

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

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

**UNITED STATES’ MOTION FOR PROTECTIVE ORDER PRECLUDING THE
DEPOSITIONS OF EDWARD LEWANDOWSKI, LEWIS STECKLER,
AND CARROLL LESIK**

Pursuant to Fed. R. Civ. P. 26(c), the United States respectfully moves for a protective order precluding the depositions of long-retired United States Department of Agriculture (“USDA”) employees Edward Lewandowski, Lewis Steckler, and Carroll Lesik. In support of this motion, the United States submits the following:

1. On October 1, 2017, the United States moved this Court for a protective order barring discovery on the following topics: (a) the alleged ambiguity of the 1996 Consent Decree, including any discovery that predates, or that concerns individuals whose participation in this matter concluded before, January 14, 2005; (b) the designation of the 30 acres covered by the Consent Decree under the Food Security Act of 1985, 16 U.S.C. §§ 3801, et seq.; and (c) the Consent Decree area’s status as a wetland and/or “water of the United States” under the Clean Water Act, 33 U.S.C. §§ 1251, et seq. *See* ECF No. 168.

2. The United States moved for a protective order limiting the scope of discovery, in part, because counsel for Defendants had identified 24 witnesses who they sought to depose,

seven of whom are retired USDA and Department of Interior (“DOI”) employees whose participation in this matter concluded long before the occurrence of the activities at issue in the United States’ Motion to Enforce the Consent Decree.¹

3. At the time the United States filed its Motion for Protective Order, ECF Nos. 168-169, Defendants had indicated that they would depose these seven retirees, but had not yet served deposition notices or subpoenas. However, on October 12, 2017, Defendants’ counsel noticed the depositions of long-retired USDA employees Lewis Steckler, Edward Lewandowski, and Carroll Lesik for October 24 and 25, attached hereto as Exhibit A.

4. Ms. Lesik worked at the USDA’s Agriculture Stabilization and Conservation Office and retired from federal service in 2000. Mr. Lewandowski and Mr. Steckler both worked at the USDA’s Soil Conservation Service (now called the Natural Resources Conservation Service) and retired from federal service in 2006.

5. Mr. Lewandowski and Mr. Steckler have already been deposed in this matter, in April 1991 and March 1992, respectively. Mr. Lewandoski’s and Mr. Steckler’s deposition transcripts, although irrelevant to the issues currently before the Court, were produced by the United States in response to Defendants’ requests for production (while preserving the United States’ objection on relevance). *See* Bates CD-FRC0003639 (Lewandowski Dep. Tr.) and CD-FRC0003751-3799 (Steckler Dep. Tr.). Neither witness had any involvement with the drafting of the 1996 Consent Decree nor the recent violations of the Consent Decree identified by the United States.

¹ The retired employees include Lewis Steckler (USDA), Edward Lewandowski (USDA), Carroll Lesik (USDA), Edward Perry (DOI), Charles Kulp (DOI), David Putman (DOI), and the late Joseph Burawa (USDA).

6. As an initial matter, Federal Rule of Civil Procedure 31(a)(2)(A)(ii) bars Defendants from re-deposing Mr. Lewandowski or Mr. Steckler absent leave of Court because both witnesses have already been deposed in this case. However, even if Defendants had sought such leave, there is no reasonable basis to re-depose these two witnesses or to depose Ms. Lesik at this time. Defendants' only conceivable purpose for re-deposing Mr. Lewandowski and Mr. Steckler, and for deposing Ms. Lesik, is to further their incorrect contention—a contention that has already been rejected by the Third Circuit in this litigation—that the USDA designated the Consent Decree wetland area as “Prior Converted Cropland,” under the Food Security Act of 1985, 16 U.S.C. §§ 3801, *et seq.*, and, therefore, it is not a wetland (and consequently not a “water of the United States”) under the CWA. Notably, those are topics on which Messrs. Steckler and Lewandowski were already deposed in the 1990s. In any event, as we explained in detail in our brief supporting our Motion for Protective Order (ECF No. 169 at 16-23), which we incorporate by reference here, this defense, and any discovery related thereto, is barred under the doctrines of law of the case, judicial estoppel, and collateral estoppel.

7. Because their testimony is irrelevant to the matter pending before the Court, these retiree witnesses should not be subjected to the burden of being deposed—for two of them, being deposed *again*—on topics that date back a quarter of a century. Accordingly, the United States respectfully requests a protective order precluding Defendants from re-deposing Mr. Lewandowski and Mr. Steckler, and from deposing Ms. Lasik.

Respectfully requested,

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DATED this 16th day of October, 2017.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 16, 2017, I served a true and correct copy of the foregoing United States' Motion for Protective Order Precluding the Depositions of Edward Lewandowski, Lewis Steckler, and Carroll Lesik on the following counsel for Defendants via ECF:

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