

Exhibit 15

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

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UNITED STATES OF AMERICA, :

Plaintiff, :

vs. : C.A. No. :

ROBERT BRACE, et al., : 1:90-cv-00229

Defendants. : 1:17-cv-00006

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DEPOSITION OF DWAYNE EDWARDS, PH.D.

DATE: Wednesday, February 21, 2018

TIME: 9:24 a.m.

LOCATION: United States Department of Justice
Environmental & Natural
Resources Division
601 D Street, Northwest, Suite 8000
Washington, D.C. 20004

REPORTED BY: Shari R. Broussard, RPR, CSR
Reporter, Notary

VERITEXT LEGAL SOLUTIONS
1250 Eye Street, NW, Suite 350
Washington, D.C. 20005

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A P P E A R A N C E S

On behalf of Plaintiff:

BRIAN S. UHOLIK, ESQUIRE
LAURA J. BROWN, ESQUIRE
United States Department of Justice
Environmental & Natural Resources Division
601 D Street, Northwest
Suite 8000
Washington, D.C. 20004
(202) 305-0733
brian.uholik@usdoj.gov
laura.j.s.brown@usdoj.gov

On behalf of Defendant Defendants:

LAWRENCE A. KOGAN, ESQUIRE
The Kogan Law Group
100 United Nations Plaza, Suite 14F
New York, New York 10017
(212) 644-9420
lkogan@koganlawgroup.com

ALSO PRESENT:

Robert Brace
Randall Brace

1 MR. UHOLIK: Objection as to counsel's
2 testimony about what is and what is not relevant
3 and also this is outside the scope of his report.

4 MR. KOGAN: Yes, counsel for the
5 Government would prefer this report is narrowly
6 framed to avoid most of issues that the Government
7 has thus far succeeded in avoiding in prosecuting
8 the action.

9 MR. UHOLIK: The expert's report deals
10 with a certain issue. That is what you're allowed
11 to depose him on. Things outside of his report
12 are --

13 MR. KOGAN: I can ask him any question
14 under the sun that is relevant to the analysis.

15 MR. UHOLIK: Anything outside of his
16 report is inadmissible.

17 MR. KOGAN: Anything. Anything,
18 Counsel, and I will continue to use my
19 prerogative.

20 BY MR. KOGAN:

21 Q Now, Dr. Edwards, if you can try to
22 ignore the obnoxiousness of counsel for the

1 Government.

2 MR. UHOLIK: Objection as to counsel's
3 testimony.

4 BY MR. KOGAN:

5 Q Now, you have also used U.S. Geologic
6 Survey National Land Cover Database?

7 A Correct.

8 Q What is the relevance of that?
9 What data do you derive from that
10 database?

11 A The common -- the key index used in
12 making runoff calculations is what's referred to
13 as the -- the curve number, which, again, is a --
14 is a measure of the soil's perviousness or
15 imperviousness.

16 Q So this is used for a runoff analysis?

17 A The land use data, yes.

18 Q So a runoff is the same thing as erosion
19 or just --

20 A No.

21 Q -- water runoff?

22 A No, it's just the water.

1 A There is, of course, the big one that --

2 Q Two.

3 A -- we checked out. This looks like one
4 (indicating).

5 Q Three.

6 A And this appears to be a stream here
7 (indicating).

8 Q Four?

9 A And I can't tell if there's anything to
10 the east of the fourth one.

11 Q Okay. So there's four culverts we can
12 assume, correct?

13 A Sure.

14 Q And there may be even others there?

15 MR. UHOLIK: Objection. Foundation.

16 MR. KOGAN: Well, we've already
17 established foundation, Counsel. Just look at the
18 map. See. Easy foundation.

19 MR. UHOLIK: That's not what foundation
20 means.

21 MR. KOGAN: I know. We have to have
22 independent evidence apart from the map that the

1 Government produced to sustain the fact that the
2 Government map is accurate. Okay. Now -- and you
3 smile with a smug smile nevertheless. You know
4 you really have nerve and a real true false sense
5 of arrogance. Let that be known for the record.

6 BY MR. KOGAN:

7 Q So on page 22 you state, I believe in
8 Section iii. or actually iv., "It should be noted
9 that the inlet to the Sharp Road Culvert is higher
10 (approximately 1.7 feet) than the outlet of the
11 Lane Road Culvert. This can create a backwater
12 condition that extends upstream for 2500 feet or
13 more and decreases the discharge capacity of the
14 Lane Road Culvert. This potential backwater
15 condition was incorporated into the analysis by
16 correcting the elevation of the channel bed
17 downstream of Lane Road Culvert to 1217.3 feet in
18 HY-8, the same elevation as the Sharp Road Culvert
19 inlet invert."

20 Now, let's take this in two parts. The
21 first sentences in subparagraph iv. on page 22 you
22 identified an elevation differential between the

1 MR. UHOLIK: Counsel is not a witness
2 and it's his opinion.

3 MR. KOGAN: I understand that, but I'm
4 asking the witness whether he's even looked to see
5 whether -- because Mr. Brace has a long history of
6 correspondence with the Government on beaver dams
7 and beaver dams occur on his property and off of
8 his property, but they do affect the flow of water
9 on his property.

10 MR. UHOLIK: Objection to counsel's
11 testimony.

12 MR. KOGAN: Yes, I understand. Let's go
13 back through the entire record, Counsel. Okay?

14 BY MR. KOGAN:

15 Q But the question I have is when you were
16 given this assignment by the Department of
17 Justice, I'm trying to figure out what information
18 they gave you or withheld from you.

19 A Okay.

20 Q And they've done this with other
21 witnesses as well. They withhold information.

22 MR. UHOLIK: Okay. Objection. There's

1 absolutely no evidence that the United States has
2 --

3 MR. KOGAN: Oh, there's total evidence
4 on this, Counsel.

5 MR. UHOLIK: -- has withheld any
6 evidence from anybody.

7 BY MR. KOGAN:

8 Q Okay. So in your case, Dr. Edwards --

9 MR. UHOLIK: The characterization is
10 absurd.

11 BY MR. KOGAN:

12 Q -- what information did they give you
13 and did they not give you?

14 What did the Government tell you or
15 provide you with paperwork as far as to use in
16 your analysis?

17 A Well, I obviously don't know what they
18 haven't given me because I haven't seen it.

19 Q You haven't seen anything?

20 A I'm not aware of anything that they have
21 not given me that I needed for my analysis.

22 Q Well, what did they give you?

1 MR. UHOLIK: I would assume that you
2 would have access to his deposition.

3 MR. KOGAN: It is convenient for you to
4 forget.

5 MR. UHOLIK: If you want to discuss Mr.
6 Brace's testimony, put a deposition in front of my
7 client.

8 MR. KOGAN: Yes, I understand.

9 MR. UHOLIK: Excuse me. My expert. Not
10 client.

11 BY MR. KOGAN:

12 Q So there are beaver dams -- there were
13 beaver dams along north of Lane Road or along Elk
14 Creek.

15 MR. UHOLIK: Objection to counsel's
16 testimony.

17 BY MR. KOGAN:

18 Q You did not take those into account in
19 your report because the Government intentionally
20 withheld that information because they want to
21 create for you an artificial situation for you to
22 make a report.

1 MR. UHOLIK: Objection as to counsel's
2 testimony --

3 BY MR. KOGAN:

4 Q So your report is a --

5 MR. UHOLIK: -- and his characterization
6 of the Government's motives.

7 BY MR. KOGAN:

8 Q -- doesn't have a lot of important data
9 which it should have because the Government
10 withheld it from you.

11 MR. UHOLIK: Objection.

12 BY MR. KOGAN:

13 Q And I don't blame you for that, sir.

14 MR. UHOLIK: Objection as to counsel's
15 testimony.

16 MR. KOGAN: Okay.

17 THE WITNESS: Well, I can -- what I can
18 tell you with regard to my report and beaver dams
19 within the Marsh property, had I seen anything in
20 historical orthoimagery that indicated to me that
21 beaver dams had, in fact, at any time been present
22 in the Marsh property, I would have pursued it,