

# UNITED STATES COURT OF FEDERAL CLAIMS

ROBERT BRACE,

Plaintiff,

v.

UNITED STATES,

Defendant.

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Docket No. 98-897L

Pages: 1 through 197/300

Place: Washington, D.C.

Date: January 11, 2005

## HERITAGE REPORTING CORPORATION

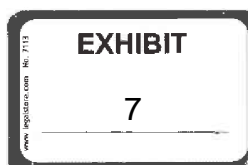
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1 up and then causing the flooding on the Murphy farm.

2           The Court today will also hear from Mr. Joe  
3 Burawa, who worked with the U.S. Department of Agriculture's  
4 Agricultural Stabilization and Conservation Service in the  
5 late sixties to the 1980s.

6           He will testify that it was common for the federal  
7 government to work with farmers in Erie County to prepare  
8 drainage plans for farmland, to provide technical advice for  
9 planning and installing drainage systems, and to provide  
10 financial assistance for such activities.

11           Mr. Burawa will tell the Court that the U.S.  
12 Department of Agriculture prepared a drainage plan, Exhibit  
13 P-1, on behalf of Mr. Brace's farmer in 1961 and that that  
14 plan provided for drainage of the Homestead and part of the  
15 Murphy farms.

16           Mr. Brace will testify that, over the years, as he  
17 grew up on the Homestead and Murphy farms, he saw his  
18 neighbors with federal plans and with federal dollars  
19 convert poorly drained land into profitable farmland.

20           Mr. Brace will also testify that he knew when he  
21 agreed to purchase these two farms back in 1975 that the  
22 U.S. Department of Agriculture had worked with his father to  
23 develop a drainage plan for the family farm. He will tell  
24 you that his father, in fact, implemented parts of that  
25 plan, draining parts of the land as needed for his dairy

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1 THE COURT: Sir, if I could have you come over  
2 here, please. And, before you take a seat, could I have you  
3 pause there, please? Sir, just pause for a second. All  
4 right. You can pause there, too. Could I have you raise  
5 your right hand, please?

6 Whereupon,

7 JOSEPH BURAWA

8 having been duly sworn, was called as a witness  
9 and was examined and testified as follows:

10 THE COURT: Good. Could I have you please take a  
11 seat? Could you begin, sir, by stating your name for the  
12 record and then please spell it?

13 THE WITNESS: My name is Joseph Burawa,  
14 B-U-R-A-W-A. Joseph is J-O-S-E-P-H.

15 THE COURT: Very good, as is the standard  
16 spelling.

17 Go ahead. Proceed, Ms. Colella.

18 DIRECT EXAMINATION

19 BY MS. COLELLA:

20 Q Thank you, Mr. Burawa. I just have a few issues  
21 to ask you about today. Where do you currently live?

22 A I live at 13081 Old Plank Road, Waterford, PA.  
23 That's in Erie County.

24 Q And how long have you lived in Erie County?

25 A I bought that farm in 1947. Been there ever

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1 since.

2 Q So you farm your property?

3 A Yes, I do.

4 Q Okay. And what is your current occupation?

5 A I'm retired from U.S. Department of Agriculture,  
6 Agricultural Stabilization and Conservation Service.

7 Q And that's also known as the ASCS?

8 A That's correct.

9 Q How long did you work for the ASCS?

10 A When I retired, I had 26 years of service.

11 Q And what did you do at the ASCS?

12 A My job was to administer all the farm programs  
13 that Congress put out, the ones that came through our  
14 office.

15 Q Was one of those programs the Agricultural  
16 Conservation Program?

17 A Yes. Probably the most popular.

18 Q How did that program work?

19 A Generally, the farmer would come in, request  
20 assistance to put conservation practices on his land. He  
21 would make a request to us to do the practice, whatever --  
22 numerous practices that we done at the time, and then, if it  
23 took technical determinations, we sent a referral to Soil  
24 Conservation Service, and Soil Conservation Service would  
25 make the technical determinations.

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1           We would do this on an ACP247 that was sent over  
2 to them, and they'd make the determination and send it back.  
3       Then we'd send a cost shares, if took some pile -- if they  
4 changed it to some extent.

5           Q     So, when you say you would send some cost shares,  
6 you mean you would provide cost sharing assistance?

7           A     Yes. That practice -- we paid 60 percent of the  
8 cost of installation. The farmer had to pay the other 40  
9 percent.

10          Q     I see. So you, at the ASCS, worked together with  
11 the Soil Conservation Service?

12          A     Yes, we did.

13          Q     Okay. And the Soil Conservation Service is part  
14 of the Department of Agriculture?

15          A     Yes, it is.

16          Q     You mentioned practices that farmers would  
17 implement. What typical practices would those be?

18          A     Well, we talked about tile underdrain at that  
19 time. It's changed now, of course. But, at that time, tile  
20 underdrain was probably the most popular and the most money  
21 that was put out into underground drainage systems.

22                 We had strip cropping practices, and then we had  
23 numerous practices that didn't take referral, like seeding  
24 and putting it into grass and legume cover to stop erosion,  
25 sagging hills and so forth on farmland, and this is just

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1 some of them putting strip croppings in.

2 Strip cropping, again, that was a referral. Soil  
3 Conservation Service would lay out the strips. Then we  
4 would pay the farmers so much an acre for establishing the  
5 strips.

6 Q You mentioned that the tile underdrain systems was  
7 the most popular practice.

8 A Back then, yes.

9 Q All right. About how many farmers did you work  
10 with to install such underdrain systems?

11 A Well, I believe the most we had in any one year  
12 was about 100 farmers in Erie County when it was popular  
13 practice. There's tile put near on every farm in Erie  
14 County.

15 Q Okay. And this was a popular practice during what  
16 time period, would you say?

17 A Well, it actually started in the sixties. I  
18 started in '67 and well up until I retired, and then it's  
19 still a component of other practices, tile underdrain is,  
20 but it's not a practice by itself.

21 Q Are you familiar with the Plaintiff in this case,  
22 Mr. Robert Brace?

23 A Yes, I am.

24 Q And are you familiar with the property he owns  
25 known as the Murphy farm?

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1 A Yes, I am.

2 Q And are you familiar with the Homestead farm that  
3 he owns?

4 A Yes.

5 Q Have you had occasion to visit these farms?

6 A Oh, yes. Numerous times.

7 Q Mr. Burawa, if I show you a video showing the  
8 property, could you identify and describe what you see on  
9 the video?

10 A I'll try.

11 Q Okay.

12 MS. COLELLA: For the record, Your Honor, we're  
13 going to show a portion of the video known as Plaintiff's  
14 Exhibit P-35.

15 THE COURT: Okay.

16 MS. COLELLA: And, for the record, it's chapter  
17 five of that video. It's been digitized on DVD, and we're  
18 going to play it without the soundtrack.

19 THE COURT: Okay. Do we need to try to dim? If  
20 we were in the modern courtroom, I could adjust the lights  
21 at will, but this one will be one of the modern courtrooms  
22 within two months. I don't know.

23 I think there may just be a single switch here,  
24 and I have a feeling, if we turn it off, we will entirely be  
25 in the dark, but just see what happens, for a moment that

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1 is. Oh, I'm wrong.

2 MALE VOICE: It's modern.

3 THE COURT: Yes. More modern than I thought.

4 MS. COLELLA: I'm going to approach the witness to  
5 give him a laser pointer.

6 THE COURT: Very good.

7 BY MS. COLELLA:

8 Q Okay. When we play the video, if you could just  
9 describe what you see on the screen for me, Mr. Burawa.

10 THE COURT: After the Dell sign.

11 MS. COLELLA: Yes.

12 Do you want to pause that, please?

13 BY MS. COLELLA:

14 Q Can you tell me what you see there, Mr. Burawa?

15 A This is the Brace farm. It's the Homestead farm.  
16 It's the Murphy tract next to it.

17 Q Could you outline that with the laser pointer?

18 A The whole farm?

19 Q Well, the Murphy farm and then the Homestead farm  
20 as well.

21 A Okay. All right. This here is the Murphy farm.  
22 This here is the Home tract. I'm not sure you saw it, but  
23 it goes up here and it goes --

24 Q Okay. Now can you tell --

25 A -- across on the other side, too.



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1 Q Can you tell me the road that transects the screen  
2 there from right to left?

3 A Would I repeat what?

4 Q I'm sorry. Can you tell me this road here that  
5 transects, goes across the screen from right to left? Do  
6 you know what road that is?

7 A I think that's Lane Road.

8 Q Is that also known as South Hill Road?

9 A Yes.

10 Q Okay.

11 MS. COLELLA: Do you want to resume?

12 BY MS. COLELLA:

13 Q We're going to resume the video, and if you can  
14 just describe what you see as it goes on.

15 A All right. This is a cabbage field here, here. I  
16 believe it's right at 86 or Sharp Road now. This is part of  
17 the Murphy tract right there. This is the ditch that was  
18 opened up to provide drainage outlets for tile. That's more  
19 cabbage.

20 Q And then do you know on what property that is  
21 located? Would it have been in --

22 A I'm not 100 percent. No, I can't. I think it's  
23 on the Brace property, this cabbage there, and this is the  
24 tract that -- this is the Murphy tract we're talking about  
25 here.

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1 Q Mm-hmm. Okay. We're now at the end of that  
2 segment. Thank you, Mr. Burawa. That's the end of it.  
3 It's a very short segment.

4 THE COURT: You can put the light back on. That's  
5 why she's looking at you.

6 BY MS. COLELLA:

7 Q Mr. Burawa, you have a binder there in front of  
8 you, or you should, with the Plaintiff's exhibits in it  
9 there in front of you.

10 THE COURT: I don't see a binder up here with him.

11 MS. COLELLA: Oh, okay. It was there. Sorry.

12 THE WITNESS: Is this it?

13 THE COURT: Oh, I'm sorry. It's there.

14 BY MS. COLELLA:

15 Q If you could turn to Exhibit No. 1 there,  
16 Plaintiff's Exhibit No. 1, and take a look at it.

17 A Yes.

18 Q Okay. Can you tell me what that is?

19 A This is a conservation plan that was requested in  
20 the Erie County Conservation District and prepared by the  
21 Soil Conservation Service for Charles D. Brace, which was  
22 Bob's father.

23 Q And do you know for what property that plan was  
24 prepared?

25 A This is the property that I pretty well outlined

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1 on your video. It's the Home farm, as well as the Murphy  
2 farm.

3 Q Okay. And is that the plan that Robert Brace  
4 worked from?

5 A Yes, it is.

6 Q Okay. To your knowledge, did Robert Brace ever  
7 receive any financial and technical assistance from the  
8 Department of Agricultural?

9 A Yes, he did.

10 Q Department of Agriculture.

11 A Yes, he did.

12 Q Okay. And during what time period was that?

13 A The first I recall is in 1977, where Bob come in  
14 and requested cost shares to put in a drainage system, tile  
15 underdrain, which you make a request and we look at this  
16 plan, along with Bruce Decker from Soil Conservation  
17 Service.

18 The county committee -- actually, elected county  
19 committee has jurisdiction over approving the practices. If  
20 they approve it, then we send what we call a referral to  
21 Soil Conservation Service to make the technical  
22 determination.

23 The same form, if it's approved, which, usually,  
24 it is -- in this case, it was approved -- it's the same form  
25 that's returned back to ASCS, and when the farmer reports

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1 and brings his receipts and so forth, then we make a  
2 payment.

3 Q And when the Soil Conservation Service made its  
4 technical determination, what did it do? Did it go out onto  
5 the property?

6 A Oh, yes. Yeah.

7 Q And what kind of activities would it undergo?

8 A Generally, usually, it was a technician that  
9 worked for Soil Conservation, but, in most cases, the  
10 technician's name was Ed Lebendowski and he done it for  
11 years really good. He would go out and lay out the tile,  
12 and, of course, you have to lay it to grade because the tile  
13 line has to have an outlet. All right.

14 And your draining areas could be way back. It  
15 could be just seeps sometimes that you have to drain, but  
16 you have to run this through the outlet, and they make that  
17 determination.

18 Q So they would make an actual physical --

19 A Yes.

20 Q -- inspection on the site?

21 A Yes. And they'd lay it out really. They'd make a  
22 dotted line and then make cut sheets and --

23 Q Okay. And do you know up to what point in time he  
24 was still receiving assistance from the Department of  
25 Agriculture? What year?



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1           A       Well, I know from looking back at some of the  
2 material, but, again, retired and now starting my 16th year,  
3 I don't have any material to look into, but, in '77, I'm  
4 pretty sure was the first, '78 again, and then he had an  
5 emergency conservation measures request because of flooding  
6 and debris that we had. I believe that was in '84.

7           Q       Okay. Could you take a look at Plaintiff's  
8 Exhibits P-2 through P-5 just very briefly? It's No. 2 and  
9 3, 4, and 5 in your binder there.

10          A       Well, I think -- is this the map with the costing?

11          Q       Actually, it would be under No. 2, under the tab  
12 2.

13                   THE COURT: Tab No. 2, sir.

14                   THE WITNESS: On that side?

15                   THE COURT: Tab No. 2.

16                   THE WITNESS: Oh.

17                   (Pause.)

18                   MS. COLELLA: Your Honor, may I approach the  
19 witness?

20                   THE COURT: You may.

21                   THE WITNESS: I had the wrong number. Two doesn't  
22 have anything.

23                   BY MS. COLELLA:

24           Q       It would be Tab 2, starting with 2, 3, 4, 5.

25           A       Thank you.

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1 Q If you could just take a look briefly at those  
2 documents there under 2, 3, 4, and 5.

3 A Okay.

4 Q Are those the kind of documents that Mr. Brace  
5 submitted to the Department of Agriculture to receive  
6 assistance in draining his land?

7 A Well, this was not -- this document here was not a  
8 document to request assistance. It's after the fact. After  
9 the farmer requests assistance. This is the referral for  
10 technical determination that we sent to Soil Conservation  
11 Service.

12 Q But that documents the assistance that he  
13 received. And 3 through 5 also documents that assistance?  
14 No. 3.

15 A Yes.

16 Q And No. 4 as well documents that assistance?

17 A That's correct.

18 Q Okay. And then No. 5? Could you look at that,  
19 please? Does that also document the assistance he received?

20 A Yes.

21 Q Thank you.

22 A This one here is for -- excuse me -- the emergency  
23 conservation measures. This didn't take a technical  
24 determination because of the fact that this has to happen --  
25 usually, I went out and looked at it and made a

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1 determination. The farmer cleaned it up and submitted his  
2 receipts, and we made payment to clean it up.

3 Q Thank you. Mr. Burawa, as of 1975, when you were  
4 working at the ASCS, did you understand the Clean Water Act  
5 to impose any restrictions on the assistance that you were  
6 providing to farmers under the Agricultural Conservation  
7 Program?

8 A No --

9 THE COURT: Pause, please. Pause, sir.

10 Yes?

11 MS. FLORENTINE: It calls for a legal conclusion,  
12 Your Honor. Objection.

13 THE COURT: I think the way it was framed, it  
14 doesn't call for a legal conclusion. It's asking more in  
15 terms of policy or other types of communications that may  
16 have occurred at the agency, so I'll take it as meaning that  
17 and only his understanding, not a legal conclusion.

18 All right, sir.

19 MS. COLELLA: Correct, Your Honor.

20 THE COURT: Rephrase the question, please.

21 BY MS. COLELLA:

22 Q Mr. Burawa, as of 1975, did you understand, in  
23 your work at the ASCS, was it your policy that the Clean  
24 Water Act imposed any restrictions on your work there in  
25 assisting farmers?

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1           A       Well, there was restrictions in the Act. I think  
2 the only thing we ever got in -- on the Act itself was a  
3 congressional record that was in the Act, but no.  
4 Interpretation in our office was that farmers were exempt  
5 from the Act at that time, and so we just done things like  
6 we always done.

7           Q       And you continued to operate under that  
8 interpretation in your office when Mr. Brace received the  
9 assistance from 1977 to 1984?

10          A       That's right.

11          Q       Okay. Can you turn to Plaintiff's Exhibit P-30 in  
12 your binder, please? It's No. 30.

13                               (The document referred to was  
14                               marked for identification as  
15                               Plaintiff's Exhibit No. 30.)

16               THE WITNESS: 30?

17               BY MS. COLELLA:

18          Q       Mm-hmm. All the way almost to the end of the  
19 binder.

20          A       Okay. I guess I've got it.

21          Q       And can you tell me what that is?

22          A       Well, this is an expert witness report for Brace  
23 Landscapes and a number.

24          Q       Okay.

25               THE COURT: All right. Before he goes on, go

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1 ahead, Ms. --

2 MS. COOK: Objection. This actually is an  
3 incompetent expert report. He also was not designated as an  
4 expert. He did not draft this report and he did not discuss  
5 it with the person who drafted it before it was written.

6 MS. COLELLA: Your Honor --

7 THE COURT: Was he designated as an expert?

8 MS. COLELLA: He was designated as an expert.

9 THE COURT: Okay. Can we pin this down and look  
10 in here at --

11 MS. COLELLA: I think our expert witness  
12 disclosure was on April 17, I believe, somewhere around that  
13 time.

14 THE COURT: Do you have a copy because that's not  
15 a document that I would have?

16 THE WITNESS: I signed it and dated it on May 28.

17 MS. COLELLA: Right.

18 THE COURT: Hold on, Mr. Burawa, because we're  
19 actually talking about something different.

20 MS. COLELLA: I don't have a copy of it with me,  
21 Your Honor.

22 THE COURT: Do you have a copy of it with you,  
23 Ms. Florentine?

24 MS. FLORENTINE: I do, Your Honor, but I also  
25 remember that -- and it may be because of the two similar

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1 names -- John was not designated as an expert. Joseph was.

2 THE COURT: All right.

3 MS. FLORENTINE: So I think he's okay at least as  
4 far as the designation goes.

5 THE COURT: All right. And so what was the other  
6 points, Ms. Cook, regarding the objection?

7 MS. COOK: This is an incompetent report. It was  
8 not drafted by Mr. Burawa and he did not discuss the facts  
9 with the person who drafted it beforehand.

10 THE COURT: Do you want to lay a little  
11 foundation --

12 MS. COLELLA: Sure.

13 THE COURT: -- in terms of where this report comes  
14 from?

15 MS. COLELLA: Sure. I was going to actually get  
16 to that, Your Honor.

17 THE COURT: Go ahead and do that first, and then,  
18 before we seek its formal admission or actually get into any  
19 of the substance of it, then let's go ahead and --

20 MS. COLELLA: Okay.

21 THE COURT: -- and see whether or not we can  
22 resolve these objections.

23 MS. COLELLA: Actually, Your Honor, I only had a  
24 couple of questions on the report.

25 THE COURT: All right. Go ahead.

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1 BY MS. COLELLA:

2 Q Mr. Burawa, did you -- does this report -- well,  
3 strike that.

4 How was this report prepared?

5 A This report was sent to me after a conversation on  
6 the telephone in your office and you told me to review it  
7 and make any corrections, and if I agreed to it, to sign it  
8 and send it back for you to pick up.

9 Q And did the report contain a summary of what you  
10 discussed with the person in our office?

11 A Yes.

12 Q And, before you signed the report, did you check  
13 it over to make sure it was accurate?

14 A Yes, I did. I -- the point.

15 Q And does the report contain the opinions that you  
16 have in this case and that you testified to today?

17 A Yes, it does.

18 THE COURT: Do I have all -- it's three pages  
19 long, correct? We have all three pages?

20 MS. COLELLA: Mm-hmm. That's correct.

21 THE COURT: Other than a summary of the facts that  
22 he's been testifying to, which portion of this is opinion?

23 I'm just asking counsel for a second, sir.

24 Go ahead.

25 MS. COLELLA: Well, he testified earlier that the

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1 process of assisting farmers in installing drainage systems  
2 on their farms was the common practice.

3 THE COURT: Ms. Cook, you didn't really object to  
4 the substance of any of this. Is it the form that's a  
5 problem?

6 MS. COOK: We object to some of the substance.  
7 There's inaccuracies in the report, which Mr. Burawa  
8 admitted to in his deposition.

9 THE COURT: Well, if that's the problem, then you  
10 can deal with that in terms of cross. How does that go to  
11 admissibility?

12 MS. COOK: I agree.

13 THE COURT: All right. Then the report will be  
14 admitted --

15 MS. COLELLA: Thank you, Your Honor.

16 THE COURT: -- 30, and you can deal with whatever  
17 points you need to, Ms. Cook, in terms of cross-examination.

18 (The document referred to,  
19 previously identified as  
20 Plaintiff's Exhibit No. 30,  
21 was received in evidence.)

22 THE COURT: Go ahead.

23 MS. COLELLA: And that was all I had, Your Honor.

24 THE COURT: Very good.

25 So, actually, Ms. Cook, now is your opportunity

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1 for cross-examination.

2 CROSS-EXAMINATION

3 BY MS. COOK:

4 Q Now I have to apologize before we start if I  
5 pronounce your name incorrectly, Mr. Burawa.

6 A Everybody does.

7 THE COURT: I have that problem, too, until they  
8 ran a \$50 million campaign to pronounce my name correctly.  
9 Well, somebody named a drug after our family.

10 BY MS. COOK:

11 Q I've been practicing, but I'll do the best I can.  
12 First of all, how long have you known Robert Brace?

13 A Well, I've known Robert when he was a kid I guess.  
14 Let's put it that way.

15 Q Mm-hmm. And I assume that you must have known his  
16 father, Charles Brace, also?

17 A Yes. Yes, I did.

18 Q And how long did you know his father, Charles  
19 Brace?

20 A Well, that's hard to say, but I'd say sixties.

21 Q Mm-hmm.

22 A Maybe even before that.

23 Q A long time.

24 A Early sixties.

25 Q Now you also testified in the Clean Water Act

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1 enforcement case?

2 A Yes, I did.

3 Q And now were you called to testify by the United  
4 States or Robert Brace?

5 A By Robert Brace.

6 Q Mm-hmm. And isn't it true that one of the reasons  
7 that you have decided to testify here today is that you want  
8 to do the right thing?

9 A That's the way I feel, yes. I believe that was my  
10 answer because I was asked if I'd get any compensation from  
11 Robert Brace to come in and so forth, and I says, yeah, I'll  
12 come down, but I just want expenses because I think you're  
13 doing the right thing. I think he left an area that looked  
14 bad and looks a lot better today, and I know he won the case  
15 in District Court in Erie, where I testified at that case  
16 also.

17 Q Mm-hmm. Now, as you just talked about in your  
18 direct examination, you did not draft your report, did you?

19 A Not the 247 report. The 245 that comes before  
20 that, but there isn't a copy of that one in here.

21 Q Oh, I'm sorry. Let me ask the question again.  
22 You did not draft the expert report that Plaintiffs have  
23 admitted as Exhibit 30?

24 A Oh. No, I did not.

25 Q Okay. And now you said in your deposition that

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1 the person who did write it did not talk to you beforehand.

2 A No. I said she called me on the phone and said  
3 she was sending it --

4 Q Uh-huh.

5 A -- and I said -- she says make any corrections,  
6 send it back as soon as you can, you know.

7 Q Okay.

8 A Review it and -- which I did. I mailed it back.

9 Q Okay. Now there were several inaccuracies in this  
10 report, weren't there?

11 A Well, there was one I had trouble with on the date  
12 I retired. I remember that one. That was embarrassing.

13 THE COURT: Did it make you younger or older?

14 THE WITNESS: Well, I'm not exactly sure.

15 THE COURT: All right.

16 THE WITNESS: But it couldn't make me much older.

17 THE COURT: All right.

18 BY MS. COOK:

19 Q And now isn't it, as we've talked before, the SCS  
20 and not the ASCS that drafts the conservation plans?

21 A Exactly.

22 Q Okay. And you worked for the ASCS?

23 A That's correct.

24 Q And now, in your capacity as an employee for the  
25 ASCS, you were not responsible for enforcing the Clean Water

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1 Act, were you?

2 A Well, I think we could be if we cost shared under  
3 circumstances that was brought into, then, you know, but no,  
4 we didn't have any jurisdiction.

5 Q And so, as an official with the ASCS, you did not  
6 provide technical guidance, just financial assistance?

7 A I would say that that's true.

8 Q Okay.

9 A But we had to review the technical assistance.

10 Q Okay.

11 A Generally, the district conservationists in 1977  
12 who come in there was Willie Ruffin. He would bring the  
13 conservation plan into my office, and the county committee  
14 would review the plan on the request for cost shares before  
15 they granted approval of it and sent it over to SCS for  
16 technical determination. So, in a sense, we had to use the  
17 plan, yes.

18 Q Okay. Now I want to spend some time on  
19 Plaintiff's exhibits that you were just looking at, starting  
20 with Plaintiff's Exhibit 2, which I'm hoping you still have  
21 in front of you. If you want to go to Tab 2. Are you on  
22 Tab 2 now?

23 A Yes.

24 Q Now, looking at the first page of Tab 2, now isn't  
25 this a technical determination referral form for an

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1 underground drainage system?

2 A That's correct.

3 Q Now can you tell me where this underground  
4 drainage system was installed?

5 A I can tell you off of my head.

6 Q You can look through.

7 A I think I have a pretty good idea where it was.

8 Q Can you tell me where?

9 A Yes. It was installed on the Brace farm.

10 Q Now, when you say "the Brace farm," you'll need to  
11 specify for me which part of the Brace farm you are  
12 referring to.

13 A I think you have the map there that shows the  
14 tiles, if I'm correct.

15 Q Yes. You also have a copy of that map in your Tab  
16 1, too.

17 A What page is it?

18 Q If you're looking for the map, it is on page 7 on  
19 Tab 1.

20 THE COURT: The little numbers at the bottom.

21 Do you want to go ahead and approach and help him,  
22 please?

23 MS. COOK: Okay.

24 (Pause.)

25 //



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1 BY MS. COOK:

2 Q Now, sir, if you can tell me, the drainage system  
3 that was installed in 1977, where was it located?

4 A Well, on the conservation plan there, the red  
5 lines show where it was installed, okay? Is that good  
6 enough?

7 Q Can you designate either was it on the Murphy farm  
8 or the Homestead farm?

9 A Most of it was on the Homestead farm, but some of  
10 it shows that it was also on the Murphy farm.

11 Q Now, if you turn to the very last page of  
12 Plaintiff's Exhibit 2, there's a sketch.

13 THE COURT: Two.

14 BY MS. COOK:

15 Q Are you on the last page, sir?

16 A Yes.

17 Q Now isn't that six-inch piping an outlet for the  
18 drainage that can be found on the Murphy farm? Excuse me.  
19 Let me rephrase that.

20 Isn't that six-inch piping an outlet, and the  
21 outlet is located on the Murphy farm?

22 A That's right.

23 Q And the drainage system is located on the  
24 Homestead farm?

25 A Well, I'd say it's all drainage system. We want

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1 to remember that, when we put in the tile system, because we  
2 like to start as many practice as we could on a lot of  
3 different farms which we did, and we only had so much money  
4 that Congress allocated under the Agriculture Conservation  
5 Program, so we would put a limit on it, usually about  
6 \$5,000. So farmers would get so they would do some every  
7 year and we would spend some every year, and I'm sure part  
8 of this was to go ahead and put in for more assistance.

9 Q Now, if you turn to Plaintiff's Exhibit 3 -- are  
10 you on Exhibit 3, sir?

11 A Yes.

12 Q Now, on the first page, this is in 1977. Wasn't  
13 this a technical determination for underground drainage  
14 system?

15 A That's correct.

16 Q Now, if you turn to the second to the last page of  
17 that exhibit.

18 A Yes.

19 Q Can you tell me where that drainage system is  
20 located?

21 A This drainage system was located on the -- called  
22 the Home farm.

23 Q Excuse me. Can you clarify?

24 A On the Home farm.

25 Q The Home farm?

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1 A Yes.

2 Q Which parcel are you referring to? The Homestead  
3 farm?

4 A Yes.

5 Q Okay. Thank you.

6 A I'm sorry.

7 Q Now can you refer to Plaintiff's Exhibit 4?  
8 That's the next tab.

9 A Yes.

10 Q And, on the first page, isn't this a technical  
11 determination for a sod waterway?

12 A That's correct.

13 Q Now, if you turn towards the end -- actually, I'm  
14 sorry, if you turn to page 25, if you look at the bottom,  
15 there's a 00025.

16 A Gotcha.

17 Q And do you see the sketch?

18 A Yes.

19 Q Now can you tell me where that drainage system is  
20 located?

21 A Well, pretty unsure of the directions now, but  
22 it's on the Brace -- the Homestead farm.

23 Q It's on the Homestead farm?

24 A Uh-huh.

25 Q Thank you. One more exhibit. Can you turn to

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1 Plaintiff's Exhibit 5?

2 A Got it.

3 Q Now this was for assistance based on the emergency  
4 conservation assistance program?

5 A Yes.

6 Q And the emergency conservation assistance program  
7 was for financial assistance for existing drainage, is that  
8 correct?

9 A Yes.

10 Q So when Mr. --

11 A Well, it could be.

12 Q Excuse me?

13 A It could be existing drainage, but it could also  
14 be silt from debris that came off of other areas that had to  
15 be cleaned up also, but, usually, it was to open up the  
16 ditches to provide -- because the ditches would fill up with  
17 the debris and it had to be cleaned out.

18 Q Mm-hmm. And so now isn't it correct then that the  
19 program did not provide assistance for any new construction  
20 of drainage systems?

21 A That's right.

22 Q Thank you.

23 THE COURT: Redirect, Ms. Colella?

24 MS. COLELLA: I think we're done, Your Honor.

25 THE COURT: Very good.

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1           And I have no questions for you, sir, so you're  
2 excused with the thanks of the Court.

3           THE WITNESS: Okay.

4           (Witness excused.)

5           (Pause.)

6           MS. MARZULLA: At this point, we'd like to call  
7 Mr. John Burawa.

8           THE COURT: Very good.

9           Do you anticipate at this point that you would be  
10 calling Mr. Joe Burawa back in rebuttal?

11          MS. MARZULLA: No, Your Honor.

12          THE COURT: All right. Then I assume -- is it  
13 okay, Ms. Florentine, for him to stay now?

14          MS. FLORENTINE: Yes, Your Honor.

15          THE COURT: Okay. So the witness can go ahead and  
16 approach. Sir, before you -- you can come back around this  
17 way, please.

18          THE WITNESS: Pardon?

19          THE COURT: You're the witness, right? Yes?

20          THE WITNESS: Yes.

21          THE COURT: Well, whatever. I think it might be  
22 easier if you came across the front here as opposed to  
23 weaving around the screen there. If I could get you to  
24 pause for a second, please.

25        //