

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. : 1:90-cv-00229
	)	1:17-cv-00006
ROBERT BRACE, ROBERT BRACE	)	
FARMS, INC. and ROBERT BRACE and	)	
SONS, INC.	)	
	)	
Defendants.	)	

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PROCEEDINGS: Deposition of  
SCOTT A. HANS

DATE: October 6, 2017

TIME: 2:49 p.m. - 5:03 p.m.

PLACE: U.S. Army Corps of Engineers  
Pittsburgh District  
1000 Liberty Avenue  
Pittsburgh, Pennsylvania 15222

REPORTER: Roberta Swank  
CSR 6042 - RPR 6846  
Notary Public

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APPEARANCES:

Appearing on behalf of the Plaintiff:

Chloe H. Kolman, Esquire  
U.S. Department of Justice  
Environment & Natural Resources Division  
Post Office Box 7611  
Washington, D.C. 20044

Appearing on behalf of the Defendants:

Lawrence A. Kogan, Esquire  
Kogan Law Group  
100 United Nations Plaza  
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New York, New York 10017

Also Present:

Dana Adipietro, Esquire  
Army Corps of Engineers  
  
Laura J. Brown, Esquire  
Army Corps of Engineers  
  
Robert Brace  
  
Beverly Brace

1 and Mike Fodse. I was not on that site visit in  
2 2012.

3 Q. But you did say here and there's  
4 references made -- and you are speaking to  
5 Mr. Brace.

6 What does the first line say, if  
7 you can read that, on the letter of 2012,  
8 December 19, 2012.

9 A. The first line on the December 19,  
10 2012 letter is:

11 "Reference is made to your  
12 request for a Jurisdictional  
13 Determination of an unnamed tributary  
14 to Elk Creek and Elk Creek on your  
15 farm in Waterford, Erie County,  
16 Pennsylvania."

17 Q. Do you recall receiving a request  
18 from Mr. Brace for Jurisdictional Determination?

19 A. I did not. I believe Mike had been  
20 in communications with Mr. Brace over beaver dams  
21 and other activities that he was seeking to  
22 conduct on his farm.

23 Q. Because I don't believe the record  
24 reflects anywhere thus far in any of the exhibits  
25 that Mr. Brace ever requested a Jurisdictional

1           A.     That parcel, I believe ownership  
2     has been somewhat in debate, at least brought up  
3     over time.

4                     I believe there though was some  
5     work conducted in the channel on that parcel.

6           Q.     Do you recall whether there was any  
7     notification to the Corps through Mr. Fodse or to  
8     EPA through Mr. Lutte and Lapp that there was a  
9     beaver dam up there causing water to stop  
10    flowing?

11          A.     I know there were discussions with  
12    beaver dams on Mr. Brace's properties in general  
13    and in general in this area, whether they were on  
14    his properties or adjacent properties. I do not  
15    know of any specific locations or maps that were  
16    ever given to us locating where said beaver dams  
17    were.

18          Q.     Do you recall there being a culvert  
19    up in the north -- northernmost corner of the  
20    Marsh tract on property Mr. Brace didn't own that  
21    was --

22          A.     Is that the Marsh tract or is it  
23    not the Marsh tract? Because the culvert where I  
24    recall is -- and what you are describing is on  
25    that third parcel.

1                   Is that part of the Marsh tract or  
2 not part of the Marsh tract from your -- so you  
3 are clear.

4                   Q.     I'm perfectly clear. I was there  
5 yesterday, so I can tell you.

6                   A.     Good.

7                   Q.     The culvert under Sharp Lane  
8 Mr. Brace had complained to Mr. Fodse and to  
9 Mr. Lapp and Lutte a number of times over the  
10 course of 2011, 2012 and 2013 that that culvert  
11 was still with two feet approximately of concrete  
12 which apparently PennDOT had placed there years  
13 ago.

14                   Are you familiar with that specific  
15 culvert?

16                   A.     I'm familiar with the culvert  
17 there, yes. I believe we walked to that culvert  
18 and looked at that on our 2013 site visit.

19                   Q.     Right. That parcel in that area --  
20 would that parcel number that's denoted on that  
21 map prepared by the Government is not Mr. Brace's  
22 property; however --

23                   Do you recall Mr. Brace speaking  
24 about how that culvert had been clogged and that  
25 water was backing up from it?

1           A.    I don't specifically recall, but he  
2    may have.

3           Q.    Do you recall Mr. Fodse talking to  
4    you about a culvert near Sharp Lane regarding  
5    back up of water?

6           A.    I recall discussions of back up of  
7    water on beaver dam, and I don't recall any  
8    specific locations that were pointed out as the  
9    specific problem area.

10          Q.    Now, those conversations you had  
11    with Mr. Fodse, did you have them with Mr. Lapp  
12    or Mr. Lutte as well?

13          A.    I don't recall any specific  
14    comments with any of those three regarding  
15    specific back-up points here.

16          Q.    So from where did you find -- did  
17    you obtain your knowledge of the culvert being  
18    backed up?

19                    MS. KOLMAN:  Objection.  
20    Mischaracterizes his testimony.

21                    MR. KOGAN:  No, I didn't  
22    mischaracterize anything.  He said --

23                    THE WITNESS:  You indicated the  
24    culvert was backed up.

25    ///

1 BY MR. KOGAN:

2 Q. Right, but you said you were aware  
3 of a culvert on Sharp Lane and you actually  
4 walked there.

5 A. Yes. I never said it was backed  
6 up.

7 Q. So you were never apprised that it  
8 was backed up in 2012 or 2013?

9 A. That there was a specific blockage  
10 in the culvert under Sharp Lane, be it created by  
11 PennDOT and/or beaver, I have never been  
12 specifically apprised of any one particular cause  
13 of that.

14 Q. Were you apprised of the fact there  
15 was a beaver dam in that general vicinity of the  
16 Marsh tract during 2012 or 2013 that was causing  
17 water backup?

18 A. I was apprised that there were  
19 beaver dam issues on Mr. Brace's properties in  
20 2012. What the limits of those properties were  
21 or locations, I was not apprised to.

22 Q. Were you apprised that there were  
23 beaver dams across Sharp Lane off, totally off,  
24 of Mr. Brace's property that caused water backup  
25 onto Mr. Brace's property?

1           A.     No, I was not apprised of specific  
2     locations of beaver dams on Mr. Brace's  
3     properties or adjacent properties. I was only  
4     apprised that there were beaver dams in the area.

5           Q.     Now, just generally speaking, when  
6     you were provided with information that might  
7     give rise to a hold back of water and causes  
8     water to rise above the surface level beyond the  
9     surface level of the banks of a tributary,  
10    doesn't the Corps go out there and investigate  
11    something like that?

12          A.     Beavers are quite interesting  
13    characters. They don't respect property lines.

14          Q.     That's true.

15          A.     Okay. The Corps of Engineers does  
16    not make a practice of investigating or managing  
17    beaver.

18                   I believe my understanding from  
19    talking with Mr. Fodse is some of Mr. Brace's  
20    initial contacts with the County Conservation  
21    District, Mr. Lutte and Mr. Fodse were regarding  
22    getting these beaver dams removed, at which time  
23    my understanding is they directed him to work  
24    with the Pennsylvania Game Commission so that he  
25    could legally remove such beaver and then remove