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 LEWIS L. STECKLER, taken before and by Sonya Hoffman, Notary Public in and for the Commonwealth of Pennsylvania on Thursday, November 30, 2017, commencing at 12:59 p.m., at the offices of Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501.

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Robert Brace

Beverly Brace

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actually said that.

MS. BUCKLEY: Objection to the testimony. There's not a question pending.

MR. KOGAN: Well, there will be.

Q. So they were able to have this area designated as prior converted cropland and they wouldn't have to seek any permitting to engage in -- do, what, drain ditches to clean ditches to tile?

MS. BUCKLEY: Objection to form.

Q. I'm just trying to get back to your point now. The prior --

A. If it was labeled PC and they wanted to put additional tile drainage in, that was permitted.

Q. Because it was kind of grandfathered. Right? Is that the way it was looked at?

A. Yeah. It's already -- it might have been a wetland 200 years before or 100 years before, but if it was deemed to be eligible for the PC designation, they could put grass waterways, we could do underground drainage. We could do other conservation work on that field.

Q. Okay. Now, did that determination have to be made as of a certain date under this Swampbuster? Do you remember? Did it have to be made -- does December 1985 ring a bell at all -- December 23, 1985?

A. That's probably the date that the -- from that

point on, that's when it officially took effect, I guess.

Q. Okay. Now, have you ever heard of another that was used in conjunction with the Swampbuster Act known as commenced conversion?

A. I heard of it.

Q. Do you recall what that involved?

A. From my recollection, that was a process where part of the conversion was completed, but yet wasn't 100 percent completed and cropped.

Q. And if the farmer was able to show that the conversion had commenced as of a certain date -- which actually you may remember, I don't know, if the farmer is able to provide evidence that that conversion started by a certain date, then the farmer would have to -- the farmer would be granted this commenced conversion by --

A. Yeah. That was the County Committee's ASCS. You're getting into another agency that granted that.

Q. Well, that's on the money side. But on the determination side?

A. No, sir. We did not grant -- SCS did not grant the commenced determinations.

Q. No. No. But the determination of whether the soils were hydric and whether the activities occurred or commenced before or started before a certain date, that determination, was that made by SCS? And then ASCS, what

A. Or we had aerial photos.
Q. But when you put a designation into a commenced conversion application, when you designated something as commenced conversion applied --
A. It wasn't designated that until after the County Committee approved it. I told you that before. We can -- we labeled the piece that we're talking about as CW.
Q. Right.
A. After the County Committee granted the commenced, it may have changed.
Q. Well, changed to what?
A. To that CC, commenced conversion.
Q. What does the CW mean?
A. Converted wetland.
Q. And what does that mean for purposes of farming?
A. It didn't have the cropping history.
Q. It didn't have the cropping history. And for how many years was a cropping history required?
A. Five, I think. I couldn't -- that's usually what they sent over to us was five years of the cropping history.
Q. And that didn't have to be the same crop. Did it?
A. No. It could be corn, oats, hay; whatever.
Q. But it only had to be cropping. It couldn't be pasturing. It had to be cropping.
A. Pasturing did not qualify.

within the fifth year, that's considered continuing cropping. Isn't it?

MS. BUCKLEY: Objection.

Q. Don't you have -- I mean, what was the rule? If you cropped at least once in five years, was that the rule, or did you have to crop every single year?

A. I couldn't tell you that. I can't remember that now, to tell you the truth.

Q. Okay.

A. I know they provide us with a cropping history.

Q. Well --

A. The Farm Bill will probably tell you that, but I just can't remember what that was now, to tell you the truth.

Q. Now, when you were going around doing these evaluations, was the National Food Security manual your rule book or was the Food Security Act/Swampbuster provisions your rule book? Were there regulations you followed?

MS. BUCKLEY: Objection to form.

Q. Was it just a matter of practice because you knew it or how did that work?

A. When it first came out, we had training sessions on it. And the parts that applied to the field offices, we had to use that pretty much day in and day out.

Q. So was it the National Food -- was it the manual

that you used?

A. We had copies of the whole thing, but not all of it applied to us at the local level.

Q. You wouldn't be carrying around a loose-leaf like I've got here today.

A. No, sir.

Q. Now, when was the first -- I've noted -- I'll try to go backwards. Have you testified before in the Brace case?

A. Yes.

Q. Do you recall when you may have testified?

A. I didn't look it up. '96 or '97 or something like that. I went to Philadelphia for a deposition and then I was in Washington, D.C. for five days.

Q. How did a deposition in Philadelphia get you to Washington?

A. I don't know.

(Exhibit D-1 Steckler - Deposition of Lewis Steckler, March 18, 1992 - marked for identification.)

Q. I'd like to submit into evidence as Defendant's Exhibit D-1 Steckler, your testimony from March 18, 1992. And that was the one -- actually, it was Erie. And it's Bates numbered series CD-FRC0003752 ending in 3799.

Do you recall testifying any other time? And I'm

types of documents that you, as a district conservationist, would be preparing in connection with a request from the farmer for designation and cost-sharing?

A. Not the first one here. The second one. The first one is an ASCS paper.

Q. Is there a form number on that? Or what's it entitled?

A. Data Needed for Swampbuster Commenced and Third-Party Determinations.

Q. Right. And that one is filled out by whom?

A. ASCS, signed by Mr. Brace.

Q. Right. But it's -- and it was dated?

A. It was signed by Mr. Robert Brace on the 31st of August, 1988.

Q. Right. Okay. And that starts a process, that document, when it's submitted?

A. Yeah. That's what this next one is.

Q. Okay.

A. And then the next one is the Highly Erodible Land and the Wetlands.

Q. Right.

A. And that was -- was that the 1026? Or 26. CPA-26. Yeah. That's what I thought.

Q. The 1026 is the third document, I think.

A. And then there was maps to go with it.

Q. Right. The 1026 was -- what was the 1026, that certification? What did that mean?

A. It had the different fields on it.

Q. Well, the 1026, I mean, the certification, I'm talking about. It's -- do you have the AD-1026 up on the top left on one of these documents?

A. Yeah. Okay. That one is ASCS.

Q. Right.

A. That was for Brace and -- yeah.

Q. And this is -- can you read Line 11 on that document, on that 1026, the AD-1026.

A. The date?

Q. No. The -- okay. Right here. What does this line say here? What does that --

A. "Date received to SCS for determination."

Q. Okay. So that would be to you then. Right?

A. Yes.

Q. And then the agency representative who signed that was?

A. Joe Burawa.

Q. Was he -- okay.

A. He was their County Executive Director.

Q. So ASCS referred the request to SCS. Is that the way this works?

A. Yes. With the map.

Q. With the map?
A. Yeah. And sometimes -- most the time, too, we had the crop in history.
Q. Okay. So --
A. A paper with it that had the different fields and different crops.
Q. So the request for cost-sharing would be made by the farmer to ASCS?
A. This was not cost-sharing. None of this was cost-sharing. Don't use that word in this.
Q. Okay. That's what I -- please, correct me.
A. That other thing was cost-sharing.
Q. The tile system was cost-sharing.
A. Yes. This was independent of that.
Q. Okay. So when ASCS referred it to SCS on 9/7/88, do we then go back to the other form, which is the CPA-026 determination?
A. Uh-huh.
Q. And were you the person at that time that made these determinations?
A. Yes. That's my writing. Yes.
Q. Okay. Now, with regard to Line No. 3 in Section 2 you mentioned earlier in your testimony about prior converted wetlands.
MS. BUCKLEY: Objection.

Q. As I recall your testimony. Is that correct, sir?
A. Yeah. Line 3 -- or No. 3, PC. And then we list the fields.
Q. Right. And if we go back to the map, which has -- there's two maps there, I believe. One that has a key and the one that doesn't. A key with letters to explain the initials on the different fields.
A. Uh-huh.
Q. Now, these fields, 1, 4, 6, 8, 10 and 13, those are all PC fields that you determined.
A. One -- I see -- I see eight. Yeah. They're just hard to find.
Q. How about on the other map behind it with more notations. Is it any easier on that one?
A. Yeah. The PC is marked, roughly, for where we talked about the tiling system.
Q. Right in here?
MS. BUCKLEY: Objection.
Q. If you would go to the map on Defendant's Exhibit D-4.
A. There's PC on this area right here (indicating).
Q. Which is above Lane Road?
A. Yes. Up here.
Q. And that would be the Homestead Farm.
MS. BUCKLEY: Objection.

Q. Are you agreeing with that being referred to as the Homestead Farm above Lane Road?

A. Okay. That's fine. Yeah. They're all listed on here.

Q. And if we went down to the converted wetlands, CW, section you have two fields there. Right?

A. 14 and 15.

Q. And what is the difference between the PC and the CW again, if you could explain?

A. CW is standing for converted wetlands.

Q. Right.

A. And PC was prior converted.

Q. Right. And what did that mean as far as -- was it the conversion had started already but wasn't finished for CW? Is that what you testified earlier to?

MS. BUCKLEY: Objection.

A. It was -- you'll have to read what the CW meant. I don't know the definition.

Q. That's fine.

A. Because at the time, I had -- this was the first one we ever did.

Q. It was the first one?

A. For CW? Yes. So I called our specialist from Harrisburg.

Q. And do you recall that person's name?

A. Barry France, I think. And he helped me through it because it's the first time we ever had a CW.

Q. Really?

A. Yes.

Q. Did you have PCs before that time?

A. PCs were many. But the CW -- I can't recall the definition right now, but he helped me fill this out over the phone.

Q. Okay.

A. The other thing I should point out that at the time I never said anything, but if you look on here, this was approved at the County Committee meeting on the 14th of September.

Q. Right.

A. I never submitted this information to the County Committee until the next day.

Q. Well, that you did testify to actually.

A. Okay.

Q. You did testify to that.

A. And I called my specialist again and he said there's nothing you can do about it, let it go.

Q. Right. But my question to you, though, is this: It was submitted to you on the 7th of September, okay? And you had to probably -- may I ask you: How many times did you go and do the field visit to make those determinations

between September 7th and September 15th?

A. Probably at least once. I think I called Bob and told him I'd be coming out to do this.

Q. But there was more than one time. No?

A. Probably.

Q. So, I mean, you didn't let -- when you received this on September 7th, which the other form showed that Mr. Burawa sent it to you on --

A. Uh-huh.

Q. -- you would have acted -- would you have acted right away on it? Would you have let it sit?

A. No. We generally did those. We worked very cooperatively with ASCS. So we generally tried to -- unless sometimes when the Farm Bill was first signed, we had stacks.

Q. So you had no time to do anything per case. Right?

MS. BUCKLEY: Objection.

A. Right.

Q. You had a limited amount of time to get cases through.

MS. BUCKLEY: Objection.

A. This was somewhat later after the initial '85 Farm Bill was signed.

Q. Right. Actually, the Farm Bill was signed on

Field No. 12, the slope is 250 feet at 8 percent. Field No. 12.

Q. Okay. I don't have that on my copies, but where is that?

A. Is that it?

Q. You may have better maps than I do.

A. I even wrote it on the map.

Q. Okay.

A. That was some kind of -- you asked about the notations and sometimes we wrote it right on the map.

Q. Just like on the conservation plan with the system, the drain tile system.

MS. BUCKLEY: Objection.

Q. So my question is: Do you recall how many times you went out to the Brace farm to make that determination -- those determinations?

MS. BUCKLEY: Objection. Asked and answered.

MR. KOGAN: If it was answered, I'm not clear of the answer.

Q. I'm not sure whether --

A. Once or twice would be my answer.

Q. Okay. Would you have let a week gone by between those two dates?

MS. BUCKLEY: Objection.

A. Like I said, the CW was the first one we had.

Q. Which means you had to be really careful with that. Right?

A. Right. That's why I called the expert. I remember calling our biologist, wetlands biologist. That may have taken more time.

The other -- the reason it didn't get turned in on the 14th, the day of the County Committee meeting, was I was out of town. I was in Clarion for a meeting.

Q. Okay. So, again, going back --

A. The only reason I mentioned that is I had no input into the County Committee's decision.

Q. But does SCS, as a matter of practice, have input into the ASCS Committee meeting?

A. Yes. I attended every meeting that I could.

Q. But who makes the determination on the Committee?

A. The commenced determination is their decision.

Q. And your determination related to the commenced decision was with respect to what? What did you decide for these Fields, 14 and 15, that they could then --

A. Well, for one thing, they had the woody vegetation removed.

Q. Okay.

A. Like I said, the definition of CW, you'd have to look it up.

Q. I could read it to you from the National Food

Safety Manual, if you like. We can enter this back into evidence again.

A. It probably had -- it probably had removal of woody vegetation as one of the items.

(Exhibit D-7 - Sections from National Food Security Act - marked for identification.)

Q. Let's enter into evidence for Defendant Exhibit D-7 Excerpts from the National Food Security Act Manual, previously entered into evidence as Defendant's Exhibit D-10 Lewandowski.

A. But, in other words, it didn't have a crop in history to qualify for a PC.

Q. Right.

A. So we had to call it something else.

Q. Right. But it was in the process of becoming a PC. Right?

MS. BUCKLEY: Objection.

A. That's not for me to decide.

Q. Okay. Now, I want to point this out to you before I hand it over. If you would please look at Subpart 517 of the glossary of the National Food Safety Act Manual on the top left.

A. (Witness complies.)

(Exhibit D-8 Steckler - Excerpts from ASCS Handbook - marked for identification.)

A. Yes.
Q. Okay. But they did not go to the field with you.
A. No.
Q. They let you go to the field.
A. Plus, I was talking to our specialist because that was the first one we ever did.
Q. Okay. So my --
A. So while I was at Clarion on the 14th, they had their meeting and decided whatever they decided. And the paperwork was completed the next day and handed in.
Q. Now, did your determination support their determination?
A. That's kind of what -- when I talked to my specialist in Harrisburg, again, that's kind of what he said.
Q. I'm asked you what your determination indicated.
A. Well, they knew which field it was because they had the map. They had the map that was unmarked.
Q. Unmarked in what sense? Unmarked in -- what was unmarked?
A. All these pictures are taken from the big area photograph.
Q. Right.
A. Both offices had a great big area photograph.
Q. Right.

A. And all the farms that participate have lines outlined where the -- how many acres, and they stick the map in the photocopy machine and make copies. They would have had a blank copy.

Q. But they would have had the -- would they have had the field separated as you do in that picture?

MS. BUCKLEY: Objection.

A. They would have had the numbers. They would have had the numbers, but no ATL or no Nos or no PCs or no CWs.

Q. So are you saying that they blindly granted this determination not knowing what it pertained to?

MS. BUCKLEY: Objection.

Q. Is that you what you're saying?

MS. BUCKLEY: Objection.

A. No. I'm not saying that. I'm just saying they didn't have the information. They didn't have this piece and this piece, but they had blank ones with the field numbers on them.

Q. So --

A. Joe and I looked at it. We talked about it.

Q. Before the meeting?

A. Yeah. We talked about it. They knew what areas was going to be CW. It wasn't a surprise.

Q. Did you have extensive discussions with Joe?

MS. BUCKLEY: Objection.

A. Well, I saw him every day over coffee.
Q. Did you show him the form before you gave it to them?
MS. BUCKLEY: Objection.
A. I can't remember that. No.
Q. But you don't -- but you do remember not giving him a copy of the form.
A. Until I signed it and turned it back in the next day, yes, on the 15th.
Q. So are you testifying that you never gave him a preliminary copy --
MS. BUCKLEY: Objection.
A. Right.
Q. -- before your signature?
A. That's true.
Q. So that --
A. Most likely that's true.
Q. Most likely. Okay. But it's a long time ago.
A. That's right.
MS. BUCKLEY: Objection.
Q. And it is possible that you may not recall.
MS. BUCKLEY: Objection.
A. Like I say, he had copies of all the maps.
Q. He did. And because of extensive discussions with you --

MS. BUCKLEY: Objection.

Q. -- he was briefed before the meeting. Was he not?

MS. BUCKLEY: Objection.

MR. KOGAN: Mr. Steckler just testified that he met with Joe every day. He had coffee with him every day.

A. We likely talked about --

MS. BUCKLEY: Objection to the characterization of the witness' testimony.

A. We likely talked about it. We talked about business all the time. Like I said, there was a good working relationship between the two offices.

Q. But your fieldwork had been completed before the 14th, and you said that you were out of town on the 14th.

A. Uh-huh.

MS. BUCKLEY: Objection.

Q. Is that a yes?

A. Yes.

Q. So it was already completed. And did you see Mr. Burawa before the 15th -- before the 14th, did you see him? Do you remember? You must have seen him.

MS. BUCKLEY: Objection.

A. Yeah. Sometime.

Q. Okay. Having coffee, if not for other reasons.

A. Yes.