

Exhibit 16

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
MICHAEL FODSE

DATE: October 6, 2017

TIME: 9:02 a.m. - 1:51 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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www.asap-buckler.com

1 (Defendant Exhibit No. D-40 marked
2 for identification, attached hereto.)

3 (Whereupon, Mr. Fodse reviewed
4 Defendant Exhibit D-40 from 1:05 p.m. until
5 1:06 p.m.)

6 BY MR. KOGAN:

7 Q. Why did you believe there was a
8 need for a flyover on November -- during November
9 2013?

10 A. I was asked -- I specifically
11 believe that the Fish & Boat Commission set the
12 flyover meeting up with the state troopers and
13 asked if the Corps or the U.S. EPA wanted to
14 attend, and being that Todd Lutte is in
15 Philadelphia, I attended.

16 Q. What were you looking at
17 particularly on that flyover, if I may ask?

18 A. We were photographing potential
19 violations of the site.

20 Q. Which particular portion of the
21 site were you looking at?

22 A. All three portions.

23 Q. Does that mean the 30-acre wetland
24 area of the Murphy tract subject to the consent
25 decree south of Lane Road?

1 A. Yes.

2 Q. Does it mean that you were looking
3 at potential violations on the homestead tract
4 which is all that upland area up in the center?

5 A. I wouldn't say specifically, but
6 all of those areas were photographed through the
7 photography.

8 Q. Did you have anything in particular
9 that you were looking for?

10 Did it include the Marsh tract,
11 including those two tax parcels --

12 A. Yes.

13 Q. -- that you referenced before?

14 A. Yes.

15 Q. Would you say that one of the
16 tracts was more of a priority than the other
17 tract?

18 A. No.

19 Q. And may I ask you if you recall
20 from that flyover what -- was there anything that
21 stuck out in your mind from that flyover of
22 November 13, 2013?

23 A. There was a trench in the very
24 western portion of the consent decree area. I
25 remember that.

1 Q. Of the what? When you say "very
2 western portion" --

3 A. I'm sorry. Hold on. I'm referring
4 to sometimes as the western portion of the U, but
5 it's actually the eastern portion of the consent
6 decree, the southeastern portion.

7 Q. So we're talking about near
8 Greenlee Road near the boundary, the eastern
9 boundary of the Murphy tract?

10 A. Greenlee Road would be the closest
11 physical structure to that area.

12 Q. I just walked it yesterday. That's
13 why I was wondering. What --

14 A. It was really -- yeah, I mean you'd
15 have to consider it the southwestern portion.

16 Q. Southeastern portion?

17 A. I'm sorry. I'm sorry, southeastern
18 portion.

19 Q. What did you observe there?

20 A. A ditch.

21 Q. In the red hatch mark?

22 A. Yes.

23 Q. I know there's a small area -- is
24 there a small area there that's not part of the
25 wetland, the upland area?