

**UNITED STATES
COURT OF FEDERAL CLAIMS**

ROBERT BRACE,

Plaintiff,

V.

UNITED STATES,

Defendant.

Docket No. 98-897L

Pages: 1 through 197/300

Place: Washington, D.C.

Date: January 11, 2005

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EXHIBIT

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1 MS. FLORENTINE: I know. But it's been changed to
2 Florentine.

3 The issue in this case is whether the regulatory
4 restriction imposed by the Clean Water Act on Mr. Brace's
5 property has taken his property under the Fifth Amendment.
6 Here that requires us to measure when did the impact on this
7 property occur.

8 Preliminarily and just so it's clear for the
9 record that we're not waiving that argument, we have earlier
10 and unsuccessfully argued that the statute of limitations in
11 this case, in fact, the cause of action accrued when
12 Plaintiff's use of this property was first restricted in
13 1987.

14 And we believe the evidence will show that the use
15 of the property was first restricted in 1987. That is when
16 prohibitions on its use under the Clean Water Act were first
17 applied to the property, and all that has happened in the
18 subsequent years is that those restrictions have been
19 continued and, ultimately, those portions of the property
20 that were changed were required to be restored. Some of the
21 portions of the property that were changed were required to
22 be restored.

23 Let me give the Court a little terminology because
24 I think, as Your Honor might have guessed from our
25 discussion about the Court of Appeals' decision, terminology