see that -- are
12 there different materials used for tile drainage or pipes on
13 this plan that you designed?

14 A. Okay. Here it is. See, it says 6-inch pipe,
15 underground 30. And then I said 6-inch pipe here again, and
16 that's where the 50 feet is. So that corresponds. Yeah.
17 Yeah. This corresponds. Right?

18 Q. Okay. So --

19 A. So --

20 Q. Okay.

21 A. But I don't have the -- yeah. The diagram is
22 right here from what I can see. No. No. This right here,
23 it looks like it's -- right here (indicating), it shows
24 these lines coming across here like that and lines here.

25 MR. UHOLIK: And for the record, we are --

1 MR. KOGAN: The conservation plan was D-2.

2 MR. UHOLIK: This is D-1 L.

3 MR. KOGAN: Let's refresh. D-1 was the
4 conservation plan.

5 MR. UHOLIK: Right. But they're not page
6 numbered, so we're a little all over the place.

7 MR. KOGAN: D-2 was the map. And D-3 is the
8 testimony. I can easily put it back together.

9 MR. UHOLIK: For the record at the moment, I
10 believe we're looking at D-1 Lewandowski, a
11 portion of the conservation plan. It's got a map
12 of some sort, along with Bates stamped
13 CD-FRC0003667.

14 MR. KOGAN: Which is tied to D-3 L.

15 BY MR. KOGAN:

16 Q. So Mr. Lewandowski, to make this a little clearer
17 because this picture in D-2 L is a bit clearer, if we could
18 correlate it to 2 --

19 A. Yeah. It's right here.

20 Q. -- to that map from D-1 L, it would appear that
21 your -- that the tile drainage system that you designed for
22 Mr. Brace's field known -- this field is known, as it has
23 been known as for this case, as the Homestead Farm or field
24 north of Lane Road. Okay?

25 The field below Lane Road into which the steel

1 pipe crosses the road under the road and empties out is
2 known as Murphy Field or Farm for purposes of this
3 litigation.

4 MR. UHOLIK: Objection, characterization.

5 Q. Are you familiar with those --

6 MR. UHOLIK: And foundation.

7 Q. -- names?

8 A. No.

9 Q. Do you recall those names at all, the Homestead
10 Farm or the Murphy Farm?

11 A. No.

12 Q. For purposes of your testimony today, do you
13 recognize that these are separate fields, but adjacent
14 fields?

15 MR. UHOLIK: Objection, characterization.

16 Q. Are these fields adjacent to one another, sir?

17 A. What fields are you talking about?

18 Q. The field where the designed drainage tile and
19 then the field into which the pipe crosses the road and
20 empties into, I think, 50 feet.

21 MR. UHOLIK: Objection, foundation.

22 A. Well, they're not adjacent fields.

23 Q. They're not adjacent?

24 A. You got a road in between.

25 Q. Right. But are --

1 A. I don't know what you're getting at.

2 Q. Well, adjacent meaning -- how would you define
3 adjacent, side by side, next to?

4 MR. UHOLIK: Objection, compound.

5 Q. Okay. Mr. Lewandowski, the only thing between
6 these --

7 A. We went underneath the road to get an outlet for
8 that system. That's why they used steel pipe.

9 Q. Right. And was there pipe beyond the road?

10 A. I would --

11 Q. Because there's 50 feet there, I believe, beyond
12 the road.

13 A. Going underneath the road is probably 30 to -- at
14 least 30 feet going through there and dumping out on the
15 other side because you have more of an outlet -- more of a
16 drop-off, you know, from the top to the bottom of the ditch.

17 Q. Right.

18 A. So that's how we -- that's how we got the outlet
19 by going across the road because on the Braces' side, you
20 didn't have enough depth, so you crossed the road because
21 you had more of a depth.

22 Q. So which way was the water flowing?

23 A. Down this way (indicating).

24 Q. From north to south?

25 A. Yes.

1 Q. From the field north of Lane Road to the field
2 south of Lane Road?

3 A. Yes.

4 Q. Is that -- would you -- is that the flow of the
5 water, the hydrology of those fields?

6 A. Is this north?

7 Q. Yes. This is due north.

8 A. Okay. Yeah. Well, then it's going south. But a
9 lot of times we have to cross the road to get an outlet
10 because it's so shallow when you come to the road --

11 Q. Right.

12 A. -- we just don't have a -- we just don't have a
13 good outlet, so by crossing the road, we have a good outlet.

14 Q. Now --

15 A. Without a good outlet, your system is not going to
16 be --

17 Q. It will clog up?

18 A. Yeah. It can clog up because you don't -- you
19 know, if you don't have any depth, you can't run a tile line
20 and lay it real close to the bottom of the ditch because you
21 don't have any drop-off and free flow. So we try to get it
22 the best outlet we possibly can, so that's why we cross the
23 road.

24 Q. Now, is there a reason why you went so many feet
25 beyond the road as opposed to just having it end?

1 A. Because that was the better place to have an
2 outlet because you have more and more depth from the ground
3 level to the bottom of the ditch, you know.

4 Q. Right.

5 A. Because when you put in tile, you want a minimum
6 of 2 1/2 feet. You try and get 2 1/2 feet. If you don't
7 have 2 1/2 feet, one of the specifications is that you got
8 to use steel pipe, so -- because you want to have 2 feet of
9 dirt on top of the plastic tile so that you don't squash it.

10 Q. And how deep do you normally go with this tile?

11 A. It varies. If you go across the hill you want to
12 go deep because, you know, you got it real steep, you got
13 some water coming out and you want to go real deep.

14 We've gone 5 feet, anywheres from 2 1/2 to 6 feet,
15 because of the trench you can go down 6 feet.

16 Q. Based --

17 A. But normally we don't go down that deep, normally
18 it's 2 1/2, 3 1/2 because -- well, I don't have a pen, but.

19 Q. Well, does it depend on how much water is flowing?

20 A. No. It's just that you want to capture the
21 underground capillary systems, you know.

22 Q. So you want to tie the drainage tile into
23 subsurface tributaries. When you say "capillary system"
24 what do you mean?

25 A. I mean, water flowing down through the little

1 capillary systems through the soil.

2 Q. Right.

3 A. Because if you have an opening down on the bottom
4 where you put your tile, you know, water is going to ooze
5 its way down through there.

6 Q. Right. And it directs the water flow. The tile
7 is used to direct the water flow.

8 A. Yeah. You have to have grade to the top.

9 MR. UHOLIK: Objection, characterization.

10 Foundation.

11 Q. Is the tile used to direct water flow?

12 A. Yeah. Yeah.

13 Q. And to drain the land from which the tile begins?

14 A. To drain the land. Yeah.

15 Q. But it's also -- is it used for conservation
16 purposes?

17 A. Well, that's conservation right there. You know
18 what I mean?

19 Q. How so, sir? Please explain. How is draining the
20 land a conservation practice?

21 A. I probably shouldn't have said that because I
22 don't understand it myself. Some of these questions are
23 kind of, in my view, obnoxious, what you're asking me.

24 Q. You're using the word "conservation", and the
25 conservation plan that Mr. Brace had --

1 A. Let's just use the word "drainage". You want to
2 drain the field. Let's be practical and not put in these
3 stupid words. I don't mean that you're stupid, don't get me
4 wrong. You want to drain a field, you drain a field. You
5 don't want to get into all these if that -- you know. Put
6 tile in there and you drain it. And that's what we do.

7 We don't bullshit around. We just drain it. And
8 I don't want these questions. These questions that you're
9 giving me are not practical, in my view.

10 Q. I'll explain the relevance.

11 A. No. I don't want the relevance.

12 Q. You --

13 A. No. No. I'm just telling you that you drain the
14 land, you drain the land. You know. That's what you want.
15 That's what I'm there for. I'm going to drain that piece of
16 ground so you can farm it so you can get your production out
17 of it. Period.

18 I'm not going to drain non-cropland because it's
19 not that good of a land to drain, because soil-wise it ain't
20 good. It's heavy. You don't get good yields. So you put
21 all your money and all your efforts into good cropland that
22 you can get your benefits out of it, and that's the bottom
23 line.

24 Q. Okay.

25 A. And if there's -- if there's a policy that you

1 can't drain wetlands, you don't drain wetlands because it's
2 already been stated that it's protected. So that's why we
3 don't get into wetland areas.

4 Q. We're talking about prior periods now, sir. And
5 the conservation plan that you looked at, does it not
6 indicate also that certain fields below this road were part
7 of the conservation plan?

8 MR. UHOLIK: Objection, characterization.

9 Q. Does the map from the conservation plan indicate
10 that the field below Lane Road is part of the conservation
11 plan?

12 MR. UHOLIK: Objection.

13 A. That's your interpretation.

14 MR. UHOLIK: Objection, vague.

15 Q. I'm asking you.

16 A. I don't know.

17 Q. I'm asking you to look at that map, sir.

18 A. I don't know.

19 Q. If you would please, sir.

20 A. I looked at it.

21 Q. Okay. So there's a field --

22 A. It's part of the farm, so it's a good outlet.

23 Q. There's a field below Lane Road that was part of
24 the conservation plan. Was it not?

25 MR. UHOLIK: Objection, asked and answered.

1 MR. KOGAN: I asked --

2 A. Okay. The plan shows that this is another area,
3 so it's another field.

4 Q. So if you were designing a tile drainage system
5 for the field north of the road that emptied into the field
6 south of the road, the farmer has a choice. Does he not?

7 A. No. He don't if he wants to put his -- that
8 system in there, he don't have a choice. That's the only
9 way to put an outlet in there. That's why he put the pipe
10 in there.

11 Q. Right. But would it be wise for him -- would the
12 farmer also put a system in the field south of the road?

13 MR. UHOLIK: Objection, speculation and
14 foundation.

15 Q. It's possible, is it not, that the farmer would
16 place a system in that field to maximize, optimize --

17 MR. KOGAN: Objection, speculation.

18 A. I don't know. I don't know what the farmer wants
19 to do. I have no idea what he wants to do.

20 Q. The conservation plan, sir, does the conservation
21 plan --

22 A. The conservation plan doesn't spell out everything
23 just because he made a plan.

24 Q. It shows a plan, though, does it not, an
25 intention? Yes?

1 MR. UHOLIK: Objection, characterization.

2 A. That's your view of it.

3 Q. It's not my view. I'm asking you, sir. You're
4 the witness.

5 A. I don't know. I don't know.

6 Q. Logically speaking, Mr. Lewandowski --

7 A. I'm not logically speaking. I don't know.

8 Q. Well, logically speaking, in the field below South
9 Lane Road?

10 A. What we're talking about right now is we want to
11 drain that portion of the ground.

12 Q. Right.

13 A. And you want that system to work and you want it
14 to last a long time.

15 Q. Right.

16 A. And you only have one outlet, and that outlet is
17 not adequate because it's not -- it's just not deep enough.
18 So if you want that system to work and you want cost-sharing
19 and Federal dollars to do that, you got to do it proper.

20 So we have specifications, you know, where if you
21 can't get 2 foot of depth, you got to use solid pipe. And
22 you got to get a good outlet because you want that to last
23 you for a long time. So the outlet -- you can't get an
24 outlet on the other side of the road, so you got to go
25 across the road and use steel pipe because you're going

1 underneath the road to get a good outlet.

2 Q. Now, if the farmer wanted -- if Mr. Brace
3 wanted --

4 A. And as long as he owns that land, he can do that,
5 you know.

6 Q. Right.

7 A. If he didn't own that land, then he would have to
8 get permission from the person who owned that land.

9 Q. Correct. Now, if he owns the land, why would he
10 let the water just accumulate after it's being dumped
11 through that -- if Mr. Brace is going to the expense of
12 putting tiling in the field north of Lane Road, why would he
13 let the water sit in the field south of Lane Road?

14 MR. UHOLIK: Objection, speculation and
15 foundation.

16 Q. Would it make any sense at all to use that field
17 south of the road?

18 MR. UHOLIK: Objection, speculation and
19 foundation.

20 A. A lot of farmers wouldn't do that anyway. They
21 says well, I just can't do it, it's not a good outlet, they
22 wouldn't do it. Some farmers won't even do it. They would
23 just ignore that part of the farm and let it go.

24 Q. Right. But the conservation plan that you just
25 reviewed showed that there were plans for that field. Does

1 it not?

2 A. If he wanted --

3 MR. KOGAN: Objection, characterization.

4 A. -- to do it.

5 MR. KOGAN: No. It's objection -- no objection.

6 It's on --

7 A. And that would be the person who planned that,
8 instead of -- you know.

9 Q. Is it --

10 A. If I planned this -- if I planned this, which I
11 did, I planned a lot of farms, and I told the guy tiling
12 this is the only way to take care of that lower area. I
13 says, the only way we can do it is go across the road. You
14 got to get permission to go across the road and get the
15 permission in writing and we can do that, because that's the
16 only way we can drain it.

17 Q. Right.

18 A. And if you don't want to do it -- and a lot of the
19 them go, okay, well, maybe I'll do it later and a lot of
20 times they never do it, so the farm always kind of gets wet
21 and he doesn't farm that area anymore.

22 Q. But does that conservation plan -- Mr. Brace's --

23 A. It doesn't indicate that.

24 Q. Are you sure about that? That's what I want to
25 make sure because if you say that --

1 A. I don't see anything that dictates that.

2 Q. Is there a field number for this field, sir, over
3 here?

4 A. Yeah. There's a field number for all these
5 conservation plans.

6 Q. But what's the field number for this field?

7 A. I don't know. It's right here, I guess. I don't
8 know what the field number is.

9 Q. Well, does that say Field 12 and Field 13? Do you
10 see a Field 12, Mr. Lewandowski, here?

11 MR. UHOLIK: For the record, we're looking at,
12 again, I believe it's part of D-1 L.

13 MR. KOGAN: Conservation plan.

14 MR. UHOLIK: We're looking at the conservation
15 plan map. It's not Bates stamped.

16 A. I can't see a 12. I can't tell.

17 Q. And let's look at --

18 A. That's a soil map there.

19 Q. Right. And what does the soil map indicate for
20 the --

21 A. It just tells you what the soil type is.

22 Q. And what does it show for that field south of the
23 road, which is here? Does that show anything?

24 MR. UHOLIK: Objection, vague. "That field," I
25 don't know --

1 MR. KOGAN: We're talking about the same field
2 into which the steel pipe emptied the water from
3 the drainage tile that Mr. Lewandowski installed
4 on the field north of Lane Road.

5 MR. UHOLIK: Mr. Kogan, that reference, that
6 field, is just vague.

7 MR. KOGAN: We're referring, again, to the field
8 south of Lane Road, known as being on the Murphy
9 Farm for purposes of this litigation. So it's not
10 so vague that you don't know it, Counsel.

11 MR. UHOLIK: But I know it's irrelevant.

12 A. I can't see it.

13 MR. UHOLIK: I'm just going to state for the
14 record at this point -- objection.

15 Mr. Lewandowski as answered multiple times that he
16 can't see it or he doesn't know, and we're just
17 asking the same questions over and over again.

18 MR. KOGAN: No.

19 Q. What we're asking is the conservation plan makes
20 reference to the field south of Lane Road. There was a plan
21 to develop that field.

22 A. It's pretty hard to located it, but I don't know.

23 Q. Mr. Lewandowski, on the conservation plan, D-1 L,
24 on the plan of conservation operations tied to that
25 document, can you please read the field numbers that I'm

1 pointing to, sir.

2 A. This has the field numbers.

3 Q. Right. But this document talks about the
4 description of the fields.

5 A. Uh-huh. I can't see the field numbers. On some
6 you can, but.

7 Q. You can see Field 12 over there, sir; right here.

8 A. It looks like 12.

9 Q. Okay. Now, can you read this document in which
10 Field 12 is included. Can you just read all those field
11 numbers, please.

12 A. 2, 3, 4, 5, 6, 9, 10, 11, 12.

13 Q. And we're talking about -- what is a unit?

14 A. Amount, acres.

15 Q. And how many acres for the total of those fields?

16 A. 65.

17 Q. The year was?

18 A. '62.

19 Q. And what is the description?

20 A. Hay line management.

21 Q. And if you would read the section, please.

22 A. "Continue using present management. Apply after
23 first -- or seeding or raising, 100 pounds of oat, 15.30 per
24 acre, when necessary to receive, plant to a rotation of corn
25 and small grain."

1 So all those fields are --

2 Q. Right. Were intended to be used as fields for
3 farming.

4 A. Yeah. But -- yeah.

5 MR. UHOLIK: Objection, characterization.

6 Q. Yes. Is that a yes answer to that question? Was
7 Field 12 among the other fields intended as part of the plan
8 to be used for farming?

9 A. Yes.

10 Q. Okay. Now, if the tile drainage that you designed
11 was to empty out past this road, which is Lane Road on
12 Exhibit D-2 L in this section to the north in the southeast
13 corner of the field above Lane Road and the northeast corner
14 of the field below Lane Road, the water would dump into the
15 field below Lane Road.

16 A. Yes.

17 Q. But there was an attempt to farm that field
18 according to the plan. Is that not correct, based on Field
19 12?

20 MR. UHOLIK: Objection, foundation.

21 Characterization.

22 Q. Based on Field 12 on the map?

23 A. Back here?

24 Q. Yes.

25 A. Well, that's a long way to go from here to here,

1 though.

2 Q. Right. But there's no other field numbers in
3 between.

4 A. No. But there's a watercourse that comes down
5 through here.

6 Q. Do watercourses run through fields,
7 Mr. Lewandowski?

8 A. Well, what is this then? That's a watercourse.
9 Let me use your pen. Right down through here, I mean, it
10 shows a watercourse coming down through here (indicating).

11 Q. Right. But are there some fields that have
12 watercourses running through them in your experience?

13 A. Well, I would think so. Sure.

14 Q. Okay. Now, if the conservation plan had plans to
15 develop that field or a portion of the field, and the
16 drainage tile that you had designed for Mr. Brace's field
17 above the road dumped into the field below the road, is it
18 not possible that Mr. Brace wanted to actually follow the
19 conservation plan --

20 MR. UHOLIK: Objection, speculation.

21 Q. -- for that lower field, 12?

22 A. But it has a watercourse that he's dumping into
23 right here.

24 Q. Right. And did you not testify earlier this
25 morning that tile drainage sometimes empties into a

1 watercourse?

2 A. There's a lot of watercourses out there, you know.
3 There's major ones and small ones and yeah.

4 Q. Yes. The answer is yes then?

5 A. Wherever you drain the field, you got to relieve
6 it someplace, either a road ditch or a stream or whatever is
7 available --

8 Q. So is it --

9 A. -- depending on the topography of the land.

10 Q. Of course.

11 A. And that's it. I mean, you want to -- you want to
12 relieve the excess water in an area where it's not going to
13 cause any problems.

14 Q. Right. Now, if Mr. Brace's conservation plan had
15 plans to use that field below Lane Road, it is quite
16 possible that Mr. Brace was going to eventually tile that
17 area as well. Isn't that a distinct possibility?

18 MR. UHOLIK: Objection. Calls for speculation.

19 A. I don't know.

20 Q. It does call -- it does call. But logically
21 speaking, if it's part of the conservation plan and he's
22 already had tile drainage above in the other field, why
23 would he just let all the water accumulate to make use of --
24 that doesn't make productive use of the lower field; does
25 it?

1 MR. UHOLIK: Objection. Calls for speculation,
2 and Counsel is testifying.

3 A. If the water that you're draining out of the
4 system causes a problem someplace below, you take that into
5 consideration. If it levels out real flat and it floods,
6 that's up to the farmer if he wants to do that or not, if
7 that's what he wants.

8 Q. If Mr. Brace wanted to drain that water off, he'd
9 have to design another tile drainage system.

10 A. Chances are, yeah.

11 Q. Okay.

12 A. There's a lot of ways to -- not a lot of ways, but
13 depending on the topography of the land whether you can find
14 an outlet that's suitable. And that's one thing about
15 laying out tile drainage, you don't want to take a problem
16 in one field and cause a problem in the next field or
17 another field.

18 Q. Right.

19 A. You got to have a good outlet to relieve the water
20 and it's got to -- and you got to -- and we always have to
21 look at where that water is going to be going, you know, and
22 eventually it hits some major stream, then it's fine, you
23 know.

24 Q. So it would make sense then to further tile drain
25 that area to divert the water into that stream. Would it

1 not?

2 MR. UHOLIK: Objection to form.

3 A. You look for the closest and the most practical
4 place to dump it and so it has a good enough bank so that
5 it's going to have some drop-off flow. If you can have a
6 nice, steep 6-foot bank that can relieve the water so it has
7 a drop-off into a stream, you look for the best outlet.

8 And a lot of times, these outlets, you have to run
9 solid pipe for, you know, 100 or 200 feet just to get an
10 outlet, you know, because you don't have the depth, you
11 know.

12 Q. Right.

13 A. That's why we survey. We have to do the
14 surveying. And a lot of these fields are real flat,
15 especially some of these potato fields. You know, we have
16 to do a lot of surveying and try to find the low spots where
17 you can run a tile line where you need the tile line and
18 find a good outlet, you know.

19 Q. Right.

20 A. The outlet is so important because you're putting
21 all that money in that investment, so the outlet is so
22 important.

23 Q. Okay. Now --

24 A. But to answer your question, you find the best
25 outlet available.

1 Q. Okay. That's a very fair and thorough answer and
2 I appreciate that.

3 A. It's practical.

4 Q. It's practical. Very. And ultimately that's all
5 I'm looking for is a practical answer.

6 A. Well, after 47 years and seven months, I'll tell
7 you what, I laid out a lot of tile systems all over Erie
8 County. And I had a lot of problems trying to -- especially
9 in flat areas trying to find an outlet, you know.

10 And sometimes we'd run tile lines on this much
11 grade and 100 feet where you know you got to have -- on a
12 two-tenths grade is like about 3 inches or 100 feet.

13 Q. Right.

14 A. And when you get a trencher to put in that system
15 in there, he's going to have flat areas, you know, so the
16 water is going to build up and it's going to flow out. But
17 still, I mean, that's -- you don't have any other
18 alternative. You got to do that, you know.

19 Q. So what you're saying, in effect, is, if I may
20 characterize --

21 A. Sure.

22 Q. -- or I'll pose it as a question --

23 A. Okay.

24 Q. -- tiling is often done in phases. Is it not?

25 MR. UHOLIK: Objection, speculation.

1 Characterization.

2 A. In phases meaning?

3 Q. Meaning you do one section at one time and do
4 another section at a later time --

5 A. Oh, yeah.

6 Q. -- to see how the water flows.

7 A. No. You know how the water is going to flow.

8 Q. Okay.

9 A. We ain't going -- we ain't going to design a
10 system where we don't have fall. I mean, after -- if you
11 have a flat field and I have to plot it up, you may have
12 to -- like French Creek, for instance, Troyer's land, a lot
13 of that, you have French Creek there, and when you get your
14 snowmelt, it's full. And when it recedes, you have a bank
15 from the top to the bottom like 5 feet. And then in the
16 springtime when you got all that flow, that water comes
17 right to the bank.

18 So your tile lines are below water, so the water
19 is going to back up into the tile. So when the water
20 recedes, then the water is going to flow out of the tile.
21 So we've done that, too, you know.

22 Q. What happens when it's freezes?

23 A. Well, I don't know. It doesn't seem to be a
24 problem.

25 Q. Does water flowing through tile drainage freeze

1 when the ground gets cold enough?

2 A. I've never seen it. It's below frost line mostly.

3 Q. Okay.

4 A. But you're going from 1,000 feet and you got a low
5 spot --

6 Q. Right.

7 A. -- and the only outlet is French Creek, so you got
8 to run that tile line on this much grade per 100 feet, you
9 know. That's why we tiled it to get that low spot out
10 there, you know. And there's a lot of low spots in some of
11 those potato fields, you know, and we have done that, you
12 know.

13 Q. Now, how long --

14 A. So the outlet -- the outlet is so important and
15 the grade is. So we try to get the most grade we possibly
16 can because the tile is going to last a lot longer and it's
17 going to be more effective.

18 Q. Now, when farmers design their tile systems or
19 have USDA design --

20 A. We do it because we survey it.

21 Q. Okay.

22 A. They don't do any of that.

23 Q. Now, if the tile system is going to empty out into
24 a tributary, into a watercourse, is it part of maintenance,
25 agricultural maintenance to clear to make sure that

1 watercourse is clear?

2 MR. UHOLIK: Objection, speculation.

3 A. Well, the outlet. The outlet, make sure it's --

4 Q. So the outlet needs to be periodically cleaned.

5 A. Absolutely.

6 Q. What does cleaning entail, if I could ask you?

7 A. Well, there's growth and then there's sediment
8 that comes off the field, you know. You get a lot of
9 sediment and that's why you try to get the most drop-off,
10 you know, from the bottom of the tile to the bottom of the
11 ditch, you know.

12 Q. Are you familiar with the word "channelize"?

13 A. No.

14 Q. When maintaining the watercourse into which the
15 tile drainage empties, do you sometimes have to dig it out a
16 little bit?

17 A. Yes. A lot of times.

18 Q. And side cast the dirt?

19 A. Yeah. You side cast the dirt, but you spread
20 that -- you got to spread it out, you got to thin it out,
21 and move it as far as you can so it doesn't wash back in.
22 Absolutely. You don't just stack it up.

23 Q. Right, to create like a higher bank.

24 A. Yeah. You don't want to do that. And we've done
25 that, too, because the farmer says, oh, yeah, I'm going

1 to -- they seem to know that, you know, spread that out.
2 And that's done quite a bit. Yeah.

3 Q. So really the watercourse is almost an extension
4 of the tiling system. Is it not?

5 MR. UHOLIK: Objection, characterization.

6 Q. How would you characterize the maintenance of the
7 watercourse of an extension of the tile drainage system?

8 A. It's maintenance.

9 Q. Of the entire drainage system?

10 A. For the outlet so that you have a good outlet.
11 Absolutely. Commonsense-wise.

12 Q. Commonsense-wise?

13 A. Yeah.

14 Q. Okay.

15 A. You have to clean it out. In fact, there was many
16 times -- not, like I say, many, but where they have to clean
17 out a watercourse a little bit, you know, and so then you
18 can eventually maybe next year or the year after put the
19 tiling system in there. But normally they do it the same
20 year, you know, clean it out.

21 Q. Put a tile drainage system in the watercourse?

22 A. That's what makes it go, yeah, you have to put it
23 in the watercourse.

24 Q. Really? And that's normal practice?

25 A. Yeah.

1 Q. Okay.

2 A. Every tile system has to have a watercourse. I
3 mean, if you can't find a watercourse, you can't put the
4 tile in there. That's part of the whole --

5 Q. Yeah. That's part of farming.

6 A. That's part of drainage of your farmland, and a
7 lot of farmers need that furiously.

8 Q. How often do you have to maintain? Is there a
9 general rule?

10 A. It just depends. You know, it just depends on the
11 situation. A lot of -- I tell farmers, make sure your
12 outlets -- you're checking out your outlets, that they're
13 opened up, you know. And every year it just seems like,
14 depending on the area, some got silt in -- you know, some
15 silt from the stream.

16 Because, you know, a lot of farmers are farming
17 upstream and they get sediment to come down. You know, you
18 have a buffer strip --

19 Q. Right.

20 A. -- to control some of the sediment, but you can't
21 control all of it. So the next year -- and years in the
22 past, they get sediment to come off the fields because
23 they're plowing the fields and the water just takes the
24 sediment down stream and builds it up over time.

25 Q. So somebody -- so one farmer's work upstream could

1 affect another farmer's work downstream.

2 A. Absolutely.

3 Q. So you got to clean up someone else's mess to
4 maintain your own farm.

5 MR. UHOLIK: Objection, speculation.

6 A. Well, you know --

7 Q. In your experience.

8 A. When we're talking about stream cleaning now,
9 that's another whole problem, you know, because you can't
10 just go and do that. Today, you can't, because of the rules
11 and regulations. You have to get permits to clean
12 streams -- or clean substantial watercourses today. You got
13 to get a permit to do that from DER or somebody. You just
14 can't go and do that.

15 A lot of farmers do do that, you know, because
16 nobody can see it way back in the boonies. And they'll
17 clean it out themselves, you know. But they're in violation
18 doing that because you got to get a permit depending on --
19 in most streams, you know.

20 Q. Aren't they causing damage to the stream by doing
21 that, in your estimation?

22 A. They're creating sediment to go downstream.

23 MR. UHOLIK: Objection. Calls for an opinion.

24 A. There's -- where farmers and --

25 MR. KOGAN: Professional opinion based on his

1 experience.

2 MR. UHOLIK: He's not an expert.

3 A. -- landowners had their neighbors up there and
4 cleaned it out and they came down there and saw how muddy it
5 was, you know. There was a few cases of that.

6 But you got to go -- you got to get permits to do
7 everything because of pollution, you know, and the laws.

8 Q. When you were doing this work back in the '80s, do
9 you generally recall the law at the time? Did they -- as a
10 member of SCS, did they train you in the law? Did you have
11 to deal with legal issues at all or just merely the
12 technical issues.

13 MR. UHOLIK: Objection to form. Compound.

14 A. We had to -- a lot of times we had to notify the
15 Township. And if they have any objections to cleaning out
16 an area that has to be done for the farmer to proceed with
17 his drainage project, we notify the Township.

18 Q. Okay. Now, is -- even if there was a conservation
19 plan in place?

20 A. Yeah.

21 Q. Did you at all --

22 A. And --

23 Q. -- work with -- I'm sorry.

24 A. No. Go ahead.

25 Q. No. Please.

1 A. I don't know about now, you know, because I've
2 been away from it for a little while, what the rules are
3 now, you know, what you can do now.

4 Q. Okay. Back then when you were working.

5 A. No. The only thing that we were told was make
6 sure you can -- even when you dump it at a road ditch, I'd
7 go -- I'd have the farmer and sometimes I would go and talk
8 to the supervisor, the Township supervisor, and let him know
9 if that's going to be a problem.

10 So in most cases they just say, no, it's okay to
11 do that.

12 Q. And --

13 A. Because they are -- they were -- they knew -- they
14 knew the farmers and they didn't want it to be a problem.
15 Go ahead. What were you going to say?

16 Q. Were there a lot of farms back then in this area?

17 A. Oh, yeah.

18 Q. Working farms?

19 A. Yeah.

20 Q. And do you see the same number of farms today in
21 this area?

22 A. Well, I'm not -- I'm not in the -- I'm not --

23 Q. Just as a non-USDA employee.

24 A. Just talking to the guys that work there now, I
25 stop and I BS with them, and they said, oh, yeah, a lot of

1 farmers aren't there anymore like there was back 20 years
2 ago, you know.

3 Q. Do they ever say why?

4 A. No, not really. No. They're just not -- some of
5 the family members aren't going into farming. They're just
6 doing other things.

7 Q. Do you think it might be because of the cost of
8 all those regulations that you say that farmers now need to
9 comply with?

10 MR. UHOLIK: Objection, speculation.

11 A. Possibly. Who knows.

12 MR. KOGAN: I think now would be a good time to
13 break and give you a two-minute break.

14 (Recess taken.)

15 BY MR. KOGAN:

16 Q. Mr. Lewandowski, thank you for returning after all
17 my grueling questioning.

18 Was there any rule book that you used to look when
19 looking at fields to determine whether they should be
20 drainage tiled?

21 A. No.

22 Q. Okay. Did you look --

23 A. Okay. Well, we had an engineering handbook that
24 showed some of the -- you know, some of the areas that water
25 will leak out of a bank or something like that. But those

1 are just -- it wasn't much of anything, so.

2 Q. Are you familiar with the Food Security Act of
3 1985?

4 A. No.

5 Q. Are you familiar with the term "prior converted
6 cropland"?

7 A. Prior converted?

8 Q. Yeah. And this is a term of art -- legal term of
9 art used in the Food Security Act of 1985.

10 Are you familiar with the term "erodible
11 farmlands"?

12 A. Erodible farmlands?

13 Q. And I'm trying to be practical, but it's the
14 legislation, the Food Security Act of 1985, is key to
15 determining the rules that farmers would have to follow if
16 they were to convert farmlands that were wet into farmable
17 land.

18 MR. UHOLIK: I'm going to object for a second.
19 The witness already testified that he doesn't
20 know --

21 Q. So you never heard of --

22 MR. UHOLIK: -- of the Food Security Act.

23 Q. -- the Food Security Act of 1985.

24 A. (Witness shakes head.)

25 Q. Have you ever heard of the National Food Safety

1 Manual?

2 A. No.

3 Q. Have you ever -- have you ever -- so you never had
4 to go through a manual?

5 A. No.

6 Q. Did you work for anybody that had to look at this
7 type of manual?

8 A. No.

9 MR. UHOLIK: Objection, speculation.

10 Q. So you were not responsible for following -- were
11 you responsible at all for knowing anything about the rules,
12 the regulations for USDA or the law that USDA followed?

13 A. Pertaining to what laws?

14 Q. To when you installed your tile drainage, did you
15 have to look at any of the USDA law?

16 A. Huh-uh. As long as it was cropland two out of the
17 last five years it was eligible.

18 Q. And you said who made that determination.

19 A. I cannot say who did it, but that was a rule of
20 cost-sharing.

21 Q. Okay. Did you work -- do you recall working with
22 representatives from other Federal agencies in doing your
23 work at all?

24 A. No.

25 Q. EPA? Anybody from EPA you worked with --

1 A. No.

2 Q. -- when you were doing tile drainage
3 installation --

4 A. No.

5 Q. -- or design?

6 A. No.

7 Q. How about Fish & Wildlife Service?

8 A. No.

9 Q. Pennsylvania DEP?

10 A. No.

11 Q. None of those agencies you worked with. Were you
12 familiar with the ASCS handbook?

13 A. No. I probably looked through it, but that was --
14 I don't recall.

15 (Exhibit D-4 Lewandowski - Excerpts from ASCS
16 Handbook - marked for identification.)

17 Q. I'd like to enter into evidence right now as
18 Defendants Exhibit D-4 L, certain excerpts of the ASCS,
19 which is the Agricultural Stabilization Conservation
20 Service.

21 A. They pay the money.

22 Q. Yes. Of the USDA.

23 A. It's their program.

24 Q. And the title of the handbook is Highly Erodible
25 Land Conservation and Wetland Conservation Provisions for

1 State and County Offices.

2 A. Yeah. We did look at --

3 (Court reporter interrupts proceedings.)

4 Q. So you said, sir, you did look at it.

5 A. We had to classify land as highly erodible
6 depending on the slope and the soil type. I remember that.

7 Q. And did you know that that was tied into the Food
8 Security Act of 1985?

9 A. I didn't know that. No.

10 MR. UHOLIK: Objection, characterization. And
11 also he's already testified that he doesn't know
12 anything about the Food Security Act.

13 MR. KOGAN: For the record, Mr. Lewandowski stated
14 he did not know that highly erodible land was at
15 all related to Federal legislation known as the
16 Food Security Act of 1985, which is -- okay.

17 MR. UHOLIK: I'm just going to interject. Mr.
18 Lewandowski, have you ever seen the document in
19 front of you that has just been tabbed D-4?

20 THE WITNESS: No.

21 Q. Okay. But if you would take two minutes to take a
22 look at that, and then we'll --

23 A. I remember we had to -- I know we had to label
24 whether it was highly erodible or not depending on the
25 slope, which was --

1 Q. And what would that mean, Mr. Lewandowski?

2 A. You know, it's been a long time. I don't remember
3 anything about this. I really don't.

4 Q. Have you ever heard of the -- did you state
5 previously that you were familiar or not familiar with the
6 term prior converted cropland, PCC or PC?

7 A. No.

8 Q. Are you familiar with the term "commenced
9 conversion"?

10 A. Nope.

11 Q. Do you know -- aside from your work designing the
12 tile drainage system for Mr. Brace, were you at all involved
13 in any subsequent ASCS, County determinations regarding his
14 farmland?

15 A. No.

16 Q. Did you attend any meetings?

17 A. No.

18 Q. Any annual meetings or monthly meetings of ASCS?

19 A. No.

20 Q. Do you know if your boss attended any of those
21 meetings?

22 A. Can't say.

23 MR. UHOLIK: Objection, speculation.

24 A. I don't know.

25 Q. May I ask who you worked for at ASCS? Who was

1 your immediate supervisor?

2 A. Lew Steckler.

3 Q. And what was his title?

4 A. District Conservationist.

5 Q. District Conservationist?

6 A. Yes.

7 Q. And was it Mr. Steckler that directed you whether
8 to pursue a particular tile drainage project?

9 A. No -- well, say that again now.

10 Q. Did Mr. Steckler direct you -- whose decision was
11 it, yours or Mr. Steckler's, when you decided to work on a
12 given tile drainage project?

13 A. No. It's usually the farmers just called me up
14 and set an appointment.

15 Q. Okay. So --

16 A. Once their application was approved, which -- and
17 then he would just give me a call and we'd set a date for me
18 to go out there and do a layout.

19 Q. Okay. But you didn't need Mr. Steckler's
20 permission to do that?

21 A. No. No. They would call me directly. In the
22 springtime, we had a lot of calls.

23 Q. The reason I ask these questions is not to -- is
24 not to be impractical. What I'm trying to get at is were
25 you aware that Mr. Brace's farm, these fields, were in

1 litigation?

2 A. Yes.

3 Q. And how did you find that out?

4 A. That's a good question. When I laid out that
5 tile, you know, it's -- I wasn't aware of that at all,
6 because I always -- we always worked on cropland.

7 Q. Right.

8 A. That's what the -- there was no provision to drain
9 new land. It had to be cropland two out of the last five
10 years. It had to be an existing cropland, because they had
11 just so much money to utilize for draining cropland. And
12 most all the farmers, that's what they were really
13 interested in, so.

14 Q. Sure.

15 A. But that was one of the provisions that it had to
16 be on cropland.

17 Q. So you were surprised when you heard that
18 Mr. Brace was in litigation after you had designed the tile
19 system?

20 MR. UHOLIK: I just need to object for a second to
21 the general reference to Mr. Brace's property and
22 the site.

23 MR. KOGAN: Okay. Let's be more specific.

24 MR. UHOLIK: Because it seems fairly clear that
25 Mr. Lewandowski designed tile drainage for a

1 portion of Mr. Brace's property, not necessarily
2 all of it.

3 MR. KOGAN: And for the record, it did include
4 tile being installed on the property in
5 litigation, for the record.

6 A. But I didn't know anything about --

7 MR. UHOLIK: Objection to Counsel's testimony.

8 MR. KOGAN: And objection to Counsel's objection
9 to Counsel's testimony.

10 A. Well, back when I laid that out, that was before
11 everything.

12 Q. Right.

13 A. In fact, I didn't even know who actually owned it,
14 whether he owned that farm or whether it was just Charlie
15 Brace who owned that farm. I didn't know that back then.

16 Q. But you saw that it was on the conservation plan,
17 which you just testified to.

18 A. Yeah.

19 Q. The reason I'm bringing this up is because there's
20 a series of forms that is tied to that litigation that is
21 also tied to the tiling, in part, that you had designed.

22 MR. UHOLIK: Objection to the characterization of
23 the forms.

24 Q. But it is because of the expenditures and forms
25 that were provided. And I think in here -- and I'm trying

1 to figure out whether this is all part of one document or
2 not. I may or may not be, so we'll just leave this part
3 out. We'll find another document.

4 Mr. Lewandowski, do you recall if there was
5 confusion in the farming community when you were working
6 about the rules that applied to them regarding wetlands
7 or --

8 A. No.

9 Q. Farmers were clear on what the rules were back
10 when you were doing this type of work?

11 MR. UHOLIK: Objection, speculation --

12 A. From my information --

13 MR. UHOLIK: -- on what farmers were clear on.

14 A. -- yeah.

15 Q. There was no concern in the farming community, to
16 the best of your knowledge, that the wetlands provision to
17 the Clean Water Act were hamstringing farmers at all?

18 MR. UHOLIK: Objection, foundation and
19 speculation.

20 Q. Are you familiar with the Clean Water Act at all,
21 Mr. Lewandowski?

22 A. Somewhat.

23 Q. And --

24 A. But that was. Go ahead.

25 Q. Please.

1 A. I don't recall anything going on like that.

2 Q. You don't recall being complained to by any of the
3 farmers?

4 A. No.

5 Q. Would Mr. Steckler, you think, have been the
6 person to hear those things?

7 A. I can't -- I don't know.

8 MR. UHOLIK: Objection, speculation.

9 Q. Did Mr. Brace ever express any concern to you
10 about the Clean Water Act while you were doing your work?

11 A. No. I think at the post office, maybe.

12 Q. At the post office after the fact?

13 A. I don't remember that, though. That was a long
14 time ago. 1918, I don't remember that.

15 Q. So if I were to show you documents that Mr. Brace
16 submitted into the USDA in 1985 -- actually, in 1987, that
17 showed that a number of his fields had obtained clearance
18 from the USDA Solar Conservation Service --

19 A. I'm not aware of that.

20 Q. -- you wouldn't be aware of any of that?

21 A. No.

22 MR. UHOLIK: Objection, characterization of the
23 forms.

24 Q. Even if Mr. Steckler signed it, you wouldn't have
25 been aware of it.

1 A. Right. No. I wouldn't be aware of it.

2 Q. Okay. So what is your understanding of
3 Mr. Brace's case? Do you understand --

4 MR. UHOLIK: Objection, vague.

5 Q. I mean, you must have heard a lot -- did you hear
6 a lot about it in the news?

7 A. No. Just from people talking and, you know, I
8 just -- I don't know where I heard it, but I heard he was
9 cited for some violations.

10 Q. Do you know on what particular field he was cited
11 for violations?

12 A. It was on that farm.

13 Q. If I were to show you the picture -- could we take
14 out D-2 again, the color picture. Do you have any idea?

15 A. I'm not familiar with that at all. I just heard
16 it, you know, and all the rumble that went on with it.
17 That's all I heard, you know.

18 Q. Okay. So if Mr. Brace had begun tiling his farm
19 in 1977 based on the reports that you had submitted and had
20 continued that for a couple of years afterwards, that would
21 be -- that would not be out of the ordinary when you were
22 installing the tile and doing other maintenance. Correct?

23 MR. UHOLIK: Objection, foundation and
24 speculation.

25 Q. Farms require constant maintenance. Do they not?

1 Drainage ditches and tiling require constant maintenance.

2 MR. UHOLIK: Objection, compound.

3 Q. Does tiling require maintenance -- constant
4 maintenance after you've installed it?

5 A. The outlet probably would.

6 Q. What are the -- what types of things could happen
7 to tiling after years of use?

8 A. Just sediment building up. Sediment building up
9 in a ditch or the watercourse.

10 Q. But what about inside the tubes themselves?

11 A. Sometimes when they install them, they -- you have
12 a rock that fell on them, because when they cover it up with
13 a bulldozer sometimes a rock would fall on a tile and they
14 didn't see it because they're up in their equipment. That's
15 happened where the water bubbled up on the ground.

16 Q. So are you saying that the tile would crack as a
17 result of --

18 A. No. It would just --

19 MR. UHOLIK: Objection, speculation and
20 foundation.

21 A. -- just squeeze it. It would just squeeze it
22 down. And maybe it would -- probably not a crack because if
23 a big rock fell on it, it would settle down and reduce the
24 capacity.

25 Q. Okay.

1 A. And then the water would probably build up and
2 still cause a wet area.

3 Q. Okay. Now, what material was the tubing for the
4 tiling made of?

5 A. Plastic.

6 Q. Polyurethane plastic?

7 A. That's what I was told. Yeah. I think. Yeah.

8 Q. And polyurethane was used because of its -- why
9 was polyurethane rather than some other form used?

10 A. I don't know. Well, it's quick to use and fast
11 and light, you know, and accessible and easy to install.

12 Q. Okay. Now, you said the only thing that would
13 cause a tile drainage system to fail or to not operate as
14 designed would be silt buildup.

15 MR. UHOLIK: Objection, characterization of his
16 testimony.

17 MR. KOGAN: I'm asking him to clarify whether
18 that's true or not.

19 A. Because on these flat fields, like I said earlier,
20 some of these lines are run on -- on -- like two-tenths,
21 two-tenths is like this (indicating), grade per 100 feet.
22 You can imagine if you run out 100 feet and you lay that
23 tile on that type of grade, you're not going to get a lot of
24 flow and you're going to get sediment -- you know, some
25 sediment to build up in the bottom.

1 Q. Could tile shift just through normal --

2 A. No.

3 Q. -- use?

4 MR. UHOLIK: Objection, speculation.

5 A. No. It can't shift.

6 Q. And you say that -- in other words, could it --

7 A. I shouldn't say it like that. I mean, some --

8 Q. Could it drop? Is there a reason -- is there any
9 source that can cause it to elevate in height?

10 MR. UHOLIK: Objection. Calls for speculation.

11 Q. Could it move in any way? Could the drainage tile
12 move in any way based on your experience?

13 MR. UHOLIK: Objection. Calls for speculation.

14 A. Not readily, I would say. I haven't heard anybody
15 that -- or any farm that they had a problem after they tiled
16 for several years. It seemed to be working pretty good.

17 Q. Okay. What --

18 A. But like I say, that could happen.

19 Q. Right. But as a technician that designed tile
20 systems, did you ever install tile systems in your prior
21 years, tile drainage systems?

22 Did you ever install your own tile drainage
23 system, for instance?

24 A. No.

25 Q. Did you ever install any tile drainage system in

1 either working for the USDA or not working for the USDA?

2 A. What do you mean by install?

3 Q. Actually build your own.

4 A. No. No. That's what I thought you meant. No. I
5 haven't. No.

6 Q. Okay. But did -- in answering my questions
7 concerning possible causes for failure or inoperability,
8 you're basing your answers on situations that you've dealt
9 with?

10 A. Yeah. I know of one, I think, that because a rock
11 fell on it, you know, and it squashed it down and it wasn't
12 working right, so they -- so I always tell them just dig it
13 out and see what's happening, but they do it themselves.
14 They find out and then they put a section of pipe in there
15 and put it back in. I had that happen here a long time ago.

16 Q. Now, how do these lengths of pipe fit in with one
17 another? How do they interconnect? Do they screw in or do
18 they snap in?

19 A. They have like a collar that fits over it, you
20 know.

21 Q. Right.

22 A. And they, like, tighten that up. But like when
23 you get a bad piece of tile, I tell them to put a perforated
24 solid pipe in there, you know.

25 Q. A what?

1 A. A solid PVC pipe with holes in it. It's easier to
2 handle.

3 Q. But wouldn't growth get in there from the
4 ground --

5 MR. UHOLIK: Objection, speculation.

6 Q. -- if there are holes?

7 A. Well, you have holes in the plastic tile. How's
8 the water going to get into the line.

9 Q. Okay.

10 A. You have perforations in the tile, so.

11 Q. So it is subject then to encroachment by natural
12 growth.

13 A. Yeah. It could. Yeah. Especially in the
14 vineyards.

15 Q. Especially vineyards.

16 A. Yeah. We tile vineyards, too.

17 Q. So how does then a farmer maintain tile?

18 A. Just the outlet. He just makes sure the outlet is
19 clean and flowing free.

20 Q. Okay. Now, if --

21 A. And at the end of the tile you use a 10-foot steel
22 pipe or a heavy plastic pipe, a PVC pipe with a guard on the
23 end of it that flips up and down, so if an animal goes in
24 there and he has raised up the flap, he can get out by the
25 flipping of the forks.

1 Q. And do you recall on your report what size pipe,
2 drainage tile, you had designed for Mr. Brace's farm?
3 What's the normal diameter of these tiles?

4 A. Well, it's 4, 6, 8 inch, you know.

5 Q. Yeah.

6 A. But if you have a 5,000-foot system on lateral
7 lines, you want the main line to be 6 inches at least.

8 Q. Right.

9 A. You know, depending how many lines you have
10 connecting onto it.

11 Q. Now, you previously testified that these tile
12 drainage systems empty out to and sometimes are built within
13 watercourses. Correct?

14 MR. UHOLIK: Objection, characterization.

15 Q. They empty out the watercourses.

16 A. Yeah. To a road ditch.

17 Q. Yeah.

18 A. A lot of them are road ditches.

19 Q. Right. But even a tributary, you could --

20 A. Yeah.

21 Q. And sometimes you even put tile drainage --
22 farmers put tile drainage in a tributary in a watercourse.

23 A. Yeah.

24 Q. If the watercourse --

25 A. In a pasture field. A lot of times in a pasture

1 field where it drains out and he don't care about that area
2 or it's close to a tributary of some sort.

3 Q. Right. Now, if the watercourse itself gets dammed
4 up by beavers, that could have an affect on the tile
5 drainage system. Could it not?

6 A. Yeah.

7 MR. UHOLIK: Objection, foundation. Objection,
8 speculation.

9 A. Yeah.

10 Q. Have you seen that in your experience?

11 A. I know I've been involved, but I can't think of
12 the guy's name. But that has happened with a beaver and
13 it's built up and clogged up.

14 Q. So it's sediment.

15 A. Sediment. Sure.

16 Q. And just water just gets clogged up upstream from
17 the water drainage.

18 MR. UHOLIK: Objection, speculation.

19 A. Yeah. But it all depends on the -- a lot depends
20 on the outlet. You know, some outlets have to be cleaned
21 out to provide a good outlet.

22 Q. Right. Would --

23 A. A lot of times when it's dry, everything is dry.
24 When we lay out the system, everything is dry.

25 Q. Now, so beaver dam or beaver --

1 A. That doesn't -- there's not that many beaver dams
2 out for that situation that you're describing here. That
3 doesn't -- I mean, that one case that was on a Game Land,
4 218 Game Land in Erie, and -- where they had a beaver.
5 Well, they actually trapped the beaver out of there and they
6 took out the dam. And I remember that was 20 years ago, but
7 that's the only one I can recall.

8 Q. Were you familiar -- were you aware that Mr. Brace
9 had beaver dam problems?

10 MR. UHOLIK: Objection, foundation.

11 A. No. I wasn't aware.

12 Q. Were you aware --

13 A. No.

14 Q. -- is the question.

15 MR. UHOLIK: You haven't established that he had
16 beaver dam problems.

17 A. It could cause a problem if you do.

18 Q. Now, when you were working on Mr. Brace's system,
19 did you continue working in the 1980s for his system? 1984,
20 1985?

21 A. I retired in 2006.

22 Q. But were you working on Mr. Brace's -- or with Mr.
23 Brace or on -- with regard to his Waterford farm
24 intermittently through 1984 to 1985. Do you recall?

25 A. I really can't recall.

1 Q. Okay. Did you ever get to see Mr. Brace's
2 completed tile system after 1984 and 1985?

3 A. No. I don't remember that at all.

4 (Exhibit D-5 Lewandowski - Robert Brace Farm map -
5 marked for identification.)

6 Q. I want to move this into evidence, Defendant's D-5
7 or D-6.

8 MR. UHOLIK: It's D-5 Lewandowski. Are you
9 planning to ask any questions about D-4, or is
10 that just --

11 MR. KOGAN: Well, I'm going to get back to D-4
12 once we get to D-5.

13 Q. This is an exhibit. It's a page from the Eco
14 Strategies, LLC.

15 This is part of a report, Mr. Lewandowski, that
16 Mr. Brace's expert had prepared in 2015 to show -- this
17 particular picture shows the flow of the --

18 MR. UHOLIK: I just want to interject for a
19 minute. Mr. Lewandowski, have you ever seen this
20 before?

21 THE WITNESS: No.

22 MR. KOGAN: Which is what I established as a
23 foundation with the prior question.

24 Q. Have you ever seen the completed Brace drainage
25 system for the Waterford farm?

1 Those arrows -- how would you interpret those
2 arrows, Mr. Lewandowski?

3 MR. UHOLIK: Objection, calls for speculation.

4 Q. Okay. Would you --

5 A. A watercourse is what they are.

6 Q. Yes.

7 A. Showing which way they're going.

8 Q. So could I ask you now to look at the two fields,
9 one to the north of Lane Road --

10 A. Right here (indicating)?

11 Q. Yes.

12 A. Okay.

13 Q. And the field to the south of Lane Road.

14 A. Okay.

15 Q. You can now see where your prior designed tile
16 drainage emptied to and how it was then used and harnessed.

17 Do you see a connection with your prior tile
18 drainage system there?

19 A. Yeah. It just came across here and dumped right
20 there.

21 Q. Right. Is it connected at all to any of the flow
22 that you see?

23 A. Well, it's going downstream.

24 Q. Yes. Into that watercourse.

25 A. Well, that's why I laid it out there.

1 Q. Exactly.

2 A. I mean, that's obvious.

3 Q. Yes.

4 A. Where else can you go with it?

5 Q. Right. So, therefore, you -- it was still -- it
6 was possible then that Mr. Brace was considering to do this.

7 MR. UHOLIK: Objection, speculation as to what was
8 possible.

9 Q. And now you see the final version of what was
10 developed.

11 A. Well, I can see why the outlet was -- that I --
12 that was put there because that's the way the water flows.

13 Q. Exactly.

14 A. You can't go uphill with it.

15 Q. Exactly.

16 A. Okay.

17 Q. Now, taking that water flow into account and
18 looking at beaver dams, okay, do you -- you stated
19 previously in your testimony this morning that you were not
20 aware that Mr. Brace had beaver dam problems.

21 A. I can't remember that. No.

22 Q. Okay.

23 A. I mean, maybe he mentioned that when we were BSing
24 at the post office.

25 MR. UHOLIK: Just objection, foundation. You're

1 asking the witness about a drainage system that he
2 didn't design nor about beaver dams that he has
3 any awareness of.

4 MR. KOGAN: And for the record, Counsel is
5 overlooking Mr. Lewandowski's acknowledgment of
6 the logical extension of his work from prior years
7 on Defendant Exhibit D-5 showing the watercourse
8 direction and showing the tile drainage
9 subsequently installed to his work.

10 (Exhibit D-6 Lewandowski - Agreement - marked for
11 identification.)

12 Q. I'd like to submit for the record an agreement
13 between Mr. Robert Brace and Mr. Leslie Brace on property up
14 here, which is known as the Brace/Marsh Farm, which was
15 acquired in 2012, that Mr. Brace had prior to his
16 acquisition leased for use.

17 MR. UHOLIK: Objection, foundation.

18 MR. KOGAN: And this document establishes the
19 foundation for that use and also establishes that
20 there were beaver dam issues concerning upstream.

21 MR. UHOLIK: Objection to foundation based on
22 location, just randomly pointing to a point on an
23 exhibit right now.

24 MR. KOGAN: And we will supplement this with an
25 acquisition document showing that the property was

1 actually acquired in 2012.

2 MR. UHOLIK: What do you mean supplement?

3 MR. KOGAN: After lunch, or we can take a break
4 and we can do it now. But I figured --

5 Q. What I'm trying to do here is establish for the
6 record that Mr. Brace had beaver problems upstream of the
7 watercourse, which if backed up would affect his tile
8 drainage system that you had installed.

9 A. It all depends on how much elevation you had.

10 Q. Right.

11 MR. UHOLIK: Let me just jump in for a second.
12 Are you going to mark it as a different document?

13 MR. KOGAN: We can add to --

14 MR. UHOLIK: I'm just asking because we can't ask
15 questions --

16 MR. KOGAN: No. It will be two different
17 documents because there's two different periods of
18 time.

19 MR. UHOLIK: As far that goes, then just objection
20 to foundation and vague. When you say upstream of
21 a watercourse, it's...

22 Q. That document is dated as of 1984.

23 A. There's been cases when farmers -- I can't think
24 of them, but I've heard of this several times that they
25 contacted the Pennsylvania Game Commission because they had

1 a problem with beavers --

2 Q. Yes. Actually --

3 A. -- to get rid of them, but you have to have
4 permission to do that.

5 (Exhibit D-7 Lewandowski - May 9, 1991 Letter -
6 marked for identification.)

7 Q. Now, we have here another document I'd like to
8 enter into evidence dated May 9, 1991, Subject: Beaver Dam.
9 And this was from a Mr. Wayne Lugaila, WCO.

10 A. Game Commission.

11 Q. Yes. This shows that this was a persistent
12 problem.

13 A. Yeah. Yep that's true. That can be a persistent
14 problem because they come right back in and build back up
15 again. But they're engineers. Those little beavers are
16 engineers.

17 Q. Without the Ph.D.

18 A. Yeah. And they do good work, too. I'll tell you.
19 It's amazing. I have a lot of respect for engineers.

20 (Exhibit D-8 Lewandowski - Letters dated November
21 15, 1994 and November 18, 1994 - marked for
22 identification.)

23 Q. Okay. And I will enter into evidence these two
24 documents to show beaver dam issues in 1994, as well. One
25 is a November 15, 1994 correspondence from Mr. Brace to

1 Mr. Zinn of the Department of Environmental Resources,
2 Pennsylvania. And another is a letter from the Senator of
3 Pennsylvania dated November 18, 1994 to Mr. Robert Brace.

4 MR. UHOLIK: Just a question: What does this have
5 to do with Mr. Lewandowski? I'm just curious.

6 MR. KOGAN: The relevancy, Counsel, is that
7 Mr. Brace --

8 MR. UHOLIK: Because Mr. Lewandowski is a fact
9 witness, so he can only testify -- his involvement
10 ended in the '80s. Papers from the '90s are
11 irrelevant to him.

12 MR. KOGAN: We're just looking at a persistent
13 beaver dam problem that began in the '80s during
14 his involvement that persisted thereafter.

15 And the relevance is, it goes to
16 Mr. Lewandowski's emphasis of the need to maintain
17 not only drainage tile, but watercourses that
18 are --

19 MR. UHOLIK: Whether you need to maintain a
20 watercourse or not has no impact on whether you
21 need to get a permit to do it.

22 MR. KOGAN: Well, we're not talking permits
23 because Mr. Lewandowski is not an expert on the
24 law, but he is an expert on farming and he is an
25 expert on --

1 MR. UHOLIK: He's actually not an expert at all.
2 He's a fact witness.

3 MR. KOGAN: Excuse me?

4 MR. UHOLIK: He's not an expert in this case.
5 He's a fact witness.

6 MR. KOGAN: He's a fact witness.

7 MR. UHOLIK: He can't offer his opinion. He can
8 offer as far as he knows.

9 MR. KOGAN: But he has experience.

10 Q. For how many years, Mr. Lewandowski, had you been
11 doing this work?

12 A. 47 years.

13 MR. KOGAN: If that doesn't qualify him as an
14 expert in what he did --

15 MR. UHOLIK: Well, I'm sure that he's an expert,
16 but he's not an expert for purposes of this
17 matter, unless you're going to identify him as
18 one.

19 MR. KOGAN: No. We'll identify him as extremely
20 knowledgeable in the design and workings of tile
21 drainage systems. Thank you.

22 Q. Okay. So going back to my question, and I just
23 provided you with this information because of what you
24 stated before, beaver dams can create problems for tile
25 drainage systems.

1 A. Absolutely. Yes.

2 Q. And if beaver dams are not addressed, no matter --
3 even if you were to maintain the tile drainage system, if
4 the beaver dam persists -- if the beaver problem persists,
5 it's not going to help ultimately. Correct?

6 A. Yeah.

7 Q. So you need to address both problems.

8 A. Sure.

9 MR. UHOLIK: Objection. Calls for an opinion and
10 speculation.

11 Q. You need to also make sure that the watercourse is
12 clear.

13 A. But you have to have an authority. You have to
14 have a permit from the Fish & Wildlife Service, you know,
15 the Game Commission to take out a beaver dam.

16 Q. Actually, that memo stated that he didn't need a
17 permit to remove the beaver dam. The question was whether
18 he would side cast the material for purposes of wetlands.
19 That was the concern.

20 MR. UHOLIK: Objection, characterization and
21 Counsel's testimony.

22 Q. But when you say "a permit", this is where that
23 Food Security Act of 1985 came in. You didn't need a
24 permit --

25 MR. UHOLIK: Objection, Counsel is testifying.

1 Q. -- if you had certain designations from SCS and
2 ASCS in 1988, relating back to the 1985 law. But you're not
3 aware of any of that.

4 A. No. I'm not aware of that.

5 Q. Okay.

6 A. There's so many laws that I'm not aware of.

7 Q. Okay. But suffice it to say that the law changed.

8 A. I can imagine. Yeah.

9 Q. And farmers had to adjust according to the law.

10 A. Yeah. Just like cleaning out a stream. I mean,
11 you just can't do it like you did back years ago. You got
12 to get permits.

13 MR. UHOLIK: Objection to Counsel's testimony.

14 A. So that sediment is going to cause problems
15 downstream. That's obvious now.

16 Q. Yeah. And --

17 A. And you could be cited for that, too. If somebody
18 downstream causes damage, I mean --

19 Q. How do you show that?

20 A. Pardon?

21 Q. How does someone show that?

22 A. Well, he follows the stream and sees the particles
23 going downstream. So the farmer has to go up there and see
24 who's doing construction or who's building something up
25 there and causing -- or cleaning out the stream, you know.

1 That was done years ago. I mean, farmers just
2 cleaned out the stream. And I'm not talking about big
3 streams, but small tributaries they did it and it was okay
4 because it would cause problems with their tile drainage
5 that they had.

6 I'm not talking about going down the whole stream,
7 you know, just a portion to get the sediment out, little
8 areas. They didn't do the whole thing because you can't and
9 it wasn't necessary. But just to clean a little 20- or
10 30-foot section, it was okay. You're not going to create
11 much of a sediment problem, you know.

12 Q. Right.

13 A. But a lot of tile drains that we dumped into, you
14 know, the shallow streams, you know -- in fact, we would
15 tell them -- we didn't even tell them, but the contractor
16 would go ahead and open it up so they could get another foot
17 of depth.

18 Q. Right.

19 A. Because of the sediment and to let the water flow
20 out of there, and then they would put blocks around there so
21 it would stabilize the area. Because you didn't want a
22 gully to start where they're going to dump a tile system,
23 because during the springtime that water just flows out like
24 you can't imagine, so they put rocks around there and built
25 it up a little bit and that was pretty obvious. And most

1 farmers will do that anyways, you know.

2 Q. Do farmers put in check dams also to regulate the
3 flow in anyway tied to a tile system?

4 MR. UHOLIK: Objection, speculation.

5 Q. To the best of your knowledge and experience.

6 A. No. They would just put riprap around into an
7 area so that they wouldn't cause a gully, you know, so. But
8 a lot of farmers did that and it stabilized the outlet very
9 good because you've got to have a stabilized area where your
10 water -- I mean, you've got a hell of an investment there
11 with all that tile, you know.

12 Q. Right.

13 A. But you didn't want to cause another problem, you
14 know.

15 Q. Right.

16 A. I did a lot of that, you know.

17 Q. Are most farmers -- or were most farmers at the
18 time, do they take care not to affect their fellow farmers
19 downstream?

20 A. Yeah. They did.

21 MR. UHOLIK: Objection, vague. Most.

22 Q. Just based on your experience. Obviously, you
23 talked about farmers. You spoke with farmers in the
24 community regularly. And if there was a problem, you would
25 probably become aware of it.

1 A. A lot of times we would go back the next year or
2 the following year and just check because I'm in the area
3 and I'd just go back there and see how things are looking,
4 so. But they kept them up pretty good.

5 Q. Yeah.

6 A. I mean, they're there all the time. They're going
7 to look at the outlet anyway. They might even take a drink
8 of water.

9 Q. Right.

10 A. Most of those farmers did a really good job at
11 that.

12 MR. KOGAN: Okay. Why don't we do this: Why
13 don't we break for lunch. And then we'll figure
14 out whether you need to stay very much longer
15 after that. Okay? Is that good?

16 (Recess taken.)

17 BY MR. KOGAN:

18 Q. Mr. Lewandowski, thank you so much for returning
19 after lunch. And I know you have more pressing engagements,
20 so I do appreciate your willingness to stick this out
21 another 40 minutes at most.

22 I want to recall your recent testimony from this
23 morning. I asked you whether you were at all familiar with
24 the Food Security Act of 1985 or the Swampbuster
25 provisions -- or the Swampbuster Act of 1985 at all, and you

1 said earlier that you were not.

2 I'm trying to think that perhaps maybe it's just
3 years and not -- you know, an inability to recall, but I
4 just want to give you another chance to answer that
5 question.

6 A. Same answer. I don't remember that.

7 Q. You don't remember or you never heard of it?

8 A. Both.

9 Q. Well, I want to help you remember now. In the D-3
10 L, if you would go to Page 13 of your deposition testimony,
11 Bates number CD-FRC000365.

12 A. What page again?

13 Q. 13 on the bottom.

14 A. 13. Okay.

15 Q. And if you would read from Page 13 to 14. And I
16 think you'll remember that you remember.

17 A. 13 and 14. 13? Number 13?

18 Q. Page 13 on the bottom.

19 A. Okay.

20 Q. It will be the last -- I would ask you to start
21 at -- on Line 23, the question at the bottom of Page 13, and
22 then work your way through Page 14.

23 A. Do you want me to read it?

24 Q. Yes, please.

25 A. "Are you familiar with the act known as the

1 Swampbuster Act?" "Yes. Any drainage, according to laws
2 today require permits." Okay. Probably that's true.
3 "Right." "We can't get involved in anything that hasn't
4 been a cropland for several years. It's got to be already a
5 cropland." Keep going?

6 Q. Yeah.

7 A. "Since 1985, I believe? Is that correct?" The
8 answer was, "Yes." "If the work was started in 1985. Are
9 you aware of what is known as the Food Security Act or the
10 Swampbuster Act?" "Yes." "What role does the SCS play in
11 that act? What's your function, if any?"

12 Okay. My answer was, "In Swampbusting?" "Yes."

13 Q. Okay. Now, that would probably be the end of it
14 because the next question was --

15 A. "Is Swampbusting?" That's the answer.

16 MR. UHOLIK: There's four more lines of testimony
17 if he wants to read it down through.

18 A. Okay. The answer -- well, no, the question was,
19 "Is Swampbusting?" "Yes." "I haven't got into that
20 really." "Okay." "I really can't answer that question."
21 "All right." "Let's just take a break here."

22 I don't remember that though. That was back when
23 I was --

24 Q. That's fine. I mean, again, I wanted you --

25 A. I don't remember that really. There's a lot of

1 stuff I don't remember.

2 Q. That's why I wanted to give you a chance to recall
3 because this Food Security Act is a very important statute
4 when it comes to wetland conservation.

5 And I can enter into evidence the entire food
6 Security Act of 1985 statute.

7 A. This is really getting into depth, isn't it?

8 Q. Well, it is to a certain extent, sir.

9 A. It surely is.

10 Q. It goes to the point, though, of --

11 A. That's why you don't get involved in different
12 programs. I'm serious.

13 (Exhibit D-9 Lewandowski - Food Security Act of
14 1985 - marked for identification.)

15 Q. It talks about highly erodible land, for instance,
16 as you were discussing earlier. And I'll even cite the
17 provision. It's on Section 12019. We'll take the whole
18 statute here, since it makes my load lighter.

19 I'm just trying to get him to look at the relevant
20 provisions here, which are in the 1200s. I don't expect you
21 to note all the ins and outs of the statute, sir, but I'm
22 sure that you're familiar with conservation.

23 MR. UHOLIK: Just a general objection as to what
24 the relevant portions of the statute are and to
25 the extent that any of this calls for a legal

1 conclusion at all.

2 MR. KOGAN: No legal conclusion. We're just
3 talking about what Mr. Lewandowski's role was with
4 respect to Swampbusting.

5 MR. UHOLIK: Well, to be fair, he testified
6 already what his role was in 1991.

7 MR. KOGAN: He wasn't sure that he was -- I
8 haven't gotten into that really.

9 MR. UHOLIK: I can't really answer that question.

10 MR. KOGAN: Yeah, but what is the definition of
11 the word? What does that mean? I haven't gotten
12 into that really.

13 Q. To what extent -- when you were looking at
14 Swampbusting, what was the -- when you were trying to decide
15 whether to put a tile drainage system in, and whether it
16 was -- it was -- the land was worthy of the tile drainage
17 system, you had to take some kind of -- make some type of
18 evaluation regarding Swampbusting at a minimum, sir, did you
19 not?

20 A. I never did it.

21 Q. To you, what was -- I mean, you testified as to
22 what Swampbusting is.

23 A. Back then, yeah. But I -- when I go out on the
24 job, it's already been defined. It's a crop field and I'm
25 going to lay out tile and that's it.

1 Q. So someone else above you made a call --

2 A. Probably.

3 Q. -- on whether it violates or just consisted of
4 Swampbusting.

5 A. Probably --

6 MR. UHOLIK: Objection, foundation.

7 A. -- because I was not -- at that time, I had
8 nothing to do with that. I just worked on cropland.
9 Basically, just cropland.

10 Q. Right.

11 A. That's what the program called for and I got
12 thousands of calls and that's all I did.

13 Q. Right. Now, the Swampbuster Act, were you aware
14 that the Swampbuster --

15 A. I heard about --

16 Q. -- allowed conversions?

17 A. -- that, but I wasn't concerned about it at that
18 time.

19 MR. UHOLIK: Objection as to Counsel's
20 characterization of the Swampbusting Act.

21 MR. KOGAN: No. I -- does this Counsel need to
22 read a section regarding conversion?

23 MR. UHOLIK: Counsel --

24 MR. KOGAN: If you want, I can for the record, but
25 I think it's known between you and I there is a

1 conversion feature in there.

2 MR. UHOLIK: Objection to Counsel's testimony.

3 Q. Okay. Now, I'll go back to what you are more
4 familiar with besides the law here, and that's the designing
5 of the tile system.

6 Do you recall when you were designing Mr. Brace's
7 tile system whether there was any clay tile? You mentioned
8 there may have been some wooden tile, as I recall, you
9 testifying.

10 A. Well, that was a long, long time ago. I mean,
11 I --

12 MR. UHOLIK: Objection to characterization.

13 A. -- was told by some farmer -- some old farmer in
14 North East a long time ago and he mentioned wood tile and
15 clay tile. Yeah. Because when I started working for them
16 in 1957, '58, it was clay tile. They didn't have plastic
17 back then. I'm not sure when plastic came in, but it was
18 clay tile back then.

19 Q. Did farmers remove their old clay or wooden tile
20 when they were installing new plastic tile?

21 A. What they did --

22 MR. UHOLIK: Objection to foundation and
23 speculation.

24 Q. In your experience in your design of tile systems
25 for farmers, did you ever come across old clay tile and

1 wooden tile on the farm?

2 A. Yeah, because we -- yeah. We laid out clay tile
3 back in the early -- or late '50s, rather. When I started
4 in '59 or '57 back then, yeah, they were using clay tile.
5 There was no plastic. And then when they started using
6 plastic on some of these old fields because of wet spots
7 because some of those old clay tiles were broken, they put
8 the plastic tile in there and they hooked the old tiles
9 close to the new lines so then it would drain into the new
10 lines.

11 Q. So they worked together.

12 A. Yeah. I mean, it's difficult to take out all
13 those old lines, so they just hooked them up.

14 Q. In your experience, when you were designing tile
15 systems, did you ever come across where subsurface there
16 were fissures, I guess, natural fissures in the land that
17 moved -- that caused movement in the tile?

18 MR. UHOLIK: Objection, vague on what fissures
19 are.

20 Q. Spaces in the ground, in different portions of the
21 ground. The earth moves; doesn't it? It doesn't just
22 remain sedentary.

23 MR. UHOLIK: Objection, compound.

24 Q. When you design a tile system, do you have to take
25 into account any potential earth movement?

1 A. No.

2 Q. Not at all?

3 A. No. Not at all.

4 Q. Now, when you design the tile system, do you have
5 to take into account seeps?

6 A. Seeps or --

7 MR. UHOLIK: Objection, vague.

8 Q. No. Do you know what a seep is?

9 A. No. You tell me what a seep is. We call them
10 springs. Yeah. Springs, that's what we capture is the
11 springs.

12 Q. And gravel, do they at all cause movement below
13 the surface?

14 A. Well, if there's some gravel in there, it could
15 cause that. Yeah.

16 Q. Okay. Now, when you designed the system, do you
17 anticipate some movement subsurface?

18 A. No -- you mean of the tile?

19 Q. Yeah. I mean, why was clay tile superseded and
20 replaced with plastic tile? Wasn't clay tile more
21 susceptible to cracking and --

22 A. Absolutely. Yes. And then it's only a foot long.
23 And when they bring them, you cracked a lot of them. A lot
24 of them did break. Even after they were in the ground, a
25 lot of them broke.

1 Q. And people just left them in the ground. They
2 didn't remove them. Right?

3 MR. UHOLIK: Objection, foundation.

4 Q. In your experience, you'd come across old clay
5 tiles?

6 A. Yeah. But they would -- they would dig them up
7 and put in another piece in there, you know. Especially in
8 the clay, they would replace the clay tiles. That was
9 pretty common, too.

10 Q. Do they get all the pieces of the clay tile out of
11 there?

12 MR. UHOLIK: Same objection.

13 A. Or they were repaired. Take them out and put a
14 new piece in there.

15 Q. Okay.

16 A. But then they'll have other pieces that break
17 through, you know. So that's one problem that they have the
18 clay because a lot of times when they were installing the
19 clay, they just put them down in the shoot. They put them
20 down in the shoot and they lined up and just the bouncing
21 and going through the system, you know, they cracked -- they
22 can crack that you can't even see the cracks.

23 Q. And that can cause leakage.

24 A. Yeah. Especially when they backfill and they
25 break them up and they don't know it. That's why it wasn't

1 a full-proof system, you know. They had a lot of problems
2 with clay.

3 Q. Does the plastic leak like that as well?

4 A. No. The plastic is just a 200-foot roll. They
5 come in rolls. Say 100 feet would be like -- or a 4-inch
6 tile would be like about 200 feet, I think. I forget what
7 it was.

8 Q. But this is all gravity based. This is all
9 gravity water flow.

10 A. Yeah.

11 MR. UHOLIK: Objection, foundation.

12 Q. Well, gravity is based on the notion of different
13 heights and the topography of the land. Correct?

14 MR. UHOLIK: Objection, speculation.

15 A. I'm not sure.

16 Q. I think what you've testified earlier was to the
17 tile has to be laid at a certain elevation and a certain
18 pitch to accommodate --

19 A. Grade.

20 Q. -- grade.

21 A. Right.

22 Q. And that's to take into account the gravity, the
23 force of gravity so that water flows properly.

24 A. Yes. We don't want to lay it flat because it
25 ain't going to do nothing flat.

1 Q. Right.

2 A. That's why on some of the slides that Bob has
3 there, I mean it's flat land and it's hard to drain because
4 you don't have a lot of fall.

5 Q. Which is why --

6 A. But you still --

7 Q. I'm sorry.

8 A. But you still have to put drains in there and run
9 it on a pretty close grade.

10 Q. Does that create like a suction force over time
11 with water continuing to flow?

12 MR. UHOLIK: Objection, speculation.

13 A. I would --

14 Q. Is that the way the system works is the
15 gravity and --

16 A. Everything is gravity flow. It seeps down into
17 the -- because when they backfilled, they backfill with
18 topsoil.

19 Q. Right.

20 A. They angle their blade and their bulldozer and
21 angle it and they just go down the line and just put all the
22 topsoil back down on top of the tile. And they cover it up
23 with the subsurface and that keeps the porous material
24 around the top so it drains. You get percolation and it
25 drains the tile and out it goes.

1 Q. And the reason I raised that is from my own
2 personal experience seeing gravity systems at work out West
3 where the runoff comes in from the mountain, they can
4 actually make it run uphill further down the valley because
5 of the force of the water.

6 A. Okay.

7 Q. So is there a force of the water when you actually
8 laid tile on a gravity base?

9 A. No.

10 MR. UHOLIK: Objection to Counsel's testimony.

11 A. No. It's just a -- when we lay it out, they have
12 fall. The most -- the better you have the grade, the better
13 system you're going to have. You're going to get a quicker
14 relief from the water.

15 Q. Is it possible that if a section of tile was
16 removed that the water would still flow to the section?

17 A. Probably.

18 MR. UHOLIK: Objection, speculation.

19 Q. So that gravity force would continue.

20 A. Yeah. But then you'd get a sinkhole because all
21 that dirt went down that tile and is out, you got a big
22 opening there and it's broken. So you'd have a sinkhole,
23 you know. So that's when the farmers would get in there and
24 fix it up themselves.

25 Q. And they don't need --

1 A. No. They don't need -- I mean, that's simple to
2 do, you know.

3 Q. What happens if there was a natural flooding
4 event, a natural weather event and flooding overtook the
5 system? Is there financing -- is there financing offered by
6 ASCS?

7 A. Not that I'm aware of.

8 MR. UHOLIK: Objection, speculation. Foundation.
9 Compound.

10 MR. KOGAN: You just don't like the question,
11 Counsel.

12 A. No. There's no -- like I -- no. There's no
13 provisions for that as far as I'm aware of, but I would be
14 aware of that.

15 Q. But did USDA ever do any cost-sharing for flood
16 related impacts on tile drainage systems?

17 A. No.

18 Q. To the best of your knowledge.

19 A. To the best of my knowledge, no. The flat
20 ground -- if it's flat and, of course, the ditches, there's
21 no water in a ditch and you got to -- and you run a tile
22 line on a two-tenths grade, you know, for 1,000 feet and
23 maybe there's another 1,000 feet of conduit, because
24 normally -- normally on flat grade, you want to have a
25 bigger size to compensate for siltation and capacity.

1 So then when you get a flooding effect, like in
2 French Creek, the water builds up and the tile is way on the
3 bottom because the water is still in the line, you know. So
4 when the water recedes, the water will flow up because now
5 it's open.

6 Q. So you're talking about a 6-inch diameter pipe.
7 You use a larger pipe in that situation.

8 A. Usually on flat grounds we like to use a larger
9 pipe, so -- and it's pretty -- you got to have a good
10 operator to put it on a two-tenths, three-tenths grade, you
11 know. It's not easy to do. He has targets that he follows.
12 Targets. But even so, it's not an easy process.

13 Q. To the best of your knowledge, do you recall when
14 you had to lay the steel pipe under the road and create that
15 culvert on both sides?

16 Was there -- did you have to create a culvert in
17 establishing that steel pipe?

18 A. No.

19 MR. UHOLIK: Objection, vague. By the road, do
20 you mean Lane Road?

21 MR. KOGAN: We're talking about Lane Road. Only
22 Lane Road. That's all we've been talking about
23 today.

24 MR. UHOLIK: Okay.

25 A. No. We just put a pipe past the road ditches.

1 Q. Right.

2 A. We tried to get below the road ditches.

3 Q. Right.

4 A. You might have a road here, and then the ditch
5 would be in a -- if we go below that, say, another 2 feet,
6 you know, so you have protection in that road ditch and the
7 top of the road you want to extend it.

8 Q. You testified earlier that you really didn't have
9 much interaction with the State Environment or the Fishing
10 or Game Commission?

11 MR. UHOLIK: Objection, characterization.

12 MR. KOGAN: No. That's in his prior testimony.

13 Q. If there was a problem with the culvert under a
14 road that affected the tile drainage system, would the
15 farmer contact you on that or would they contact the State?

16 A. State.

17 Q. Have you ever had a situation where they asked you
18 what to do?

19 A. Yeah.

20 Q. And your advice was?

21 A. Call the Township, call the Highway Department,
22 and that happens once in a while.

23 Q. Right. And do you recall Mr. Brace ever
24 mentioning any clogged culverts that impacted his fields?

25 A. Not offhand. I don't. We had a lot of

1 conversations, so I can't say that we didn't.

2 Q. I'm just trying to see if I have that here; I may
3 not. But I think we'll leave that for another time, if we
4 have another time, which I doubt because I don't want to put
5 you through this again.

6 MR. KOGAN: I don't think I've got any further
7 questions actually. And I really want to say
8 thank you for your help and understanding.

9 MR. UHOLIK: Let's go off for a second.

10 (Recess taken.)

11 MR. KOGAN: Brian, I wanted to add one more thing
12 in the record.

13 MR. UHOLIK: Go ahead.

14 BY MR. KOGAN:

15 (Exhibit D-10 Lewandowski - Sections from National
16 Food Security Act Manual - marked for
17 identification.)

18 Q. What I want to do is enter into evidence several
19 sections of the National Food Security Manual, which relate
20 to the Swampbuster Act for evidence sake. I think it's
21 better in this one. We're going to treat this as one, even
22 though there's several sections.

23 We're just entering into the record several
24 sections of the National Food Safety Manual, which talk
25 about the Swampbuster provisions, as a manual -- a rule book

1 for USDA, ASCS and ultimately CRS employees.

2 Now that you've recalled the Food Security Act and
3 Swampbuster provisions, do you recall ever seeing the
4 National Food manual -- the Food Security Act manual?

5 A. No.

6 Q. That was from '88.

7 A. We probably had it, but I didn't look at it or
8 whatever, so.

9 MR. KOGAN: I'm finished.

10

11

CROSS-EXAMINATION

12

BY MR. UHOLIK:

13

14 Q. Just a couple of questions, Mr. Lewandowski. I
15 need D-3. You recall seeing Defendant Exhibit 3,
16 Lewandowski. I'm going to flip back to what is Bates
17 stamped CD-FRC0003667, which, I think, Counsel will agree,
18 is the hand-drawn diagram of the tiling system.

19

20 Now, you looked at this in conjunction with
21 Defendant Exhibit 1 Lewandowski, specifically, the page --
22 which does not have a page number on it, but it is the
23 conservation plan map. I believe you testified that you
24 believe that the diagram on Bates number 3667 is -- or
25 diagrams the tile system. And I'm pointing to a tile system
that appears to be on the conservation plan map in the

1 central right portion of the map just above what we've
2 discussed as Lane Road.

3 Do you agree with that?

4 A. It looks pretty close to me. I mean, it's -- I
5 would say it's -- that's the -- that's the -- yeah. I think
6 it's that. Yeah. It looks like it was.

7 Q. So judging by -- first of all, do you recall doing
8 any work south of Lane Road?

9 A. No.

10 Q. And do you see anything in front of you that would
11 suggest that you did any work south of Lane Road, apart from
12 installing the outlet pipe?

13 A. No. That's about it.

14 Q. So did you design a tiling system south of Lane
15 Road to the best of your recollection?

16 A. No. I don't remember any of that.

17 Q. Okay. And just one further question: I believe
18 here, your first deposition in this matter, which is the
19 whole D-3 Lewandowski, was taken on April 14, 1991 according
20 to the first page there, and here we are at November 20,
21 2017.

22 Was your memory better about this matter and your
23 duties regarding this matter in 1991 or now?

24 A. My memory?

25 Q. Yes. Was your memory better about the -- about

1 your involvement in this matter, was your memory better in
2 1991 or now?

3 MR. KOGAN: Objection to the form of the question,
4 and to the insinuation that Mr. Lewandowski
5 doesn't understand what he understands.

6 MR. UHOLIK: Okay.

7 A. You know, I laid out a lot of tile and I worked on
8 a lot of farms, and some farms are clearer to me and other
9 farms aren't. I can remember being there a little bit, but
10 I don't remember how the layout was, you know.

11 But I -- that's all I can really tell you, you
12 know. You know, when I look at this, it brings back a
13 little memory, you know.

14 MR. UHOLIK: Okay. That's fine. No further
15 questions.

16

17 REDIRECT EXAMINATION

18 BY MR. KOGAN:

19

20 Q. There's a lot of detail here, Mr. Lewandowski, is
21 there not?

22 A. Yeah. Like this part right here, I have no idea
23 what that part is right there on this map. It's a -- you
24 know, a lot of times when we get the plan map form -- it's
25 called a PA-19. When we get it back from the contractor we

1 go to the cultivation plan and we put it in red ink, you
2 know, what was completed. And then the writeup, you know,
3 we put down the date and the footage. We always did that to
4 the maps.

5 Q. Mr. Lewandowski, let me ask you a question: Have
6 you ever seen the consent degree that Mr. Brace entered into
7 with the government in 1996?

8 A. No.

9 Q. You had never seen that at all?

10 MR. UHOLIK: Objection.

11 MR. KOGAN: The only reason I raised it is because
12 perhaps the placement of some of your drawings
13 there's another map here, the consent decree area,
14 but you don't recall that so we'll leave it at
15 that.

16 Thank you, again.

17

18 (Deposition concluded at 1:17 p.m.)

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<p>MR. KOGAN: [65] 10/10 11/15 13/2 24/18 30/7 31/24 33/19 34/14 36/3 39/13 39/21 41/18 45/20 45/22 49/15 49/22 50/25 51/2 51/6 51/13 58/25 59/16 62/2 62/4 63/12 63/25 64/6 64/17 77/24 80/11 84/12 87/22 88/2 88/7 93/16 100/10 100/21 103/3 103/17 103/23 104/2 104/12 104/15 106/5 106/11 106/21 107/2 107/5 107/8 107/12 107/18 112/11 116/1 116/6 116/9 117/20 117/23 125/9 126/20 127/11 128/5 128/10 129/8 131/2 132/10 MR. UHOLIK: [173] THE WITNESS: [4] 40/10 43/10 84/19 100/20</p>	<p>13 [10] 63/9 113/10 113/13 113/14 113/15 113/17 113/17 113/17 113/18 113/21 131 [1] 3/6 14 [7] 3/14 44/21 45/24 113/15 113/17 113/22 130/19 14F [1] 2/13 15 [5] 3/20 4/12 7/19 105/21 105/25 15.30 [1] 65/23 16501 [1] 1/16 16507 [1] 1/24 18 [4] 3/20 39/1 105/21 106/3 182 [3] 46/21 46/22 49/24 182-6 [2] 47/14 49/6 19 [3] 5/5 45/9 131/25 1918 [2] 19/7 90/14 1957 [3] 7/10 13/17 118/16 1959 [2] 5/5 7/13 1960 [1] 13/15 1962 [2] 36/1 40/6 1970s [2] 7/8 46/8 1977 [4] 47/5 47/10 47/12 91/19 1980s [2] 46/8 99/19 1984 [4] 99/19 99/24 100/2 104/22 1985 [19] 3/22 81/3 81/9 81/14 81/23 84/8 84/16 90/16 99/20 99/24 100/2 108/23 109/2 112/24 112/25 114/7 114/8 115/6 115/14 1987 [1] 90/16 1988 [1] 109/2 1991 [11] 3/14 3/19 44/21 45/1 45/24 105/5 105/8 116/6 130/19 130/23 131/2 1994 [7] 3/20 3/20 105/21 105/21 105/24 105/25 106/3 1996 [1] 132/7 1:17 [1] 132/18 1:17-cv-0006 [1] 1/5 1:90-cv-002229 [1] 1/4</p>	<p>23rd [1] 7/15 25 [1] 17/11 26 [1] 38/18 29 [1] 1/14 3 30 [5] 16/10 50/5 50/8 50/15 53/13 30 feet [2] 50/5 53/14 30-foot [1] 110/10 333 [1] 1/23 36 [1] 3/12 3666 [1] 49/22 3667 [1] 129/23 37 [1] 3/13 4 4-inch [1] 122/5 40 [1] 112/21 44 [1] 3/14 4556 [1] 1/25 47 [4] 4/20 30/19 71/6 107/12 5 5 feet [1] 72/15 5,000-foot [1] 97/6 50 [5] 16/10 50/6 50/7 52/20 53/11 50 feet [2] 16/10 50/16 6 6 feet [2] 55/14 55/15 6-foot [1] 70/6 6-inch [4] 50/6 50/14 50/15 126/6 601 [1] 2/6 65 [1] 65/16 7 7,000 feet [1] 16/12 7/77 [1] 47/5 77 [1] 47/5 8 8 inch [1] 97/4 8000 [1] 2/6 814-452-4556 [1] 1/25 83 [1] 3/16 880 feet [1] 50/3 9 9:05 [1] 1/14 A a.m [1] 1/14 able [2] 16/5 29/11 about [58] 4/13 6/18 10/25 11/12 12/18 12/24 13/15 16/12 17/25 18/2 27/16 38/19 39/7 41/16 46/8 46/12 49/7 49/13 52/17 58/4 60/10 62/24 64/1 65/3 65/13 69/14 71/12 77/8 79/1 82/11 83/7 84/12 85/3 88/6 89/6 90/10 91/6 92/10 98/1 100/9 103/1 103/2 110/2 110/6 111/23 115/15 116/3 117/15 117/17 122/6 126/6 126/21 126/22 128/25</p>	<p>130/13 130/22 130/25 130/25 above [8] 16/19 18/10 18/13 66/13 67/17 68/22 117/1 130/1 Absolutely [8] 15/4 43/8 74/5 74/22 75/11 77/2 108/1 120/22 abuts [1] 17/5 accessible [1] 93/11 accommodate [1] 122/18 according [4] 66/18 109/9 114/1 130/19 account [4] 102/17 119/25 120/5 122/22 accumulate [2] 61/10 68/23 acknowledgment [1] 103/5 acquired [4] 40/5 44/4 103/15 104/1 acquisition [2] 103/16 103/25 acre [1] 65/24 acreage [1] 43/2 acres [4] 43/2 43/3 65/14 65/15 across [12] 19/15 31/5 50/24 53/19 55/11 60/25 62/13 62/14 101/19 118/25 119/15 121/4 act [31] 3/22 3/24 10/22 81/2 81/9 81/14 81/22 81/23 84/8 84/12 84/16 89/17 89/20 90/10 108/23 112/24 112/25 113/25 114/1 114/9 114/10 114/11 115/3 115/6 115/13 117/13 117/20 128/16 128/20 129/2 129/4 Action [1] 1/4 activities [2] 6/10 29/11 actually [18] 14/18 18/5 18/7 45/19 47/20 50/7 67/18 88/13 90/16 95/3 99/5 104/1 105/2 107/1 108/16 124/4 124/7 128/7 add [2] 104/13 128/11 addition [2] 45/4 49/8 address [1] 108/7 addressed [1] 108/2 adequate [1] 60/17 adjacent [6] 52/13 52/16 52/22 52/23 53/2 53/3 adjust [1] 109/9 advance [1] 30/8 advice [1] 127/20 aerial [1] 21/19 affect [4] 77/1 98/4 104/7 111/18 affected [1] 127/14 after [20] 7/19 8/17 10/21 46/5 61/10 65/22 71/6 72/10 75/18 80/16 87/18 90/12 92/4 92/7 94/15 100/2 104/3 112/15 112/19 120/24 afterwards [1] 91/20</p>	<p>again [14] 11/18 41/23 44/23 50/15 63/12 64/7 64/17 86/9 91/14 105/15 113/12 114/24 128/5 132/16 agencies [2] 82/22 83/11 agency [2] 5/10 6/3 ago [11] 5/19 10/21 36/11 80/2 90/14 95/15 99/6 109/11 110/1 118/10 118/14 agree [2] 129/17 130/3 agreement [3] 3/18 103/10 103/12 agricultural [3] 14/11 73/25 83/19 Agriculture [6] 4/17 4/22 4/23 5/15 5/24 6/1 ahead [7] 36/22 36/22 78/24 79/15 89/24 110/16 128/13 aid [1] 28/23 ain't [4] 57/19 72/9 72/9 122/25 all [85] 4/7 9/6 9/24 11/25 13/12 13/20 14/16 14/19 16/3 16/3 16/11 17/15 18/7 18/8 18/25 24/14 25/10 26/22 28/2 28/2 28/8 28/8 30/19 33/10 36/24 39/2 43/12 51/6 52/9 57/5 57/21 57/21 61/16 63/4 65/10 66/1 68/23 70/21 71/4 71/7 72/16 76/21 78/11 78/21 80/8 80/16 82/11 82/23 84/15 85/12 87/5 87/12 88/2 89/1 89/17 89/20 91/15 91/16 91/17 98/19 100/3 101/21 104/9 107/1 111/11 112/6 112/23 112/25 114/21 115/21 116/1 117/12 119/12 120/2 120/3 120/12 121/10 122/8 122/8 123/21 124/20 126/22 130/7 131/11 132/9 allowed [1] 117/16 almost [1] 75/3 along [3] 6/5 27/5 51/12 already [11] 21/24 27/19 46/25 49/23 58/2 68/22 81/19 84/11 114/4 116/6 116/24 also [15] 2/17 21/20 29/24 30/25 31/19 35/18 47/20 56/15 58/6 59/12 84/11 88/21 103/19 108/11 111/2 alternative [1] 71/18 always [9] 16/18 48/10 48/11 62/20 69/20 87/6 87/6 95/12 132/3 amazing [1] 105/19 AMERICA [1] 1/2 among [1] 66/7 Amount [1] 65/14 angle [2] 123/20 123/21 animal [1] 96/23 annual [1] 85/18</p>
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<p>anywhere [1] 40/19</p> <p>anywheres [1] 55/14</p> <p>apart [2] 16/10 130/11</p> <p>appear [2] 46/17 51/20</p> <p>appears [1] 129/25</p> <p>application [4] 6/23 9/1 22/25 86/16</p> <p>applied [1] 89/6</p> <p>apply [4] 6/22 6/23 22/20 65/22</p> <p>appointment [1] 86/14</p> <p>appreciate [3] 40/2 71/2 112/20</p> <p>approval [1] 24/22</p> <p>approve [1] 26/16</p> <p>approved [2] 26/25 86/16</p> <p>April [4] 3/14 44/21 45/24 130/19</p> <p>April 14 [1] 130/19</p> <p>are [82] 4/11 11/15 11/20 12/1 12/9 12/17 12/25 13/9 13/14 13/14 15/23 15/25 17/14 18/3 18/8 20/18 21/5 22/6</p>	<p>31/14 36/2 37/4 37/5 40/15 40/16 40/21 41/6 41/21 45/3 45/19 46/8 48/22 49/21 50/10 50/10 50/11 50/25 52/5 52/13 52/16 52/17 52/25 56/22 57/9 62/24 66/1 67/11 69/10 70/14 72/18 74/12 76/16 79/2 79/13 81/1 81/2 81/5 81/10 85/8 89/20 92/6 92/16 93/20 96/6 97/12 97/18 100/8 101/5 104/12 105/15 106/10 106/18 108/2 111/17 112/3 113/25 114/8 115/20 115/24 118/3 119/19 130/20 131/8</p> <p>area [30] 10/19 13/8 13/11 17/2 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C E R T I F I C A T I O N

I, Sonya A. Hoffman, Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes in the above-captioned matter.



Sonya A. Hoffman

Court Reporter

Dated: December 11, 2017

