

**UNITED STATES
COURT OF FEDERAL CLAIMS**

ROBERT BRACE,

Plaintiff,

V.

UNITED STATES,

Defendant,

Docket No.: 98-897L

Pages: 600 through 897

Place: Washington, D.C.

Date: January 13, 2005

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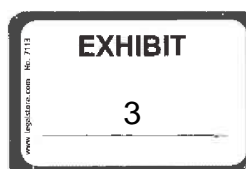
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1 witness.

2 THE CLERK: All rise.

3 (Whereupon, a short recess was taken.)

4 THE CLERK: All rise.

5 THE COURT: Please be seated.

6 Ms. Cook, your next witness.

7 MS. COOK: The government calls Lewis
8 Steckler, please.

9 THE COURT: Very good. Mr. Steckler, if I
10 could have you pause over here for a second and raise
11 your right hand.

12 Whereupon,

13 LEWIS L. STECKLER

14 having been duly sworn, was called as a
15 witness and was examined and testified as follows:

16 THE COURT: Very good. You can come up here
17 and grab a seat.

18 Mr. Steckler, could you start by stating
19 your name for the record, your full name, and then
20 please spell it.

21 THE WITNESS: Lewis L. Steckler. That's
22 L-E-W-I-S, S-T-E-C-K-L-E-R.

23 THE COURT: Very good. Proceed.

24 DIRECT EXAMINATION

25 BY MS. COOK:

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1 Q Mr. Steckler, we will start with the easy
2 questions. Where are you currently employed?

3 A Erie County, Pennsylvania.

4 Q And who do you work for, Mr. Steckler?

5 A I work for the United States Department of
6 Agriculture, Natural Resources Conservation Service.

7 Q Now, was the Natural Resources Conservation
8 Service previously know by a different name?

9 A Soil Conservation Service.

10 Q Okay.

11 A If you want to use the nomenclature, that is
12 SCS, and we are now NRCS.

13 Q Okay. We will stick with the SCS.

14 Now, what is your current position with the
15 SCS?

16 A The title, my position title is district
17 conservationist.

18 Q And how long have you been the district
19 conservationist?

20 A In Erie County, since September of 1978.

21 Q Okay. Now, can you tell the Court about
22 your educational background?

23 A Yes. I was born and raised on a dairy farm,
24 and I used that experience to go to an agricultural
25 college. I went to Penn State University and studied

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1 agronomy. I got a four-year Bachelor of Science
2 Degree.

3 I went to the army. I came back to Penn
4 State University and got a Master of Science Degree in
5 agronomy. In both cases I specialized in soil
6 conservation and soil science. Those are two fields
7 of specialty. I took practically every course they
8 had on those two subjects.

9 Q Okay. Now, can you describe what your
10 current job entails now?

11 A In a nutshell, we are responsible for
12 administering the soil/water conservation program
13 authorized by Congress through the Department of
14 Agriculture to the private landowners in Erie County.

15 And I can give you more specific program
16 examples if you would like.

17 Q No, that's good enough for now. Thank you.

18 Now, how long have you known Mr. Robert
19 Brace?

20 A I can't put a specific date on it, but I've
21 been in Waterford for quite a few years and he's been
22 in Waterford longer than I have. So nobody ever
23 formally introduced us, I think, but the first time I
24 was on his farm was in 1979.

25 Q Okay, so it's been a long time then.

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1 A Yes.

2 Q Now, what is Mr. Brace's reputation around
3 Erie County and in Waterford?

4 A He's the best cabbage grower there is, and
5 it's also known, and there has been articles in the
6 paper about the wetlands case, and he can't deny that.
7 Farmers ask me about it. People I run into ask me
8 about the Brace case. I've heard that for 15 or 18
9 years.

10 Q Now, in your capacity as an employee at the
11 SCS, have you worked with Mr. Brace?

12 A Yes.

13 Q Now, are you familiar with the Murphy farm?

14 A Yes.

15 Q And are you familiar with the Homestead
16 farm?

17 A Yes.

18 Q And how did you first get involved in this
19 case, Mr. Steckler?

20 A The representative from the Fish and
21 Wildlife Service stopped in our office, I'm going to
22 say 1987. The individual was David Putnam came into
23 the office. And he asked if we had any records on Mr.
24 Brace's farm, or that particular homestead and the
25 Murphy tract. We didn't call them that at that time.

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1 That was when I first became aware other than what I
2 read in the newspapers.

3 Now, I did read things that were published
4 in the Erie Times.

5 Q Now, I want to spend some time talking about
6 conservation plans. Can you generally explain what a
7 conservation plan is?

8 A That's one of our primary responsibilities
9 that Congress has mandated. We are available to
10 prepare soil and water conservation plans for private
11 landowners who request our assistance.

12 This plan entails several components. One
13 of the things we do, the very basis of our
14 conservation work is we first analyze the soil and use
15 a soils map of the area that this particular landowner
16 desires assistance on. The landowner generally
17 discusses with me his objective. Is he a big farmer?
18 Is he a corn farmer? Do they have dairy cows?

19 This is all discussed, and generally they
20 will have some particular objective, whether it's --
21 and one of the objectives is generally to increase
22 their crop yield, improve the drainage, maybe to
23 construct a water holding facility. It could be any
24 number of landowner objectives.

25 This conservation plan puts those all in a

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1 folder with our recommendations, and then it's
2 recorded on a map similar to the exhibit. It's a map.
3 The decisions are recorded on the map, and we make
4 two copies. We keep a file copy and the landowner
5 receives a copy around the time it was prepared.

6 Q Okay. Now, does every farmer have a
7 conservation plan?

8 A No. We haven't made one for everybody yet.

9 Q Okay. So then is this a voluntary process
10 for a farmer?

11 A Yes, there is no legal requirement that I
12 know of requiring that they absolutely have to have
13 one.

14 Q Now, did Mr. Brace have a conservation plan?

15 A Mr. Robert Brace?

16 Q Mr. Robert Brace, excuse me.

17 A No.

18 Q And from your understanding, whose
19 conservation plan did Mr. Robert Brace use?

20 A The one for his father, Charles Brace.

21 Q And when was that conservation plan drafted?

22 A 1961. We have an exhibit.

23 Q Your eyes are better than mine.

24 A I've seen it before.

25 Q Now, why would a farmer want a conservation

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1 plan in his own name, Mr. Steckler?

2 A Well, that would reflect his objectives
3 versus the former owner. If the former owner was a
4 dairy farmer or a feed farmer, and the new owner was
5 raising horses or growing corn or some other
6 agricultural enterprise, there could be different
7 conservation topographics required, different drainage
8 requirements. There could be other recreational --
9 there could be a lot of different reasons why you
10 would want to have a plan in your own name.

11 Q Now, in front of you you should have a
12 notebook, and in that notebook if you could turn to
13 Plaintiff's Exhibit 1.

14 Now, for the record can you tell us what
15 Plaintiff's Exhibit 1 is, Mr. Steckler?

16 A It's a cover for a soil and water
17 conservation plan, and the crop rater is listed as
18 Charles T. Brace.

19 Q Now, can you explain looking at this
20 exhibit, the conservation plan, what was recommended
21 for the Murphy farm?

22 A Turn the page?

23 Q Sure.

24 A There is the soil map that I talked about,
25 and there is an explanation of the soil map, soil

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1 descriptions. The conservation write-up goes along
2 with the conservation map. You have the map with
3 field numbers so that you can go -- the write-up
4 describes the specific field.

5 Q Okay.

6 A What field do you want me to?

7 Q Well, if we could turn to page Bates stamp
8 7, can you tell us the field numbers on the Murphy
9 farm, Mr. Steckler?

10 A Yes. Starting at the left edge or the
11 western edge, there is a field No. 12 entitled hay
12 land. There is a field No. 13 called wildlife. I
13 believe it's 14, pasture.

14 Q And now can you explain to us what the
15 conservation plan recommended for those three fields?

16 A Field 12, the hay land, is recommended to
17 continue managing that field for hay crop, for hay
18 lands, and then it gives some recommendations for
19 putting additional fertilizer on that to keep the
20 field productive. And then it also recommends if the
21 hay crop begins to thin out after a few years, he can
22 go to a crop rotation of corn, small grain, and then
23 re-seed it back to hay. That's the recommendation for
24 field 12.

25 Field No. 13, if we are going from left to

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1 right, it's the wildlife area. Basically, the
2 wildlife area is recommended to leave it as it is, and
3 there is an additional sentence that says there is a
4 possibility of constructing a dike and providing a
5 pond area for wild ducks, and recommends consulting
6 the Pennsylvania Game Commission for more information.

7 The last field is pasture, field 14.

8 (Pause.)

9 THE WITNESS: I don't see a 14 listed, but
10 there is a field 7 that has pasture.

11 BY MS. COOK:

12 Q And what is the recommendation for field 7?

13 A To fertilize and top dress with fertilizer.

14 Q Now, looking at this conservation plan, was
15 there a drainage system recommended for the Murphy
16 farm?

17 A I see no field numbers that correspond to
18 any drains dried up, so the answer is no. There is no
19 drain plan for the Murphy tract.

20 Q Now I have another question about what the
21 conservation plan recommended for the Murphy tract.

22 Was there any recommendation regarding
23 dynamite in the Murphy tract?

24 A I seen none.

25 Q Okay. Now, Mr. Steckler, I want to talk

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1 about the technical assistance that the SCS provided to
2 Mr. Brace, and we've had a lot of testimony regarding
3 that issue, and if you could turn to Plaintiff's
4 Exhibit 2, which would be in your notebook.

5 A I have it.

6 Q Yes. Can you briefly explain what
7 Plaintiff's Exhibit 2 is, please?

8 A Yes. This is a 247 request referral for
9 technical determination from our sister agency. At
10 that time it was ASCS.

11 Robert Brace has requested the conservation
12 practice of underground drain system.

13 Do you want me to read it?

14 Q No, no, no, you don't need to.

15 Now, looking at this referral determination,
16 can you tell where the underground drain system was
17 located?

18 A It does have a farm number by Mr. Brace's
19 name. It's 9832.

20 Q Okay.

21 A That's an ASCS identification of that tract
22 of land. The actual location of the drainage line
23 required me to go to further exhibits to where it's
24 shown.

25 Q Okay. And if you can turn to page 116.

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1 THE COURT: 116 or 16?

2 MS. COOK: Excuse me. Sixteen.

3 BY MS. COOK:

4 Q And what is that, Mr. Steckler?

5 A That's a tile installation report sketch
6 that we prepared that shows the layout of where the
7 underground drain lines were proposed to be installed,
8 and then the contractor installs it, and he notes the
9 footage line there.

10 And once we see that then we look at the
11 sketch. That particular line wasn't installed where
12 it was originally drawn.

13 Q And now looking at the sketch, can you tell
14 where the drainage system was located?

15 A Well, the two roads on there at the top of
16 the sketch is for north. If you notice, there is a
17 north there. So the road on the far right is
18 Greenlee, and the road going across kind of the bottom
19 is South Hill Road. The drainage system is 99 percent
20 located in the Homestead tract.

21 Q Now, you say 99 percent. Can you explain
22 then the other one percent?

23 A The way I interpret this drawing, I wasn't
24 yet at the office in '77, but I know the man who did
25 this job, and he still works with me to this day,

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1 there is an outlet pipe that goes underneath South
2 Hill Road. It even says in here we put in a 6-inch
3 steel pipe so that the drain pipe wouldn't be damaged
4 by going through the township road. That is for
5 purposes of outletting the drainage system.

6 And it does drain for 100, 200, 320 some
7 feet or something like that to a free-flowing outlet,
8 so that the whole system would work.

9 Q Now, if you can turn back to the first page,
10 and can you tell us what this determination says about
11 wetland types?

12 A Yes, there is a -- in the middle of the
13 paper, the form 247, there is a nomenclature there
14 that says "Wetland types 3, 4 or 5, yes or no." This
15 was to be checked off by SCS. And you can say it's
16 been circled "no".

17 In common sense terms, what this means is
18 that the drainage that was going to be put in could
19 not -- if we had circled "yes," the different
20 categories 3, 4, or 5, we would have not been able to
21 provide assistance or ASCS would have been unable to
22 provide cost-sharing assistance. That would have
23 probably been the end of the referral.

24 Basically, a real quick explanation of that
25 is the request was for drainage on an existing crop

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1 tilled fields where prior crops had been grown. It
2 was agricultural crops or hay land crops being grown.

3 Q Now, one last question before we leave this
4 exhibit. Can you just briefly explain the difference
5 between outlets versus a drainage system, outlet
6 piping versus a drainage system?

7 A Well, the reason I know that's an outlet is
8 because for one thing there is no corresponding
9 connecting line. If we were attempting to drain the
10 area, there would have been other connecting lines.
11 Plus we would never have went to the extra expense of
12 trenching under the road if there had been an outlet
13 at the road.

14 My understanding would be in other cases
15 like this where we run into this, if we can use the
16 road culvert or road ditch as an outlet, we don't go
17 to the extra expense of going 300 more feet and
18 putting in steel pipe, and getting permission from the
19 township to go across the road.

20 So for those reasons, that's why I call it
21 an underground outlet.

22 Q Okay. Now if you could turn to Plaintiff's
23 Exhibit 3.

24 A Okay.

25 Q Now, we've had considerable testimony on

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1 this exhibit, and so briefly can tell you tell me
2 again what this exhibit is?

3 A It's another request referral for technical
4 determination from ASCS for underground drains for
5 Robert Brace, farm 3A, or 9A32.

6 Q And if you would turn to page 20, can you
7 tell us where this drainage system was located?

8 A I don't really know. I know Mr. Burawa
9 testified it's on the Homestead farm. I can't tell.
10 There is no road names. I see a house and a barn.
11 The only thing I could tell you about this, this is
12 the contractor's writing. It's not the Soil
13 Conservation Service writing, and that's the reason
14 the map is not complete. The north arrow is on the
15 next page. I honestly don't know which ones.

16 Q Now, are there any houses or barns on the
17 Murphy farm, Mr. Steckler?

18 A Not to my knowledge.

19 Q Okay. Now, if you can turn back to the
20 first page of this exhibit, can you tell us what this
21 determination says about wetlands?

22 A Yes. We circled "no" again.

23 Q Excuse me?

24 A We circled "no" again, so our knowledge,
25 here again I wasn't in Erie County as of May of '78,

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1 to my knowledge by circling "no" this was in an
2 agricultural crop area.

3 Q Okay. And then to Plaintiff's Exhibit 4,
4 and what is this exhibit, Mr. Steckler?

5 A Another determination for cost-sharing
6 assistance for Robert Brace.

7 Q And if you would turn to page No. 25, can
8 you tell us where this system was located?

9 A This one is a little bit different. This
10 was for grass waterway, but it did have a subsurface
11 drain component with it. So we installed both the
12 grass waterway and the subsurface drain through the
13 use of a private contractor that Mr. Brace hired.

14 The location is to the northwest of Greenlee
15 Road across from buildings, farm buildings. It's not
16 in the Murphy tract.

17 Q Thank you.

18 Now I want to spend some time talking about
19 the Emergency Conservation Program, and I know that
20 Burawa talked about it earlier in his testimony.

21 Can you explain what the Emergency
22 Conservation Program is?

23 A Yeah, at that time, and that's when they
24 still have it, but at that time we had sever
25 thunderstorm, dumped three or four inches of rain in

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1 the Waterford area and some other parts of Erie
2 County. The normal practice for the agricultural
3 agencies, which would include ASCS, SCS, Extension
4 Office, Conservation District, the Health Department,
5 possibly Fish Commission, it depends. But we had an
6 agency meeting where we discussed what damage was done
7 to farmland. Were the crops damaged?

8 The result of this meeting was that we
9 requested as a group through the emergency program
10 through ASCS, we requested additional funds for Erie
11 County to assist landowners to recover from the severe
12 rain damage.

13 Q Now, can you explain what type of assistance
14 the government provided specifically under this
15 program?

16 A There was about -- generally there is four
17 items. The particular one in question was EC-2, which
18 is grading, shaping, re-leveling or similar measures
19 to crop areas that were damaged by the storm.

20 Q So I understand what you are saying then,
21 does this involve cleaning out existing systems?

22 A Yes, it would.

23 I should point out that this was not
24 referred for technical determination to us. This was
25 pretty much, as Joe said, the ASCS's responsibility.

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1 My understanding was that was for restoring
2 existing structures or cleaning off cropland that got
3 debris on from a ditch that overflowed or a road
4 culvert that was flooded, or ground from township
5 roads washed off because the township roads were
6 flooded by this rain, and some of the gravel from the
7 township roads washed right on top of fields. That
8 was part of this emergency work was to remove the
9 gravel from the fields, clean out any ditches where
10 this gravel had gotten in some farm ditches, to clean
11 the ditches out to restore the normal how things were
12 before the rain event.

13 Now if you can turn to Plaintiff's Exhibit 5
14 and describe what this is, Mr. Steckler.

15 A This is the 254 from -- practice approval
16 payment application from ASCS for Robert Brace. The
17 practice is EC-2.

18 Q And so what kind of -- the practice of EC-2
19 then, what kind of assistance does that mean he
20 requested?

21 A He requested the grading, shaping, re-
22 leveling or similar measures to restore cropland areas
23 to their original scope before the flood, before the
24 severe rain.

25 Q And can you tell us where this assistance

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1 was provided?

2 A There is no sketch with this assistance. My
3 closest location reference would be the farm number,
4 9A32, and with Mr. Brace's name after it.

5 Q And farm No. 98 -- excuse me, what was that?

6 A 9A32.

7 Q And what farm is that, Mr. Steckler?

8 A That encompasses both the Murphy farm and
9 Homestead farm in that period.

10 Q Okay, thank you.

11 Now, there has been testimony regarding
12 highly erodible lands. Can you explain what highly
13 erodible lands are?

14 A That was the definition of cropland that
15 they came up with in the 1985 farm bill. Basically,
16 the highly erodible crop field is a crop field that
17 exhibits slope, and length of slope characteristics
18 that are sufficient to produce a certain amount of
19 erosion if the field was left in an unprotected,
20 completely bare soil condition.

21 And through this definition they gave us
22 some forms that we plug in the numbers on how long the
23 slope is, how steep the slope is. If it's on this
24 side of the line, it meets the highly erodible
25 definition. If it's on this side of the line, it was

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1 not identified as highly erodible.

2 Q Now, can you explain what a highly erodible
3 designation is?

4 A If the field met that designation, we
5 labeled the field on the SCS map, we labeled the field
6 HEL as abbreviation for highly erodible land.

7 Q And now if a farmer had highly erodible --
8 his land was designated highly erodible, what would
9 that allow the farmer to do?

10 A I can't really -- it didn't really change
11 anything as far as the characteristic of the field.
12 What the labeling did was if that landowner required
13 additional government cost-sharing money or government
14 program participation, there was a certain amount of
15 time, and I believe it was two or three years or
16 something in that range, were all farmers with highly
17 erodible lands had to have a minimum conservation plan
18 prepared for those fields by January 1 of 1990, I
19 believe.

20 So at the time we identified it there was
21 periods of lengths of time that landowners could
22 request a basic conservation plan be prepared, similar
23 to the conservation plan for their highly erodible
24 field.

25 If they did this and implement the

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1 conservation plan that they were -- that farmer was
2 eligible for additional government benefit.

3 Q Can you estimate how many farmers in Erie
4 County had requested something like the highly
5 erodible designation?

6 A It would be into the hundreds. We had
7 stacks of them, and we had four people in our office
8 working on them. I would guess 400 tracts. We didn't
9 do 400 in one month, but over the course of 1985 to
10 1990, we had a big push to make sure every farmer got
11 a chance to have a conservation plan.

12 Q Now you said by having this designation it
13 assisted them in funding under the farm bill. Were
14 there other benefits that would assist a farmer by
15 having a highly erodible designation?

16 A There was other programs that he would be
17 eligible for through the ASCS office. Maybe it was --
18 there was another agency that make farm loans. That
19 if you requested a farm loan, you would also have to
20 have a HEL conservation plan. If you requested
21 participation in a commodity grain program, any of the
22 programs that the government had, you would have to
23 have this plan completed.

24 Q Now, does Mr. Brace have highly erodible
25 lands on the Murphy farm?

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1 A There is two upland fields that he has the
2 highly erodible designation.

3 Q And has SCS developed a highly erodible
4 determination for Mr. Brace for those two parcels?

5 A Yes, we did that in, I believe, 1988.

6 Q Okay. Mr. Steckler, I want to spend some
7 time talking about the restoration project that was
8 required of Mr. Brace following the enforcement
9 action.

10 Can you turn to Plaintiff's Exhibit 23?

11 A I have it.

12 Q And can you tell us what that is?

13 A That's a Natural Resources letterhead
14 stationery dated December 24; subject, wetland
15 restoration plan, that Mr. Brace request that I visit
16 the wetlands restoration site.

17 Q Now, can you explain why you visited the
18 restoration site?

19 A I was called by Mr. Brace to go out and
20 visually observe the excavator digging the trenches
21 that were described earlier by Mr. Lapp, and to -- my
22 understanding was I was supposed to, you know, kind of
23 check and see if the plan was being completed the way
24 it was designed, the way it was set up.

25 They sent me -- I called the Fish and

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