

Exhibit 6

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

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) No.
ROBERT BRACE, ROBERT BRACE) 1:17-cv-00006-BR
FARMS, INC., et al.,)
Defendants.)

Deposition of RANDALL BRACE
Wednesday, January 10, 2018

The deposition of RANDALL BRACE, called as a witness by the plaintiff, pursuant to notice and the Federal Rules of Civil Procedure pertaining to the taking of depositions, taken before me, the undersigned, Lance E. Hannaford, Notary Public in and for the Commonwealth of Pennsylvania, at the offices of U.S. Attorney's Office, 17 South Park Row, Erie, Pennsylvania 16501, commencing at 9:06 o'clock a.m., the day and date above set forth.

1 uplands?

2 A I always refer to it as the contour field.

3 Q Contour field is fine. So pre2012, the
4 only portion of the Murphy site that was planted was
5 the contour field?

6 A To the best of my recollection, yes.

7 Q Then after 2012, so 2012 and on what
8 portions of the site, the Murphy site, were planted?

9 A We have to go back to where we got
10 permission to plant the stuff. It's in the hatched
11 parts after 2012.

12 Q In the hatched parts after 2012.

13 A Right. Not all of the hatched parts. Not
14 all of it.

15 Q What did you plant there?

16 A Corn.

17 Q Is the farming operation at least at this
18 time, 2012 and on, is it fairly reasonable to say it's
19 a corn farming operation right now?

20 A Yes.

21 MR. KOGAN: Counsel, I object to the
22 characterization of all of the hatched area being
23 farmed. So if you would clarify for the sake of
24 the witness what area he responded to your
25 question.

1 MR. UHOLIK: The witness testified not all
2 of the hatched area was planted. But that some
3 of it was. We are going to get to where in a
4 second.

5 MR. KOGAN: Thank you.

6 Q Could you please, with the pen that you
7 have, write "corn" wherever corn was planted in the
8 red hatched area from 2012 on?

9 A Okay. I think that about does it.

10 Q And do you know in what years after 2012
11 that those areas were -- that you marked with the word
12 "corn" to indicate where it was planted, what years
13 corn was planted? Was it every year?

14 A It was after 2012, before you guys shut us
15 down again.

16 Q When were you shut down? When did you stop
17 planting in there?

18 A I can't recall exactly what year it was.

19 Q Did you first plant that area in the spring
20 of 2012?

21 A I don't know if it was 2012 or not. I
22 really can't -- my brother could probably tell you
23 with the records he has. I really don't have any
24 records of it.

25 Q And the corn that you planted after 2012,

1 was that corn sold?

2 A I know it was harvested, yes.

3 Q You are not sure I guess -- trying to
4 narrow down the time frame. You are not sure if there
5 was a harvest in 2012. Was there a harvest in 2013?

6 A I really have lost track of time. I can't
7 really -- you know.

8 Q The contour field, has that also been
9 planted -- has the contour field effectively been
10 planted the last ten years, continuously?

11 A No. I think it was cropped. Then it sat
12 idle until they came back out. Then we planted again.
13 That was some time after 2012. Like I say, exact year
14 I don't know.

15 Q That's fine.

16 Were you involved with any of the planting
17 work on that piece of property?

18 A I was not.

19 No.

20 Q Your brother, Ronnie?

21 A Yes.

22 Q We can put that away for a moment.

23 We are going to turn next to your knowledge
24 of the consent decree and the restoration plan. What
25 was previously marked yesterday as P14. We will mark

1 approximately? If you know a month.

2 A It was that summer. Like I said, I don't
3 know if it was two days or a week or what.

4 Q If you could draw with your pen just the
5 ditch so we will be able to see it.

6 MR. KOGAN: Which site are you referring
7 to?

8 MR. UHOLIK: In the consent decree area.
9 If you could draw the ditch in the consent decree
10 area you cleaned out.

11 Q Let the record reflect I actually will have
12 the witness highlight it. The pen is probably not
13 good enough.

14 A Right now just in the hatched area. Right?

15 Q Just on the Murphy site.

16 A Just on the Murphy site.

17 Q For now. If there is ditches on the Murphy
18 site you cleaned outside the hatch area, feel free to
19 draw those places as well.

20 Let the record reflect the witness is
21 drawing the ditch with a pink highlighter.

22 When you say you cleaned out the ditch, I
23 believe you testified that you removed debris with a
24 track hoe. How does that work? If you could explain
25 to me how cleaning out the ditch works as if I was

1 five.

2 A It's a bucket, it has a bucket on it, a
3 boom and a bucket.

4 Q The track hoe has a boom and a bucket. In
5 order to get the debris out of the ditch, do you dig
6 it out? Is that how it works? You dig it out?

7 A Yes.

8 Q When you dug out the ditch where did you
9 place the material that you were digging out?

10 A Right where Todd Lutte told me to.

11 Q Where would that be?

12 A On the north side of the ditch.

13 Q North side of the ditch. Would that also
14 be in the red area, the consent decree area?

15 A Yes.

16 Q Do you know approximately how long it took
17 you to complete that work? By that work I mean
18 digging out of the ditch within the consent decree
19 area.

20 A Oh, I mean, this would just be a guess.

21 Q That's fine. An estimation is fine.

22 A Maybe four or five days. Like I said,
23 that's a guess.

24 Q Did you do that consecutively? When you
25 started doing it, is that what you did? Did you do it

1 over four or five consecutive days, or was it broken
2 up, did you do it in bits and pieces?

3 A No. We stayed at it.

4 Q Stayed at it.

5 A Yes.

6 Q Were you involved in any other work in the
7 consent decree area?

8 A When my brother tiled it, I would do
9 hookups.

10 Q What does it mean to do the hookups?

11 A Well, you hook the tile together.

12 Q You said when your brother tiled it. When
13 did your brother tile the consent decree area?

14 A I think it was that same summer. Like I
15 said, I can't say any particular dates, because I
16 can't remember any dates.

17 Q That's fine. If you have an approximation,
18 give me a week, if you give me a month, that's fine.
19 Or if you just say the summer, that's fine. Be as
20 specific as you can be.

21 So did your brother tile it -- tile the
22 consent decree area before or after you cleaned the
23 ditch?

24 A It would have been after.

25 Q And was your -- that the extent of your

1 involvement in the tiling, hooking up the tile, as you
2 said? Were you involved in using the track hoe or any
3 other sort of heavy equipment?

4 A Yes. Where an outlet would be, we dig an
5 outlet. That is where he would start. Then when the
6 run was done, you would fill it up.

7 Q If you could, I will hand you a yellow
8 highlighter. Obviously, this is approximate.
9 Approximate the areas that you were involved in the
10 installation of tile drains in the consent decree
11 area.

12 A I will just draw a line?

13 Q Just draw lines.

14 A Like I said, this is just an --

15 Q We are approximating here.

16 A Right. This isn't exact.

17 MR. KOGAN: Counsel, did you ask the
18 question of whether he is going to indicate where
19 the tile that he hooked up was placed? Or where
20 it was tiled itself by his brother?

21 MR. UHOLIK: Larry, you will be free to ask
22 your questions.

23 MR. KOGAN: I'm asking you what you asked.

24 MR. UHOLIK: I asked him, he said that he
25 was involved in one, hooking up tile, and two,

1 digging out outlets. I asked him where he was
2 personally involved in the tile installation
3 process. There may be other tiling he wasn't
4 involved in. I assume he won't mark that.

5 A That is roughly about it.

6 Q Let the record reflect that the witness has
7 marked in yellow highlighter where in the consent
8 decree he was involved in installing tile drains.
9 Thank you, sir.

10 Do you know approximately how long it took
11 to install the tile drains that you were involved in
12 installing? I know you said ditch cleaning was over
13 four or five days. About how long was this?

14 A I don't know. Not very long.

15 Q Sort of the same question that I asked
16 before, as you described it, did you keep at it?

17 A Yes.

18 Q Do you know when the installation was
19 completed by?

20 A I don't think it was ever completely
21 completed, because that is when I think it was Smolko
22 came out that tried shutting us down.

23 Q Let me rephrase. When did you stop
24 installing tile drain?

25 A Like I say, it was all that summer. Any

1 dates or anything, I don't know. But it was that
2 summer. To the best of my recollection.

3 Q So you started tiling in the summer.
4 Somewhere during the summer you stopped tiling for
5 whatever reason.

6 A Right.

7 Q This is a topic -- we talked about it
8 before, but when is planting season?

9 A Planting season is in the spring.

10 Q What is the purpose -- what was the purpose
11 of clearing the ditch, why did you clean the ditch is
12 my question.

13 A Well, it was backing everything up on both
14 sides of the road.

15 Q It was backing everything up.

16 And why did you install -- by you I mean
17 you and your brother, why did you install tile drain?

18 A To farm.

19 Q I guess my question is if planting is in
20 the fall -- is in the spring, why was it necessary to
21 install tile drain in the summer like immediately,
22 effectively?

23 A Because we did it after Todd Lutte and
24 Fodse came out and told us we could do that.

25 MR. KOGAN: It would be a good time for a

1 there someplace.

2 Q Is there any difference between -- can you
3 tell by looking at a drainage tile if it is an old
4 tile or new one?

5 A That one is all dirty. I can't tell what
6 color it is.

7 Q Just generally. Is older tile made of a
8 different material? Does it look different?

9 A No. I mean, they have used plastic tile
10 for a long time. I don't really know.

11 Q You can put the photos away for the time
12 being. You may want to grab RA1 for orientation
13 purposes.

14 So we discussed a little bit the work that
15 was done within the consent decree area. And you have
16 highlighted where you were involved in tile drain
17 installation. Can you tell me who is the person who
18 said, "Go tile that"? Did you do it on your own? Did
19 your father tell you? Who told you?

20 A My father.

21 Q Do you recall, you may not, do you recall
22 whereabouts, when he may have told you to do that?

23 A I don't.

24 Q And who actually installed the tile drain
25 in the consent decree area?

1 A My brother.

2 Q Did your brother have any help? Or did he
3 do it on his own?

4 A He run the machine by himself.

5 Q And I know you helped with hooking up the
6 outlets -- hooking up the tile, then digging some
7 outlets. Outside of you and Ronnie, was there anybody
8 else assisting?

9 A My boy.

10 Q Which?

11 A Zach.

12 Q And what is it that you understand the
13 purpose of tile drain to be?

14 A So you can farm.

15 Q How does it help you farm?

16 A It takes water off the surface so the crops
17 don't flood.

18 Q So it drains water from the land?

19 A Yes.

20 Q We discussed -- I won't get the photo back
21 out. I will just ask you. How is it installed? I
22 know we saw there is some sort of machine. What is
23 the machine called?

24 A It's called a tile plow.

25 Q How does a tile plow work?

1 A A knife, and it just lays it in there. It
2 feeds it through the tube and then lays it down.

3 Q Do you have to -- you have to bear with me.
4 Obviously, I don't know about this.

5 Do you have to dig out a trench in order to
6 lay tile? Or does the tile plow effectively dig and
7 lay tile by itself?

8 A You have to dig the outlet, and you drop
9 the tile plow -- you just need maybe four, five foot,
10 three to five foot, just enough to drop the tile plow
11 down. Then you take off. Then it lays it. It feeds
12 it and lays it down.

13 Q So when you and Ronnie installed the tile
14 drain, if you could just sort of describe to me how
15 that worked. Would you dig the outlet with the
16 excavator?

17 A Yes. Track hoe.

18 Q You would dig an outlet with the track hoe.
19 Then Ronnie would come, and he would -- when you say
20 knife, what is --

21 A Just a slang word. Like I say, it's a big
22 arm. It's a big arm with a tube on the end. And as
23 you drop it down in, once you get your grade, you get
24 it started. And you hold it for just a couple feet.
25 Then he takes off. Then it just lays it across there.

1 Q So you would dig the outlet, Ronnie would
2 come with the tile plow. And then, as you say, take
3 off, and it would drag tile?

4 A It would lay tile.

5 Q Lay tile. When it lays tile, I would
6 assume -- I won't assume. Does it push earth out?
7 Sort of from either side? What I'm trying to imagine
8 is when you lay tile, is it completely covered? Do
9 you have to go back and cover the tile?

10 A It's completely covered with this knife,
11 with this type of tile plow.

12 There are different types of -- you might
13 be thinking of a trenching machine. This is
14 altogether different.

15 Q I'm just trying to imagine when you go to
16 lay the tile, you lay some tile, you pull the tile
17 plow out, is the tile completely covered and
18 underground?

19 A It is completely covered and underground.

20 Q Who designed the tile system that you
21 installed in the consent decree area? How did you
22 decide where to put it?

23 A My dad.

24 Q Did he -- was he out on the property with
25 you while the installation was occurring?

1 A Certain times.

2 Q Saying "Put tile here, put tile there"?

3 A Yes.

4 Q When he wasn't there, how did you know
5 where to put the tile?

6 A Because he told us where to put it.

7 Q At some other previous point he said put
8 tile in this area, did he ever draw it on a map?

9 A You would go from point A to point B. We
10 had to go exactly where he wanted it.

11 Q Did he ever, like, draw a map of the tile
12 system? Give you any sort of written thing, or just
13 sort of like "put it there"?

14 A No. No written thing. Not to my
15 knowledge.

16 Q And how much tile drain, when I say how
17 much, you can approximate a length, if you know, how
18 much tile drain did you install in the consent decree
19 area?

20 A I can honestly say. I don't have a clue.

21 Q That's fine.

22 I'm going to flip over what was previously
23 marked Plaintiff's Exhibit 18. We will mark it RA7.

24 (Thereupon, Exhibit No. RA7 was marked for
25 identification.)

1 Were there -- was there vegetation on the
2 site?

3 A You mean when we did the excavating?

4 Q When you did the excavating, was there
5 vegetation on the site, trees, shrubs, et cetera?

6 A Yes.

7 Q Did you clear the site? Or did someone
8 clear the site of vegetation?

9 A Where are we talking about?

10 Q In the consent decree area.

11 A In the consent decree.

12 Yes, my dad would have done that. After we
13 done the ditch.

14 Q Your dad, personally, would have?

15 A He is the one that ran the bulldozer, yes.

16 Q Do you know whereabouts in the consent
17 decree area that he would have cleared vegetation?
18 Let me rephrase. Whereabouts did he clear vegetation?

19 A Everywhere they said we could.

20 Q Do you have any idea where that would be?

21 A Everywhere where Todd Lutte and Fodse said
22 we could.

23 Q What I'm asking is where did Todd Lutte and
24 Mike Fodse say that you could clear?

25 A Everything there. All except in the back,

1 in the very back. Everything except -- he was
2 concerned about this ditch right here where we were
3 going to put the dirt and stuff. And we put the dirt
4 on it would be the north side of the ditch.

5 Q You are saying that Todd Lutte and Mike
6 Fodse told you you could clear vegetation from the
7 entire consent decree area?

8 A Yes. They said we could farm that, yes.

9 Q How was the vegetation cleared?

10 A Bulldozer.

11 Q I think we know the answer, but why was it
12 cleared?

13 A To farm.

14 Q Were you told that you could clear
15 vegetation at the same visit where you were told that
16 you could clean the ditches?

17 A You can't farm without clearing vegetation.

18 Q I understand. What I'm saying is were you
19 told that you could clear the vegetation at the
20 same --

21 A Yes. When they stood back there and said
22 they were going to declare all this agricultural
23 ditches, that was the day right there.

24 Q And they told you that --

25 A And then they said the government would

1 write something up. But as we know, the government
2 works slow.

3 Q When they told you that you were back --
4 you were back in the consent decree area --

5 A Yes.

6 Q And along the ditch --

7 A We were standing in what I call the contour
8 field right here overlooking everything.

9 Q If you could just draw --

10 A Where we were standing?

11 Q Write an M. We will call that meeting for
12 where you were standing.

13 A Right in there roundabout.

14 Q Let the record reflect the witness drew an
15 M on RA1 to indicate where Michael Fodse and Tom Lutte
16 were meeting with I believe --

17 A My brother and I.

18 Q Ronnie Brace and Randy Brace.

19 A Right.

20 Q Did you -- so after the cleaning and after
21 the clearing and after installation of tile drain, you
22 planted. Correct? The areas that you have written
23 corn in in the consent decree area.

24 A Yes. I can't remember -- I don't think it
25 was that year. I can't remember the exact date, but

1 yes.

2 Q Those crops were harvested?

3 A Yes.

4 Q And they were sold?

5 A I assume.

6 Q That would probably be -- if it wasn't 2012
7 which I guess from your testimony makes sense,
8 planting season is in the spring. It would have been
9 2013 would have been the year?

10 A Ronnie would have a better handle on that.

11 Q We will ask Ronnie.

12 A I figure you will.

13 Q I think that is probably a good place for a
14 break.

15 (Recess taken.)

16 MR. KOGAN: Relating to deposition RA6,
17 have you established foundation that the picture
18 of the land in this exhibit, which contains the
19 photo locations that correspond to RA5 exhibit
20 with all the photos taken during the May 20th,
21 2015 visit, does this picture of the land reflect
22 the land as it appeared on May 20th, 2015?

23 MR. UHOLIK: Can you repeat that?

24 MR. KOGAN: Does this picture, which shows
25 all the points of photographs taken during the

1 decree area, did he tell you where he wanted tile,
2 basically? Did he design the tile system?

3 A You said the consent decree?

4 Q Originally, you testified when you
5 installed the tile drain in the consent decree area,
6 you put it basically where your father told you to put
7 it.

8 A Correct.

9 Q Did you do the exact same thing in the
10 Marsh site?

11 A Correct.

12 Q Now, you said that when your father
13 purchased -- please correct me if I'm wrong -- when
14 your father purchased the Marsh site that it was I
15 believe wet and grewed up. So when you say grewed up,
16 it was covered -- was it covered with shrubs,
17 vegetation?

18 A In a vegetated --

19 Q There were trees?

20 A Some, yes.

21 Q Did anyone clear any of the vegetation?

22 A Robert. Dad.

23 Q How much of the Marsh site was cleared?

24 A Pretty much all of it except right there.

25 Q When you say right there?

1 Q Right. I don't think the email is saying
2 they were there at the site. I'm saying what Todd
3 Lutte is discussing in the email, does it accurately
4 reflect what you recall discussing with Todd Lutte
5 during that visit?

6 MR. KOGAN: Foundation. I object to
7 foundation. What sentence are you referring to
8 reflects his understanding? Let's go sentence by
9 sentence, if you have to.

10 Q That's fine. I'm going to just read.
11 First of all the subject line of the email is beaver
12 dam removal on the Waterford farm.

13 There is a sentence in here, that says,
14 "Due to the presence of beaver dams that have
15 developed on the property water has backed up. And it
16 is your desire to remove these dams."

17 Was that an accurate description at the
18 time of what was discussed on the site?

19 A Yes.

20 Q "It is also our understanding that once the
21 beaver dams are removed you wish to clean the channel
22 and the culvert so that the water which is currently
23 encroaching into your agricultural fields can drain
24 properly." Does that accurately match up with what
25 you remember being discussed?

1 A Yes.

2 Q He goes on to say, to verify whether or not
3 you need a permit, I have been in contact with Mike
4 Fodse who is going to meet you on the site to discuss
5 the above mentioned activities.

6 Does that match up with what you recall
7 being discussed?

8 A I don't remember that.

9 Q Do you remember discussing anything else?

10 A No. I don't.

11 Q So that about covered it. Okay.

12 On that 2011 -- the May 2011 visit, around
13 about there, where on the property do you remember
14 walking? By the property I mean between Murphy,
15 Homestead and Marsh site, which of those sites were
16 you on?

17 A Pretty much around the whole thing.

18 Q You were around the whole thing.

19 Do you recall after that May 2011 site
20 visit, there was another site visit with Mr. Fodse?

21 A Yes. That would have been, I think, the
22 time with Todd Lutte.

23 Q Before --

24 A I can't remember the dates.

25 Q I'm just asking if you remember attending a