

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

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4 UNITED STATES OF AMERICA, )  
5 Plaintiff, )  
6 vs. )No.  
7 ROBERT BRACE, ROBERT BRACE )1:17-cv-00006-BR  
8 FARMS, INC., et al., )  
9 Defendants. )

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Deposition of RONALD BRACE  
Thursday, January 11, 2018

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14 The deposition of RONALD BRACE, called as a  
15 witness by the plaintiff, pursuant to notice and the  
16 Federal Rules of Civil Procedure pertaining to the  
17 taking of depositions, taken before me, the  
18 undersigned, Lance E. Hannaford, Notary Public in and  
19 for the Commonwealth of Pennsylvania, at the offices  
20 of U.S. Attorney's Office, 17 South Park Row, Erie,  
21 Pennsylvania 16501, commencing at 9:00 o'clock a.m.,  
22 the day and date above set forth.

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APPEARANCES:

On behalf of the Plaintiff:  
U.S. Department of Justice:  
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ALSO PRESENT:

Beverly Brace  
Robert Brace

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1 RONALD BRACE

2 called as a witness by the Plaintiff, having been  
3 first duly sworn, as hereinafter certified, was  
4 deposed and said as follows:

5 EXAMINATION

6 BY MR. UHOLIK:

7 Q Good morning, Mr. Brace. I am Brian  
8 Uholik, counsel for the United States. With me is my  
9 colleague, Sarah Buckley. Could you please state your  
10 full name and address for the record?

11 A Ronald D. Brace. 1065 Route 97, Waterford,  
12 PA 16441.

13 Q Have you ever been deposed before, sir?

14 A No.

15 Q I will just go through some general  
16 instructions as to how this works. We will have a  
17 conversation. I will ask questions. You will give  
18 some answers. Hopefully, we will get out of here  
19 quickly.

20 You are under oath. And you must testify,  
21 truthfully, as if you were in court. Do you  
22 understand?

23 A Yes.

24 Q You must answer the questions verbally.  
25 Uh-huhs, nods, that sort of thing doesn't really work



1 because the court reporter can't record it. Do you  
2 understand?

3 A Yes.

4 Q When I ask a question, could you please  
5 wait to answer until I finish? The court reporter can  
6 only record one voice at a time. If we talk over each  
7 other, we won't have a record we can use. Do you  
8 understand?

9 A Yes.

10 Q Your attorney may object to some of my  
11 questions from time to time. But unless Mr. Kogan  
12 directs you not to answer the question on the basis of  
13 privilege, you have to answer. Do you understand?

14 A Yes.

15 Q If you do not understand a question or part  
16 of a question or anything, please ask me to clarify.  
17 Ask me what I mean. Otherwise, we will assume that  
18 you understand what I am talking about. Okay?

19 A Yes.

20 Q If you need a break, please let us know.  
21 We are happy to take a break. The only thing I would  
22 ask you is, if we have a question pending, to finish  
23 that question. Do you understand?

24 A Yes.

25 Q Are you taking any medication today, or do

1 you have any illnesses that would compromise your  
2 ability to testify?

3 A No.

4 Q Is there anything else you can think of  
5 that would be affecting you that could compromise your  
6 ability to testify?

7 A No.

8 Q Mark this R01.

9 (Thereupon, Exhibit No. R01 was marked for  
10 identification.)

11 Q I will ask you about activities on  
12 properties in Erie County. I want to make sure we are  
13 on the same page as to what we call the properties so  
14 we are clear.

15 I handed you what has been marked Exhibit  
16 R01. Do you recognize the properties depicted on this  
17 document?

18 A Yes.

19 Q I will be referring to the parcel outlined  
20 in black south of Lane Road, parcel  
21 ID47-012-028.0-001.00, as the Murphy site. Do you  
22 understand?

23 A Correct. Yes.

24 Q I will be referring to the area south of  
25 Lane Road within the Murphy site, that is marked as

1 red, as the consented decree area. Do you understand?

2 A This area here.

3 Q The red hatched area.

4 A Yes.

5 Q I will be referring to the parcel north of  
6 Lane Road directly west of Greenlee, parcel  
7 ID47-011-004.0-002.00, as the Homestead site. Do you  
8 understand?

9 A Yes.

10 Q I will be referring to the two parcels west  
11 of the Homestead parcel and east of Sharp Road, parcel  
12 Nos. 31-016-063.0-002.00 and 47-011-004-0-003.00, as  
13 the Marsh site. Do you understand?

14 A Yes.

15 Q I will be referring to the culvert that is  
16 located on the western portion of Lane Road between  
17 the Murphy and Marsh sites as the -- through which  
18 what the United States refers to as Elk Creek passes  
19 as the Lane Road culvert. Do you understand?

20 A Right here.

21 Q Let the record reflect the witness is  
22 identifying the culvert that is sort of between the  
23 Marsh site and the Murphy site. I have to do it for  
24 the record.

25 That culvert, yes, right there. The

1 culvert closest to the intersection of Lane Road and  
2 Sharp Road. That would be it. Yes, sir. Do you  
3 understand?

4 A I do. Just so you know, that is not Elk  
5 Creek.

6 Q I understand.

7 A I want to make sure it's clear.

8 Q I understand that is defendants' position.  
9 I know we will go back and forth in this case. You  
10 will refer to it as the agricultural ditch. I will  
11 refer to it as Elk Creek. We think of it it as  
12 different things.

13 I will be referring to the culvert on Sharp  
14 Road located just south of the intersection of Sharp  
15 Road and Greenlee Road through which what the United  
16 States considers Elk Creek passes as the Sharp Road  
17 culvert. Do you understand?

18 A Yes.

19 Q Now we will just talk a little about your  
20 background. Can you just tell me what your employment  
21 history has been since you graduated high school?

22 A Farm. Farmer.

23 Q For the same company?

24 A Yes.

25 Q Same company?

1 A Robert Brace & Sons.

2 Q Are you an officer with Robert Brace &  
3 Sons?

4 A Yes. I'm treasurer.

5 Q Do you, in your capacity as treasurer, deal  
6 with any of the financial documents, see any balance  
7 sheets, that sort of thing?

8 A No.

9 Q Do you, in your capacity as treasurer,  
10 review any tax returns?

11 A No.

12 Q Is it safe to say if I had you review  
13 balance sheets, you wouldn't necessarily know what was  
14 on them?

15 A I'm not used to the bookkeeping, no.

16 Q Who does the bookkeeping?

17 A Our secretary. Our accountant, Tom.

18 Q Tom Roberts?

19 A Tom Roberts, yes.

20 Q Your secretary's name is?

21 A Rosalie.

22 Q Do you know her last name?

23 A I do not off the top of my head right now.

24 Q Do you also do any work for Robert Brace  
25 Farms, Incorporated?

1 A Yes. We work back and forth.

2 Q Could you just, generally, explain how that  
3 works? Is it sort of mixed together?

4 A Yes. My dad has controlling interest.  
5 When I say we work back and forth, he always tells us  
6 what to do. We can give our input. But when it comes  
7 down to whatever we do in the business, he makes the  
8 final okay.

9 Q Now, I understand that Robert Brace, Robert  
10 Brace Farms, Incorporated and Robert Brace & Sons,  
11 Incorporated, they all own different properties. Is  
12 that a fair characterization?

13 A Yes. Robert Brace & Sons has property and  
14 Robert -- is that what you are saying?

15 Q Yes. Robert Brace & Sons performs work on  
16 properties owned by Robert Brace Farms?

17 A Yes.

18 Q And vice versa?

19 A Yes.

20 Q Do you have a cellular telephone, sir?

21 A I have a Droid or a Samsung. I don't know  
22 anything about that.

23 Q Do you know if one of the companies pays  
24 for that?

25 A Yes.

1 Q Which one, do you know? If you don't know,  
2 it's fine.

3 A I don't know.

4 Q Do you know if, for instance, would your  
5 brother have a similar telephone that is also paid for  
6 by the company?

7 A I honestly -- I don't know if he uses his  
8 own personal or if he has a farm phone.

9 Q We will discuss farming operations on the  
10 Murphy and Homestead sites for a moment.

11 I will represent over the last few days  
12 your father and brother have testified when it comes  
13 to planting, you are mostly the person that runs the  
14 combine and does the planting. So we will ask some  
15 questions, generally, about that.

16 So you are familiar with the Homestead site  
17 marked on Exhibit R01 north of Lane Road, sir?

18 A The Homestead site, yes.

19 Q On average, how many times a year are you  
20 on the Homestead site?

21 A We are on there -- how many times a year?

22 Q You are free to approximate.

23 A I'm trying to get an approximate figure.  
24 Maybe 30 days out of the year. A month out of the  
25 year.

1 Q When you are on site, what is your purpose  
2 for being there?

3 A Planting. Harvesting.

4 Q The planting season is when?

5 A Usually end of April. It can go all the  
6 way up to the 10th of June.

7 Q Typically, when do you harvest?

8 A First of October, end of September, first  
9 of October.

10 Q In the last ten years, have any of the  
11 Homestead areas been planted with crops?

12 A Yes.

13 Q What type of crops?

14 A Corn.

15 Q How long -- is it exclusively corn?

16 A It is now, yes.

17 Q How long has it been exclusively corn?

18 A Since we quit cabbage. I can't honestly  
19 remember what year we quit cabbage.

20 Q Were you still farming cabbage before 2000?

21 A We did have cabbage -- I believe we did  
22 have cabbage.

23 Q So some time between 2000 and I guess 2006  
24 or so --

25 MR. KOGAN: Did you mention -- ten years



1 from today would be 2008.

2 Q Do you know if you farmed cabbage after  
3 2005?

4 A I honestly can't remember the year we quit  
5 cabbage.

6 Q That's fine. For the last ten years it's  
7 been exclusively corn?

8 A Corn.

9 Q Could you write on Exhibit R01 where on the  
10 Homestead site you have planted and harvested corn in  
11 the last ten years?

12 A You want me to write "corn" on it?

13 Q Just write "corn" on it.

14 Thank you, sir.

15 Who planted the corn?

16 A I did.

17 Q Did you have any help? Or did you do that  
18 exclusively?

19 A I plant the corn just myself.

20 Q Did you also do the harvesting?

21 A Yes.

22 Q Did you do that just yourself?

23 A Running the combine, yes.

24 Q For the last ten years was there ever a  
25 year where you didn't plant corn on the Homestead

1 site?

2 A Yes.

3 Q What year?

4 A What years. I can't honestly remember what  
5 years they were without looking at my records.

6 Q What records are you talking about?

7 A Usually my Ag Leader SF -- SMF maps.

8 Q What are those, sir?

9 A It's a map that the combine takes, keeps  
10 track of our yield.

11 Q How does the combine keep track of your  
12 yield?

13 A It will -- as you make every pass in the  
14 field, it it will create a map of that field.

15 Q Does it have GPS?

16 A Yes.

17 Q By GPS I'm referring to global positioning  
18 satellite.

19 Do you maintain the records from the  
20 combine?

21 A Yes.

22 Q Do you have them?

23 A I have them. I have to see how far back we  
24 have them. I don't know how far back we go with them.

25 Q Does the combine come with GPS? Or do you

1 install that yourself?

2 A You can -- if you order it, it will come  
3 that way.

4 Q Is that how you got a combine with GPS, did  
5 you order it that way?

6 A Yes.

7 Q Do you know if the combine machine  
8 maintains those records within the machine? Are you  
9 aware?

10 A Not within the machine, no.

11 Q No, it does not do that?

12 A No. It does not. It doesn't keep it in  
13 the combine itself.

14 Q Explain to me the process. You do your  
15 harvest, how do you get the information out?

16 A There is a Pro 600 in the combine cab.  
17 It's a computer.

18 Q And you can --

19 A There is a memory card in there.

20 Q Do you know if you still have the memory  
21 cards?

22 A Yes. It's only one card. You print the  
23 maps out at the end of the year, all your information.  
24 Then you clear that card for the following season.

25 Q Any of the Ag Leader SMF maps, is that

1 the --

2 A When I first started, it was Ag Leader. As  
3 time progressed and technology got better, of course  
4 the maps get better. It's a Pro 600 now that we use,  
5 it's not Ag leader.

6 Q So for the seasons that you did not plant  
7 corn -- do you have any idea how many seasons that was  
8 when you didn't plant?

9 A We have always planted corn.

10 Q Sorry. On the Homestead property. You  
11 said there have been years in the last ten where you  
12 had not planted. Do you know how many?

13 A No. We have always planted on the  
14 Homestead within the last ten years. Other than if it  
15 was flooded.

16 Q What I'm asking is do you know when you  
17 didn't plant?

18 A I don't understand.

19 Q I believe I asked --

20 A What years I did not plant corn?

21 Q I believe I asked in the last ten years,  
22 was there ever a year where you didn't plant corn on  
23 the Homestead site. I believe you answered there were  
24 years you did not plant.

25 A No. We planted every year.

1 Q You planted every year?

2 A Yes.

3 Q Is it safe to say in the areas on Exhibit  
4 R01, where you marked corn on the Homestead property,  
5 every year for the last ten years you planted corn  
6 there?

7 A Unless if it was flooded.

8 Q My question is when you say unless if it  
9 was flooded, in what years was it flooded so you  
10 couldn't plant?

11 A That's what I have to go back. I can't  
12 recall the years without looking back at the records.

13 Q In those seasons, would you have planted on  
14 other portions of the Homestead property? Or did you  
15 just not plant the entire property?

16 A No. We would plant other portions.

17 Q Your maps created from your combine would  
18 show us what areas have been planted in what season?

19 A Yes.

20 Q I will put on the record a document request  
21 that defendants provide any and all maps produced from  
22 the combine that we are discussing here for the last  
23 ten years at a minimum. We will go on.

24 What companies operate the Homestead site?

25 A It's owned by my dad.

1 Q So your father owns it. Does Robert Brace  
2 & Sons do work on that site?

3 A Yes.

4 Q Does Robert Brace Farms, Incorporated do  
5 work on that site?

6 A Yes.

7 Q When the work is being done by either  
8 company, is it usually you, personally, doing the  
9 farming activities?

10 A The farming activities, mostly me. My  
11 brother does help in the fall and the spring.

12 Q Are you familiar with the Murphy site  
13 marked on Exhibit R01 south of Lane Road?

14 A Yes.

15 Q On average, how many times per year are you  
16 on the Murphy site?

17 A Recently, I guess just not very often.

18 Q Would you say once a month? Once a year?  
19 No idea?

20 A Usually when the government would come out  
21 and want to walk it.

22 Q Basically, you have only been on there for  
23 site visits?

24 A For site visits since we got -- when my dad  
25 got the quit work order.

1 Q Before then did you visit the property at  
2 all?

3 A We visited the property, yes. It would be  
4 EPA gave us permission to clean the ditches out.

5 Q When?

6 A 2012, approximately.

7 Q Before 2012, did you have any reason to go  
8 on the Murphy site?

9 A The only thing is I planted and harvested  
10 the oats, rye, because I'm the only one that ran the  
11 combine earlier on on the Murphy farm. So if you want  
12 to go back that far, I was on it to harvest the oats,  
13 plant the oats, rye.

14 Q When would that have been?

15 A That would have been in -- just trying to  
16 think. It's been a long time.

17 Q Are we talking the '80s, before then?

18 A It was in the '80s.

19 Q During the '80s, what areas of the Murphy  
20 property -- Murphy site did you plant with oats and  
21 hay and what you just described?

22 A All of this here, back here and through  
23 here and into here.

24 Q Yesterday your brother Randy referred to  
25 that part in the middle as the contour field. Do you

1 refer to it as that?

2 A Contour fields we call it.

3 Q We will call that the contour fields today  
4 so we understand what we are talking about. For the  
5 record, when I say contour field, we mean the area  
6 south of Lane Road on the Murphy site that is not in  
7 the red area. It's sort of in the middle. It comes  
8 out from Lane Road and juts down south and abuts the  
9 consent decree and sort of surrounded by the consent  
10 decree area.

11 During that period were you not farming the  
12 contour field?

13 A We were farming the contour.

14 Q When you say in the '80s when you were  
15 farming --

16 A Dad had prior converted it to farm ground.  
17 I harvested the oats, the rye. I remember taking hay  
18 off it.

19 Q My question is -- just a second ago when  
20 you described where you farmed, you just pointed to  
21 the area in the consent decree. I'm asking was it the  
22 entire Murphy property?

23 A The entire Murphy property except there was  
24 a section of woods, I believe right in this area here.  
25 Because there is a field right here. But yes, all



1 this through here.

2 Q And the contour field?

3 A And the contour.

4 Q Since 1996 have any of the Murphy site  
5 areas been planted with crops?

6 A I guess I can't answer. If I knew the date  
7 when he got stopped. When the Federal government and  
8 put a cease and desist on his property.

9 Q Do you know when that was?

10 A '87 Andy Martin came out. I believe -- I  
11 know Andy Martin came out in '87.

12 Q Right now I'm just asking since 1996.  
13 Since 1996 has anything been planted on the Murphy  
14 site?

15 A There wasn't, if he had a cease and desist  
16 on it.

17 Q I guess what I'm asking, from what I  
18 understand, if there is planting to be done, it's  
19 usually you that does it?

20 A Right.

21 Q Do you recall planting anything on the  
22 Murphy site since 1996? From 1996 until today, have  
23 you planted corn or any other thing?

24 A Yes. We planted corn on it when Todd Lutte  
25 and Army Corps Michael Fodse came out. I believe that

1 was in 2012. That is when they came out and declared  
2 all the ditches ag ditches.

3 Actually, we met on Lane Road. We walked  
4 back to where there is check dams from when dad had to  
5 put them in the previous time. We walked back,  
6 approximately, in here somewhere.

7 Q You can just write "CD" approximately --

8 A This is approximately.

9 Q Yes, approximately.

10 Thank you, sir.

11 When you say we walked back, who is we?

12 A Randy, my brother.

13 Q You and Randy.

14 A Yes.

15 Q It was you, Randy, Todd Lutte and Michael  
16 Fodse?

17 A Yes.

18 Q Just as I asked you to do before, can you  
19 write "corn" wherever it is -- hold on.

20 Does the time for that meeting -- does July  
21 2012 sound right for that meeting?

22 A July 2012 for Mike Fodse and EPA when Todd  
23 Lutte came out, yes.

24 Q When after July 2012 did you plant?

25 A Well, we did work on it after they gave us

1 permission. We started shortly after. That would  
2 have been in July. We either planted it -- we would  
3 have probably planted it in '13.

4 Q Did you plant it in '14?

5 A I believe it was '13, '14. We planted up  
6 until this go around here when they stopped us again.

7 Q You believe you planted it in the spring of  
8 2013 and the spring of 2014?

9 A Yes. Up until we got the cease and desist  
10 again.

11 Q Who did the planting?

12 A I did.

13 Q Would you have the same type of GPS maps  
14 for the Murphy site that you would for the Homestead  
15 site?

16 A Should have. Yes.

17 Q Did you harvest from the Murphy site?

18 A We harvested.

19 Q In 2013 and 2014?

20 A If that was the years we had corn there,  
21 yes.

22 Q Do you know if those crops were sold?

23 A Yes. They were sold.

24 Q If you planted in 2013 and 2014, do you  
25 know if you planted in 2015?

1           A           I would have to go back and look at the  
2 map. Like I say -- whenever the government gave us  
3 our cease and desist for dad.

4           Q           Just do me a favor. On Exhibit R01, write  
5 "corn" in the areas of the Murphy site where you  
6 planted corn from 2012 on.

7           A           Let me go back to where when Todd Lutte was  
8 here. Because I want to make it very clear. When we  
9 were back here, I told Lutte, "Dad is going to want to  
10 plant this." I said, "How far can we plant to? Where  
11 can we plant to?"

12                   We were right here. And he pointed right  
13 in this area here. That is as far as we went. You  
14 want to know where it was planted, the corn?

15           A           This line is approximately, without being  
16 out in the field.

17           Q           Is that sort of the approximate boundary?

18           A           This is approximately where Lutte told us  
19 we could plant to on the Murphy farm.

20           Q           Now, before the meeting with Tom Lutte and  
21 Mike Fodse, did you plant on the areas -- on the  
22 Murphy property outside of the red consent decree  
23 area?

24           A           In these two fields.

25           Q           The contour field, and I don't know what we

1 call the field in the -- I guess that would be the  
2 southwest corner?

3 A This field.

4 Q Yes.

5 A No. Because at the time, the first time  
6 when dad got his first order with the consent decree,  
7 if any pollutants got in there, he could go to jail.  
8 So no.

9 Q Who told you he could go to jail?

10 A The consent order.

11 Q The consent order. Okay.

12 Have you seen the consent order, sir?

13 A I have read it a long time ago.

14 Q We will have this marked as R02.

15 (Thereupon, Exhibit No. R02 was marked for  
16 identification.)

17 Q You said you may have read this once  
18 before. I will ask you to just take some time and  
19 read it, take your time.

20 MR. KOGAN: We are going to do a document  
21 request again for Charles Kulp deposition  
22 testimony, which we haven't been able to find  
23 discovery disks, and Tom Delphonso, which we  
24 haven't been able to find. We have done thorough  
25 reviews with relativity. We can't find it.

1 MR. UHOLIK: Just so you know, we produced  
2 everything we have. We very likely don't have  
3 it. I can tell you yesterday Randy testified he  
4 testified in this case. I don't have his  
5 deposition. We will take another poke at it. We  
6 produced everything we have.

7 Q You have taken time to read that?

8 A Yes.

9 Q My first question, is there anything in  
10 there that mentions prison or jail time? I will  
11 represent for the record that it doesn't. So my  
12 question is, who told you that if something fell down  
13 from the contour field into the consent decree area  
14 that someone was going to go to jail?

15 A Right here it says defendants -- let me  
16 find it.

17 "Defendants' officers, directors, agents,  
18 servants, employees, successors, assigns and those in  
19 active concert or participation with them are enjoined  
20 permanently from discharging any pollutants including  
21 dredged or fill material into the approximately 30  
22 acre wetland site depicted on attachment A unless such  
23 discharge is in compliance with the Clean Water Act."

24 Q Right. What I'm asking is who told you  
25 someone would go to jail if there was a discharge of

1 some sort?

2 A My dad had criminal charges against him.

3 Q From whom?

4 A From the government.

5 Q Which government?

6 A The EPA.

7 Q The EPA criminally charged your father.

8 Okay.

9 MR. KOGAN: Counsel, I think it was  
10 testified the other day that Mr. Brace had  
11 received criminal charges placed against him by  
12 the state. And there may be a confusion here  
13 regarding whether those criminal charges also  
14 extended into the federal arena. Why don't we  
15 just stipulate --

16 MR. UHOLIK: That's fine.

17 Q You can stick the consent decree to the  
18 side for a second.

19 Back to R01. So the contour field -- when  
20 is the first time after 2006 you planted the contour  
21 field?

22 MR. KOGAN: For the record it may also be  
23 found perhaps in the court of claims trial  
24 reference to prior criminal action being brought  
25 against Mr. Brace back from the original lawsuit.

1 Just take a look back in time.

2 MR. UHOLIK: I don't recall Mr. Brace  
3 testifying any criminal charges from the EPA.

4 A Your question is how many times we planted  
5 after --

6 Q No. I know that Randy -- yesterday I will  
7 represent that Randy testified at least for some  
8 period of time the contour field sat idle. And then  
9 you started planting it again.

10 My question is when did you start planting  
11 it again?

12 MR. KOGAN: I think he testified to that  
13 fact, counsel. He said after the July 2012 visit  
14 of Mr. Lutte and Mr. Fodse. I think he  
15 testified. If you could read that back, I would  
16 appreciate that.

17 A Correct. I did say it.

18 Q Just so we are clear, you did not plant the  
19 contour field until after the meeting with Lutte and  
20 Fodse?

21 A Until after the meeting with Lutte and  
22 Fodse.

23 Q Is that the same for the field in the  
24 southwest corner of the Murphy site?

25 A This one here?



1 Q The one outside the consent decree area.  
2 Yes, sir.

3 A Yes. Because both of these we quit  
4 planting. Yes. Both of them.

5 Q Please mark this as R03.  
6 (Thereupon, Exhibit No. R03 was marked for  
7 identification.)

8 Q Mr. Brace, you have been handed what has  
9 been marked Exhibit R03. It's a photo log of various  
10 photos taken by Water Conservation Officer James  
11 Smolko in and around the Murphy and Marsh sites.  
12 Could you please flip to -- you will notice there are  
13 numbers in the corner. If you could flip to the one  
14 that reads EPA 0000458. You should see a piece of  
15 equipment.

16 Are you familiar with the area that is  
17 depicted in this photo?

18 A Yes.

19 Q Where is this?

20 A Approximately, right in this area.

21 Q Let the record reflect -- could you mark a  
22 P for where, approximately, this photo is being taken  
23 from?

24 Let the record reflect the witness has  
25 written P on Exhibit R01 on the appears to be just

1 around the Lane Road culvert. And we are on EPA  
2 0000458, which is a photo taken by James Smolko.

3 So if you can look at this photo, this  
4 photo was -- I will read the caption of the photo.  
5 "Photograph IMGP370 taken September 10th, 2012 at,  
6 approximately, 1723 hours. Headwaters of Elk Creek  
7 south of Lane Road culvert pipe dredging and tile  
8 operation underway."

9 If you can look in the left portion, there  
10 is a piece of yellow equipment there. What is that?

11 A Referring to the John Deere?

12 Q Yes. What is the John Deere?

13 A It's a John Deere dozer.

14 Q It's a bulldozer?

15 A Yes.

16 Q Above the John Deere dozer, is that the  
17 contour field?

18 A Yes.

19 Q It appears the contour field has been  
20 planted with something.

21 A It appears. Yes.

22 Q What does that -- what would that be?

23 A It looks like corn.

24 Q If this photo is accurate, you would have  
25 planted corn on the contour field at least in spring

1 of 2012. Would that be accurate?

2 A Yes.

3 Correct.

4 Q Can you also see the other field? By the  
5 other field I mean --

6 MR. KOGAN: Counsel, I object as to  
7 foundation for that. Because this picture photo  
8 was taken in September 10, 2012. I think the  
9 witness previously testified that planting takes  
10 place even into the summertime.

11 MR. UHOLIK: He said planting season ended,  
12 I believe, at the latest June 10th.

13 THE WITNESS: June 10th.

14 MR. KOGAN: What conclusion are you drawing  
15 here?

16 MR. UHOLIK: Larry, if you have an  
17 objection, you can object.

18 MR. KOGAN: I'm giving you my objection.  
19 State, specifically, the date you are referring  
20 to when the planting --

21 MR. UHOLIK: You can't testify.

22 MR. KOGAN: I'm asking you to refer to the  
23 date, specifically, that you are asking the  
24 witness about.

25 MR. UHOLIK: I appreciate you are asking me

1 to do that. However, you can't ask me to do  
2 that.

3 MR. KOGAN: I'm objecting based on the fact  
4 you are not doing it.

5 MR. UHOLIK: I appreciate that.

6 Q If the date on this photo is accurate, it  
7 would have meant at the absolute latest you would have  
8 planted the contour field in June of 2012. Is that  
9 correct?

10 A Yes. If this is September of 2012. Yes.

11 Q Can you see the southwest field?

12 A Not from this picture.

13 Q Can you tell me, the piece of equipment in  
14 the foreground closest to us on the right, just next  
15 to what we call a creek and you call an agricultural  
16 ditch, what is that called?

17 A Case excavator.

18 Q Is that similar to a track hoe?

19 A Track hoe. Another word for a track hoe.

20 Q Thank you, sir.

21 I will go back to the consent decree for a  
22 moment. If you can flip to the last few pages, there  
23 is something called the restoration plan.

24 Are you familiar with this restoration  
25 plan, sir?

1 A I've read it.

2 Q Is today the first time you read it? Or  
3 had you read it at some point?

4 A I read it a while back.

5 Q And were you, after the first trial in this  
6 case and then the appeals, were you involved -- after  
7 this consent decree was negotiated and executed, were  
8 you involved in performing the work required by the  
9 consent decree?

10 A No.

11 Q Do you know who was?

12 A I don't.

13 Q Do you know if the work was finished?

14 A I believe it was finished.

15 Q And why do you believe that?

16 A I just remember it says in the consent  
17 decree that dad had to, I believe, pay a 10,000 dollar  
18 fine. But the work was completed.

19 Q Is one of the ways you know the work was  
20 completed is you have seen a check dam on site?

21 A There was a check dam on site. And of  
22 course, when the property all flooded.

23 Q So the check dam, have you had occasion to  
24 see the check dam?

25 A I have seen it before. The first time I

1 saw it is when Lutte gave us permission to clean all  
2 the ag ditches out. There were some cement blocks  
3 where the check dam was.

4 Q And how would you describe how they were  
5 placed, situated?

6 A They were placed, I believe, across the  
7 ditch.

8 Q Were they in a straight line?

9 A Over time they moved a little bit. They  
10 were there when whoever put the blocks in in the  
11 beginning when this all happened.

12 Q So the first time you had ever seen it was  
13 in 2012, during the Lutte and Fodse visit?

14 A That's the first time I remember seeing the  
15 actual check dam. Because I wasn't present when it  
16 was put in, when the tile lines were cut.

17 Q When you say that over time they moved,  
18 from what time did they move? If you hadn't seen it  
19 until 2012, did they move from 2012 --

20 A You asked me if they were straight across.  
21 I remember somewhat it was kind of like that. They  
22 weren't directly straight. But I guess you could say  
23 they were in a straight line. To me that's not  
24 perfectly straight.

25 Q So you thought, "Oh, they must have moved,"

1 if they weren't perfectly straight?

2 A Yes. Because I don't know -- yes. I don't  
3 know how they were put in.

4 Q Either they moved, or they were put in that  
5 way?

6 A You asked if they were in a straight line.  
7 No.

8 Q I tried to figure out how you know they  
9 moved, if you hadn't seen it until 2012?

10 MR. KOGAN: Do you want to describe how  
11 Mr. Brace arranged --

12 Q Mr. Brace arranged two highlighters. They  
13 are not straight. They are -- I guess one is -- I  
14 don't know how I would describe it. Slightly  
15 overlapping the other at an angle. It's not  
16 completely straight.

17 MR. KOGAN: They were not uniformly  
18 straight is what counsel is trying to say.

19 A Because I read in one letter the EPA or the  
20 government, I would have to see the letter again. I  
21 remember they accused us of removing a check dam. And  
22 that was false.

23 Q So the check dam, if I walk out there  
24 today, the check dam is there?

25 A If it's not flooded with water.

1 Q Well, it would still be there. I couldn't  
2 see it, if it was flooded?

3 A If it was flooded, you couldn't see it.

4 Q Back to what I marked RO3.

5 I would like you to turn in this document  
6 to the page that will read EPA 0001109. For the  
7 record, we are on RO3 -- sorry, I'm in the wrong  
8 exhibit.

9 MR. KOGAN: Is now a good time for a break?

10 MR. UHOLIK: Sure.

11 (Recess taken.)

12 BY MR. UHOLIK:

13 Q Mr. Brace, how long have you been a farmer?

14 A My whole life, I guess.

15 Q I don't like to ask this, but how old are  
16 you?

17 A I am 47. I planted cabbage ever since I  
18 was little.

19 Q Would you consider yourself an expert on at  
20 least the sort of farming that you do?

21 A I wouldn't say I'm an expert.

22 Q Would you consider yourself fairly  
23 knowledgeable?

24 A Fairly knowledgeable, yes.

25 Q And with your experience over your entire



1 life of farming, are you able to estimate acreage? If  
2 you looked at a field, would you be able to tell me  
3 and say, "I think that's about" --

4 A No.

5 Q No?

6 A No.

7 Q I will have this marked R04.

8 (Thereupon, Exhibit No. R04 was marked for  
9 identification.)

10 Q You have been handed what has been marked  
11 Exhibit R04. I will represent these are photos taken  
12 by employees of the EPA in and around the Murphy and  
13 Marsh sites during a May 2015 site visit.

14 I would like you to flip to -- it will read  
15 EPA 0001109 in the lower right corner. Photo 7 in the  
16 upper part.

17 Do you recognize what is depicted in this  
18 photo?

19 A An outlet tile.

20 Q When you say an outlet tile, what is an  
21 outlet tile?

22 A It's a tile that runs water.

23 Q Are these used to drain moisture off  
24 fields?

25 A Yes.

1 Q We will use this in conjunction with R01.

2 So after the July 2012 visit with Lutte and  
3 Fodse that you discussed with me, did you perform any  
4 work in the consent decree area marked in red on R01?

5 A After 2012, after Lutte, the EPA and Army  
6 Corps told us we could do it, yes.

7 Q Before then you didn't perform work in  
8 there?

9 A We met with -- I remember dad tried to get  
10 all the agencies up there approximately the year  
11 before 2011, because the beaver dams were in the  
12 ditches, the ground was all flooded. The only ones  
13 that showed up were EPA and the Game Commission.

14 Q So beaver dams aside, before the meeting  
15 with Lutte and Fodse, did you perform work in the  
16 consent decree area?

17 A The only work we would have done is the  
18 permission to take the beaver dams out.

19 Q So now we will move after the meeting.  
20 After the meeting what did you do?

21 A After the meeting with --

22 Q With Lutte and Fodse, what did you do?

23 A We went ahead and cleaned all the ag  
24 ditches out.

25 Q I presume what you refer to as ag ditches

1 we refer to as Elk Creek. Just do me a favor and with  
2 the pink highlighter once again, on Exhibit R01, mark  
3 what ag ditches, what you call ag ditches you cleaned  
4 out. When you say we, I assume you mean -- correct me  
5 if I'm wrong, was it you and Randy?

6 A It wasn't me. It was Randy.

7 Q Highlight where, to the best of your  
8 recollection, what Randy cleaned out?

9 A After we met with Lutte.

10 Q Yes.

11 A Just on the Murphy farm?

12 Q Right now just on the Murphy farm.

13 A Okay.

14 Q So let the record reflect the witness  
15 highlighted in pink on R01 where he witnessed his  
16 brother, Randy Brace, clean out what the United States  
17 refers to as Elk Creek and what defendants refer to as  
18 agricultural ditches.

19 A I want to make it clear, I didn't witness  
20 him clean every ditch out.

21 Q Do you know that -- how would you know --  
22 if you didn't witness it, how would you know he  
23 cleaned it out?

24 A Todd Lutte told us we could clean them out.

25 Q How would you know your brother had

1 actually did it?

2 A Because he's the one that runs the  
3 excavator.

4 Q Did he tell you he did it?

5 A Yes. You could see it, if you drove up  
6 there.

7 Q You weren't involved in the cleaning out or  
8 excavating of what you refer to as ditches. What work  
9 did you do, personally?

10 A I ran the tile machine.

11 Q Is that called a tile plow?

12 A It's a Liebrecht tile --

13 Q Is Liebrecht the manufacturer?

14 A Liebrecht is the manufacturer.

15 Q Do you know the make and model?

16 A Not offhand, no.

17 Q By you, you can specify what entity, if you  
18 know, do you know -- do you own that tile machine?

19 A I believe Robert Brace & Sons.

20 Q Is that the same -- how long have you owned  
21 it? Do you have any idea?

22 A I would have to look back to see what date  
23 we bought that. I don't know off the top of my head.

24 Q Has it been the same tile machine since  
25 2010?

1 A I don't know without going back to look.

2 Q Is the tile machine you have now the same  
3 tile machine you used to lay tile --

4 A Lay tile when?

5 Q Since 2012.

6 A Since after Lutte. Yes.

7 Q Is that tiling machine equipped with global  
8 positioning system, GPS?

9 A Yes. It is.

10 Q Is the GPS a part of the machine itself?  
11 Or do you install that?

12 A No. It's -- you have to put the globe on  
13 the tile machine. There is a wire going to your Pro  
14 1,000.

15 Q So what is a Pro 1,000?

16 A That's the monitor in the tractor.

17 Q The Pro 1,000 is the monitor in the tile  
18 machine?

19 A Not in the tile machine. It's in the  
20 tractor. The globe, your positioning globe, your  
21 receiver is on, if I recall, it's on the machine.

22 Q You have to bear with me, because I don't  
23 understand any of this. Is the tile plow something  
24 you hook to a tractor?

25 A Yes.

1 Q So a tile plow is something you hook to a  
2 tractor. You hook it to the tractor, then you take a  
3 GPS globe and stick it on top of the tractor. Is that  
4 correct?

5 A Yes. They may call that an antenna. I'm  
6 not sure the proper name. But yes.

7 Q But this is something you do yourself, you  
8 take the thing -- the GPS, whatever we call it, you  
9 stick it on top of the tractor?

10 A Yes. You stick it on top of the tile plow.  
11 Not the tractor.

12 Q You said on top of the tile plow.

13 A Yes.

14 Q How big is a tile plow?

15 A It's not real big. I never measured it.  
16 I'm sure you have pictures of it.

17 Q So the tile plow is attached to the back of  
18 the tractor?

19 A To the hitch, the draw bar.

20 Q Is that on the rear of the tractor?

21 A That's on the rear of the tractor.

22 Q You yourself place the globe whatever we  
23 call it, the globe, the antenna, you put on top of the  
24 tile plow?

25 A It's on the tile plow, yes.

1 Q When you are done with the tile plow, do  
2 you take it off the tile plow, or is it always on the  
3 tile plow?

4 A You can take it off and use it on another  
5 piece of equipment.

6 Q The unit that you attached to the tile  
7 plow, who owns that? The GPS unit. Is that Robert  
8 Brace Farms, Robert Brace & Sons?

9 A I believe it is Robert Brace & Sons.

10 Q Do you know how many GPS units you have?

11 A When you say units, you can take that  
12 globe, you can -- it's not just for one piece of  
13 equipment.

14 Q Do you have multiple globes or just one?

15 A I believe we have two antennas or globes.

16 Q So why would -- what's the purpose of  
17 having a GPS system that is attached to a tile plow?

18 A That's what lays the tile in the ground to  
19 keep your grade.

20 Q You want to know, specifically, where you  
21 have tile, is that why you have a GPS system attached  
22 to it?

23 A No. The GPS system is what keeps the grade  
24 for us. Whoever is running the tile plow, that is how  
25 you keep your grade to put the tile in.

1 Q When you say keep your grade, can you  
2 explain what that means?

3 A You don't want to run water uphill. It  
4 keeps the grade so the water goes one way.

5 Q Does it also keep a record of where you are  
6 placing the tile?

7 A It can. But I never printed one out on  
8 that machine.

9 Q Is this similar to the other -- the GPS  
10 system, the system in the combine where there is a  
11 memory card?

12 A No. There is no memory card, to my  
13 knowledge, in this Pro 1,000. Because this is a  
14 totally different computer that is in that tractor  
15 that is hooked to the tile plow.

16 Q So you use it to maintain a certain grade.  
17 After you are done, you didn't keep any records,  
18 basically?

19 A No. I didn't print any records out.

20 Q To your knowledge, the Pro 1,000 doesn't  
21 have any memory?

22 A That I don't know.

23 Q To your knowledge, do you have the same  
24 antenna or -- is it the same tractor now that you  
25 did -- that you used for the tiling in the consent



1 decree area?

2 A I can't say it's the same tractor offhand.  
3 I can't say it's the same tractor. It was a quad  
4 track we pulled it with. It could have been a  
5 different model the previous year.

6 Q I'm trying to figure out if you have the  
7 Pro 1,000 -- the same Pro 1,000 you had in 2012.

8 A Yes. That tractor had the Pro 1,000, and I  
9 believe it had it, even if we would have switched  
10 tractors, it would have been in the same tractor that  
11 pulled the tile plow. What I'm saying is if we switch  
12 tractors, that Pro 1,000, I believe, was in either  
13 tractor.

14 Q When you performed -- you said you did the  
15 tiling?

16 A Yes.

17 Q Would you, please, do me a favor and take  
18 this yellow highlighter and please draw -- it's  
19 approximate, where you recall laying tile in the  
20 consent decree area. I know you testified you didn't  
21 lay tile before the meeting with Fodse and Lutte.  
22 Correct?

23 A Correct.

24 Q Take this marker, this highlighter, and  
25 highlight where you laid tile after that meeting in

1 the Murphy site?

2 A This is all going to be approximate. You  
3 want me to put an X where we tiled.

4 Q If you can just draw a line.

5 A I can't remember exactly how we ran it. If  
6 you want to know where we tiled, I can put an X there.  
7 I can't put every line in.

8 Q If you can approximate. If you can't do  
9 that, an X is fine. Whatever you feel comfortable  
10 putting.

11 A Okay.

12 Q Did you tile the areas outside of the  
13 consent decree on the Murphy site at all after that  
14 meeting? The contour field or that southwest corner.

15 A We may have tiled right here.

16 Q Let the record reflect the witness has  
17 placed a number of yellow highlighted Xs within the  
18 Murphy site, including within the consent decree area  
19 to mark where tiling was laid.

20 We will turn back to the photos. So  
21 turning back to Exhibit R04. We are on page EPA  
22 0001109. I believe we talked briefly about this. The  
23 white tube in the middle of the photo, do you  
24 recognize that as a tile joint?

25 A Yes.

1 MR. KOGAN: He already testified it is an  
2 outlet.

3 Q I'm trying to reorient ourselves.

4 Is this the sort of drain that you -- or  
5 outlet -- is the tubing attached to the drain similar  
6 to this outlet?

7 A Yes.

8 Q Does everything look like this sort of  
9 white plastic tube?

10 A Through the field?

11 Q Yes, sir.

12 A Yes. It can be white, yellow, black.

13 Q Is this the sort of tile that you installed  
14 where you marked the Xs on Exhibit R01?

15 A To the best of my knowledge, it was all the  
16 four inch tile.

17 Q Would it look like this, this white tube?

18 A Yes. It could look white, yellow, black.

19 Q If you would please flip to page EPA  
20 0001128.

21 Do you recognize what this photo shows?

22 A Looks like a drain tile in the center.

23 Q Is that similar to the sort of tile that  
24 would have been laid?

25 A Yes. It's white. Looks like the other

1 one.

2 Q Do you recall, when you laid the tile, if  
3 it was white, yellow or black?

4 A I believe most of ours were white.

5 Q Can you describe to me how does a tile plow  
6 work? Do you have to -- does somebody -- forgive me  
7 for not knowing this. Does someone have to come in  
8 before you and sort of dig a trench?

9 A How we did it, once you run your main line,  
10 then you run laterals off that main line. Randy would  
11 come in, dig a hole over top the tile we just laid.  
12 He would dig back three, four, five feet, just enough  
13 to get my tile plow down in the hole.

14 Q The tile plow, you dig a hole, can you sort  
15 of describe to me -- I'm trying to figure out how the  
16 tile ends up underground. How does the tile plow end  
17 up underground?

18 A Once the machine is in the hole, you go  
19 forward. There is two rubber wheels that is pushing  
20 the pipe down they call it a boot. It lays it.

21 Q It lays it underground without tearing up  
22 the surface?

23 A Very little. I'm trying to explain how.  
24 It doesn't tear the surface up hardly at all. It will  
25 probably, right where the tile goes in, you will see

1 where the ground might be bowed up a little bit. It  
2 is depending on conditions.

3 Q If you could just grab R03.

4 One question about one picture. If you  
5 could flip on what is Exhibit R03 to EPA 00000457.  
6 You should see some equipment in the photo.

7 A Yes.

8 Q Sir, is that thing there in the middle of  
9 the photo, attached to the tractor, is that a tile  
10 plow?

11 A Yes.

12 Q How many of those do you own?

13 A Just this one.

14 Q Have you had the same tile plow since 2012?

15 A We had the same tile machine. Like I say,  
16 I have to look back at the records when we, actually,  
17 bought it. I don't know the date we bought the  
18 machine.

19 Q Do you recall buying the machine any time  
20 recently?

21 A Not recently, no.

22 Q Is it flexible?

23 A The tile is flexible.

24 Q Could you please flip to on Exhibit R04,  
25 page EPA 0001132? Is there a tile drain depicted in

1 this photo?

2 A Yes.

3 Q Where would that be? Is that the white  
4 tube there?

5 A Yes. The white tube.

6 Q Do you have any idea what the two black  
7 tubes there are?

8 A Yes. The first black one, I believe, is  
9 the road culvert.

10 Q By first black, one you mean the one  
11 closest to the bottom of the photo?

12 A Closest to the bottom. The other one could  
13 be a six inch tile.

14 Q Do you know if you laid that tile?

15 A I did not lay that tile. You are talking  
16 about the six inch or eight inch, if that is a tile.

17 Q I'm talking about the white tube.

18 A Yes. We laid that one.

19 MR. KOGAN: Counsel, let's stipulate there  
20 are three tubes.

21 MR. UHOLIK: There are three. I said one  
22 white one, two black ones.

23 MR. KOGAN: I think two are ribbed, one is  
24 not.

25 Q The lower black one, you think, is the road

1 culvert. Let's call it the second black one, the one  
2 above that. Any idea what that is?

3 A It could be a tile.

4 Q You have tile tubes that are that big?

5 A I know they got six inch tile. Without  
6 being there, I don't know what size it is. I don't  
7 know.

8 Q That's fine. Remember, you can say, "I  
9 don't know." There is a lot of stuff I don't know.  
10 You are allowed to not know.

11 The white tile -- but the white tile to the  
12 left of the second black tube, which we don't know is  
13 tile, did you lay that?

14 A We could have laid it and/or we may have  
15 repaired one.

16 Q Do you have any idea, by looking at this  
17 photo, can you orient yourself on the site? Do you  
18 know where you are?

19 A I believe we are on Lane Road. This is  
20 what we refer to as the contour field.

21 Q Would the contour field be -- if you are on  
22 Lane Road looking south, would the contour field be to  
23 your right?

24 A Yes. We would be right approximately  
25 somewhere right in here.

1 Q Can you tell where this white tile tube  
2 might be draining from?

3 A It's probably draining out of this field  
4 right here.

5 Q You think it's probably draining the field  
6 that is depicted in the photo?

7 A It could be, yes.

8 MR. KOGAN: Counsel, please stipulate where  
9 this culvert is located relative to Lane Road and  
10 the Murphy tract. Is it the center culvert or  
11 the culvert the government refers to as Elk  
12 Creek?

13 MR. UHOLIK: It's not the culvert by what  
14 the government refers to as Elk Creek. I believe  
15 Mr. Brace has said that it --

16 Q Are there three culverts, Mr. Brace, on  
17 Lane Road or two? There is this one. What we call  
18 Lane Road culvert.

19 A Three.

20 Q I believe it is the center one which is  
21 attached -- it runs under Lane Road. And above it  
22 into the Homestead property is -- on R01 is an orange,  
23 I believe that says agricultural ditch, that runs up  
24 into the Homestead property. That's the culvert we  
25 are talking about right now.



1           Let's go back to 2012. You haven't put any  
2 tile in yet. Who says, "Mr. Brace, go put tile in"?

3           A       When Todd Lutte and them came out, they  
4 knew we were going to farm it in all the fields,  
5 because I specifically -- like I believe I told you  
6 this before, that -- told Lutte we will want to farm  
7 this.

8           And we had to go in and repair the tiles  
9 that the government made my dad rip up prior. Because  
10 in the consent decree order, as you know, they said  
11 rip up the tiles. We couldn't farm it unless we went  
12 back in and repaired and/or laid tile.

13          Q       At the 2012 meeting, did you ask Mr. Lutte  
14 or Mr. Fodse, "Can I lay tile drain in this area?"

15          A       I, personally, did not.

16          Q       Did they tell you that you could lay tile  
17 drain, specifically? Did they say, "Mr. Brace, you  
18 are allowed to tile" -- where you marked the Xs, "You  
19 are allowed to tile in there"?

20          A       I don't remember Lutte saying that. But  
21 tiling is part of an agriculture, and with us farming  
22 that, he knew the tile lines were cut, plugged. And  
23 we had to go back in, in order to farm that ground, we  
24 had to fix those tiles.

25          Q       I'm trying to get a sense what was

1 specifically said. I know you may have understood one  
2 thing. Somebody may have understood another. I just  
3 want to know what was said. That's all.

4           Could you do me a favor, could you mark --  
5 I know you said Mr. Lutte, Mr. Fodse, yourself and --

6           A       Randy.

7           Q       Randy, the other Mr. Brace, walked off into  
8 the Murphy site. That is where this conversation  
9 occurred. Could you mark on Exhibit R01 with an M  
10 whereabouts you were standing when that meeting took  
11 place?

12                   When you -- where did you go when you  
13 walked into the Murphy farm?

14           A       To the best of my knowledge, we started  
15 right in this area right here.

16           Q       This area right here, where are you talking  
17 about?

18           A       That would be the third culvert.

19           Q       Is that what the government calls the Lane  
20 Road culvert today?

21           A       Yes.

22           Q       You started there, and what happened?

23           A       We started there.

24           Q       I don't mean to interrupt you. I assume  
25 you are going to say we. When you say we, what we are

1 about to talk about, are you referring to the four  
2 people, talking about Todd Lutte, Mike Fodse, yourself  
3 and Randy Brace?

4 A Yes.

5 MR. KOGAN: Counsel, when we talk about the  
6 Lane Road culvert, at what the government refers  
7 to as Elk Creek?

8 MR. UHOLIK: Right. We established we are  
9 calling that culvert the Lane Road culvert even  
10 though there are multiple Lane Road culverts.

11 MR. KOGAN: I want to be clear.

12 Q I will hand you an orange highlighter. If  
13 you would just -- starting where you started, sort of  
14 describe where you walked. Then when you stop, we  
15 will have you do something else.

16 A To the best of my knowledge, from what I  
17 recollect, we started here. I believe we walked --

18 Q Up the contour field?

19 A That's what I remember. Up the edge of the  
20 contour field up to this knoll.

21 Q Are you referring to the -- I know there is  
22 a clump of trees.

23 A There is a clump of trees.

24 Q Somewhere around there?

25 A Somewhere in that area. I remember Todd

1 Lutte wanted to have -- he told me and Randy -- Todd  
2 Lutte told us he wanted to have a little side thing  
3 with Mike Fodse.

4 From what I remember, they kind of went off  
5 in this area. They came back. That's when Todd Lutte  
6 said they decided they are going to determine all  
7 these agricultural ditches.

8 I remember proceeding to walk down to this  
9 area right here. We may have followed this ditch  
10 right here, because Todd Lutte was worried about  
11 draining this area here. He didn't know where to tell  
12 Randy to put the dirt out of the ditch.

13 Finally, he decided to put it on the field  
14 side.

15 Q So did you -- do you mean, by field side,  
16 in the contour field?

17 A Not in the contour field, but on the side  
18 of the contour field. Instead of putting on this  
19 side.

20 We stood right here. That is when I asked  
21 Lutte, I said, "Dad will want to farm these fields.  
22 Where can we plant corn to?"

23 He pointed with his hand. We are going to  
24 say, "Right to here." And there is a little ditch  
25 right there. That is as far as we went when we

1 planted corn.

2 We proceeded to walk back out to meet -- my  
3 dad was out there. Back to the road. Todd Lutte  
4 explained to him the same thing he told me and Randy  
5 out in the field. They were going to determine these  
6 agricultural ditches. He said we can clean those out.

7 I believe Randy asked when we could start.  
8 Somebody asked when we could start. Todd Lutte said  
9 right away. My brother I remember, specifically,  
10 asking Todd, "What are we going to do with all the  
11 phone calls? Because as soon as we start cleaning  
12 these ditches out, there is going to be calls."

13 Todd Lutte said all calls will be directed  
14 to the EPA. Then Todd a short time -- Todd pointed  
15 over to the Marsh property and asked dad what he  
16 planned on doing with that. I remember dad saying,  
17 "We are planning on farming it." That's what I  
18 remember at that meeting.

19 Q About how long did it take you --

20 A Could I say one more thing?

21 Q Yes, sir.

22 A There was talk about us -- our dad talked  
23 about maybe putting a pond, a small pond over on the  
24 Marsh property. Todd Lutte didn't see a problem with  
25 that. I just wanted to add that in.

1 Q So the meeting -- I think we sort of agreed  
2 it was some time in July 2012. When did you lay the  
3 tile in the consent decree area, to the best of your  
4 recollection?

5 A We started shortly after Todd left. I  
6 can't remember if it was a day or a week, but we  
7 started shortly after that day.

8 Q Basically, immediately. Would that be a  
9 fair characterization?

10 A Yes. Very close.

11 Q Why did you start immediately?

12 A So we can get the water off the property.

13 Q I guess my question is if you couldn't  
14 plant it until the following spring, why did you do it  
15 immediately?

16 A Because normally -- it was July, probably  
17 one of the driest parts, it could be one of the driest  
18 times of the year. It just made sense to do it then.

19 Q Okay.

20 Q What is the purpose of tile drain?

21 A It helps your crops grow.

22 Q How does it do that?

23 A It takes your submoisture, a lot of crops  
24 don't like what we call wet feet.

25 Q When you say submoisture, some ground is --

1 I don't want to testify, but some ground is naturally  
2 wetter than others?

3 A Erie County, yes. Erie County soil, yes.

4 Q Would you say that, generally speaking,  
5 Erie County soil is wet?

6 A I mean, it can be.

7 Q The fields that you farm, and I understand  
8 that --

9 A Just because they are wet don't mean they  
10 are not productive.

11 Q I'm just asking about general moisture. Is  
12 it your experience, at least in the fields that you  
13 personally farm, are they wet?

14 A The fields we farm?

15 Q Yes.

16 A It's typical Erie County soils, so I'm sure  
17 you know from there what kind of soils.

18 Q Sir, I can tell you with 100% certainty I  
19 don't know. That's why I'm asking.

20 A If you ask me the names they call all the  
21 soils, I couldn't tell you that either.

22 Q I couldn't tell you either.

23 I guess I'm trying to get a sense, is it  
24 common in the area --

25 A It's a common practice to tile.

1 Q Is that because the ground in Erie County  
2 is maybe wetter than some other places?

3 A Yes. To get good productive crops, you  
4 have to keep the water off.

5 Q Do you have any idea how much tile you laid  
6 in the consent decree area?

7 A I don't know. I never kept track.

8 MR. KOGAN: I think that question has been  
9 answered. If we could read that back.

10 MR. UHOLIK: I haven't asked him how much  
11 tile he laid.

12 Q Was the -- let's go back to the time of the  
13 meeting.

14 A 2012.

15 Q Let's go before that meeting. If you can  
16 take yourself back to -- even the day of, whatever.  
17 The consent decree area, how would you describe it?  
18 Was there a lot of vegetation on it? Were there  
19 shrubs? Were there trees?

20 A Yes. There were a few trees. Old Elm  
21 trees. It was grassy. And prior to that, prior to  
22 2011 when the beavers had the dams up through the  
23 ditches, it was all flooded.

24 Q When you removed -- the beaver dams were  
25 remewed; is that correct?



1 A Yes. The Game Commission gave dad  
2 permission to remove the dams.

3 Q And after that --

4 A They even helped remove one of them.

5 Q After that was it flooded?

6 A After we took the dams? No. Once the  
7 water came down, that's when dad called the EPA out,  
8 Todd Lutte and the Army Corps, that's when they came  
9 out.

10 Q When you are talking about the beaver dams  
11 removed, where were they located? Do you remember?

12 A I remember there was one at the culvert at  
13 Sharp Road, because the Game Commission helped us take  
14 that one out.

15 Q I think I may have seen photos of that one.

16 A You could have. I haven't seen the photos.

17 And I recall -- I thought there was one or  
18 two in this ditch on Marsh farm.

19 Q When you say this ditch, are we referring  
20 to what you call an agricultural ditch and the United  
21 States calls Elk Creek?

22 A It's not Elk Creek.

23 Q I appreciate it. But for the record, we  
24 have to understand, since we are calling it something  
25 different.

1 A Right.

2 Q There were one or two on --

3 A I believe on the Marsh Homestead property.

4 And I remember there was one not too far  
5 from the check dam. And I believe there was one in  
6 this area.

7 Q And by this area, you mean --

8 A To the best of my knowledge --

9 Q In the consent decree area there was -- I'm  
10 trying to think how to describe it for the record.

11 There is a beaver dam in the vicinity of sort of the  
12 intersection of what you drew the pink line, you  
13 drew --

14 A Approximately, in that vicinity.

15 Q And what we are calling Elk Creek and what  
16 you are calling an agricultural ditch.

17 A Correct.

18 And there is also a dam which is still  
19 there today, somewhere right in this area.

20 Q How many beaver dams -- do you know how  
21 many beaver dams are out there today?

22 A No. Because I haven't been on the  
23 property. So I can't -- I know there is one up here.  
24 I haven't walked the property recently to know if  
25 there is any moved in.

1 Q So in total -- by you I believe you said it  
2 was Randy that did the removal of the beaver dams?

3 A Randy and the Game Commission with the one  
4 dam, yes.

5 Q How many beaver dams were removed north of  
6 Lane Road?

7 A We are on this side.

8 Q North of Lane Road.

9 A Approximately, two, maybe three.

10 Q And how many were removed south of Lane  
11 Road?

12 A One, possibly two, that I can recall.

13 Q Back to the vegetation. You said it was  
14 grassy. There were trees. Were there some shrubs?  
15 I'm referring to in the consent decree area back  
16 before the July 2012 meeting.

17 A I guess it could have been grown up to some  
18 shrubs.

19 Q At that meeting did -- at that meeting, the  
20 July 2012, did either Fodse or Mike Lutte tell you  
21 to -- strike that.

22 After that meeting was the vegetation  
23 cleared?

24 A Yes. Because we took the dead Elm trees  
25 that were there out. And we tiled it after he cleaned

1 the ditches out.

2 Q And who cleared the vegetation?

3 A It would probably be -- I know I took some  
4 out. Randy helped take a few trees out. I remember  
5 we used them for firewood.

6 Q Was there any clearing of the grass or  
7 anything like that?

8 A We didn't mow it. We may have ran a field  
9 cultivator through it after it was tiled.

10 Q Would that be to prepare it for planting?

11 A Yes.

12 Q And at that 2012 meeting with Fodse and  
13 Lutte, did either of them -- when you did your walk on  
14 the contour field and came to that knoll, did either  
15 of them say, "You can clear all this"?

16 A He just -- Lutte told us we can farm  
17 approximately to where I drew that line.

18 Q Please correct me if I'm wrong. They said  
19 you can clean the ditches, and you can farm up to this  
20 point, basically?

21 A Correct. And he determined all these ag  
22 ditches where I marked out, and he knew our intent to  
23 farm it, and so did Fodse.

24 Q Did they say anything else?

25 A To my knowledge, no. Other than what I

1 already told you.

2 Q Thank you so much.

3 A There is one more thing. Todd Lutte did  
4 say that he was going to write something up, but the  
5 government works slow. But he was going to write  
6 something up.

7 Q The government does work slow. I think  
8 that's probably a good place to stop for now.

9 (Recess taken.)

10 BY MR. UHOLIK:

11 Q Just one more question about the consent  
12 decree area for now. Are there any other ditches  
13 around that knoll other than the ones you highlighted?

14 A Around this knoll here?

15 MR. KOGAN: What knoll?

16 A The knoll on the field.

17 Q The knoll on the contour field. Are there  
18 any ditches around here?

19 MR. KOGAN: "Here" is where? South of  
20 the --

21 Q It's near where Mr. Brace has drawn a line  
22 to indicate where he believes Mr. Lutte told him he  
23 could farm up to. Are there any other ditches around  
24 that point?

25 A There is a ditch that goes from here up and

1 around. But we never touched that one. That is all  
2 still flooded.

3 MR. KOGAN: Could we describe where that is  
4 located?

5 MR. UHOLIK: He pointed to -- seems to be,  
6 basically, almost along the property line there  
7 is a ditch that runs.

8 MR. KOGAN: Runs east to west.

9 MR. UHOLIK: East to west around the bottom  
10 of the property.

11 A And it circles up and connects to this  
12 ditch.

13 Q It circles up and connects to what  
14 Mr. Brace refers to as an agricultural ditch and the  
15 United States refers to as Elk Creek.

16 Any other ditches perpendicular to that,  
17 sort of coming up? It seems there is a lot of east  
18 west. Is there any north south ditching?

19 A I'm trying to think.

20 This is all flooded back in here. I can't  
21 tell. I'm trying to think

22 Q If you don't remember, that's fine.

23 A Right now I don't recall.

24 Q Totally fine.

25 You said that your brother, Randy, cleaned

1 out what you call agricultural ditches and we call Elk  
2 Creek. Did he clean anything else out there? Did he  
3 excavate anything new?

4 A He didn't excavate anything that Todd and  
5 Fodse told us that he couldn't excavate. And that is  
6 why the ditches I outlined, to my knowledge, that's  
7 all he dug out.

8 Q To your knowledge, he didn't dig anything  
9 else out either old or new?

10 A No.

11 He did right here, right where Todd Lutte  
12 told us we could farm to, he did put this one in.

13 Q What one?

14 A Right where Todd Lutte, where we marked  
15 that.

16 Q Where you made that pen marking there is a  
17 ditch there?

18 A Yes. I believe there was a ditch right to  
19 where Lutte told us where we could farm to.

20 Q There is a ditch. Would you be kind  
21 enough -- that will be over top your pen mark, but  
22 just so we know.

23 Let the record reflect the witness will  
24 highlight that ditch much like he did the -- what he  
25 refers to agricultural ditches and we refer to as Elk

1 Creek, he highlighted it with pink.

2 A And I would like -- there is one more  
3 culvert after looking at this picture. It's an old  
4 one. We said there was three culverts on Lane Road.

5 Q We will make green dots.

6 A The only reason is when you asked me how  
7 many culverts were on there, I said three.

8 Q But there is four?

9 A And I believe --

10 Q Let the record reflect the witness is  
11 making green dots along Lane Road where he believes  
12 there are culverts.

13 Mr. Brace, is it to your understanding what  
14 the United States is calling the Lane Road culvert is  
15 the second green dot from the left?

16 A This right here, yes.

17 Q Just so we are clear for the record. Thank  
18 you, sir.

19 Do you know if either your father, Robert  
20 Brace Farms or Robert Brace & Sons owns the property  
21 to the south of the property line for the Murphy site?

22 A If Robert Brace owns the property south  
23 here?

24 Q Yes.

25 A Not to my knowledge.



1 Q Robert Brace Farms, Incorporated?

2 A Not to my knowledge.

3 Q Sons?

4 A No.

5 Q And that last ditch that you highlighted  
6 there, where you previously had the pen mark for where  
7 you think Todd Lutte told you you could farm up to.  
8 Was that new? Did that exist prior to the meeting?

9 A No. That was -- no.

10 Q We are going to move on from the consent  
11 decree. If you could take a look at the Homestead  
12 property. How many ditches are on the Homestead  
13 property, do you know?

14 A Four.

15 Q You believe four ditches. Do you know sort  
16 of what condition those ditches are? Are they cleaned  
17 out? Are they clogged?

18 A This one --

19 Q Let's go east to west.

20 A This here, I don't recall cleaning this one  
21 out. The one marked agricultural ditch --

22 Q That is in orange.

23 A It's orange. We cleaned that out.

24 Q We are on Exhibit R01 still. The  
25 agricultural ditch is in orange on the Homestead

1 property. Continue, sir.

2 A I believe he cleaned this one here, did not  
3 touch this one.

4 Q When you say this one here, are you  
5 referring -- is this a ditch, this blue sort of dotted  
6 dashed dot dot line?

7 A That is what I'm referring to. Looking at  
8 this map, that is what I'm referring to. Then there  
9 is a ditch, and I believe it is filled in. It goes  
10 from this road that intersects this ditch.

11 Q And is this -- what you are calling this  
12 ditch, is that labeled there?

13 A Yes. The map says it is labeled.

14 Q What does the map call it?

15 A The map is calling it a tributary, then  
16 some letters or numbers. 626. That's all I can --

17 MR. KOGAN: Counsel, a previous exhibit was  
18 used. That may elaborate better.

19 MR. UHOLIK: We will probably get there.

20 Q So tributary 626, what you are calling an  
21 agricultural ditch, was cleaned out?

22 A I can't recall if that was cleaned out  
23 after 2012. Because I know this ditch here was not.

24 Q By this ditch, you mean there is a ditch  
25 coming down from the top?

1 A There is a ditch coming down from Greenlee  
2 Road that intersects this ditch. I guess I can't  
3 recall if this was dug out after 2012.

4 Q Was it dug out prior?

5 A Yes. At one time I remember it was being  
6 cleaned.

7 Q Do you have any idea when that was?

8 A I don't.

9 Q And the ditch that you said comes down from  
10 Greenlee and intersects the ditch we were formerly  
11 talking about, is that still clogged?

12 A Yes.

13 Q The orange labeled ditch on the Homestead  
14 farm, which actually has an agricultural ditch  
15 labeled, do you recall when that was cleaned out?

16 A I thought we cleaned it out after Lutte and  
17 Fodse after 2012, I think.

18 Q And then the ditch to the east of that, has  
19 that been cleaned out?

20 A This one here?

21 Q How many ditches are there to the east of  
22 the orange ditch on the Homestead property?

23 A I see one.

24 Q You see one. That's fine. Was that one --  
25 how can you tell it's a ditch? Is that the one with

1 the Xs?

2 A No.

3 Q What is the Xs?

4 A The Xs says tributary and a number to Elk  
5 Creek.

6 Q So that is not the ditch you are talking  
7 about. Where is the other ditch?

8 A Right here. And it goes underneath Lane  
9 Road. This is part of it.

10 Q Is that the dashed line?

11 A That's the dashed line. Yes.

12 Q Let the record reflect that to the east of  
13 what appears to be a watercourse with some Xs on it,  
14 and to the west of the Homestead property line is a  
15 dashed line that Mr. Brace has indicated is an  
16 agricultural ditch.

17 I was trying to figure out what that was.  
18 Do you know whether that was cleaned out or not?

19 A It wasn't cleaned out on this side of Lane  
20 Road.

21 Q It was only cleaned out on the other side?

22 A I believe so. Yes.

23 Q What were the -- did the condition -- it  
24 seems that two ditches may have been cleaned out on  
25 the Homestead property?

1 A I know for sure we cleaned this one out.

2 Q When you say this one, the orange one?

3 A Yes. The orange ditch.

4 Q Why did you clean that out?

5 A Because it was completely plugged, and the  
6 tile lines were completely plugged off.

7 Q Was that causing water --

8 A Want me to explain how the system works?

9 Q Yes, please.

10 A From Route 86, this ditch comes up through  
11 the Murphy farm -- I'm sorry, through the Marsh farm,  
12 on to the Murphy farm, and comes up to Lane Road.  
13 This whole side of the Homestead farm drains into this  
14 ditch.

15 So without this ditch going through the  
16 Marsh farm, this Homestead property on this side here  
17 all flows down and around. So if it is plugged off  
18 like this ditch was, all the tile lines coming from  
19 these fields are totally not running. And they back  
20 up.

21 Q Before you cleaned out the orange  
22 agricultural ditch on the Homestead farm on Exhibit  
23 R01, the water was all backed up on to these Homestead  
24 fields that you marked with corn?

25 A Yes. Whether it was on top and/or

1 submoisture.

2 Q What happened after you cleaned it out?

3 A Well, when we cleaned this out and Lutte  
4 and Todd gave us permission to clean this ditch out  
5 all the way to 86, things started working and drying  
6 up. That is why we had to go back in and repair  
7 and/or fix the tile on the Murphy farm.

8 Q How does the tile on the Murphy farm affect  
9 the tiling system on the Homestead property?

10 A Well, as the consent decree said earlier,  
11 when we read it, he had to tear up the tile lines.

12 Q What I'm just asking, are these --

13 A The best way for me to explain it is the  
14 tile on the Homestead, for instance this field and  
15 this field, it drains into this ditch, the tile lines,  
16 which drains the fields.

17 It comes down and goes all the way right to  
18 here to 86. So I guess that's how this drains the  
19 Homestead.

20 Q I'm just saying that the tiling system in  
21 the consent decree area, that doesn't have anything to  
22 do -- does it have anything to do with the tiling  
23 system in the Homestead farm?

24 A No. But these ditches do.

25 Q I'm just asking about the tiling system.

1           A        Like I said, when he had to plug the tile  
2 lines off and, we were going to farm the Marsh  
3 property, he had to go back in and repair and lay tile  
4 from when the government had had tear up the tile,  
5 previously.

6           Q        I guess here is my question. When you  
7 cleaned out the orange agricultural ditch, how did  
8 the -- you said before, when it was clogged, there was  
9 a lot of backup on to the Homestead property.

10          A        You could almost -- from what I recall, you  
11 could almost walk across there. That is how full this  
12 ditch was.

13          Q        The orange ditch?

14          A        Yes.

15          Q        When you removed -- by you, either you or  
16 your brother, Randy.

17          A        Randy.

18          Q        When Randy removed it, how did the tiling  
19 system react? Did the moisture -- how did the  
20 moisture in the fields drop?

21          A        We had to go in, I remember there was a  
22 spot here that the tile was backed up, and it was  
23 choked off. We had to repair a section in here. We  
24 had to repair some tile on this side of it, also.

25          Q        What were those tile drains backed up with?

1           A           From the ditch being plugged and the water  
2           not being able to flow and sediment. And then trying  
3           to farm all those years. A tractor could have -- if  
4           we got stuck with a tractor, which we did, it could  
5           have broke the tile.

6           Q           Can you sort of describe the difference  
7           between the field moisture levels before you cleaned  
8           out the orange agricultural ditch on R01 and after?

9           A           Before we cleaned it out and before we  
10          opened -- cleaned these ditches here out, the  
11          Homestead -- it was getting harder and harder to farm  
12          year after year.

13                    The water, for instance along this ditch,  
14          this field kept creeping back. There was a spot in  
15          here that we had to keep going farther and farther  
16          out. The water just kept expanding back into the  
17          fields making it wetter and wetter every year.

18          Q           And how --

19          A           The reason for that is because, for  
20          instance, this tile going -- any tile that emptied  
21          into this ditch was plugged. It couldn't escape.

22          Q           Right.

23                    So when you cleaned the ditch, I assume you  
24          also cleaned -- I don't know, how do you clean out  
25          tile, if tile is plugged? How do you clean it?



1           A           If you can't clean it with a rotorooter,  
2           you normally dig up where it is plugged or broke and  
3           repair it.

4           Q           Did you do both those things in the  
5           Homestead farm?

6           A           Yes. We repaired tile and laid tile where  
7           we needed to repair it.

8           Q           Was that after you cleaned out the orange  
9           agricultural ditch?

10          A           If I recall, that would be afterwards.  
11          Yes.

12          Q           Since you cleaned it out, have the  
13          Homestead property fields, have they been draining  
14          better?

15          A           It's helped. We still should put some  
16          more -- lay more tile line on the Homestead.

17          Q           Do you still have a water retention  
18          problem, subsurface moisture problem?

19          A           Yes.

20                    You asked for yield maps, which you will  
21          see in yield maps, it will show you where the spots  
22          need tiled from the color of the map. You will see  
23          what I'm talking about after you look at yield maps.

24          Q           You think you need more tile on the  
25          Homestead property?

1 A Yes. That shouldn't be a problem. Seeing  
2 tile is part of agriculture. Normal farming  
3 practices.

4 Q Have you had any similar problems on the  
5 contour field?

6 A I remember we laid a tile, there is a gas  
7 well right here. And this picture here --

8 Q When you say this picture here, let the  
9 record reflect the witness is -- we are on Exhibit  
10 R04. It is page EPA 00001132.

11 A This picture here with the gas well in it,  
12 we did lay some tile and repair some tile that was in  
13 this section here and up by the gas well.

14 Q Is that the only tile you have up in the  
15 contour field that you know of?

16 A Unless he put some in where I don't know.

17 Q When you say he?

18 A My dad. I don't recall any other tile.  
19 Other than I guess on this side of the contour right  
20 here.

21 Q Since you started farming in the contour  
22 field again, apart from that installation of tile, you  
23 don't recall putting any others in?

24 A Just right on this section here.

25 Q Is that outside the contour field?

1           A           Well, that is -- in this picture it is part  
2 of the consent decree.

3           Q           I'm just referring, for purposes of this,  
4 we are calling the contour field the area in the  
5 middle not in the consent decree.

6           A           Right.

7           Q           How is the moisture level there?

8           A           That was decent. That's a real sandy  
9 field.

10          Q           What does that mean?

11          A           Like going to the beach.

12          Q           But you can still plant there?

13          A           You can still plant there.

14          Q           What grows well in sandy fields?

15          A           We have had cabbage, corn, wheat, oats.

16          Let me rephrase. It's not beach sand. It's real fine  
17 soil.

18          Q           Grainy?

19          A           Yes.

20          Q           Let's discuss the Marsh site. Are you  
21 familiar, sir, with what we are calling the Marsh site  
22 today? It is marked on Exhibit R01 north of Lane  
23 Road.

24          A           Yes.

25          Q           Who owns it?

1 A My dad, Robert Brace.

2 Q Do you recall when it was purchased?

3 A I do not.

4 Q Do you know if it was purchased before or  
5 after the Todd Lutte and Mike Fodse meeting? If you  
6 don't recall, that's fine.

7 A I don't recall the date he purchased that.

8 Q Do you know why your father purchased it?

9 A He had this section, which is in Waterford  
10 Township, already had a PC, I believe -- or a CW on  
11 it. So this was already, previously, drained back in  
12 '77 after he dynamited this ditch in right here.

13 Q When you say this section -- because the  
14 Marsh site is made up of two parcels. Are you  
15 referring to the eastern most parcel?

16 A Right now I'm talking about the Waterford  
17 parcel. Waterford Township parcel.

18 Q For the record, of the two parcels, is that  
19 the eastern most?

20 A That is the eastern corner. Yes.

21 Q Is it your understanding he purchased it  
22 with the intent to farm it?

23 A Yes.

24 Q And what were the conditions of the site  
25 when your dad purchased it?

1 A Can I point as I talk?

2 Q Yes, sir. If you can describe where you  
3 are for the record.

4 A This section right here, which would be  
5 from the intersection of Sharp Road to approximately  
6 the Waterford McKean Township line. There was a  
7 section of trees, Maple, Cherry, Poplar, I believe.  
8 There was a schoolhouse foundation in this corner.

9 Q That is the southwestern section of Marsh  
10 site?

11 A Correct. Down by the culvert on Route 86.  
12 And all the way up along 86, I'm going to say  
13 approximately to the Waterford McKean line. It was a  
14 grassy vegetation with I guess some brush growing up  
15 on it. On the Waterford Township parcel, it was more  
16 brushier.

17 Q Would it be fair to characterize the site  
18 as vegetated?

19 A Yes. Vegetated with grass, a section had  
20 some trees on it, yes.

21 Q How many times a year are you on the Marsh  
22 site? On average. It's just an approximate.

23 A Ever since we got the stop order I don't  
24 recall being on it.

25 Q Apart from maybe site visits?

1           A           Yes. There were two visits. The one I  
2 remember meeting on Lane Road. I can't recall the  
3 date. We met right here. I remember everybody  
4 talking. I believe it was a rainy day that day. But  
5 I didn't go on it with those people. I didn't walk  
6 that.

7                   I believe it was towards the last visit.  
8 That was in October of this year. I met most of the  
9 people on Lane Road up from the second culvert here.  
10 And then I let.

11                   I guess to answer, I haven't been on, to my  
12 knowledge, since --

13           Q           The rainy visit.

14           A           Yes.

15           Q           Does May 2015 sound about right to you?

16                   MR. KOGAN: I think he is referring to the  
17 June 2013 visit. That was the visit everybody  
18 got rained on. And it was testified previously  
19 there was a videographer.

20           Q           You weren't on site for -- were you on site  
21 for the May 2015 visit?

22           A           That was with EPA, DOJ, Neal Devlin. Is  
23 that the meeting?

24           Q           I believe that may be it.

25           A           I was on site with that one.

1 Q Was that a rainy day visit as well?

2 A I don't recall that being rainy on that  
3 day.

4 Q Basically, you haven't been to the Marsh  
5 site, maybe a handful of times the last couple years?

6 A Right.

7 Q Have any of the Marsh --

8 A Other than driving by it.

9 Q Right. I assume -- you operate a fair  
10 number of -- I guess it's one entity or one farming  
11 operation. You operate multiple fields in the area.  
12 Is that correct?

13 A Yes.

14 Q You are always driving around.

15 A Correct.

16 Q Has the Marsh site been planted with crops  
17 since your father purchased it?

18 A No.

19 Q Did you grow up around this area?

20 A I mean, I grew up on the other side of  
21 Waterford. My granddad owned what was called the  
22 Homestead and purchased the Murphy farm. I was young  
23 enough I don't remember the dairy operation or  
24 anything like that.

25 Q Do you remember really anything with the

1 Marsh site?

2 A When my grandfather owned it?

3 Q Through your life.

4 A I know from -- I want to say pictures. I  
5 know it was farmed from the wooden tile we've seen in  
6 the Murphy property. I remember my grandfather  
7 telling me all this back here was buckwheat fields.

8 From what people told me, like my  
9 grandfather, I remember him saying that.

10 Q So you found -- you found wooden tile in  
11 the Marsh site?

12 A Not in the Marsh site. I'm talking the  
13 Murphy site.

14 Q Don't worry about the Murphy site for now.  
15 We will just talk about the Marsh site. Do you  
16 remember -- how long has it been, we sort of agree  
17 it's vegetated. How long has it been vegetated? Can  
18 you recall? Has it been a while?

19 A I couldn't tell you how long. I know it  
20 was farmed, this section here, approximately was still  
21 being farmed late '60s, '70s, approximately.

22 Q And by this section here, you are talking  
23 it's the western -- a portion --

24 A To me I would be calling it the western  
25 side of the township line.



1 Q Is it that whole parcel? Or just a smaller  
2 portion of the parcel?

3 A I remember seeing an old photo my brother  
4 had hanging in his house. And this was all field.  
5 That's going off the old photograph. Of course the  
6 schoolhouse was there.

7 In the photograph that he had, if I recall,  
8 this was all open. I can't remember what this looked  
9 like.

10 Q Since you have been farming, have you ever  
11 recalled it being farmed?

12 A By Earl Brace would be my dad's cousin, I  
13 believe, was the last one to farm that.

14 Q When do you think that might have been?

15 A I think I said last time it was probably  
16 farmed was '60s, '70s, approximately. I'm not 100%  
17 sure on the date.

18 Q That's absolutely fine.

19 Let's fast forward to your father purchases  
20 the Marsh site. To your knowledge, what work has been  
21 done on the Marsh site since your father purchased it?

22 A We cut the trees. I'm the one who cut the  
23 trees on the intersection from the schoolhouse of  
24 Sharp Road to Lane Road.

25 Q What did you do? Did you excavate the tree

1 stumps?

2 A We cut the trees up for firewood.

3 Q Right. Did you excavate the tree stumps?

4 A We excavated the tree stumps out.

5 Q What did you do with the tree stumps?

6 A We burned them.

7 After we got the trees, then we proceeded  
8 to tile this section here.

9 Q I will, once again, hand you the yellow  
10 highlighter. Let the record reflect the witness is  
11 going to highlight in yellow on Exhibit R01 within the  
12 Marsh site where he laid tile.

13 A Yes. Again, I will draw an X on where  
14 we -- that I know we laid tile. And we started to lay  
15 some tile, I know there is -- I believe there is a  
16 tile that goes around. Of course this is all tile,  
17 how far over without looking at a map, I couldn't tell  
18 you.

19 Q When you say this is all tile, you are  
20 talking about the western portion -- western parcel of  
21 the Marsh site is all tiled, effectively?

22 A Well, we never got a chance to farm it.  
23 But we still had to finish -- this is where we were  
24 going to either finish tiling it and/or possibly put a  
25 pond in this section here.

1 Q Is that the eastern parcel?

2 A This is the eastern side. So this side was  
3 never 100% completed.

4 Q So the eastern parcel, it seems you have  
5 drawn one tile line. There is a little bit of tile on  
6 the eastern section is what you are saying?

7 A There is a little bit of tile. We didn't  
8 put the laterals in like we did over here.

9 Q So in the western section, you put in  
10 lateral tiling?

11 A Yes. I can't recall how many feet apart we  
12 put them.

13 Q Do you have any idea how much you put in  
14 there?

15 A I don't.

16 Q How would you describe -- do you feel like  
17 you need to add any more tile to the Marsh site?

18 A Until we farm it.

19 Q Until you farm it, you don't know.

20 A We don't know. Like I said, I haven't been  
21 on it, so I don't know. I can tell you this, this  
22 section is not completed yet.

23 Q That's the eastern section?

24 A Correct.

25 Q You have completed tiling in the western

1 section?

2 A For the time being.

3 Q I think -- did I ask you if you -- after  
4 you cut down the trees you pulled up the stumps?

5 A Yes.

6 Q And the rest of the vegetation, the brush,  
7 the grass, was any of that --

8 A We burned it.

9 Q You burned the brush and the grass?

10 A Not so much the grass. The tree stumps.

11 Q Did you dig up the shrubs?

12 A Yes.

13 Q Who did that work?

14 A Randy. Either dug them out or -- I can't  
15 remember what process we used on the brush part.

16 Q Did your father do any of the work?

17 A Yes. I know he ran the dozer a little bit.  
18 I believe he ran the field cultivator.

19 Q What would the bulldozer be used for? What  
20 was it used for on the Marsh site?

21 A Possibly to push some of the brush off.

22 Q And what would the field cultivator be used  
23 for?

24 A To fit the ground up.

25 Q What does that mean?

1 A Well, fitting is preparing to plant. Where  
2 the grass and stuff was, I remember running the field  
3 cultivator back and forth.

4 Q Does it dig up --

5 A There was no disk on that field cultivator.  
6 There is just shanks and tines and like a roller  
7 basket.

8 Q What does that do to the ground?

9 A It prepares your seed bed.

10 Q How does it do that?

11 A How to explain that to you.

12 Q Does dirt get moved around? Is there any  
13 earth moving?

14 A Define earth moving.

15 Q The ground. I don't mean heavy equipment  
16 earth moving. Is the ground disturbed?

17 A With a field cultivator?

18 Q Yes.

19 A I guess you would have to say yes. But  
20 it's disturbed to a point. That is normal farming as  
21 far as preparing your seed bed.

22 Q Just to the consent decree area. Did your  
23 father run the bulldozer in the consent decree area  
24 after you installed tile?

25 A I'm trying to think. I'm not saying he

1 didn't. I know Randy did when we were tiling.

2 Q And the dozer is used for, basically,  
3 moving vegetation?

4 A It's a dozer.

5 Q I sort of understand. We have to make it  
6 clear.

7 A You can use a dozer for anything. You can  
8 hook a piece of equipment to it and farm with it. You  
9 can push a tree over with it. You can pull another  
10 piece of equipment out. A dozer is multiple uses.

11 Q A utility vehicle.

12 A A utility.

13 Q So when did you add the tile drain in the  
14 Marsh property?

15 A It was after the 2012 meeting with Lutte  
16 and Fodse. Because I think I said this, Lutte asked  
17 what dad was going to do with the Marsh property. And  
18 he said he wanted to farm it. So it would have been  
19 after that meeting.

20 Q And who directed you to install tile drain?

21 A My dad.

22 Q To your recollection, did Todd Lutte or  
23 Mike Fodse say anything about tile drain in the Marsh  
24 site?

25 A Not that I recall.

1 Q Did they say anything about clearing  
2 vegetation in the Marsh site?

3 A They didn't. But I guess it was assumed  
4 they knew. Because in order to farm it.

5 Q So you assumed they knew. Is that correct?

6 A Yes. Because how else would you have  
7 farmed it without clearing it?

8 Q Was there any excavation of what the United  
9 States refers to as Elk Creek and what you call an  
10 agricultural ditch, was there any excavation or  
11 cleaning of the ditch -- Randy testified yesterday he  
12 was the one that did ditch cleaning.

13 A Right.

14 Q Did Randy clean that ditch or what the U.S.  
15 calls Elk Creek?

16 A This one here.

17 Q Yes, sir. The witness is referring to --  
18 he's pointing --

19 A Yes. He cleaned that ditch.

20 Q Could you please highlight, once again  
21 going back to pink, the portion of the ditch that  
22 Randy cleaned north of Lane Road? Again, this is what  
23 the U.S. refers to as Elk Creek. To the best of your  
24 recollection.

25 A I'm just trying to see -- I'm having a hard

1 time finding where the culvert on 86 is at on this  
2 map. I'm assuming it's --

3 Q I believe, sir --

4 A It's not up there. It could be.

5 Yes.

6 Q How did -- when did he clean that out?

7 A Again, it was after 2012. After Lutte's  
8 meeting. It was after 2012.

9 Q By after 2012 you mean, actually, after the  
10 year 2012 or after the July 2012 meeting with Fodse  
11 and Lutte?

12 A It was after the meeting. We didn't do  
13 anything until we got permission from EPA, after they  
14 determined those ag ditches. It would have been after  
15 that.

16 Q At that meeting, do you recall discussing  
17 this ditch, what the U.S. calls Elk Creek, do you  
18 remember discussing this at all?

19 A I don't recall walking that. We did not  
20 walk that, no. And I do remember -- I'm trying to  
21 think when it was my brother walked that ditch and  
22 gave the footage to the EPA. The date doesn't ring a  
23 bell what date he walked that from Sharp to Greenlee  
24 Road.

25 Q So that 2012 visit, was that mostly -- did



1 you spend any time in the Marsh site during that?

2 A I'm trying to think. I think Lutte walked  
3 the Marsh site. But I think Lutte knew we were going  
4 to clean it out, because we described, like I told you  
5 before, it would have done no good to clean out to  
6 Lane Road.

7 Q When you say you think Lutte knew --

8 A Yes. They gave us permission to clean out  
9 from 86 to Lane Road. The ditch.

10 Q When you say you think Lutte knew you  
11 intended also to clean north of Lane Road, basically,  
12 why do you think that he knew that? Did he say, "I  
13 understand you are going to clean out north of Lane  
14 Road"?

15 A I was under the assumption, because this  
16 ditch is all one ditch from here to here, when Lutte  
17 gave us permission to clean this out, and then my  
18 brother walked this for the EPA or Todd Lutte.

19 Q When you were meeting with Todd Lutte and  
20 Mike Fodse and your brother on the consent decree area  
21 where you marked in orange highlighter and where you  
22 stopped, and you assumed that when they said you can  
23 clean out this ditch --

24 A I didn't assume that. He told us that.

25 Q I'm saying he said that -- you are

1       testifying they said you could clean out this ditch.

2           A       Right.

3           Q       You took that to mean that you could clean  
4       out all the way up to Sharp Road?

5           A       All the way to Sharp Road.

6           Q       That was your understanding of it?

7           A       Yes. That was my understanding of it.

8           Q       Did they specifically say that?

9           A       I remember him saying, "We are going to  
10       declare these all agricultural ditches. And you can  
11       clean out" --

12          Q       Basically, I'm asking did he say, "You can  
13       clean this back up to Sharp Road"?

14          A       I guess I can't say --

15               MR. KOGAN: Counsel, let it be known for  
16       the record the witness said he did not walk the  
17       ditch the government refers to as Elk Creek with  
18       Todd Lutte. It was his brother that did that.

19               MR. UHOLIK: Actually, that's a  
20       mischaracterization of his testimony.

21               MR. KOGAN: No. It's not. Ask the  
22       question again.

23               MR. UHOLIK: We can have it read back. I  
24       believe what he said was after the meeting the  
25       EPA asked his brother to walk --

1 A After we cleaned the ditch.

2 MR. UHOLIK: I don't believe the witness  
3 testified they walked the length of what he is  
4 calling an agricultural ditch and what the United  
5 States refers to as Elk Creek into the Marsh site  
6 all the way up to the Sharp Road culvert during  
7 the meeting.

8 MR. KOGAN: I didn't say that.

9 Q Back to my question.

10 You are standing back here with Fodse,  
11 Lutte and your brother. By back here I mean we are at  
12 Exhibit R01 at the end of Mr. Brace's orange  
13 highlight.

14 A You know what, Lutte did know we were going  
15 to clean that ditch out. Because Randy -- Randy  
16 again -- I do believe Lutte knew we were going to  
17 clean that ditch out from Sharp Road to Lane Road.

18 Q Here is my question. Did Lutte or Fodse  
19 expressly state at that July 2012 meeting, "We  
20 understand you are going to clean the ditch out all  
21 the way back up to Sharp Road, and you can do that"?

22 A I believe he did. Because Todd Lutte knew  
23 it would do no good to clean the ditch out right to  
24 Lane Road.

25 Q How did he know that? How do you know that

1 he knew that?

2 A Because I believe my brother expressed to  
3 Lutte, I don't know what meeting. I know he expressed  
4 it other times on how this system worked. Without  
5 this ditch going to the Marsh property, the Murphy  
6 farm and the Homestead, the drainage will not work  
7 correctly.

8 Q So at the July 2012 meeting -- here is my  
9 question. Was it, specifically, discussed that you  
10 were going to clean it all the way up to Sharp -- did  
11 you say, "We are going to clean this ditch to Sharp  
12 Road"? And did they say, "Yes, you can do that"?

13 A I thought it was spoken, yes.

14 Q When your brother cleaned the ditches, what  
15 you call the ditches, what the United States refers to  
16 as Elk Creek north of Lane Road, how did he do that?

17 A With the excavator or track hoe as you  
18 called it.

19 Q Can you sort of describe to me how he did  
20 it?

21 A Like you would any ditch, took a bucket  
22 scoop of whatever is in the ditch and then laid it  
23 alongside of the ditch.

24 Q Do you know what side of the ditch he --

25 A He did that -- I don't recall which side.

1 No.

2 Q Were you there for it?

3 A I was around there. I wasn't with him when  
4 he cleaned out the ditches. Because he cleaned the  
5 ditches out after we took the beaver dams out. And  
6 then Lutte and them came out.

7 That was in 2011. 2012 is when -- shortly  
8 after that meeting is when he started cleaning them  
9 out. And I was not with him in the excavator. So  
10 no --

11 Q You weren't there?

12 A Not very much, if I was.

13 Q Okay. Do you know how long it took them to  
14 excavate -- or clean out the ditch from Lane Road to  
15 Sharp Road?

16 A I know it wasn't long. But I can't give  
17 you whether it was a day or a week.

18 Q There is a property to the north -- I guess  
19 it's directly north of the western parcel of the Marsh  
20 property. Do you know who owns that?

21 A I think a man from New York. I'm not sure.  
22 No, I don't know his name.

23 Q But you are sure -- are you sure that your  
24 brother cleaned out the -- what we call Elk Creek and  
25 you call the agricultural ditch on that property?

1           A           Yes. Because dad got an easement from him.  
2 I can't tell you when.

3           Q           That's fine.

4                        So why did your brother clean out where you  
5 highlighted in pink north of Lane Road?

6           A           To get the water off of the property.

7           Q           What was -- what was in -- what you are  
8 calling a ditch and we are calling Elk Creek, what had  
9 to be removed?

10          A           Well, prior to a beaver dam, let me explain  
11 this. Can you picture this road all flooded with  
12 water and Sharp Road overflowing with water? So you  
13 had vegetation in the ditch. If you could picture  
14 everything -- this all was underwater. All this  
15 consent decree. This is still underwater back here.  
16 This was all wet. And the debris that he cleaned out  
17 would have been grass.

18          Q           Are we talking about before the removal of  
19 the beaver dams?

20          A           This was after.

21          Q           So after the removal of the beaver dams --

22          A           You asked me what he would have took out of  
23 the ditches. And so it would have been grass,  
24 sediment from being backed up so long.

25          Q           Did he dredge it? Do you know?

1 A He didn't -- no. He just used the  
2 excavator.

3 Q So excavate it and then dump it on the  
4 side?

5 A I believe that is how he did it.

6 MR. KOGAN: Referring to side casting,  
7 counsel?

8 MR. UHOLIK: I'm just asking --

9 MR. KOGAN: Dumping on the side, are you  
10 referring to that term of art?

11 MR. UHOLIK: I believe side casting is a  
12 term of art.

13 MR. KOGAN: I just want to make sure.

14 Q So can you -- we will take this blue  
15 highlighter. Can you show me in blue where -- you  
16 said it was flooded and pointed to different areas.  
17 When you say it was flooded, can you give me a time  
18 period? Whatever it was, when was it flooded?

19 A I can't give you the dates, as far as the  
20 specific years. I do remember -- Lane Road going up  
21 there. And it was coming over the road here. Sharp  
22 Road, I believe, was closed off. And then even after  
23 the water receded, for a long time this water would be  
24 up close to the road.

25 Q So how many times has the water overtopped

1 Lane Road?

2 A I remember at least once.

3 Q Once.

4 A Then like I say, I remember it -- how many  
5 times, I can't tell you. But the water being real  
6 close to the edge of Lane Road.

7 Q So you remember it at least once. Is it  
8 possible that it is more than one but less than five?  
9 I'm trying to get a sense. At least once can be one  
10 or a million.

11 A All I can say, I remember going up there  
12 one time. It was over the road. I remember going up  
13 there numerous times and having it close to the road.  
14 I made the comment, I forget who it was, but the  
15 township is going to have to close that road down.

16 Q You can recall it being close to the road a  
17 number of times and overtopping the road once.

18 A Right.

19 Q When it was overtopping the road, how long  
20 was the road over top of the road?

21 A I didn't stick around to see it go down. I  
22 don't know how long it is.

23 Q Do you know -- do you have an idea when  
24 that was?

25 A I don't know a date.



1 I know it was before 2011. But to give you  
2 an exact date when I saw the flood, I can't remember.

3 Q Before 2011, was that before the clearing  
4 out of the beaver dams that were in --

5 A Yes.

6 Q Overtopped before the beaver dams were  
7 cleared out; is that right?

8 A Correct.

9 Q So since you, and by you I mean Randy,  
10 since Randy has cleared out what you have highlighted  
11 in pink, since he cleared out the beaver dams, so we  
12 are talking after he cleared out the beaver dam,  
13 before he cleaned out the ditches, do you recall it  
14 overtopping?

15 A Say that one more time.

16 Q You just said that was before 2011 which I  
17 believe is -- some time in 2011 I believe the beaver  
18 dams were cleared out. Correct?

19 A Approximately, that date is when we met  
20 with the EPA and I believe the Game Commission. That  
21 was to take dams out. That was the initial intent.  
22 Because prior to that the property was completely --  
23 it was flooded.

24 Q So prior to removing the beaver dams, the  
25 property was flooded?

1 A Correct.

2 Q So before you removed the beaver dams is  
3 when you recall seeing the water overtopping Lane  
4 Road?

5 A Before we removed the beaver dams.

6 Q Before you removed the beaver dams?

7 A Before.

8 Q The beaver dam removal would have been in  
9 2011?

10 A They were there in 2011, they were there  
11 for a number of years. They weren't there just --

12 Q Do you recall the removal being in 2011?

13 A Some time in 2011.

14 Q I think this is a good time to break for  
15 lunch. Hopefully, we will be able to finish up quick  
16 after.

17 (Thereupon, a luncheon recess was taken  
18 from 12:15 p.m. until 12:50 p.m.)

19 ---

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25

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 BY MR. UHOLIK:

3 Q Welcome back, Mr. Brace. I believe we left  
4 off with the Marsh property. Actually, we were  
5 discussing the beaver dams.

6 So do you have any idea when in 2011 those  
7 dams were removed?

8 A I know it was 2011. I don't have the exact  
9 date, no. I don't.

10 Q Was that before or after I believe you said  
11 that the Game Commission came on site?

12 A The Game Commission came on site with the  
13 EPA. That is when Bob tried to get all the agencies  
14 up there.

15 Q By Bob you mean --

16 A Robert.

17 Q Your father?

18 A Yes. Tried to get all the agencies up  
19 there to get the flooding off the property and put it  
20 back prior to '84. Of course, I think I said this  
21 before, the EPA and the Game Commission came out. The  
22 Game Commission gave us permission. But as far as the  
23 date, I can't off the top of my head think of the  
24 date.

25 Q So in 2011 the beaver dams were removed.

1 Correct? After the beaver dams were removed what  
2 happened to the water levels?

3 A They receded.

4 Q How much did they recede?

5 A Quite a bit.

6 Q What was the date of the -- after the  
7 beaver dams were removed north of Lane Road, how were  
8 the water levels on the Homestead property?

9 A Well, until we cleaned the actual ditches  
10 out, it still wasn't right on the Homestead property  
11 or the Murphy. Obviously, the Murphy was -- the tile  
12 lines were cut like I said before.

13 The water receded. But as far as the tile  
14 lines working, for instance when I told you this ditch  
15 here, you could almost walk across it.

16 Q So this ditch here, we are on Exhibit R01.  
17 Mr. Brace is pointing to the orange line that is  
18 labeled agricultural ditch on the Homestead property.

19 A Right. Correct.

20 Q All right.

21 What I'm asking, before Fodse and Lutte  
22 came on the property, so after the beaver dam removal  
23 and before Fodse and Lutte came on the property, so  
24 the beaver dams are removed, and the water recedes.

25 A Water receded.

1 Q So what was the condition of the Homestead  
2 property at that point?

3 A Still wet, because the ditches were all  
4 silted in or filled up. They needed cleaned out. So  
5 nothing -- on the Homestead property --

6 Q Did it change the water level at all?

7 A Well, yes, like the water in Murray farm  
8 here, where it was almost up the road or flooded, yes,  
9 it went down.

10 But your question was to me did the  
11 Homestead property dry out, no, because the ditches  
12 were completely filled in.

13 Q So the orange agricultural ditch was filled  
14 in at that point.

15 A Yes. This ditch is filled into this right  
16 now.

17 Q This ditch, you are talking about the  
18 northwestern most ditch, which comes down from  
19 Greenlee Road and intersects this ditch, which has a  
20 label on it that is trib 626?

21 A Yes.

22 Q And the ditch, that is labeled trib 626,  
23 you are not sure if this is clogged or cleaned out?

24 A I know, if I recall, I mean, it could use  
25 cleaned out, yes.

1 Q I may have asked this. Forgive me if I ask  
2 a question twice. Do you recall roundabouts in  
3 2011 -- we did discuss it. Never mind. Strike that.

4 I think I'm going to turn now to the EPA  
5 and the various site visits you have been involved  
6 with. You have been to at least some site visits?

7 A I was, yes.

8 Q Off the top of your head, do you remember  
9 any -- if you can work from -- chronologically, from  
10 back to present.

11 A All right. Let me start -- I will do this  
12 for my own so I can remember.

13 We met with EPA and the Game Commission.  
14 Then we met with Todd Lutte and Michael Fodse.

15 Q Is that the second one?

16 A I guess that would be the second meeting.  
17 I believe it was 2012. We have '11 with the Game  
18 Commission.

19 And then after 2012, Smolko stopped us.

20 Q Was that during 2012?

21 A That would have been, yes, in the fall, I  
22 believe. Because I was on the tile machine, on the  
23 tractor. And we were right here. I was in the  
24 tractor. My dad and Randy were somewhere in here.  
25 Smolko pulled up.

1           There was other -- one or two other  
2 vehicles with two deputies. I don't even know their  
3 names. They proceeded to walk up to Smolko. Then I  
4 was getting out of the tractor and walking up to dad  
5 and Randy and the two deputies or whatever. They told  
6 me to stand back.

7           But I could hear what was going on. Smolko  
8 did not want to hear anything what dad or my brother  
9 tried to explain to them.

10           Randy would try to explain, or dad, the  
11 meeting we had with the EPA. And dad did try to tell  
12 him to go down to the conservation district and  
13 everything what he was telling him would match out.

14           But Smolko was -- he handled it very  
15 unprofessionally. I remember him putting his hand on  
16 his gun, pointing at my dad saying, "I'm going to go  
17 find out if what you are saying is right. If when I  
18 come back, if nothing matches up, you are going to  
19 jail." And he pointed to my brother, he said, "You  
20 are going to jail, too."

21           It was probably -- I don't know if it was  
22 an hour, two hours. I got in the pickup with dad.  
23 And we saw Smolko's truck somewhere down by Lane and  
24 Greenlee Road. We pulled up. Dad rolled the window  
25 down. And Smolko said, "I guess you do have

1 everything you need." And that was the end of it that  
2 day.

3 And then -- I'm going to your first  
4 question. The visits I did with the EPA or Army Corps  
5 that came out. The only thing -- I don't remember if  
6 the visit -- I remember a visit with Pam. You were  
7 out there. I believe everybody was there.

8 And we walked the Murphy farm. I'm not  
9 100% sure of the date. It was the date that Neal  
10 Devlin was with us. That is the meeting that I am  
11 referring to, because there was a couple other  
12 meetings prior.

13 Q Does May 2015 sound about right? It's okay  
14 if you don't remember.

15 A I'm not sure of the date.

16 Q Were there any -- I will represent that  
17 that meeting was in May 2015.

18 Can you recall any other meetings between  
19 the Smolko incident and that May 2015 meeting.

20 A Well, there was another meeting. Again, I  
21 can't -- I believe it was a rainy day that day. I  
22 know Smolko was out. I think we talked about this a  
23 little bit.

24 We met again on Lane Road about in this  
25 area. I didn't -- other than I might have said hi to



1 somebody. I didn't go on the property that day. I  
2 don't recall going on that property. They were on the  
3 Marsh property.

4 MR. KOGAN: Counsel, I think we can  
5 stipulate he previously testified it was the June  
6 2013 on-site visit?

7 MR. UHOLIK: Yes. He said hi.

8 MR. KOGAN: Which was a rainy day.

9 MR. UHOLIK: Okay. I wasn't there.

10 A The visit with the -- the other big visit  
11 with Pam, I'm sorry, I can't remember --

12 Q Laura Brown.

13 A Laura Brown and our attorney, there was  
14 Todd Lutte, I believe Michael Fodse, we met on I  
15 believe the Lane Road where the -- right about in this  
16 area here. And I remember walking -- I remember  
17 walking, me and Randy walked with Neal Devlin for a  
18 lot of it.

19 I remember being close to Pam and Laura. I  
20 do remember we were up in here. Lutte was in the  
21 ditch looking at whatever he was looking at. We were  
22 up on this part of the field. I just remember there  
23 was another lady. I'm sorry, I don't know her name.  
24 I don't know what agency she was from.

25 I did make the comment that it was hard to

1 believe that we had a combine that I harvested crops  
2 down in this section. And then we kind of just  
3 followed along. I believe we crossed right in here.  
4 We walked up -- I can't remember if everybody walked  
5 up this side.

6 I do remember walking up this side to Lane  
7 Road, then coming back out to -- came out on Greenlee  
8 Road. Came back to Lane Road. And we came back to  
9 the place. We made a loop.

10 Then we proceeded to go over in this  
11 section. And I just remember talking to Pam for just  
12 a minute. And Pam said that Bob has a really good  
13 memory. And I said, "Yes, he does."

14 Of course, Todd and other officials were in  
15 that area. That is the extent I remember of that  
16 meeting.

17 Q Is that the last one you remember?

18 A The last one was I believe this October,  
19 towards the end of October.

20 Q What did you do during that meeting?

21 A I showed up for the meeting. I believe I  
22 signed in. I don't know if I stayed until all of the  
23 agencies got there. But I left shortly after. I  
24 didn't go on the property. I left shortly after.

25 Q Went back to work?

1 A Yes. We were harvesting corn.

2 Q You mentioned something I wanted to ask you  
3 about. At one point you had a combine in the back of  
4 the Murphy site. When did you start running the  
5 combine?

6 A Our first combine, I was in ninth grade. I  
7 believe it was ninth grade when we bought our TR75.  
8 It was a New Holland combine. That was -- I was in  
9 ninth grade. I graduated in '88. So '84ish,  
10 somewhere in that, give or take. That is when I first  
11 started running the combine. Approximately, in that  
12 time frame.

13 Q Some time in the mid'80s.

14 A Correct.

15 Q You have been running it ever since?

16 A Pretty much. Yes.

17 Q We will just start with the first visit.

18 If you can't remember something, don't worry. It's  
19 been a while. So the EPA, you said the EPA and Game  
20 Commission in 2011. Right?

21 A That's what I recall. Yes.

22 Q Do you remember who attended that?

23 A It was, I believe, Todd Lutte and the Game  
24 Commission officer, Darren Clark.

25 Q Did you attend that whole -- were you there

1 the whole time?

2 A I was there. Yes, I was there I think for  
3 the whole time.

4 Q Was your brother there?

5 A I believe he was there. I'm not 100% sure.

6 Q Was anybody else with you?

7 A I believe Bob was there, my dad. I think  
8 that was it on that meeting.

9 Q Do you remember what the purpose of that  
10 visit was? Do you remember why they came out?

11 A Yes. Of course, the farms were all  
12 flooded. And Judge Allegra's case, they were supposed  
13 to put the water back to pre'84 -- or the land back to  
14 pre'84.

15 So the reason we called them was to observe  
16 the flooding. That's why we wanted all the agencies  
17 there. But only the Game Commission and EPA showed  
18 up. But that was the purpose of the meeting.

19 Q I will have this marked R05.

20 (Thereupon, Exhibit No. R05 was marked for  
21 identification.)

22 Q You have just been handed what has been  
23 marked Exhibit R05. It's an email from Todd Lutte to  
24 Brace Farms dated September 12th, 2011. Have you ever  
25 seen this document before?

1 A Could I read it?

2 Q You can certainly read it. I'm just asking  
3 if you have seen it before.

4 A I don't recall seeing this document.  
5 That's why I want to read it. It might refresh.

6 Q Take your time and read the document.

7 A No. I did not see this email.

8 Q But you have read it now.

9 A I read it now.

10 Q Does the content of the email match up with  
11 your recollection of what the visit was about?

12 A Yes. I remember exactly what I said, dad  
13 invited all the agencies there.

14 I notice in this email PA Fish and Boat  
15 Commission -- I will read it. "This activity may be  
16 undertaken provided there is no discharge of dredge  
17 material or fill material to the waters of the U.S.  
18 and it is done in compliance with the directions of  
19 the -- discharge of the dredge or fill material to  
20 waters of the U.S. and is done in compliance with the  
21 directions of PA and Boat and Fish Commission and the  
22 Army Corps of Engineers in Erie County." At the 2012  
23 meeting EPA took the lead on this.

24 Q We will get to it.

25 A I'm just telling you --

1 Q We are going step by step. All I'm asking  
2 about is the 2011 site visit. Does the content of the  
3 email match up with your recollection what the site  
4 visit was about?

5 A To me my recollection of the site visit was  
6 to get the water off to make the property pre'84.

7 Q What was discussed at that meeting that  
8 would lead to that?

9 A When Lutte -- at the 2012 meeting?

10 Q 2011.

11 A 2011 we got the water off, the beaver dams  
12 removed. And then was it a year later, 2012, Lutte  
13 came back out with --

14 Q We are going to go meeting by meeting. My  
15 question is -- correct me if I'm wrong, the 2011  
16 meeting, was that about beaver dams?

17 A Yes. The 2011 meeting, that was about --  
18 yes, that was about the beaver dams.

19 Q Do you recall where you walked at that  
20 meeting? Did you walk on the Marsh?

21 A On the 2011 with the Game Commission and  
22 EPA, we didn't walk, because it was all flooded. So I  
23 don't recall walking. If we did, I don't remember  
24 where it was.

25 Q Do you remember any meetings where it was

1 just Fodse but not Todd Lutte? If you don't, it's  
2 fine.

3 A It was the 2011, I believe. That would  
4 have been one.

5 Q So there was another 2011 meeting?

6 A No. The one we just talked about. Because  
7 Todd Lutte is from EPA.

8 Q You said Todd Lutte from EPA and Darren  
9 Clark.

10 A That's what I remember.

11 Q We are done with that meeting. Do you  
12 recall any other meeting in 2011 that was attended by  
13 Mike Fodse but not Todd Lutte? Mike Fodse by himself.  
14 If you don't remember, that's fine.

15 A I'm trying to think.

16 Q Take your time.

17 A Unless it was one of the meetings towards  
18 the end like when I had to leave. If he happened to  
19 come, I don't remember.

20 Q We talked about the July 2012 visit in bits  
21 and pieces. Who attended?

22 A I was there. Randy. Todd Lutte. Mike  
23 Fodse. I believe my sister, Rhonda.

24 Q Would that be Rhonda McAtee?

25 A McAtee. Bob Brace.

1 Q Your father.

2 A And Ron Bosworth, I believe.

3 Q Do you know who Mr. Bosworth is?

4 A He was, I believe, Kathy Rapp's assistant  
5 or aide.

6 Q Who is Kathy Rapp?

7 A State representative.

8 Q So let's go from the start. Where did you  
9 meet on the site?

10 A From what I recall, it was I believe in  
11 this area right here.

12 Q When you say in this area, around about --

13 A We are talking the 2012.

14 Q We are now into July 2012. You are talking  
15 the second green dot -- around the second green dot  
16 from the left.

17 A Correct.

18 Q Near what the United States refers to as  
19 the Lane Road culvert?

20 A In and around that area.

21 Q You meet there. Everybody is there. I  
22 presume everybody being Ronnie -- Randy, you, Todd  
23 Lutte, Mike Fodse, Mrs. McAtee. Your father,  
24 Mr. Brace. And Mr. Bosworth.

25 A I believe that to be, yes.



1 Q What happens?

2 A I think I said this earlier. We will go  
3 through it. Me and Randy, my brother, Todd Lutte and  
4 Mike Fodse, we walked -- I remember walking up to this  
5 point here.

6 Q We are on Exhibit R01. You are, basically,  
7 following the orange line that you drafted earlier?

8 A Yes. That's what I recall. It might have  
9 been over. I don't know.

10 Q This is just approximate.

11 A Like I say, I remember Todd Lutte saying he  
12 wants to take a little -- he has to talk to Mike. Me  
13 and Randy stayed up there. I believe they went down  
14 in this area. They weren't gone a whole long time.  
15 Then they came out.

16 And Todd Lutte came out and said, "We are  
17 going to declare these agricultural ditches."

18 Q When he said these, were you --

19 A At the time he was down in here. And when  
20 we stood here -- so we were here. He said he was  
21 going to declare from 86 to Lane Road and these all ag  
22 ditches.

23 Q He said, "I'm going to declare everything  
24 from 86 to Lane Road ag ditches"?

25 A I believe so.

1 Q So what else did he say?

2 A Then we proceeded to walk down past where  
3 the check dam is.

4 Q Let's back up. Sorry to interrupt.

5 When he said, "We are going to declare all  
6 these ag ditches," we are going to take your pen and  
7 write an M, approximately where?

8 A Approximately, somewhere in this is what I  
9 recall.

10 Q Let the record reflect the witness has  
11 drawn an M on Exhibit R01 to indicate where that  
12 portion of the meeting occurred.

13 Now continue.

14 A We proceeded down past the check dams. We  
15 got around this point here. I told Lutte, "Dad is  
16 going to want to farm these fields after we get the  
17 water and ditches cleaned out."

18 I said, "How far can we go here?"

19 And Todd Lutte pointed, "We are going to  
20 say you can go right to here." That is why this is  
21 here. And we never went past that point.

22 Q Can you write an F for where you were  
23 standing when that occurred?

24 Let the record reflect the witness is  
25 writing an F on Exhibit R01 to identify where this

1 portion of the meeting occurred.

2 During that time did Todd Lutte ever  
3 mention anything about the knoll? Did he ever use the  
4 word "knoll"?

5 A No. I don't recall him using it. Like I  
6 say, him and Fodse went down. We didn't follow them.  
7 So I don't really know if they went down -- I don't  
8 know how far they went.

9 Q What was Todd Lutte doing when he said,  
10 "You can farm to this point"? Was he standing still?  
11 Was he gesturing? What was he doing?

12 A I believe I was -- he was in front of me.  
13 Or beside me not too far by this ditch. And I just  
14 remember asking him, because we wanted to make sure  
15 that this second go around -- everything was good to  
16 go.

17 That's why I asked him how far -- "Dad is  
18 going to want to plant it. How far can we go?"

19 And we were all right here, me, Randy,  
20 Fodse --

21 Q At the F?

22 A Somewhere around the F. Yes.

23 Q Did he point to anywhere? He was just  
24 standing here and said, "You can farm to this point"?

25 A Of course, we were standing. What I recall

1 is him just putting his arm out and pointing and  
2 saying, "We are going to call this the line right  
3 here."

4 Like I say -- and we proceeded back. Of  
5 course, we told dad or Robert what they were going to  
6 do. And Todd -- that is when Randy asked when we can  
7 start, I believe it was.

8 He said right away.

9 Randy said, "There is going to be calls  
10 when we start cleaning."

11 He said, "All the calls will be directed to  
12 the EPA." I thought he was going to write something  
13 up. He said, "The government works slow." And that  
14 is what I -- oh, and then, of course, at the end of  
15 that meeting, he did ask dad what he wanted to do with  
16 the Marsh farm, which I said a couple times.

17 And he said, "Farm it."

18 And that was -- that's pretty much what I  
19 remember of that meeting.

20 Q When your dad said "farm it," do you recall  
21 Todd saying anything?

22 A I don't recall Todd saying anything, no.

23 Q Do you recall Mike Fodse saying anything?

24 A I don't, no.

25 Q So on that site visit, do you recall ever

1 making your way on to the Marsh site?

2 A I don't recall making the way on the Marsh  
3 site.

4 Q And after you came back from your meeting  
5 where the M and the F are on Exhibit R01, you came to  
6 the group to tell everybody what Lutte and Fodse said.  
7 Did anybody ask them any questions other than Randy?

8 A I'm sure my dad said something.

9 Q If you don't recall.

10 A I can't recall what he would have said  
11 other than when Lutte asked him about the Marsh farm.

12 Q Let's jump to the next one that you  
13 discussed, actually, attending where EPA was present  
14 was the May 2015 meeting.

15 A Was that with Pam?

16 Q That was with Pam.

17 Do you remember who all attended that one?

18 A There should have been a sign-in. I don't  
19 recall if I signed the sheet that day. A lot of  
20 people were there.

21 Q Do you remember what the purpose of that  
22 visit was?

23 A Yes. To -- after the EPA said they made a  
24 mistake.

25 Q So what was everyone doing on the farm that

1 day?

2 A Like I say, I remember Todd Lutte in a  
3 ditch looking at soil. That is when everybody -- that  
4 day, what I remember, everybody was -- we walked along  
5 this ditch here up to Greenlee. We walked down. We  
6 walked over to here.

7 Q You, basically, made a loop on the Murphy  
8 site and the consent decree area?

9 A Yes.

10 Q Did you go to the Marsh site at all?

11 A I don't recall going to the Marsh. I'm not  
12 saying they didn't.

13 Q Do you remember anything specific about any  
14 determinations being made or conclusions being made  
15 that day?

16 A No. I don't.

17 Like I said, I told you earlier about me  
18 saying something to somebody about the combine, having  
19 a combine down in that corner.

20 And other than Pam saying that dad had a  
21 good memory and me saying, "Yes, he does," we pretty  
22 much followed them. Me and Randy were with Neal most  
23 of the time. And Pam and her was with me or near us  
24 some part of the time.

25 Q Just generally, when you are on site

1 visits, what is your role? What do you do?

2 A On site visits?

3 Q Yes.

4 A Listen.

5 Q Do you just walk around and listen, is that  
6 the extent of it?

7 A Yes.

8 Q Do you ever take any notes?

9 A Not on paper. No.

10 Q On what would you have taken notes?

11 A Just memory.

12 Q Did you ever take any pictures?

13 A I never took any pictures.

14 Q Did you ever take any videos?

15 A I never took any videos.

16 Q Did you see anyone else take any notes?

17 A I'm sure probably Lutte or somebody were  
18 taking notes. I can't say.

19 Q Did Randy ever take any notes?

20 A No.

21 Q Did your father ever take any notes?

22 A Not to my knowledge.

23 Q When your sister was there, did your sister  
24 ever take any notes?

25 A If she did, I don't know.

1 Q Basically, the same question for  
2 photographs. Did you ever see Randy take any  
3 photographs?

4 A I didn't see Randy or dad unless they took  
5 them and I didn't notice it.

6 Q I will circle back to one last thing, I  
7 think. Mr. Brace, you stated on the record that you  
8 have an android phone. Do you have an email account  
9 on that phone?

10 A I think my sister set one up. But I never  
11 used it. Because I don't like emails.

12 Q Do you use any email?

13 A No. I don't, personally.

14 Q Do you know if your brother, Randy, does?

15 A I don't know.

16 Q Do you know if your dad does?

17 A Send an email?

18 Q Yes.

19 A No.

20 Q Do you know if either Robert Brace Farms or  
21 Robert Brace & Sons has an email account?

22 A Yes. BraceFarms@Verizon.net.

23 Q Do you know of any other email accounts?

24 A That's the only one I know of at the farm.

25 Q Do you know who mans that?



1 A It would be Rosalie at present.

2 Q Before Rosalie came on, do you know who  
3 would have handled that?

4 A We had a couple different secretaries.  
5 Sherri was her name.

6 Q Do you know her last name?

7 A I believe it was Huntley. I believe there  
8 was another one. I don't remember her name. And then  
9 I believe it was Rhonda.

10 Q When did Sherri come on? If you can  
11 remember, approximately, when she came on and when she  
12 was no longer with the company.

13 A I don't remember. I can't recall.

14 Q Do you use your phone to send text  
15 messages?

16 A I do. I can send a few text messages.  
17 Yes.

18 Q Do you ever send any text messages about  
19 the farming operation?

20 A Yes. Like to a seed rep. I don't text  
21 that much. But if he -- if I'm talking to a seed rep,  
22 and he's explaining something about corn, he might  
23 shoot me a text. Fertilizer guy spreading fertilizer  
24 might tell me, "I'm done. I moved to field X."

25 Q Ever shoot a text to your brother

1 discussing farming?

2 A No. Never to Randy. I don't even know if  
3 his phone will take -- I don't know what kind of phone  
4 he has.

5 Q I think that's it, Mr. Brace. Thank you so  
6 much.

7 MR. KOGAN: We are finished.

8 (Thereupon, at 1:30 p.m. the deposition was  
9 concluded.)

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ERRATA SHEET

I, Ronald Brace, have read the foregoing 126 pages of my deposition given on January 11, 2018, and wish to make the following, if any amendments, additions, deletions or corrections:

Page/Line	Should Read	Reason for Change
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In all other respects, the transcript is true and correct.

\_\_\_\_\_  
Ronald Brace

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

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CERTIFICATE

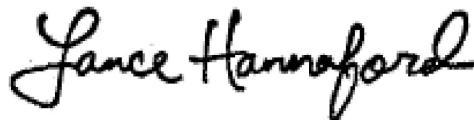
COMMONWEALTH OF PENNSYLVANIA, )  
 ) SS:  
COUNTY OF ALLEGHENY. )

I, Lance E. Hannaford, do hereby certify that before me, a Notary Public in and for the Commonwealth aforesaid, personally appeared RONALD BRACE, who then was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the taking of his oral deposition in the cause aforesaid; that the testimony then given by him as above set forth was by me reduced to stenotypy in the presence of said witness, and afterwards transcribed by means of computer-aided transcription.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Pittsburgh, Pennsylvania



Lance E. Hannaford, Notary Public  
My commission expires October 19, 2018

- - -

1 January 18, 2018

2 TO: Lawrence Kogan, Esquire  
3 100 United Nations Plaza, Suite 14F  
4 New York, New York 10017

5 RE: DEPOSITION OF RONALD BRACE  
6 NOTICE OF NON-WAIVER OF SIGNATURE

7 Please have the deponent read his deposition  
8 transcript. All corrections are to be noted on the  
9 preceding Errata Sheet.

10 Upon completion of the above, the deponent must  
11 affix his signature on the Errata Sheet, and it is to  
12 then be notarized.

13 Please forward the signed original of the Errata  
14 Sheet to Mr. Brian Uholik, Esquire, for attachment to  
15 the original transcript, which is in his possession.  
16 Send a copy of same to me.

17 Please return the completed Errata Sheet within  
18 thirty (30) days of receipt hereof.

19 Lance Hannaford,  
20 Court Reporter  
21  
22  
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24  
25

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Commonwealth of Pennsylvania Rules of Civil

Procedure

Title 231, Chapter 4000

Depositions and Discovery

Rule 4017

(c) When the testimony is fully transcribed a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by the witness and shall be signed by the witness, unless the inspection, reading and signing are waived by the witness and by all parties who attended the taking of the deposition, or the witness is ill or cannot be found or refuses to sign. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within thirty days of its submission to the witness, the person before whom the deposition was taken shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the refusal to sign together with the reason, if

any, given therefor; and the deposition may then be used as fully as though signed, unless the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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