

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 90-229 (Erie)
)	
ROBERT BRACE,)	
ROBERT BRACE FARMS, Inc.,)	
)	
Defendants.)	
)	

**UNITED STATES’ RESPONSE TO DEFENDANTS’ SECOND
SET OF REQUESTS FOR PRODUCTION**

Plaintiff the United States hereby responds to Defendants’ Second Set of Requests for Production.

GENERAL OBJECTIONS

1. The United States objects to each of the Requests for Production to the extent that they are vague, ambiguous, overly broad, cumulative, duplicative, or unduly burdensome.
2. The United States objects to the definition of “You” and “United States of America” on the grounds that it is overly broad and unduly burdensome and purports to include “all agents, employees, attorneys, accountants, and/or representative of the United States of America and any other person acting for or on behalf of the United States of America” when the current proceedings are limited, at most, to the actions of certain federal agencies related to the Consent Decree entered in this case. As Defendants have largely failed to limit their requests to specific federal agencies or employees, in responding to these Requests for Production, the United States has, as a matter of proportionality and relevance, interpreted “You” and “United

States of America” to be limited to the activities of the following United States agencies:
Environmental Protection Agency, Region 3; Army Corps of Engineers, Pittsburgh District;
Department of Agriculture – Natural Resources Conservation Service (and its predecessor)
Waterford, Pennsylvania Office; Department of Agriculture – Natural Resources Conservation
Service (and its predecessor), Pennsylvania State Office; Department of Agriculture – Farm
Service Agency (and its predecessor), Waterford, Pennsylvania Office; Department of
Agriculture – Farm Service Agency (and its predecessor), Pennsylvania State Office
Department
of Agriculture – Forest Service, Region 9; Department of the Interior – Fish and Wildlife
Service, Migratory Bird Program; and Department of the Interior – Fish and Wildlife Service,
Region 5.

3. The United States objects to each of the Requests for Production to the extent they call for disclosure of any information protected by the attorney-client privilege, work product doctrine, deliberative process privilege, common interest privilege, or any other applicable privilege, doctrine, rule, or protection

4. The United States objects to each of the Requests for Production to the extent that they seek information that is neither relevant to any claim or defense nor proportional to the needs of the case.

5. The United States objects to each of the Requests for Production to the extent that they seek information and/or documents that are already or equally available to Defendants.

6. The United States objects to each of the Requests for Production to the extent that they call for premature production of expert witness-related materials that are not yet due to be disclosed.

7. The United States’ Responses are based on currently available information. The

United States reserves the right to amend or supplement the Responses if different or additional information is subsequently discovered during the course of this litigation, or if the relevance, significance or applicability of information currently known is subsequently ascertained.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents related to, and including, the U.S. Department of Agriculture Soil Conservation Service document entitled, *Food Security Act Progress Report - Oct. 1989*.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.¹ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.²

2. All documents related to, and including, the Letter from Jay D. Hair, President of National Wildlife Federation, to Clayton Yeutter, Secretary of Agriculture (Oct. 13, 1989)

¹ Instead of seeking discovery of information specific to this civil action, this Request seeks limitless, sweeping discovery related to broad, far-reaching legislative and/or policy initiatives enacted by the United States government via innumerable, unidentified employees thereof.

² Upon consulting with the appropriate federal agencies, the undersigned was informed that the agencies do not typically maintain records dating back this far. The agencies represent that, to the extent that responsive documents may exist at the Federal Records Center (if they have not been destroyed pursuant to record retention policies and regulations), they could not be located through electronic means—their existence could only be determined via an extraordinarily lengthy and labor and resource-intensive physical search, the duration of which cannot be determined with any certainty due to the significant breadth of this Request. Even interpreting this Request narrowly, the best estimate the agencies can offer is that the search would likely take several months, at an absolute minimum, to complete.

criticizing Mr. Yeutter's claim that more than \$1 million had been withheld from more than 400 agricultural producers.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.³ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.⁴

3. All documents related to, and including, the comments made by former USDA Agricultural Stabilization and Conservation Service ("USDA-ASCS") Administrator, Keith Bjerke on or around December 6, 1989, countering the criticisms made by environmental and waterfowl conservation organizations (as noted below in RFP 15) and by certain legal commentators against local ASCS County Committees as being "institutionally biased" and "personally biased" against enforcement of the "Swampbuster" provisions of the Food Security Act of 1985 ("This American system of ours says that, No. 1, you are innocent until proven guilty. No. 2, you should be tried by a jury of your peers, not outside agitators. What is going on is best judged by local folks rather than outsiders"), as the Washington Post reported on December 6, 1989 in an article authored by Brisbane entitled, *A Farm Belt Fight Over Protected 'Potholes'*, and as discussed extensively, along with the unjustified application of the Swampbuster's "commenced determinations" exemption, in the 1991 Indiana Law Review article entitled, *Swampbuster: A Report from the Front*, 24 Ind. L. Rev. 1507, 1509-1516 (1991).

³ See supra note 1.

⁴ See supra note 2.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.⁵ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.⁶

4. All documents related to, and including, the U.S. Department of Agriculture report entitled, *Federal Assistance Award Data System, CCC Federal Assistance FY 1982-1989: Summary By State (1989)*.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.⁷ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.⁸

5. All documents related to, and including, the U.S. Department of Agriculture report entitled, *Environmental Assessment for the Wetland Conservation Provisions of the Food Security Act of 1985 (1986)*.

⁵ See supra note 1.

⁶ See supra note 2.

⁷ See supra note 1.

⁸ See supra note 2.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.⁹ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.¹⁰

6. All documents related to, and including, the U.S. Department of Agriculture Soil Conservation Service report entitled, *Interpretations of Wetland Data from the 1987 National Resource Inventory (Aug. 1990)*.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.¹¹ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.¹²

7. All documents related to, and including, the full U.S. Department of Agriculture Natural Resources Conservation Service Conservation Effects Assessment Project ("CEAP") synthesis report entitled, *Conservation of Wetlands in Agricultural Landscapes of the United States (April 2011)*, published by Wiley in the supplement to Vol. 21 of the Journal, *Ecological*

⁹ See supra note 1.

¹⁰ See supra note 2.

¹¹ See supra note 1.

¹² See supra note 2.

Applications, especially the portion of the report focused on the Appalachian Highlands Region which includes Erie County in northwestern Pennsylvania.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto. The United States further objects to this Request, which lacks any reasonable subject matter or custodial limitation, as unduly burdensome, overly broad, and disproportional to the needs to the case. Subject to and without waiving the foregoing objection, the United States notes that *Conservation of Wetlands in Agricultural Landscapes of the United States (April 2011)* may be accessed at <http://onlinelibrary.wiley.com/doi/10.1890/1051-0761-21.sp1.ii/epdf>¹³ and a September 2006 report entitled *Wetlands in Agricultural Landscapes*, which includes a section on the Appalachian Highlands Region, may be accessed at <https://www.nal.usda.gov/sites/default/files/resources/ceap05complete.pdf>.

8. All documents related to the preparation of the USDA-NRCS Conservation Effects Assessment Project (CEAP)-Wetlands Science Note entitled, *Role of Prior Converted Croplands on Nitrate Processing in Mid-Atlantic Agricultural Landscapes (Sept. 2017)*, explaining how prior converted croplands can substantially reduce nitrate export from agricultural watersheds, including all articles and reports referenced therein.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense

¹³ Additionally, a summary of this report may be accessed at https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1041601.pdf.

thereto.¹⁴ The United States further objects to this Request as vague (e.g. “preparation” is undefined). The United States further objects to this Request, which lacks any reasonable subject matter or custodial limitation, as unduly burdensome, overly broad, and disproportional to the needs to the case. Subject to and without waiving the foregoing objections, the United States will produce non-privileged documents responsive to this Request and notes that *Role of Prior Converted Croplands on Nitrate Processing in Mid-Atlantic Agricultural Landscapes* (Sept. 2017) may be accessed at https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcseprd1353132.pdf.

9. All documents related to, and including, the U.S. Department of Interior Fish and Wildlife Service document entitled, *Wetlands of the United States: Current Status and Recent Trends* (1984).

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States’ claim that Defendants violated the 1996 Consent Decree and any defense thereto.¹⁵ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.¹⁶ Subject to and

¹⁴ The Third Circuit has already concluded that the land at issue received a “commenced conversion,” and not a “prior converted cropland,” determination in 1988, *United States v. Brace*, 41 F.3d 117, 121, 127 (3d Cir. 1994), and Defendants have cited no evidence that they ever received a “prior converted cropland” determination from USDA. Additionally, Defendants have not proffered any explanation as to why information about a publicly-available report issued within the last year, much of which would likely be insulated from discovery under the deliberative process privilege, is remotely relevant to USDA actions taken approximately 30 years ago.

¹⁵ See supra note 1.

¹⁶ See supra note 2.

without waiving the foregoing objections, the United States notes that *Wetlands of the United States: Current Status and Recent Trends (1984)* may be accessed at dx.doi.org/10.3996/092015-JFWM-085.S7.

10. All documents related to, and including, the U.S. Department of Interior Fish and Wildlife Service/Canadian Wildlife Service report entitled, *Waterfowl for the Future: The North American Waterfowl Management Plan (1987)*.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.¹⁷ The United States further objects to this Request, which lacks any reasonable subject matter or temporal limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.¹⁸ Subject to and without waiving the foregoing objections, the United States notes that *Waterfowl for the Future: The North American Waterfowl Management Plan (1987)* may be accessed at <https://www.fws.gov/migratorybirds/pdf/management/NAWMP/OriginalNAWMP.pdf>.

11. All documents related to, and including, the Memorandum from Mike Hein, Chairman of the Wetland Conservation Analysis Team, to John B. Campbell, Deputy Under Secretary of the Department of Agriculture (Nov. 28, 1989), discussing wetland protection and restoration recommendations for the Conservation Title of the 1990 Farm Bill.

¹⁷ See supra note 1.

¹⁸ See supra note 2.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.¹⁹ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.²⁰

12. All documents related to, and including, the Agricultural Stabilization and Conservation Service report entitled, *Sod/Swamp Cumulative Data Report for April and March (1989)*.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.²¹ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.²²

13. All documents related to, and including, the report entitled *Aerial Photographic Analysis of Wetland Conversion Related to the Food Security Act (1990)* prepared by Williams, Miah and Finkbeiner for the United States Environmental Protection Agency ("US-EPA").

¹⁹ See supra note 1.

²⁰ See supra note 2.

²¹ See supra note 1.

²² See supra note 2.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.²³ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.²⁴

14. All documents and photographs, videos, surveys, aerial maps, topographic maps related to, and including, all U.S. Department of Agriculture Soil Conservation Service ("USDA-SCS") field logs, reports, notes, summaries, forms, etc. prepared by Lewis Steckler, formerly of the USDA-SCS office servicing Waterford and McKean Townships in Erie County, Pennsylvania with respect to the properties owned by Robert Brace (tax parcel no.s) within such townships and county, in connection with the Mr. Steckler's determination of the "highly erodible land" and "commenced conversion" status of such properties during 1985-1990.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto. The United States further objects to this Request as vague (e.g. "field logs," "reports," "notes," "summaries," and "forms" are undefined and Defendants failed to provide specific tax parcel numbers). The United States further objects to this Request, which seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the

²³ See supra note 1.

²⁴ See supra note 2.

needs to the case.²⁵ Subject to and without waiving the foregoing objections, the United States represents that all relevant, non-privileged documents responsive to this Request have already been produced.

15. All documents related to and/or revealing the 1987-present membership in nonprofit environmental and waterfowl conservation organizations, including, but not limited to, Ducks Unlimited, Inc., the National Fish and Wildlife Foundation, the National Wildlife Federation, the Nature Conservancy, the Conservation Fund, Pheasants Forever, Quail Unlimited, NatureServe, The Wildlife Society, Trout Unlimited, and the Wildlife Management Institute, of: a) Erie County and Warren County, Pennsylvania employees of the U.S. Department of Agriculture Soil Conservation Service (“USDA-SCS”) and the USDA Natural Resources Conservation Service (“USDA-NRCS”) (including current and former officials, such as Messieurs Lewis Steckler, Barry Issacs, and Barry Frantz); b) State College, Pennsylvania employees of the U.S. Department of Interior’s Fish and Wildlife Service (“DOI-FWS”) (including current and former officials, such as Messieurs David Putnam, Edward Perry and Charles Kulp); c) Pittsburgh, Pennsylvania employees of the U.S. Army Corps of Engineers Pittsburgh District Office (including current officials, such as Michael Fodse, Scott Hans, Nancy Mullen and Dana Adipietro); and d) Philadelphia, Pennsylvania employees of the U.S. Environmental Protection Agency Region III Office (including current officials and employees including, but not limited to, Jeffrey Lapp, Peter Stokely, Katlyn Almeter, Todd Lutte and Pamela Lazos).

²⁵ See supra note 2.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto. The United States further objects to this Request as vague (e.g. "nonprofit environmental . . . organizations" and "nonprofit . . . waterfowl conservation organizations" are undefined). The United States further objects to this Request, which lacks any reasonable subject matter or temporal limitation and seeks documents spanning approximately 30 years, as unduly burdensome, overly broad, and disproportional to the needs to the case.²⁶ Subject to and without waiving the foregoing objections, the United States represents that the relevant agencies do not possess any documents responsive to this request.

16. All documents related to and/or revealing the implementation nationally, within the Great Lakes Region, and/or within Erie and Warren Counties, Pennsylvania, of the USDA-SCS (USDA-NRCS) "Wetland Reserve Program" which, since its inception in 1992, is known to have enrolled 1,074,245 acres of converted and degraded wetland into the program, including information about the involvement of Ducks Unlimited, Inc., The Nature Conservancy and other nonprofit environmental and waterfowl conservation organizations.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.²⁷ The United States further objects to this Request as vague (e.g. "implementation" is

²⁶ See supra note 2.

²⁷ See supra note 1.

undefined). The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents spanning approximately 30 years, as unduly burdensome, overly broad, and disproportional to the needs to the case.²⁸

17. All documents related to and/or revealing the implementation nationally, within the Great Lakes Region, and/or within Erie and Warren Counties, Pennsylvania, of the USDO-I-FWS “Partners for Fish and Wildlife Program” which, between its inception in 1987 and the enactment into law of the Partners for Fish and Wildlife Act of 2006 (P.L. 109-294 (Oct. 3, 2006) (120 Stat. 1351), is known to have resulted in 33,103 agreements with private landowners to restore 677,000 acres of wetlands.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States’ claim that Defendants violated the 1996 Consent Decree and any defense thereto.²⁹ The United States further objects to this Request as vague (e.g. “implementation” is undefined). The United States further objects to this Request, which lacks any reasonable subject matter, temporal, custodial limitation and seeks documents spanning approximately 30 years, as unduly burdensome, overly broad, and disproportional to the needs to the case.³⁰

18. All documents related to and/or revealing the implementation nationally, within the Great Lakes Region, and/or within Erie and Warren Counties, Pennsylvania, of the USDA Farm Service Agency and USDA Commodity Credit Corporation “Conservation Reserve Program” which, since 1985, is known to have provided agricultural landowners with annual

²⁸ See supra note 2.

²⁹ See supra note 1.

³⁰ See supra note 2.

rental payments and cost-share assistance to establish long-term, approved resource conservation plans and practices.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.³¹ The United States further objects to this Request as vague (e.g. "implementation" is undefined). The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents spanning approximately 30 years, as unduly burdensome, overly broad, and disproportional to the needs to the case.³²

19. All documents related to and/or revealing the implementation of the Great Lakes Fish and Wildlife Restoration Act of 1990 (P.L. 101-646 (Nov. 29, 1990)), as amended, inter alia for purposes of studying and taking actions to protect, maintain and restore fish and wildlife habitat, including the enhancement and creation of wetlands that result in a net gain in the amount of those habitats, vis-a-vis the establishment of the Great Lakes Coordination Office and the Lower Great Lakes Fishery Resources Office and the Great Lakes Fish and Wildlife Restoration Act Grants Program pursuant to which grants have been made to non-Federal partner organizations, including Ducks Unlimited, Inc. and other environmental and waterfowl conservation organizations (as noted above in RFP 15) and/or to the Pennsylvania Fish and Boat Commission and Pennsylvania Game Commission, and Pennsylvania Department of Environmental Protection, and/or to the Erie County Soil and Water Conservation District and

³¹ See supra note 1.

³² See supra note 2.

Warren County Conservation District, as facilitated by steadily increasing congressional appropriations.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.³³ The United States further objects to this Request as vague (e.g. "implementation" and "enhancement" are undefined). The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.³⁴

20. All documents, including those involving the issuance of grants, from 2010 to the present, related to and/or revealing the implementation of the "Great Lakes Restoration Initiative" ("GLRI") Action Plans, as authorized by the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2010 (P.L. 111-88 (Oct. 30, 2009)), and annually reported to Congress and the President consistent therewith, which GLRI Action Plans are coordinated through an Interagency Task Force and Regional Working Group led by the U.S. Environmental Protection Agency consistent with the "Great Lakes Regional Collaboration Strategy to Restore and Protect the Great Lakes" (Exec. Summ. pp. 4, 23-28, 42-46, 59-62 – e.g., "By 2010, restore, recover, and protect a net increase of 550,000 acres of wetlands within Great Lakes Basin"; By 2015, restore, recover and protect a net increase of 1,000,000 acres (450,000 additional) of wetlands within the Great Lakes Basin"; and seeking to promote bottom-up local

³³ See supra note 1.

³⁴ See supra note 2.

sustainable development focused practices in the Great Lakes Basin and to reduce amount of productive farmland) and Appendix X – Sustainable Development Strategy Team (pp. 5-6, showing a continuing trend in farmland losses – “Farmland loss in the U.S. portion of the Great Lakes basin between 1982 and 1997 was more than 4,000,000 acres, representing nearly 49% of the total farmland loss for the eight Great Lakes states during this period;” “The Census of Agriculture shows the trend of loss of farmland continuing between 1997 and 2002 in the Great Lakes basin States of Indiana, Michigan, Minnesota, Ohio and Wisconsin.”) and its accompanying “Strategy Implementation Framework,” both initiated and adopted in 2004, and the financial resources of which began with \$475 million of congressional funding in 2010, a substantial portion of which was to be provided for restoration activities conducted by non-Federal partners including via grants to Ducks Unlimited, Inc. and other environmental and waterfowl conservation organizations (noted above in RFP 15), and/or the Pennsylvania Fish and Boat Commission, Pennsylvania Game Commission, and Pennsylvania Department of Environmental Protection, and/or the Erie County Soil and Water Conservation District and Warren County Conservation District, to accomplish restoration objectives where appropriate, including within the Lake Erie watershed, are since known to have supplemented federal agency base budgets, doubled the acreage enrolled in agricultural conservation programs in watersheds where phosphorus runoff contributes to algae blooms, including in western Lake Erie, and to have restored and enhanced 17,500 acres of Great Lakes coastal wetlands through FY 2016.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States’ claim that Defendants violated the 1996 Consent Decree and any defense

thereto.³⁵ The United States further objects to this Request as vague (e.g. “implementation”, “Lake Erie watershed”, and “western Lake Erie” are undefined). The United States further objects to this Request, which lacks any reasonable subject matter or custodial limitation, as unduly burdensome, overly broad, and disproportional to the needs to the case.

21. All documents related to the implementation by the USDA-SCS (USDA-NRCS) and DOI-FWS, nationally, within the Great Lakes Region, and/or within Erie and Warren Counties, Pennsylvania, of the North American Waterfowl Management Plan first executed by the DOI-FWS and Environment Canada in May 1986, and as amended.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States’ claim that Defendants violated the 1996 Consent Decree and any defense thereto.³⁶ The United States further objects to this Request as vague (e.g. “implementation” is undefined). The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 30 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.³⁷ Subject to and without waiving the foregoing objections, the United States represents that the North American Waterfowl Management Plan may be accessed at <https://www.fws.gov/migratorybirds/pdf/management/NAWMP/OriginalNAWMP.pdf>.

22. All documents related to the implementation, from enactment to the present, by the USDA-SCS (USDA-NRCS) and DOI-FWS, nationally, within the Great Lakes Region,

³⁵ See supra note 1.

³⁶ See supra note 1.

³⁷ See supra note 2.

and/or within Erie and Warren Counties, Pennsylvania, of the North American Wetlands Conservation Act (P.L. 101–233, Approved Dec. 13, 1989, 103 Stat. 1968), as amended, including the names, titles and locations of all DOI-FWS and Ducks Unlimited, Inc. employees serving three-year terms as members of the North American Wetlands Conservation Council, from the time it was established until the present, and including all meeting minutes from period spanning from enactment to the present as well as all determinations the Council made during said period concerning wetlands conservation projects nationally and in Erie and Warren Counties, Pennsylvania.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States’ claim that Defendants violated the 1996 Consent Decree and any defense thereto.³⁸ The United States further objects to this Request as vague (e.g. “implementation” is undefined). The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents spanning approximately 30 years, as unduly burdensome, overly broad, and disproportional to the needs to the case.³⁹ Subject to and without waiving the foregoing objections, the United States will produce non-privileged documents responsive to this Request and notes that meeting minutes from March 2006 to July 2013 may be retrieved and the identity of the members of the North American Wetlands Conservation Council ascertained by visiting <https://www.fws.gov/birds/grants/north-american-wetland-conservation-act/north-american-wetland-conservation-council.php>.

³⁸ See supra note 1.

³⁹ See supra note 2.

23. All documents related to the implementation, from execution to the present, by the USDA-SCS (USDA-NRCS) and DOI-FWS, nationally, within the Great Lakes Region, and/or within Erie and Warren Counties, Pennsylvania, of the Tripartite Agreement signed in March 1988, by the Director General for Ecological Conservation of Natural Resources of Mexico, the Director of the Canadian Wildlife Service, and the Director of the United States Fish and Wildlife Service, including a copy of said agreement.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.⁴⁰ The United States further objects to this Request as vague (e.g. "implementation" is undefined). The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents spanning approximately 30 years, as unduly burdensome, overly broad, and disproportional to the needs to the case.⁴¹ Subject to and without waiving the foregoing objections, the United States will produce non-privileged documents responsive to this Request.

24. All documents related to the execution and implementation of memorandums of understanding ("MOUs") reached between the United States and Ducks Unlimited, Inc., during the period spanning 1984 to the present, including, but not limited to, (a copy of) each of the following: a) Memorandum of Understanding Between the U.S. Department of Agriculture Forest Service/U.S. Department of Interior Fish and Wildlife Service/U.S. Department of Interior Bureau of Land Management and Ducks Unlimited, Inc. (84-SMU-004) (March 14, 1984); b)

⁴⁰ See supra note 1.

⁴¹ See supra note 2.

Memorandum of Understanding Between the USDA Forest Service and Ducks Unlimited, Inc. (99-SMU-028) (Dec. 14, 1998); c) Memorandum of Understanding Between U.S. Department of Agriculture Farm Service Agency and Ducks Unlimited, Inc. (Sept. 17, 2005); d) Service-Wide Memorandum of Understanding Between Ducks Unlimited, Inc. and United States Department of Agriculture Forest Service (Sept. 29, 2009).

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.⁴² The United States further objects to this Request as vague (e.g. "implementation" is undefined). The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents spanning approximately 30 years, as unduly burdensome, overly broad, and disproportional to the needs to the case.⁴³ Subject to and without waiving the forgoing objections, the United States will produce non-privileged documents responsive to this Request.

25. All documents related to, and including, the grants issued to Ducks Unlimited, Inc. and other environmental and waterfowl conservation organizations (noted above in RFP 15), and/or to the Pennsylvania Fish and Boat Commission, the Pennsylvania Game Commission and the Pennsylvania Department of Environmental Protection, and/or to the Erie County Soil and Water Conservation District and Warren County Conservation District, by the United States Department of Agriculture Soil Conservation Service (Natural Resources Conservation Service) and the United States Department of Interior Fish and Wildlife Service under the grant funding

⁴² See supra note 1.

⁴³ See supra note 2.

mechanisms established by the North American Wetlands Conservation Act of 1989, as amended, for assisting in the implementation of the North American Waterfowl Management Plan and the Tripartite Agreement on wetlands between Canada, the United States and Mexico, by developing partnerships to carry out wetlands conservation projects that protect against and/or limit nationally, within the Great Lakes Region, and/or within Erie and Warrant Counties, Pennsylvania, the conversion of wetlands into croplands.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto.⁴⁴ The United States further objects to this Request as vague (e.g. "implementation", "environmental . . . organizations", and "waterfowl conservation organizations" are undefined). The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents spanning approximately 30 years, as unduly burdensome, overly broad, and disproportional to the needs to the case.⁴⁵

26. All documents, including correspondences, agency memoranda and policy statements, memorandums of understanding, etc., related to the USDA Natural Resources Conservation Service's use of personnel from Ducks Unlimited, Inc. and other environmental and waterfowl conservation groups as NRCS field compliance staff and/or biologists, as U.S. Congressman Kevin Cramer (R-N.D.) had documented in a March 31, 2015 letter he sent to Chief Jason Weller, Office of the Chief, of the USDA-NRCS, about which U.S. Senator John Hoeven (R-N.D.) had previously questioned former U.S. Department of Agriculture Secretary

⁴⁴ See supra note 1.

⁴⁵ See supra note 2.

Tom Vilsack during Hearings of the Senate Committee on Agriculture, Nutrition and Forestry convened on February 24, 2015 (S. HRG. 114–145, p. 45) (“Then a follow-up to that is one of the things that NRCS is doing is they are using some of the wildlife groups like Ducks Unlimited. I have an avid sportsman, and I love to hunt and fish, but I am also a big advocate for farmers, as are you, and [T]here is concern on the part of our farmers that creates a potential conflict of interest or problem when NRCS is using a group like DU on this wetlands compliance issue. So can you address that for me? Because this is a concern that I have been hearing from my farm groups from about—in my state and others?”), which the publication, Environment & Energy (E&E) Daily had reported on March 12, 2015), and about which the North Dakota Grain Growers Association had previously complained in a press release issued on September 23, 2014 (“The North Dakota Grain Growers Association [...] strongly disapproves of the United States Government, through the Nat[ural] Resources Conservation Service, using Ducks Unlimited personnel as foot soldiers for its work due to their bias toward their own agenda, oftentimes at the hands of the North Dakota farmers that helped build this great state into the economic powerhouse it is today.”).

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States’ claim that Defendants violated the 1996 Consent Decree and any defense thereto.⁴⁶ The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation, as unduly burdensome, overly broad, and disproportional to the needs to the case. Subject to and without waiving the foregoing objections, the United States represents that the relevant agencies do not possess any documents

⁴⁶ See supra note 1.

responsive to this request. Although the USDA utilizes the technical expertise of non-governmental organizations for a variety of conservation purposes, including wetlands restoration, enhancement, and/or creation, only USDA employees engage in compliance review. In addition, to the extent this is a blanket request for records related to USDA's contracting with non-governmental vendors for conservation activities, such as the design of wetland habitats (as just one example), such a request is not only irrelevant to this civil action, but also unduly burdensome, grossly overbroad, and disproportional to the needs of the case as it would require USDA to undertake a herculean effort to search every file that may contain information related to its contractors.

27. All documents, including correspondences, agency memoranda and policy statements, memorandums of understanding, etc., related to the implementation by the United States, within the Great Lakes Region, and within Erie and Warren Counties, Pennsylvania, and in cooperation with the Commonwealth of Pennsylvania, and subject to advice provided by the U.S.-Canada International Joint Commission established by the "U.S.-Canada Boundary Waters Treaty of 1909," of Articles 2.4, 3.1, 4.1-4.2, 7.1-7.2, and Science Annex 10, of the "Canada-U.S. Great Lakes Water Quality Protocol of 2012" (superseding the Great Lakes Water Quality Agreement of 1978), consistent with pp. 20-26 (re the use of a "precautionary inference") of the June 1994 Report of the International Joint Commission entitled, *Applying Weight of Evidence: Issues and Practice, A Report on a Workshop held October 24, 1993*.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense

thereto.⁴⁷ The United States further objects to this Request as vague (e.g. “implementation and “Great Lakes Region” are undefined). The United States further objects to this Request, which lacks any reasonable subject matter, temporal, or custodial limitation and seeks documents approximately 25 years old, as unduly burdensome, overly broad, and disproportional to the needs to the case.⁴⁸ Subject to and without waiving the foregoing objection, the United States notes that the relevant agencies do not possess any documents responsive to this request, however *Applying Weight of Evidence: Issues and Practice, A Report on a Workshop held October 24, 1993* may be accessed at <https://scholar.uwindsor.ca/cgi/viewcontent.cgi?article=1488&context=ijcarchive>.

28. All documents, including correspondences, agency memoranda and policy statements, memorandums of understanding, etc., related to the implementation by the United States, within the Great Lakes Region, and within Erie and Warren Counties, Pennsylvania, and in cooperation with the Commonwealth of Pennsylvania, of Sections 1 and 2 (re precautionary action and sustainable development) of the Preamble and Chapter 1, Articles 100.a and 110.h of the International Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of December 13, 2005, which reaffirms the Findings and Principles of the Great Lakes Charter – Principles for Management of Great Lakes Water Resources of February 11, 1985, especially Directives 1, 3 and 6 of the Great Lakes Charter Annex of June 18, 2001.

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States’ claim that Defendants violated the 1996 Consent Decree and any defense

⁴⁷ See supra note 1.

⁴⁸ See supra note 2.

thereto. The United States further objects to this Request as vague (e.g. “implementation” is undefined). The United States further objects to this Request, which lacks any reasonable subject matter or custodial limitation, as unduly burdensome, overly broad, and disproportional to the needs to the case. Subject to and without waiving the foregoing objections, the United States represents that the relevant agencies do not possess any documents responsive to this request, however the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of December 13, 2005 may be accessed at http://www.glsregionalbody.org/Docs/Agreements/Great_Lakes-St_Lawrence_River_Basin_Sustainable_Water_Resources_Agreement.pdf.

29. All documents, including correspondences, agency memoranda and policy statements, memorandums of understanding, etc., related to the implementation by the United States, within the Great Lakes Region, and within Erie and Warren Counties, Pennsylvania, and in cooperation with the Commonwealth of Pennsylvania, of Article 1, Sections 1.2, 1.3.2.a, 3.4.1, 4.2.2 and 4.5, and Article 4, Sections 4.15.1.b-c, of the St. Lawrence River Basin Water Resources Compact approved by the U.S. Senate on October 3, 2008, partially in reliance upon the February 22, 2000, U.S.-Canada International Joint Commission report entitled, *Protection of the Great Lakes: Final Report to the Governments of Canada and the United States* (pp. 5, 29, 42, 46 and 50 concerning the Compact’s adoption of key principles of international environmental law such as Europe’s precautionary principle), as reported by legal commentators in the 2008 Wayne Law Review article entitled, *The International Joint Commission and Great Lakes Diversions: Indirectly Extending the Reach of the Boundary Waters Treaty* (54 Wayne L. Rev. 1661, 1677, 1685 (2008)).

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto. The United States further objects to this Request as vague (e.g. "implementation" is undefined). The United States further objects to this Request, which lacks any reasonable subject matter or custodial limitation, as unduly burdensome, overly broad, and disproportional to the needs to the case. Subject to and without waiving the foregoing objections, the United States represents that the relevant agencies do not possess any documents responsive to this request, however the St. Lawrence River Basin Water Resources Compact may be accessed at http://www.glsregionalbody.org/Docs/Agreements/Great_Lakes-St_Lawrence_River_Basin_Water_Resources_Compact.pdf.

30. All documents, including correspondences, agency memoranda and policy statements, memorandums of understanding, etc., related to the implementation by the United States, within the Great Lakes Region, and within Erie and Warren Counties, Pennsylvania, and in cooperation with the Commonwealth of Pennsylvania, of Section III (pp. 14-16, i.e., "in accordance with applicable international law" and "guided by a precautionary approach as reflected in the Rio Declaration of 1992"), Sections IV.1.b-c (i.e., re application of the 'polluters-pay principle'), Section IV.2 (i.e., "using ecosystem-based management and adaptive management") and Section IV.7 (i.e., "The United States should cooperate and provide leadership internationally in the protection, management, and sustainable use of the worlds' oceans, coastal regions and Great Lakes in keeping with the applicable conventions and agreements, and with customary international law, as reflected in the Law of the Sea Convention"), of the July 19, 2010 White House Council on Environmental Quality *Final*

Recommendations of Interagency Ocean Policy Task Force, as adopted by Presidential Executive Order 13547 – Stewardship of the Ocean, Our Coasts and the Great Lakes (July 19, 2010).

RESPONSE:

The United States objects to this Request as seeking information that is wholly irrelevant to the United States' claim that Defendants violated the 1996 Consent Decree and any defense thereto. The United States further objects to this Request as vague (e.g. "implementation" and "Great Lakes Region" are undefined). The United States further objects to this Request, which lacks any reasonable subject matter or custodial limitation, as unduly burdensome, overly broad, and disproportional to the needs to the case. Subject to and without waiving the foregoing objections, the United States notes that the agencies do not possess any documents responsive to this request, however the *Final Recommendations of Interagency Ocean Policy Task Force* may be accessed at https://www.nsf.gov/geo/opp/opp_advisory/briefings/nov2010/optf_finalrecs.pdf.

Respectfully submitted,

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DATED this 30th day of January, 2018.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on January 30, 2018, I sent a true and correct copy of the foregoing United States' Responses to Defendants Second Set of Requests for Production to counsel for Defendants via First Class mail and E-mail at the following address.

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