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## Erie County farmer's case headed for mediation

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A Waterford area farmer's legal battle with the U.S. government continues.

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Waterford-area farmer Robert Brace, the Environmental Protection Agency and the U.S. Department of Justice will sit down soon in hopes of resolving a decades-old dispute.

But 30 years after Brace first clashed with the U.S. Fish and Wildlife Service about his right to repair drainage pipes on his farmland, the battle between the grain farmer and the U.S. government continues to crackle with a recent exchange of strongly worded legal arguments.

That battle gave the appearance of being over in 1996 when Brace signed a consent decree with the government in which he agreed to pay \$10,000 and to remove drainage lines that made some of his acreage suitable for planting.

Brace, now recognized as a national figure in the property-rights movement, has continued to argue the case in court over the years, piling up legal bills that he says have topped \$1 million.

Earlier this year, the Department of Justice filed a motion in federal court in Erie to enforce the consent decree — claiming that Brace is again farming that land — and to levy millions of dollars in penalties against Brace and his company, Robert Brace and Sons Inc.

Lawrence Kogan, a New York City lawyer who now represents Brace, said his client will meet with the government and a court-mandated mediator within the next several weeks.

Kogan, who has worked extensively with western farmers, particularly on water-rights issues, said he's hopeful that a changing political climate and new leadership at the EPA could lead to a settlement.

"I am looking forward to the open-mindedness of the EPA and DOJ under new leadership," Kogan said.

There is little suggest, however, that the parties are kindly disposed to one another.

A response to the government's complaint against Brace, filed by Kogan and Erie lawyer Neil Devlin, says in part: "This case involves the United States' incessant efforts to make Brace a national example for political, policy and media purposes by imposing and enforcing unreasonable, improper ... restrictions."

Brace's lawyers continued: "Now, the government in a demonstration of its arrogance and cognizance, has measurably increased its aggression by filing this enforcement action ... with no fewer than 11 days remaining prior to the inauguration of the 45th President of the United States of America."

In a summary of the case, filed on his firm's website, Kogan said the government filed its case "for apparent political reasons."

Government lawyers returned that same tone in a reply filed Tuesday that characterizes Brace's response as "though chock full of hyperbolic, incendiary and sophomoric rhetoric, ultimately provides nothing more than irrelevant and baseless arguments."

The Department of Justice also addressed Brace's claims that the consent decree was flawed and ambiguous, saying: "Defendants can point to no ambiguity in the decree that would sanction their drilling and filling the very wetlands that are the subject of this litigation ..."

Brace, who has been vocal about his case over the years, referred questions to his lawyers, saying only that "It's been a hard fight. We have been working 24/7 for a month."

Despite the tough talk by the two parties, Kogan said Brace has an open mind.

"My client is entering into this with the hope that the Department of Justice will take a reasonable approach to resolve the matter so it's no longer belaboring the courts," he said.

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