

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

UNITED STATES OF AMERICA, :
Plaintiff :
v. : Civil Action Nos.:
: 1:90-cv-002229 and
: 1:17-cv-0006
ROBERT BRACE, ROBERT BRACE:
FARMS, INC. and ROBERT :
BRACE and SONS, INC., :
Defendants :

Deposition of LEWIS L. STECKLER, taken before
and by Sonya Hoffman, Notary Public in and for the
Commonwealth of Pennsylvania on Thursday, November
30, 2017, commencing at 12:59 p.m., at the offices
of Knox McLaughlin Gornall & Sennett, P.C., 120
West Tenth Street, Erie, PA 16501.

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1 L E W I S L . S T E C K L E R, first
2 having been duly sworn, testified as follows:

3
4 D I R E C T E X A M I N A T I O N

5 BY MR. KOGAN:

6
7 Q. Mr. Steckler, thank you for coming and appearing
8 today. We appreciate it.

9 Would you state your full name and former position
10 within the U.S. government for the record.

11 A. Lewis Lee Steckler. I was a District
12 Conservationist for Soil Conservation Service, and then
13 NRCS, which is Natural Resource Conservation Service in Erie
14 County for 28 years.

15 Q. Now, what years are we talking about, sir?

16 A. From '78 until I retired on January 1st of 2006.

17 Q. Okay. That's a long span.

18 A. Yes.

19 Q. You must have seen a lot of changes over the
20 course of that span.

21 A. Yeah.

22 Q. Working for the SCS as a District Conservationist,
23 what were your duties, generally speaking?

24 A. Well, generally worked with landowners and
25 farmers, ranchers, whatever you want to call them, property

1 owners to do conservation work on their property that they
2 own.

3 Q. And when you speak about conservation work, are
4 you talking about conserving the soil?

5 A. Primarily. I mean, there's other resources that
6 we learned to take care of. That's part of the reason they
7 changed our name from the Soil Conservation to the Natural
8 Resource Conservation.

9 Q. Right. And that was done in the Farm Act of 1990
10 when they --

11 A. I think somewhere in there. Yeah. So we
12 considered other things, other than just soil then, you
13 know, water and wildlife and other things like that.

14 Q. So you were no longer focusing on farming.

15 MS. BUCKLEY: Objection, foundation.

16 Q. You were focusing on issues other than farming,
17 including environmental wildlife issues.

18 A. Yes. We did work for Townships. We helped people
19 that had recreation ideas. As far as their property, they
20 wanted to build a pond and they weren't farming, they wanted
21 it for recreation, we helped those type of people, too.

22 Q. Now, was USDA, SCS, pre-NRCS days, working with
23 other Federal agencies to do -- to perform all these tasks
24 that you mentioned?

25 MS. BUCKLEY: Objection, vague.

1 Q. Did you work alone within the USDA Soil
2 Conservation Service or did you confer with other Federal
3 agencies on a given landowner request?

4 A. Mostly State agencies, like the Game Commission,
5 Presque Isle State Park. Once in a while we cooperated with
6 the Fish & Wildlife Service. We worked with private
7 organizations like Ducks Unlimited and the French Creek
8 Conservancy.

9 Q. That must have been very trying; was it not?

10 MS. BUCKLEY: Objection, vague.

11 Q. Ducks Unlimited is not known as a moderate
12 organization; is it?

13 MS. BUCKLEY: Objection to the characterization
14 and vague. Lack of foundation.

15 MR. KOGAN: I object to the objection. But
16 anyway, my observation of Ducks Unlimited is
17 they're rather radical.

18 MS. BUCKLEY: Object to the testimony of Counsel.

19 MR. KOGAN: It's just based on my own empirical
20 knowledge.

21 BY MR. KOGAN:

22 Q. Now, when you were engaging in all of these
23 evaluations -- you just said, Mr. Steckler, that over the
24 course of years what used to be pretty much limited to a
25 farming focus expanded into non-farming areas.

1 MS. BUCKLEY: Object to the characterization. You
2 can answer.

3 A. It evolved into some other aspects of farming like
4 setting aside land not to farm. Like the Conservation
5 Reserve Program where farmers retired property and fields
6 and got paid for leaving it in sod.

7 Q. It's the same thing that they do with water banks.
8 Right?

9 A. Yes. That was the soil bank. Water bank was in
10 the '50s. CRP was in the '80s and '90s.

11 Q. And the water banks are still in there currently.
12 Aren't they?

13 A. I couldn't tell you.

14 MS. BUCKLEY: Objection, foundation.

15 Q. Because I know firsthand having represented
16 farmers out West that their water bank programs have lasted
17 for the last 10, 15 years.

18 MS. BUCKLEY: Objection.

19 Q. They pay you not to use water, to irrigate.

20 A. Oh, okay.

21 MS. BUCKLEY: Objection to Counsel's testimony.

22 MR. KOGAN: I just wanted to get to the context of
23 the fact that farming no longer consists of merely
24 focusing on farming.

25 MS. BUCKLEY: Counsel, you shouldn't be providing

1 context. You're supposed to be asking the witness
2 questions.

3 MR. KOGAN: I'm trying to understand -- by
4 providing context as an example, I'm trying to
5 understand Mr. Steckler's focus --

6 MS. BUCKLEY: You need to lay a foundation to
7 provide that context.

8 MR. KOGAN: Well, the foundation is, Counsel, that
9 Mr. Steckler said that we're dealing with
10 non-farming issues, which are environmental and
11 wildlife.

12 MS. BUCKLEY: I've stated my objection.

13 MR. KOGAN: That lays enough of a foundation for
14 me to open up the door to say that water banking
15 takes into account environmental and wildlife
16 issues; is it not? Or are you not
17 knowledgeable --

18 MS. BUCKLEY: I've stated my objection.

19 MR. KOGAN: -- about these issues? Because if
20 you're not, I understand it. And in that case, I
21 won't try to embarrass you. I promise.

22 Q. Now, let's get back to the questions. Over the
23 course of the years from 1978 to 2006, your role as a
24 conservationist for the district in Erie expanded its scope
25 of focus. Did you not say that, Mr. Steckler?

1 A. Well, we lost some things. Some of the programs
2 got defunded. We had an RC&D program where we worked with
3 the counties, and that pretty much got defunded.

4 That was to help municipalities do conservation
5 work. That program kind of got defunded and got lost.

6 Q. Right.

7 A. And other things came along.

8 Q. Now, why would a farmer set aside land for
9 conservation?

10 MS. BUCKLEY: Objection. Calls for speculation.

11 MR. KOGAN: I'm responding to what Mr. Steckler
12 just said, Counsel.

13 Q. So I'm going to go back to your prior testimony
14 and you mentioned the land conservation program.

15 A. Sometimes they did it because they were nearing
16 retirement age.

17 Q. So they weren't going to be working the farm
18 anymore.

19 A. That's true.

20 Q. And therefore they'd get a one-time lump sum
21 payment.

22 A. Or they could get a yearly payment.

23 Q. An annuity, so to speak. Correct?

24 A. For leaving in it grass or whatever.

25

1 Q. So that sure as heck beats working your butt off.

2 A. Or sometimes they retired the steep fields, the
3 ones that were less profitable and farmed a better ground
4 for their crops.

5 Q. So it's a high profit margin?

6 A. I don't know about the profit picture. You'd have
7 to analyze each situation to -- we didn't get into that
8 economic part of it.

9 Q. But farmers don't farm for the pure joy of
10 farming. They farm for economic reasons. Don't they?

11 MS. BUCKLEY: Objection. Calls for speculation.

12 Q. Well, I'm just getting back to the conservation
13 program again, which then goes back to the conservation
14 issue, which is other than farming.

15 So when we talked about the programs, why would a
16 farmer, again, enter into a conservation program --

17 MS. BUCKLEY: Objection.

18 Q. -- based on what you just said?

19 MR. KOGAN: Objection noted.

20 A. It may be for economic reasons, for profit
21 reasons, getting close to retirement. Some farmers actually
22 liked wildlife and they actually planted crops and left it
23 for wildlife. Sometimes they had other motivations that
24 they wanted to conserve the soil.

25 Q. What would they do for income then?

1 A. They had -- they had -- I worked for a lot of
2 farmers that had other jobs other than farming. I mean,
3 they had a full-time job somewhere else but owned property.

4 Q. These were like gentlemen farmers?

5 A. You could call them that.

6 Q. Those are usually for smaller farms. Right?

7 MS. BUCKLEY: Objection. Lack of foundation.

8 A. Erie County had the whole range of small, little
9 farms to bigger farms.

10 Q. And we're talking what year now, '70s, '80s?

11 A. (Witness nods head.)

12 Q. So how many farms would you estimate based upon
13 your tenure of an SCS District Conservationist; hundreds,
14 thousands of farms in the beginning of your tenure?

15 MS. BUCKLEY: Objection.

16 MR. KOGAN: Objection noted.

17 A. District dairy farms, I know, at one time I think
18 when I started Erie County had like 250 dairy farms. Maybe
19 today there's 50 or 60.

20 Q. Really? What happened to those 200 other farms?

21 A. They're gone or they got bought up by the big guys
22 that are still around.

23 Q. Through normal market forces, do you think, or
24 regulatory costs?

25 MS. BUCKLEY: Objection.

1 A. I don't know where all the milk is coming from,
2 but.

3 Q. You better hope it's not coming from the Third
4 World. What about the non-dairy farmers?

5 A. Well, the fruit belt on the lake has pretty much
6 stayed the same.

7 Q. And what about the vegetables and the --

8 A. Some of that fairly steady, too, because of the
9 lake -- favorable lake climate.

10 Q. But by the lake, aren't there a lot of wetlands
11 out there by the lake?

12 MS. BUCKLEY: Objection.

13 Q. What's the topography of the land by the lake,
14 generally speaking?

15 A. Generally rolling to flat.

16 Q. Are there wetlands as part of that topography?

17 MS. BUCKLEY: Objection.

18 A. In places. It depends where you're at.

19 Q. Okay. Let me back up to provide Counsel her
20 much-desired foundation.

21 As a soil conservationist for the district, were
22 you responsible for knowing the land, knowing the hydrology
23 of the land, knowing the soil content of the land, the
24 nature of the soil, the hydrology of the land?

25 A. Yes, sir.

1 MS. BUCKLEY: Objection to form.

2 A. Yes.

3 Q. You were. Those -- you had to have a working
4 knowledge of those areas.

5 A. I studied that in college.

6 Q. Did you have to have a working knowledge of the
7 factors to determine whether there's a wetland or not in a
8 given location?

9 MS. BUCKLEY: Objection.

10 A. We could start by noting if the soil was hydric or
11 not.

12 Q. Okay. But that doesn't necessarily mean that it's
13 hydrology was indicative of a wetland.

14 A. No.

15 MS. BUCKLEY: Objection.

16 A. If we needed official determination, we had to
17 call a specialist from Harrisburg.

18 Q. So that would be a State specialist?

19 A. Yes.

20 Q. From which agency?

21 A. It would still be Soil Conservation or NRCS.

22 Q. So it was a State-level office. It wasn't part of
23 the U.S. Department of Agriculture.

24 A. Yes. It was.

25 Q. Oh, it was. Okay. And they would be a wetland

1 expert. Is that what you mean?

2 A. Well, to do official determination, you needed to
3 examine the ground and drill holes.

4 Q. Right.

5 A. And examine the soil colors and so forth.

6 Q. Okay. And did they have to confer with other
7 Federal agencies on that?

8 A. I don't know. It depended on what it was for. If
9 it was for one of our projects, they probably didn't.

10 Q. Okay. Have you ever heard of a three-factor
11 wetland test?

12 A. No. Not recently.

13 Q. Did you know about the U.S. Army Corps. of
14 Engineers Wetlands Delineation Manual?

15 A. Yeah. I heard of it.

16 Q. And do you recall perhaps that that manual
17 employed a three-factor test to determine whether a
18 wetland --

19 A. I can't remember that.

20 Q. So, therefore, suffice it to say that your focus
21 was more on the hydric nature of the soil, not whether the
22 soil indicated wetlands.

23 MS. BUCKLEY: Objection.

24 MR. KOGAN: Objection noted.

25 A. I don't -- I don't --

1 Q. Do you know that there's a -- are you familiar
2 with the fact -- or let's restate it another way.

3 Were you aware that there was a difference between
4 an indication of hydric soil and an indication of soil
5 hydrology suggesting wetlands?

6 MS. BUCKLEY: Objection.

7 Q. Did you know that merely because you had a hydric
8 soil that didn't make the land a wetland?

9 MS. BUCKLEY: Objection.

10 A. That's the start of it. Right.

11 Q. Right.

12 A. Some of the wetlands had been drained previously.
13 Even though it was a hydric soil, if it had been drained and
14 farmed continuously, there was no other vegetation. You had
15 to have vegetation in order to qualify as a wetlands.

16 Q. When you say "farmed," there's farming for
17 livestock and then there's farming for crops. Correct?

18 A. Yes.

19 Q. So you could maintain pasturelands in a way of
20 conserving soil in order to enrich the livestock that eats
21 the pastureland, right, that grazes?

22 MS. BUCKLEY: Objection.

23 A. It depends on what you're talking about as far as
24 pastureland. If it's native pasture and never been planted
25 to any type of crops, that's not considered being in

1 agricultural cropland.

2 Q. Under what criteria?

3 A. Well, that's the way we -- I looked at it.

4 Q. So there was no such thing --

5 A. Just because you put a fence around it doesn't
6 mean it's cropland or pasture.

7 Q. You're right. If you put a fence around land by
8 itself, that doesn't mean anything. I agree with that.
9 That makes sense.

10 But if you had livestock, you had cows pasturing
11 out in a given area and they were grazing, and you had --
12 and a farmer had installed a ditch or tile drainage to
13 enhance the nutrients and conserve the soil, wouldn't that
14 be farming?

15 MS. BUCKLEY: Objection.

16 A. Yeah. That could be part of farming.

17 Q. I mean, historically speaking?

18 A. Yes.

19 Q. I mean, in the history of our nation, we are an
20 agricultural nation, were we not, Mr. Steckler?

21 A. Yep.

22 Q. And didn't part of that agricultural community
23 devote itself to livestock production?

24 MS. BUCKLEY: Objection.

25 A. It certainly did.

1 Q. So that historically means that live-stocking is
2 farming. Does it not?

3 MS. BUCKLEY: Objection.

4 A. I don't see where you're going with this. I'm not
5 disagreeing.

6 Q. As a matter of logic and a matter of history,
7 livestock production is farming. Correct?

8 MS. BUCKLEY: Objection.

9 A. That's one form of it. You're right.

10 Q. And then cropping is another form.

11 A. That's right.

12 Q. And cropping and rotating crops is normal farming.
13 Is it not?

14 A. Uh-huh.

15 Q. You can one season plant one crop and another
16 season plant another crop. As long as you conserve the soil
17 the proper way, you, as the farmer, would get the
18 production -- the productivity off that soil. Would you
19 not?

20 A. (Witness nods head.)

21 Q. Is that a yes?

22 A. Yes.

23 Q. Okay. So when you were serving in your role as
24 SCS District Conservationist, you were obligated to
25 administrate a certain loss, including -- what was the main

1 law that you were responsible for administering?

2 A. Well, mostly the Soil Conservation Act. And then
3 as they produced different farm bills, there was items under
4 the farm bills then.

5 Q. You are familiar, are you not, with the Food
6 Security Act of 1985?

7 A. That's what I'm calling the Farm Bill.

8 Q. That's the total --

9 A. You remember, I've been retired for 12 years, so I
10 haven't had to think about this stuff.

11 Q. The problem is when you look at it from the long
12 scope, every little bill adds to another issue down the pike
13 because you can't just do the short term, you got to do the
14 long term. Right?

15 A. For a while there they passed one every five
16 years.

17 Q. It's kind of like tax law. They kept on changing
18 on the tax laws, if you remember.

19 A. Uh-huh.

20 Q. So with the Farm Bill of '85, they had a provision
21 that you may be familiar with, the Swampbuster provisions of
22 that bill.

23 A. I remember it.

24 Q. And what was the -- do you remember what the focus
25 of that Swampbuster provision was? In a way, I mean, you're

1 talking about conserving soil. That was your focus, was it
2 not, sir --

3 MS. BUCKLEY: Objection.

4 Q. -- to ensure that farmers practiced soil
5 conservation?

6 A. Well, they called it soil and water conservation.
7 Yes. They just -- the Swampbuster was -- really started in
8 the upper Midwest where they tried to lessen the loss of
9 wetlands where farmers were draining them and planting
10 crops.

11 Q. Right. Historically speaking, they've been doing
12 this for centuries. Correct?

13 A. And the environmentalists wanted to slow that
14 process down.

15 Q. So the environmentalist wanted to slow down the
16 farmers historical practice of farming on wetlands. Is that
17 what you're --

18 A. Or draining them and farming them.

19 Q. And they came up with these provisions in the
20 Swampbuster Act to stop that type of activity.

21 MS. BUCKLEY: Objection.

22 Q. Do you think? Just based on your practice. I'm
23 not asking you as an attorney. I'm asking you in your
24 practice, in your every day practice, that was the
25 understanding.

1 MS. BUCKLEY: Objection.

2 A. That's what I thought at the time.

3 Q. Okay. And was there a way for farmers to conserve
4 the soil and the water and still yet farm without having to
5 go to the agencies for permits --

6 MS. BUCKLEY: Objection.

7 Q. -- under this Swampbuster provision?

8 A. They had a provision in there where it was -- if
9 it had a history of being cropped, even though it had some
10 hydric soils on it, they could call it a prior converter.

11 Q. And that -- and who made that determination? Was
12 it you that made that determination or others like you
13 around the country?

14 MS. BUCKLEY: Objection to form.

15 A. Yes. If it had the cropping history, even though
16 it had hydric soils there, if it had been actively cropped,
17 we could write a PC on the map for that field so the
18 Swampbuster provisions didn't apply to that area.

19 Q. So that means it didn't even get touched by the
20 Clean Water Act at all?

21 MS. BUCKLEY: Objection.

22 A. Well, I don't know about that.

23 Q. Okay. Well, there were -- those are things I'll
24 talk with you afterward, but there are regulations that came
25 out in 1993, which I'll introduce into evidence that

1 actually said that.

2 MS. BUCKLEY: Objection to the testimony. There's
3 not a question pending.

4 MR. KOGAN: Well, there will be.

5 Q. So they were able to have this area designated as
6 prior converted cropland and they wouldn't have to seek any
7 permitting to engage in -- do, what, drain ditches to clean
8 ditches to tile?

9 MS. BUCKLEY: Objection to form.

10 Q. I'm just trying to get back to your point now.
11 The prior --

12 A. If it was labeled PC and they wanted to put
13 additional tile drainage in, that was permitted.

14 Q. Because it was kind of grandfathered. Right? Is
15 that the way it was looked at?

16 A. Yeah. It's already -- it might have been a
17 wetland 200 years before or 100 years before, but if it was
18 deemed to be eligible for the PC designation, they could put
19 grass waterways, we could do underground drainage. We could
20 do other conservation work on that field.

21 Q. Okay. Now, did that determination have to be made
22 as of a certain date under this Swampbuster? Do you
23 remember? Did it have to be made -- does December 1985 ring
24 a bell at all -- December 23, 1985?

25 A. That's probably the date that the -- from that

1 point on, that's when it officially took effect, I guess.

2 Q. Okay. Now, have you ever heard of another that
3 was used in conjunction with the Swampbuster Act known as
4 commenced conversion?

5 A. I heard of it.

6 Q. Do you recall what that involved?

7 A. From my recollection, that was a process where
8 part of the conversion was completed, but yet wasn't 100
9 percent completed and cropped.

10 Q. And if the farmer was able to show that the
11 conversion had commenced as of a certain date -- which
12 actually you may remember, I don't know, if the farmer is
13 able to provide evidence that that conversion started by a
14 certain date, then the farmer would have to -- the farmer
15 would be granted this commenced conversion by --

16 A. Yeah. That was the County Committee's ASCS.
17 You're getting into another agency that granted that.

18 Q. Well, that's on the money side. But on the
19 determination side?

20 A. No, sir. We did not grant -- SCS did not grant
21 the commenced determinations.

22 Q. No. No. But the determination of whether the
23 soils were hydric and whether the activities occurred or
24 commenced before or started before a certain date, that
25 determination, was that made by SCS? And then ASCS, what

1 they did, was looked at the bills to pay.

2 MS. BUCKLEY: Objection to form.

3 Q. In other words, wasn't SCS more of the --
4 didn't -- wasn't their role more substantive than the ASCS?
5 Didn't the Soil Conservation Service -- did the Soil
6 Conservation Service make --

7 A. If it didn't have the cropping history, we did not
8 put a PC on it.

9 Q. Right. But if they were going toward the cropping
10 history by making changes to the land, and they had the
11 bills to prove it?

12 MS. BUCKLEY: Objection.

13 A. We put a CW on it for converted wetland.

14 Q. Right. But that was a determination that SCS
15 made.

16 A. Right.

17 Q. Yes.

18 A. It wasn't a commenced determination until the
19 County Committee approved it.

20 Q. Right. But that was mostly on the dollars.

21 MS. BUCKLEY: Objection.

22 Q. No?

23 A. I wasn't -- I didn't work for them.

24 Q. Because we have prior testimony from --

25 MS. BUCKLEY: Objection. Counsel.

1 MR. KOGAN: Yes.

2 MS. BUCKLEY: Can we go off the record for a
3 second.

4 MR. KOGAN: Yes.

5 (Recess taken.)

6 BY MR. KOGAN:

7 Q. Okay. So the role of the SCS in looking at these
8 issues, prior converted or commenced conversion, was to make
9 the determination as to the conditions of the soil and the
10 farm. Correct or not correct?

11 What was the scope of the investigation that you
12 had to undertake?

13 A. Well, they provided us with cropping history.

14 Q. Who is the they?

15 A. ASCS. They have records of all the crops the
16 farmer planted. If they participated in the ASCS programs,
17 they provided us with the cropping history of the fields.

18 Q. But if they didn't already participate, then you
19 would have to -- SCS would have to do the work. No?

20 A. We could look at aerial photos or we could go out
21 and look at it personally.

22 Q. Okay. And do a field on site?

23 A. Yeah.

24 Q. And that's to determine whether it qualifies for a
25 PC?

1 A. Or we had aerial photos.

2 Q. But when you put a designation into a commenced
3 conversion application, when you designated something as
4 commenced conversion applied --

5 A. It wasn't designated that until after the County
6 Committee approved it. I told you that before. We can --
7 we labeled the piece that we're talking about as CW.

8 Q. Right.

9 A. After the County Committee granted the commenced,
10 it may have changed.

11 Q. Well, changed to what?

12 A. To that CC, commenced conversion.

13 Q. What does the CW mean?

14 A. Converted wetland.

15 Q. And what does that mean for purposes of farming?

16 A. It didn't have the cropping history.

17 Q. It didn't have the cropping history. And for how
18 many years was a cropping history required?

19 A. Five, I think. I couldn't -- that's usually what
20 they sent over to us was five years of the cropping history.

21 Q. And that didn't have to be the same crop. Did it?

22 A. No. It could be corn, oats, hay; whatever.

23 Q. But it only had to be cropping. It couldn't be
24 pasturing. It had to be cropping.

25 A. Pasturing did not qualify.

1 Q. And what about cropping and tiling? Did cropping
2 and tiling qualify?

3 In other words, if you're cropping one year, you
4 got to take a break because you got to set up the tiling to
5 make it more efficient.

6 A. Well, then it would be classified as idle. They
7 would have something in there. It would be weeds or
8 whatever. They would put something in there.

9 Q. But that's still -- farming -- isn't tiling
10 farming, then, while the crop -- in between crops?

11 A. In this county, if you leave it sit idle it's
12 going to grow up to weeds.

13 Q. Well, obviously, if you're installing a tile
14 drainage, you've got to be clearing ditches and --

15 MS. BUCKLEY: Objection.

16 A. Most farmers did not forego a year's production to
17 put tile drains in. They put the drains in before or after
18 the crops.

19 Q. Right. But if --

20 A. Or in the crop.

21 Q. How do you do that in the crop, sir?

22 A. You just forego the hay crop that's there or
23 whatever and put the lines down through the existing crops.

24 Q. So if somebody -- if a farmer was putting in tile,
25 laying tile within a five-year period and then cropped

1 within the fifth year, that's considered continuing
2 cropping. Isn't it?

3 MS. BUCKLEY: Objection.

4 Q. Don't you have -- I mean, what was the rule? If
5 you cropped at least once in five years, was that the rule,
6 or did you have to crop every single year?

7 A. I couldn't tell you that. I can't remember that
8 now, to tell you the truth.

9 Q. Okay.

10 A. I know they provide us with a cropping history.

11 Q. Well --

12 A. The Farm Bill will probably tell you that, but I
13 just can't remember what that was now, to tell you the
14 truth.

15 Q. Now, when you were going around doing these
16 evaluations, was the National Food Security manual your rule
17 book or was the Food Security Act/Swampbuster provisions
18 your rule book? Were there regulations you followed?

19 MS. BUCKLEY: Objection to form.

20 Q. Was it just a matter of practice because you knew
21 it or how did that work?

22 A. When it first came out, we had training sessions
23 on it. And the parts that applied to the field offices, we
24 had to use that pretty much day in and day out.

25 Q. So was it the National Food -- was it the manual

1 that you used?

2 A. We had copies of the whole thing, but not all of
3 it applied to us at the local level.

4 Q. You wouldn't be carrying around a loose-leaf like
5 I've got here today.

6 A. No, sir.

7 Q. Now, when was the first -- I've noted -- I'll try
8 to go backwards. Have you testified before in the Brace
9 case?

10 A. Yes.

11 Q. Do you recall when you may have testified?

12 A. I didn't look it up. '96 or '97 or something like
13 that. I went to Philadelphia for a deposition and then I
14 was in Washington, D.C. for five days.

15 Q. How did a deposition in Philadelphia get you to
16 Washington?

17 A. I don't know.

18 (Exhibit D-1 Steckler - Deposition of Lewis
19 Steckler, March 18, 1992 - marked for
20 identification.)

21 Q. I'd like to submit into evidence as Defendant's
22 Exhibit D-1 Steckler, your testimony from March 18, 1992.
23 And that was the one -- actually, it was Erie. And it's
24 Bates numbered series CD-FRC0003752 ending in 3799.

25 Do you recall testifying any other time? And I'm

1 not going to expect you to go through your entire testimony,
2 sir, so please don't look distressed like you are now. Do
3 you recall testifying at any other time in connection with
4 this case?

5 A. Well, I just don't remember that.

6 Q. Okay.

7 MS. BUCKLEY: Can we go off the record.

8 (Discussion held off the record.)

9 BY MR. KOGAN:

10 Q. The question was: Do you recall testifying either
11 at a deposition or in court in connection with the Brace
12 case?

13 A. Yes.

14 Q. Did you not say -- did you indicate that you
15 recall being in Philadelphia for one of these testimonies,
16 or could it be possible that you're confusing this with
17 another case?

18 A. No. It should be in there somewhere. I remember.

19 Q. The Washington, D.C. one, I can tell you where
20 that was.

21 A. That was the --

22 Q. That was in the United States Court of Claims.

23 A. Okay. That sounds familiar.

24 Q. That's the Washington D.C. one.

25 MR. KOGAN: Off the record.

1 (Discussion held off the record.)

2 BY MR. KOGAN:

3 (Exhibit D-2 Steckler - Transcript from US Court
4 of Federal Claims, January 13, 2005 - marked for
5 identification.)

6 (Exhibit D-3 Steckler - Deposition of Edward
7 Lewandowski, April 14, 1991 - marked for
8 identification.)

9 Q. D-2 Steckler is -- I'm trying to get all the
10 folded pages out of here so we have a flat presentation --
11 the United States Court of Federal Claims witness testimony,
12 trial testimony, of Mr. Steckler dated January 13th of 2005.
13 And the page sequence is 698 through 765.

14 The reason I raise the question is because, one,
15 I'm only going to be asking questions pertaining to certain
16 pages that I will raise as I ask the questions. And also
17 I'm going to be relating back to some other documents that
18 have been submitted into evidence, which will now be entered
19 for this deposition that Mr. Steckler addresses in his
20 testimony.

21 This one is the deposition testimony of Mr. Ed
22 Lewandowski for April 14, 1991 labeled previously as
23 Defendant's Exhibit D-3 Lewandowski. In particular, we're
24 looking at the sketch diagram of the tiling and the
25 accompanying sheets relating to the tiling system that SCS

1 had designed for Mr. Brace back in 1977.

2 Mr. Steckler, would you take a look at the last
3 few pages of that Lewandowski testimony. And you can unclip
4 that if you need to. Do you recall historically speaking
5 that SCS had designed a tile drainage system for a portion
6 of Mr. Brace's farm?

7 MS. BUCKLEY: Objection. Can we clarify what
8 farm.

9 MR. KOGAN: In 1977.

10 MS. BUCKLEY: Okay. Also Mr. Brace's farm. We
11 know that Mr. Brace has multiple farm tracts.

12 Q. We're talking about his Waterford farm.

13 A. On Greenlee.

14 Q. Basically Greenlee and Lane Road, or South Hill as
15 they called it.

16 A. Yeah. I recall. This is the type of form we used
17 and we recorded how many feet and so forth. And this is a
18 sketch of where the drains were put in.

19 Q. Right. Now, I can refer back to certain of your
20 testimony in your District Court 1991 deposition. And I
21 believe also in your Court of Claims deposition where you
22 talk about the tiling system being extended under Lane Road.

23 Do you recall that, sir?

24 A. It says right here -- no. I don't recall it, but
25 it says that they went under the road, 30 foot of 6-inch

1 pipe.

2 Q. Right. And in your testimony -- and I can
3 actually make reference to precisely the page, if I can find
4 it here.

5 A. Yeah. The crop field was north of the road. And
6 in order to get enough fall to make it run by gravity, they
7 cut right through the road probably.

8 Q. Right. Because there wasn't a culvert there
9 already, probably. Right?

10 A. There might not have been. I couldn't tell you.

11 Q. Would they just dig another hole under the road
12 and --

13 A. Well, the trench probably just went right across
14 through the road. They'll take it through the gravel roads
15 just as easy as a field.

16 Q. Right. And how far out did the pipe then extend?
17 Do you recall?

18 MS. BUCKLEY: Objection.

19 Q. Okay. If I were to refer you, Mr. Steckler, to
20 Pages 37 and 38 of your District Court testimony, which is
21 D-1, which I think is under the Court of Claims.

22 A. What page?

23 Q. 37 to 38. Do you see where you say -- you're
24 discussing the 300 feet to a watercourse?

25 MS. BUCKLEY: Objection.

1 MR. KOGAN: I'm just trying to find the language
2 on the page for him.

3 A. It said 30.

4 Q. It looks like 300.

5 A. No. The --

6 Q. Right. But your testimony says 300 feet.

7 A. It says 30 foot of 6-inch under the road, which is
8 steel pipe.

9 Q. Under the road. But I'm talking now beyond the
10 road into --

11 A. Oh. Up into the field?

12 Q. Yes.

13 A. Oh. Whatever the sketch shows. Here's the sketch
14 up into the --

15 Q. Right. But I'm looking at your testimony under
16 oath. So you must have known something to testify to
17 300 feet --

18 MS. BUCKLEY: Objection.

19 Q. -- on Pages 37 to 38. If you want, I can point it
20 out to you.

21 A. No. I see it.

22 Q. Okay. Can you read that out loud for the record.

23 A. "I assume they dug through the Township road and
24 went about 300 feet in order to get an outlet."

25 Q. And --

1 A. There was no drop-off at the end of the road. No
2 road ditch for use as an outlet. It was a single line that
3 is sketched right here.

4 Q. Would that be the single line there (indicating)?

5 A. It couldn't tell you. I guess this is it right
6 here. Three plus zero zero is 300 feet, so it's on there.

7 Q. Oh, it is. Okay.

8 A. I didn't do this fieldwork, so I'm only going by
9 what I see.

10 Q. Oh, course. Mr. Lewandowski had done this
11 fieldwork.

12 A. Or the tile. The person who operated this
13 trenching machine, he was experienced enough to do some
14 things on his own without our approval.

15 Q. How could you draw that conclusion from that?

16 A. Just from other jobs he did. He didn't have to
17 double-check with us.

18 Q. Who is the he?

19 A. Mr. Sheldon that signed this.

20 Q. He was a tile machine operator.

21 A. Yes. And the owner of the company.

22 Q. Right. But the --

23 A. He could make changes to our design without our
24 approval.

25 Q. Right. But the design as it's stated is 300 feet

1 out to a watercourse from the road. Correct?

2 A. That's what it says right there.

3 Q. And your testimony seems to corroborate that.

4 Does it not?

5 A. I guess. I wasn't there.

6 Q. No. I'm sure you weren't, but you were -- I'm
7 just going over your testimony to corroborate the design of
8 the drainage tile damage by Mr. Lewandowski, who you
9 actually testified designed it.

10 MS. BUCKLEY: Objection. Lack of foundation.

11 MR. KOGAN: Do you want me to find that.

12 MS. BUCKLEY: He said that he doesn't remember.

13 Q. Okay. Page 35 in your testimony it should mention
14 Mr. Lewandowski as the one who designed the system.

15 MS. BUCKLEY: Objection.

16 Q. Does it not? I'm posing it as a question.

17 A. So on -- what do you want me to look for on 35?

18 Q. Mr. Lewandowski was -- whether Mr. Lewandowski was
19 the person who designed that -- to the best of your
20 recollection, designed that tile system.

21 Now, there's also further -- if we were to go into
22 your Court of Claims testimony beginning on Page 708, it, I
23 think, will further clarify that.

24 A. Well, there's two outlets here, so I'm not sure.
25 And this is not complete over here.

1 Q. Yeah. But that's above north -- above Lane Road.
2 I'm talking now below Lane Road.

3 A. Yeah. But there would be some stuff written over
4 here. I don't know. It must have been flat enough that
5 they needed to go that far in order to get the gravity flow.

6 Q. Right.

7 A. Is the only thing I can say.

8 Q. Can we check now on your Court of Claims
9 testimony, Page 708.

10 A. (Witness reviews document.)

11 Q. Okay. What does it say there, sir?

12 A. It talks about the sketch and the contractor
13 putting a length of the line in. Well, that's pretty much
14 what I told you.

15 Q. Yeah.

16 A. They went that far in order to get a free-flowing
17 outlet.

18 Q. Yeah. And what does a free-flowing outlet mean?
19 Is that a watercourse?

20 A. By gravity.

21 Q. Is a free-flowing outlet a watercourse?

22 MS. BUCKLEY: Objection.

23 MR. KOGAN: I'm asking a question.

24 Q. What is a free-flowing --

25 MS. BUCKLEY: Objection.

1 MR. KOGAN: Objection noted.

2 Q. What is a free-flowing outlet? What does that
3 mean?

4 A. The pipe coming out. And there has to be fall
5 below so the water can get out the drainage pipe.

6 Q. Now, where would that pipe empty out?

7 A. It could be a road ditch. It could be an existing
8 watercourse. It could be a ditch somebody dug.

9 Q. An agricultural ditch?

10 A. It could be a PennDOT highway ditch.

11 Q. Right. But we're not on a highway, so it would
12 be -- would there be -- let's bring up the other map here.

13 A. I'm assuming it was a farm.

14 (Exhibit D-3 Steckler - Color Map - marked for
15 identification.)

16 Q. Let's enter into evidence now, I think, it's D-4
17 Steckler, what was previously labeled D-2 Lewandowski.

18 Mr. Steckler, are you familiar generally with the
19 layout of what farm is portrayed in that exhibit?

20 A. Uh-huh.

21 Q. Mr. Brace's farm from Waterford?

22 A. And the Murphy tract.

23 Q. Yes. And the Murphy tract. And you see where the
24 Greenlee and Lane Road intersect.

25 A. Yes.

1 Q. So looking back at the sketch of the drainage tile
2 system to get a general sense -- a general sense of where it
3 entered the Murphy farm.

4 A. Yeah. It was -- it had to be one of two points,
5 either likely here or here (indicating).

6 Q. Okay.

7 A. And I wasn't there. I didn't work in this county
8 then.

9 Q. No. I understand. I'm just trying to get to your
10 use -- I'm trying to understand how you explained it.

11 A. From the sketch, it's pretty hard to tell exactly
12 which one it was because the rest of this drawing is not
13 here to label the road.

14 Q. But if this dashed line, which reflected -- I
15 mean, if the pipe went under Lane Road, which is here, and
16 it --

17 A. Well, I don't think there's any doubt at one time
18 it did, because they put steel pipe under the road.

19 Q. Right. And then it extended out 300 feet into the
20 field. Correct?

21 A. That's what the sketch said.

22 Q. Okay. Now, we don't have a scale map on this
23 picture, but that open watercourse, that open outlet, as you
24 said -- did you not testify just moments ago that that open
25 outlet could be either a watercourse or a drainage ditch?

1 MS. BUCKLEY: Objection to characterization.

2 A. Or both.

3 Q. Or both?

4 A. Because here's a natural stream here.

5 Q. Right.

6 A. And it's coming down there.

7 Q. Right. But in 1977 when this work was performed?

8 A. Yeah. That's the date on it. Yes.

9 Q. So there must have been either a ditch or an open
10 watercourse or both. Right?

11 MS. BUCKLEY: Objection.

12 Q. Is that a yes?

13 A. Yes. The water had to flow somehow.

14 Q. Right. Now --

15 A. Whether Mother Nature did it or it was assisted.

16 Q. Now, there is a difference between a drainage
17 system and a free-flowing outlet.

18 MS. BUCKLEY: Objection.

19 Q. I'm referencing to your testimony on Pages 708,
20 709, and 710 to that point.

21 A. The outlet is a small part of the whole system.

22 Q. But it is part of the system, is it not,
23 Mr. Steckler?

24 A. Yes. You have to have an outlet or the whole
25 thing won't work.

1 Q. The whole system won't work. What do you mean by
2 that, sir?

3 A. It's going to back up for a certain -- if the
4 outlet gets plugged --

5 Q. Right.

6 A. -- the water is going to find somewhere else to
7 go, so it's going to pop up somewhere.

8 Q. So if --

9 A. It may only destroy a certain percentage of the
10 whole system because the rest of it, it's up into the field.

11 Q. Right. But if there's a main line -- if we could
12 go back to that drawing again in that other testimony --
13 Mr. Lewandowski's testimony.

14 A. Yeah. I know where. It goes up into the crop
15 field.

16 Q. Right. It's got a main line and then it's got
17 tributaries. Correct?

18 A. Well, yeah. It's -- whatever you call it, a
19 pattern system or herringbone system.

20 Q. Right. So if there was a blockage in the open
21 outlet, the free-flowing outlet, whether it be a watercourse
22 or a drainage ditch, if there were backup in either one or
23 both and it was connected to the tile drainage system, that
24 would cause a backup in the tile drainage system as well?

25 MS. BUCKLEY: Objection.

1 MR. KOGAN: It's a question.

2 A. Likely.

3 Q. Likely yes?

4 A. Yeah. It's likely going to -- the water is going
5 to come down there and it's going to find somewhere to go.

6 Q. So it can burst the tile?

7 A. Yeah. It will make a suck hole or whatever.
8 We've seen that. Sometimes roots plug it up or plant roots
9 can plug up the drainage system --

10 Q. Right.

11 A. -- various places.

12 Q. Beaver dams could do -- if a beaver dam jammed up
13 an open outlet, wouldn't that cause a --

14 A. Possibly.

15 Q. -- a downstream effect?

16 MS. BUCKLEY: Objection.

17 Q. Possibly?

18 A. It may not plug if the water would just back up
19 the line.

20 Q. It would just flood out, do you mean?

21 MS. BUCKLEY: Objection.

22 A. It's -- water is going to -- you know, if the
23 beaver dam is this high (indicating) and your pipe is down
24 here --

25 Q. Right.

1 A. -- it's going to put water in that pipe until it
2 gets to this level -- until it gets above this.

3 Q. Yeah. I appreciate that answer. Do you recall
4 Mr. Brace's land having highly erodible components?

5 MS. BUCKLEY: Objection.

6 A. Yes. I seen some of the field were HEL, what we
7 call highly erodible land.

8 Q. And didn't that -- if a land was designated as
9 highly erodible by SCS, would SCS make that determination?

10 A. Yes.

11 Q. Did you make that determination from --

12 A. Sometimes.

13 Q. What would be necessary, then, for Mr. Brace to
14 remain eligible for USDA?

15 A. The highly erodible lands needed a conservation
16 plan that limited that amount of soil erosion.

17 (Exhibit D-5 Steckler - Soil & Water Conservation
18 Plan - marked for identification.)

19 Q. I'd like to enter into evidence at this time
20 Exhibit D-5, the Soil & Water Conservation Plan Sold To
21 Robert Brace, previously Exhibit D-1 Lewandowski and D-1
22 Lesik.

23 A. Does this have the maps in it?

24 Q. Yes. It does. Towards the back.

25 A. HEL?

1 Q. Yeah. I believe -- well, this wasn't -- doesn't,
2 but I can show you one that does. The map here --

3 A. Yeah. Because it's going to be the fields that
4 have enough slope to them. It can't be the flat fields.

5 Q. Right. There's a map right here. If you look
6 closely at this map, Mr. Steckler, toward the intersection
7 of Greenlee and Lane, do you see the tile system sketched
8 out there?

9 A. Yeah. It looks like it might be similar to the
10 one that was there possibly.

11 Q. But would this be the type of conservation plan
12 that would meet the requirements to -- you know, if there
13 was a finding of highly erodible land, would this be the
14 kind --

15 A. This was done way before HEL was even thought of.

16 Q. But it was also updated, was it not, if it had a
17 diagram?

18 A. Well, let me get one thing straight here, this
19 conservation plan was made for Charles Brace.

20 Q. Right.

21 A. Underneath this conservation agreement, it was not
22 made for Robert Brace.

23 Q. Right. But it was updated.

24 A. Robert Brace never requested a conservation plan
25 for these parts. We had this plan in our inactive file,

1 canceled file, because Charlie Brace passed away.

2 Q. In 19 -- what year are we talking about it was
3 inactive?

4 A. Whenever Mr. Brace, Charles Brace, passed away.

5 Q. Well, it's interesting because the --

6 A. This was made in 1961.

7 Q. I understand that. But your forms, that I will
8 show you and submit into evidence, indicate that you had
9 already considered this plan as not being placed into quiet
10 dormancy.

11 MS. BUCKLEY: Objection.

12 Q. So my question to you is: The plan that has the
13 tiling in 1977 that SCS designed as an update to Mr. Charles
14 Brace's plan, it's in the picture there. You just looked at
15 it. It goes across Lane Road.

16 A. It could.

17 Q. If you looked at it and compare it to
18 Mr. Lewandowski's sign, that would make what you just said
19 incorrect.

20 MS. BUCKLEY: Objection.

21 Q. Would it not?

22 A. We used a --

23 MS. BUCKLEY: Excuse me. Objection lack of
24 foundation.

25 Q. Well, let's pull out the map.

1 MS. BUCKLEY: You can --

2 Q. Let's pull out the map from there again.

3 A. I was just pointing out that the cooperator
4 decision is made in this plan, when it was made, were made
5 by Mr. Charles Brace.

6 Q. Right. A plan can be amended in time. Can it
7 not?

8 MS. BUCKLEY: Objection. Calls for speculation
9 and lack of foundation.

10 MR. KOGAN: You need to have an objection noted
11 and objected to.

12 A. We never threw them away because this always
13 happened. Somebody else was going to buy the farm or the
14 son inherited it or whatever.

15 Q. So they step into the landholder's plan and then
16 do they not amend?

17 MS. BUCKLEY: Objection, characterization.

18 A. Generally, in most cases, we made a new plan with
19 a new request so that the new person owning it, his
20 decisions, were listed, not the former.

21 Q. Right. But in this case, is there not a sketch on
22 the map -- not that map, the one behind it further back,
23 there's a sketch of the tile drainage there. And I'd like
24 you to compare it to the tile drainage sketch at the end of
25 Mr. Lewandowski's testimony.

1 A. It could be the -- it could be the same one.

2 Q. Okay. Please, if you would, take a look for a
3 moment.

4 A. As I said, I wasn't there and I didn't draw it.
5 That's not the right one.

6 Q. That's not the one -- there. And the difference
7 would be?

8 A. This one here looks like similar to this one.

9 Q. So that would show a de facto amendment. An
10 amendment, in fact, to the old plan.

11 MS. BUCKLEY: Objection.

12 Q. Would it not?

13 MS. BUCKLEY: Objection.

14 A. These -- this thing here that came from ASCS --

15 Q. Right.

16 A. -- could be done without this at all.

17 Q. Could be, but not if you had highly erodible land.
18 Right?

19 A. Highly erodible land wasn't even talked about when
20 this was done in 1977.

21 Q. Right.

22 A. So get that out of your mind because HEL didn't
23 come in until 1985.

24 Q. With the Food Security Act.

25 A. Right.

1 Q. The Swampbuster. But the diagrams do look the
2 same; do they not? You just testified to that.

3 A. That one does. Yes.

4 Q. Okay. So therefore we're talking almost about the
5 same drainage tile system there.

6 MS. BUCKLEY: Objection.

7 A. Anybody can compare as well as I can.

8 Q. Why would they install -- why would that map have
9 an image that is similar to the image of Mr. Lewandowski's
10 tile drainage system unless the plan was updated?

11 MS. BUCKLEY: Objection.

12 MR. KOGAN: Objection noted.

13 A. Because this was a separate entity.

14 Q. No. I understand that. But why would that put
15 that in that conservation plan picture? And it had to be by
16 someone -- wouldn't it have to be by someone that designed
17 it?

18 MS. BUCKLEY: Objection.

19 A. That was a standard practice. We always -- once a
20 project was completed and we had these completed maps turned
21 in by the contractor --

22 Q. Yes.

23 A. -- and the footage on there, it was standard
24 practice to record it in the plan.

25 Q. And that reflects that the plan was updated. Does

1 it not?

2 MS. BUCKLEY: Objection.

3 Q. If you recorded it in the plan -- if the SCS
4 recorded it in the plan, then the plan as a matter of fact
5 was updated. Was it not?

6 MS. BUCKLEY: Objection.

7 MR. KOGAN: Objection noted.

8 A. Well, let's see if they wrote it down in here.
9 They didn't write it down in here. The other thing -- the
10 other possibility is if you read the conservation plan, it
11 talks about installing tile drains as a planned activity and
12 not as a completed yet. It was planned, but hadn't been
13 installed.

14 Q. Right. But did you not just testify moments ago
15 that it would not have been -- you would not have put it on
16 the map unless it was completed?

17 MS. BUCKLEY: Objection.

18 MR. KOGAN: Objection noted. But he did state
19 that.

20 Q. Did you not --

21 MS. BUCKLEY: Objection.

22 Q. Did you not, Mr. Steckler, just state that once
23 the plan was completed -- the project was completed it would
24 have been put on the map?

25 A. I stated that, but in this case I don't see it.

1 Q. You don't see it documented.

2 A. Right.

3 Q. That doesn't mean it didn't happen. Correct?

4 MS. BUCKLEY: Objection.

5 Q. Is that a yes, a maybe or possibly?

6 A. I wasn't there. I didn't do it, so I don't know.

7 Q. Okay. But it's possible then.

8 MS. BUCKLEY: Objection. Calls for speculation.

9 Counsel --

10 MR. KOGAN: Objection noted.

11 MS. BUCKLEY: -- how many --

12 MR. KOGAN: How many times do you need to object,
13 because I'm going to object back?

14 MS. BUCKLEY: I'm going to object to every
15 question that you ask that is objectionable.

16 MR. KOGAN: And I'm going to counter.

17 MS. BUCKLEY: Can we go off the record.

18 MR. KOGAN: Yeah.

19 (Discussion held off the record.)

20 (Exhibit D-6 Steckler - Forms for Cost-Sharing -
21 marked for identification.)

22 BY MR. KOGAN:

23 Q. I'd like to enter into evidence Defendant's
24 Exhibit D-6 Steckler a group of documents previously
25 designated as D-2 Lesik consisting of the Swampbuster

1 Commenced Third-Party Determinations, the Highly Erodible
2 Land and Wetland Conservation Determination, the Highly
3 Erodible Wetland Conservation certification, and the
4 Not-To-Scale Maps associated with these documents.

5 But before you -- and before we look over those
6 documents, Mr. Steckler, you were about to say something.

7 A. Well, sometimes on those maps of the farm, the
8 area photos, the tile drains would be put in a dashed color
9 as being planned. And then two or three years later when it
10 was implemented and we got the footage, when we got the
11 footage, we would put it in as red so then we could -- you
12 would know that it's been installed. But I can't tell that
13 from the photocopy.

14 Q. Right. But you do note that there was a sketch in
15 the map itself.

16 A. It looks to me like that one --

17 Q. And they weren't dashes.

18 A. This heavy one here was probably red.

19 Q. Right. I'm talking about the ones here and here
20 (indicating), the whole system in here.

21 A. This one here. And it looks like it corresponds
22 to that one that Mr. Lewandowski laid out.

23 Q. Thank you, sir. I appreciate you following that
24 up.

25 Now, looking at these documents, are these the

1 types of documents that you, as a district conservationist,
2 would be preparing in connection with a request from the
3 farmer for designation and cost-sharing?

4 A. Not the first one here. The second one. The
5 first one is an ASCS paper.

6 Q. Is there a form number on that? Or what's it
7 entitled?

8 A. Data Needed for Swampbuster Commenced and
9 Third-Party Determinations.

10 Q. Right. And that one is filled out by whom?

11 A. ASCS, signed by Mr. Brace.

12 Q. Right. But it's -- and it was dated?

13 A. It was signed by Mr. Robert Brace on the 31st of
14 August, 1988.

15 Q. Right. Okay. And that starts a process, that
16 document, when it's submitted?

17 A. Yeah. That's what this next one is.

18 Q. Okay.

19 A. And then the next one is the Highly Erodible Land
20 and the Wetlands.

21 Q. Right.

22 A. And that was -- was that the 1026? Or 26.
23 CPA-26. Yeah. That's what I thought.

24 Q. The 1026 is the third document, I think.

25 A. And then there was maps to go with it.

1 Q. Right. The 1026 was -- what was the 1026, that
2 certification? What did that mean?

3 A. It had the different fields on it.

4 Q. Well, the 1026, I mean, the certification, I'm
5 talking about. It's -- do you have the AD-1026 up on the
6 top left on one of these documents?

7 A. Yeah. Okay. That one is ASCS.

8 Q. Right.

9 A. That was for Brace and -- yeah.

10 Q. And this is -- can you read Line 11 on that
11 document, on that 1026, the AD-1026.

12 A. The date?

13 Q. No. The -- okay. Right here. What does this
14 line say here? What does that --

15 A. "Date received to SCS for determination."

16 Q. Okay. So that would be to you then. Right?

17 A. Yes.

18 Q. And then the agency representative who signed that
19 was?

20 A. Joe Burawa.

21 Q. Was he -- okay.

22 A. He was their County Executive Director.

23 Q. So ASCS referred the request to SCS. Is that the
24 way this works?

25 A. Yes. With the map.

1 Q. With the map?

2 A. Yeah. And sometimes -- most the time, too, we had
3 the crop in history.

4 Q. Okay. So --

5 A. A paper with it that had the different fields and
6 different crops.

7 Q. So the request for cost-sharing would be made by
8 the farmer to ASCS?

9 A. This was not cost-sharing. None of this was
10 cost-sharing. Don't use that word in this.

11 Q. Okay. That's what I -- please, correct me.

12 A. That other thing was cost-sharing.

13 Q. The tile system was cost-sharing.

14 A. Yes. This was independent of that.

15 Q. Okay. So when ASCS referred it to SCS on 9/7/88,
16 do we then go back to the other form, which is the CPA-026
17 determination?

18 A. Uh-huh.

19 Q. And were you the person at that time that made
20 these determinations?

21 A. Yes. That's my writing. Yes.

22 Q. Okay. Now, with regard to Line No. 3 in Section 2
23 you mentioned earlier in your testimony about prior
24 converted wetlands.

25 MS. BUCKLEY: Objection.

1 Q. As I recall your testimony. Is that correct, sir?

2 A. Yeah. Line 3 -- or No. 3, PC. And then we list
3 the fields.

4 Q. Right. And if we go back to the map, which has --
5 there's two maps there, I believe. One that has a key and
6 the one that doesn't. A key with letters to explain the
7 initials on the different fields.

8 A. Uh-huh.

9 Q. Now, these fields, 1, 4, 6, 8, 10 and 13, those
10 are all PC fields that you determined.

11 A. One -- I see -- I see eight. Yeah. They're just
12 hard to find.

13 Q. How about on the other map behind it with more
14 notations. Is it any easier on that one?

15 A. Yeah. The PC is marked, roughly, for where we
16 talked about the tiling system.

17 Q. Right in here?

18 MS. BUCKLEY: Objection.

19 Q. If you would go to the map on Defendant's Exhibit
20 D-4.

21 A. There's PC on this area right here (indicating).

22 Q. Which is above Lane Road?

23 A. Yes. Up here.

24 Q. And that would be the Homestead Farm.

25 MS. BUCKLEY: Objection.

1 Q. Are you agreeing with that being referred to as
2 the Homestead Farm above Lane Road?

3 A. Okay. That's fine. Yeah. They're all listed on
4 here.

5 Q. And if we went down to the converted wetlands, CW,
6 section you have two fields there. Right?

7 A. 14 and 15.

8 Q. And what is the difference between the PC and the
9 CW again, if you could explain?

10 A. CW is standing for converted wetlands.

11 Q. Right.

12 A. And PC was prior converted.

13 Q. Right. And what did that mean as far as -- was it
14 the conversion had started already but wasn't finished for
15 CW? Is that what you testified earlier to?

16 MS. BUCKLEY: Objection.

17 A. It was -- you'll have to read what the CW meant.
18 I don't know the definition.

19 Q. That's fine.

20 A. Because at the time, I had -- this was the first
21 one we ever did.

22 Q. It was the first one?

23 A. For CW? Yes. So I called our specialist from
24 Harrisburg.

25 Q. And do you recall that person's name?

1 A. Barry France, I think. And he helped me through
2 it because it's the first time we ever had a CW.

3 Q. Really?

4 A. Yes.

5 Q. Did you have PCs before that time?

6 A. PCs were many. But the CW -- I can't recall the
7 definition right now, but he helped me fill this out over
8 the phone.

9 Q. Okay.

10 A. The other thing I should point out that at the
11 time I never said anything, but if you look on here, this
12 was approved at the County Committee meeting on the 14th of
13 September.

14 Q. Right.

15 A. I never submitted this information to the County
16 Committee until the next day.

17 Q. Well, that you did testify to actually.

18 A. Okay.

19 Q. You did testify to that.

20 A. And I called my specialist again and he said
21 there's nothing you can do about it, let it go.

22 Q. Right. But my question to you, though, is this:
23 It was submitted to you on the 7th of September, okay? And
24 you had to probably -- may I ask you: How many times did
25 you go and do the field visit to make those determinations

1 between September 7th and September 15th?

2 A. Probably at least once. I think I called Bob and
3 told him I'd be coming out to do this.

4 Q. But there was more than one time. No?

5 A. Probably.

6 Q. So, I mean, you didn't let -- when you received
7 this on September 7th, which the other form showed that
8 Mr. Burawa sent it to you on --

9 A. Uh-huh.

10 Q. -- you would have acted -- would you have acted
11 right away on it? Would you have let it sit?

12 A. No. We generally did those. We worked very
13 cooperatively with ASCS. So we generally tried to -- unless
14 sometimes when the Farm Bill was first signed, we had
15 stacks.

16 Q. So you had no time to do anything per case.
17 Right?

18 MS. BUCKLEY: Objection.

19 A. Right.

20 Q. You had a limited amount of time to get cases
21 through.

22 MS. BUCKLEY: Objection.

23 A. This was somewhat later after the initial '85 Farm
24 Bill was signed.

25 Q. Right. Actually, the Farm Bill was signed on

1 December 23, 1985? Do you recall that?

2 A. Right.

3 Q. That's why that date is so --

4 A. You reminded me of that before.

5 Q. But in order to check out all those fields, you
6 had to go back more than one time, I would imagine. No?

7 MS. BUCKLEY: Objection.

8 Q. How many fields -- let's count all the fields
9 here. We've got one, two -- please count those fields up,
10 if you would. It looks like at least eight fields -- 10
11 fields actually when you consider the two up on Section 1.

12 MS. BUCKLEY: Objection. Is there a question?

13 Q. Yeah. The question I have is: Is it possible to
14 look at 10 fields in one trip --

15 A. Yes.

16 Q. -- to make all these different determinations?

17 A. Yes.

18 Q. Really?

19 A. We did this for hundreds and hundreds of farms. I
20 can drive by a field and tell you within a percent or two
21 what slope that field is just from familiarity and doing it
22 so many times.

23 Q. Did you have checklists you had to go by in order
24 to make these determinations?

25 A. Yeah. I even have it written down here on ATL

1 Field No. 12, the slope is 250 feet at 8 percent. Field No.
2 12.

3 Q. Okay. I don't have that on my copies, but where
4 is that?

5 A. Is that it?

6 Q. You may have better maps than I do.

7 A. I even wrote it on the map.

8 Q. Okay.

9 A. That was some kind of -- you asked about the
10 notations and sometimes we wrote it right on the map.

11 Q. Just like on the conservation plan with the
12 system, the drain tile system.

13 MS. BUCKLEY: Objection.

14 Q. So my question is: Do you recall how many times
15 you went out to the Brace farm to make that determination --
16 those determinations?

17 MS. BUCKLEY: Objection. Asked and answered.

18 MR. KOGAN: If it was answered, I'm not clear of
19 the answer.

20 Q. I'm not sure whether --

21 A. Once or twice would be my answer.

22 Q. Okay. Would you have let a week gone by between
23 those two dates?

24 MS. BUCKLEY: Objection.

25 A. Like I said, the CW was the first one we had.

1 Q. Which means you had to be really careful with
2 that. Right?

3 A. Right. That's why I called the expert. I
4 remember calling our biologist, wetlands biologist. That
5 may have taken more time.

6 The other -- the reason it didn't get turned in on
7 the 14th, the day of the County Committee meeting, was I was
8 out of town. I was in Clarion for a meeting.

9 Q. Okay. So, again, going back --

10 A. The only reason I mentioned that is I had no input
11 into the County Committee's decision.

12 Q. But does SCS, as a matter of practice, have input
13 into the ASCS Committee meeting?

14 A. Yes. I attended every meeting that I could.

15 Q. But who makes the determination on the Committee?

16 A. The commenced determination is their decision.

17 Q. And your determination related to the commenced
18 decision was with respect to what? What did you decide for
19 these Fields, 14 and 15, that they could then --

20 A. Well, for one thing, they had the woody vegetation
21 removed.

22 Q. Okay.

23 A. Like I said, the definition of CW, you'd have to
24 look it up.

25 Q. I could read it to you from the National Food

1 Safety Manual, if you like. We can enter this back into
2 evidence again.

3 A. It probably had -- it probably had removal of
4 woody vegetation as one of the items.

5 (Exhibit D-7 - Sections from National Food
6 Security Act - marked for identification.)

7 Q. Let's enter into evidence for Defendant Exhibit
8 D-7 Excerpts from the National Food Security Act Manual,
9 previously entered into evidence as Defendant's Exhibit D-10
10 Lewandowski.

11 A. But, in other words, it didn't have a crop in
12 history to qualify for a PC.

13 Q. Right.

14 A. So we had to call it something else.

15 Q. Right. But it was in the process of becoming a
16 PC. Right?

17 MS. BUCKLEY: Objection.

18 A. That's not for me to decide.

19 Q. Okay. Now, I want to point this out to you before
20 I hand it over. If you would please look at Subpart 517 of
21 the glossary of the National Food Safety Act Manual on the
22 top left.

23 A. (Witness complies.)

24 (Exhibit D-8 Steckler - Excerpts from ASCS
25 Handbook - marked for identification.)

1 Q. Also, I'd like to enter into evidence D-8 Steckler
2 the ASCS Handbook, Highly Erodible Land Conservation and
3 Wetland Conservation provisions previously entered into
4 evidence as Exhibit D-4 Lewandowski and D-3 Lesik.

5 Mr. Steckler, would you look at this section here,
6 WC Exception. First of all, have you ever seen this
7 document before?

8 A. No. Not in this form. Like I said, it came from
9 ASCS, so.

10 Q. Okay. Based on that definition of commenced
11 conversion, did you not just testify -- or can you please
12 restate your testimony concerning the dates, September 14,
13 1988 and September 15, 1988 and why you think that's
14 important.

15 A. Well, they didn't -- they didn't even get a chance
16 for me to show them the map or discuss it with the Committee
17 members. They made their decision without --

18 Q. Well, let me ask you: Was that form submitted to
19 you on September 7th?

20 A. Probably.

21 Q. You have it dated on top as September 7th. Date
22 of Request 9/7/88.

23 A. Yeah.

24 Q. So they had that -- is it likely -- is not likely
25 they had that document?

1 MS. BUCKLEY: Objection.

2 Q. With your notation on the bottom, commenced filed
3 with ASCS?

4 A. Right.

5 Q. So just because you didn't sign it until 9/15
6 doesn't mean they couldn't make a determination based on it.

7 MS. BUCKLEY: Objection.

8 A. I don't know.

9 Q. I'm asking you the question.

10 A. I assume they had a copy.

11 Q. Right. So if looking at this definition of
12 commenced conversion in the ASCS handbook, could they not
13 make a determination based on the fact that you already put
14 all of the fields in the proper categories having made the
15 determination yourself that these fields go in these
16 categories?

17 A. No. They wouldn't have had this information.
18 They wouldn't have had this information until I turned it
19 into them when I signed it at the bottom.

20 Q. Well, don't you share the information? Since this
21 was the first CW and since it was -- as you said, everything
22 was on a very short time --

23 A. Yes. We --

24 MS. BUCKLEY: Objection.

25 Q. Didn't you not testify to that?

1 A. Joe and I talked about it.

2 Q. Okay.

3 A. It was a -- we talked about it.

4 Q. Is it not possible that you shared a copy of this
5 with Joe, even though it may not have been necessarily
6 signed? That's all I'm asking you. Do you recall, is my
7 question?

8 MS. BUCKLEY: Objection.

9 A. That's the reason I pointed out the dates, because
10 I was -- at that time I was upset I didn't get a chance to
11 go to the meeting and talk to the people on the Committee.

12 Q. You were upset. But I'm --

13 A. Because they didn't -- they didn't have my
14 information yet.

15 Q. But what I'm trying to say is when did you ever
16 express that to them?

17 MS. BUCKLEY: Objection.

18 Q. Because I'm looking -- based on your prior
19 testimony --

20 A. My specialist told me to let it go. The person in
21 Harrisburg advised me just to -- don't worry about it. Let
22 it go. There's nothing I could do about it.

23 Q. So are you testifying today that you did not give
24 them this form with the field numbers on it that they could
25 use --

1 A. Until 9/15.

2 Q. -- on September 14th? You're saying that they did
3 not have this form.

4 A. That's right.

5 Q. You're absolutely certain about that without a
6 question.

7 MS. BUCKLEY: Asked and answered.

8 A. To the best of my knowledge. How's that?

9 Q. To the best of your knowledge they never had this
10 form. So you're saying that all these other people
11 fabricated their annual meeting --

12 MS. BUCKLEY: Objection.

13 MR. KOGAN: I'm getting to the question here,
14 because what is the logical conclusion based on
15 what he's saying? He's saying that this Committee
16 vote was based on nothing. It was based on a
17 vacuum of information.

18 Q. Is that what you're insinuating, sir?

19 MS. BUCKLEY: Objection.

20 MR. KOGAN: Objection noted.

21 Q. Are you insinuating that they made the
22 determination without enough information to make the
23 determination?

24 A. They did whatever they had to do. I just --

25 Q. What does that mean?

1 A. I didn't get a chance to go. That's all.

2 Q. You didn't get a chance to go.

3 A. Because I was out of town.

4 Q. That may be true. But are you saying that they
5 also did not have this form --

6 MS. BUCKLEY: Objection.

7 Q. -- with this information?

8 MS. BUCKLEY: Objection. Asked and answered.

9 It's starting to get abusive.

10 MR. KOGAN: I'm going to ask the question as many
11 times as I wish, many different ways.

12 By Mr. Steckler stating just before that he
13 was almost certain that they did not have a copy
14 of this form on September 14, 1988 because he
15 wasn't there and he would be the only one to bring
16 that form, he's saying -- he's insinuating that
17 they made a determination without adequate
18 information.

19 Q. I just want to make sure that under oath you are
20 making that statement.

21 MS. BUCKLEY: Objection.

22 MR. KOGAN: Objection noted.

23 A. To the best of my knowledge, they had this map,
24 but they didn't have my designations on it at the 14th
25 meeting.

1 Q. They had a map with PC and CW on the field
2 numbers. Correct? Were there field numbers --

3 MS. BUCKLEY: Objection.

4 Q. -- on that map?

5 A. No. The map would have gone with the paper. This
6 would have been what I handed back to them.

7 Q. Which version of the map? There's two versions.
8 You obviously annotated one map after another.

9 MS. BUCKLEY: Objection.

10 Q. There wouldn't be two maps if that were not the
11 case.

12 MS. BUCKLEY: Objection.

13 MR. KOGAN: Objection noted.

14 Q. Are there two maps there, Mr. Steckler, one with
15 your annotations and one without?

16 A. (Witness reviews documents.) They've been
17 photocopied. If you notice, it's the same information,
18 except for this.

19 Q. Can you say that again, sir.

20 A. See like this?

21 Q. Yes.

22 A. 8 percent of 250 feet.

23 Q. Right.

24 A. 8 percent of 250 feet.

25 Q. Right.

1 A. This map is a photocopy.

2 Q. Right. But is that your handwriting?

3 A. No.

4 Q. That's not your handwriting.

5 A. That is somebody else's handwriting. I didn't do
6 this.

7 Q. So they had this map at the time of their meeting.

8 A. I don't know.

9 Q. Is that what you're testifying to?

10 A. No. I have no idea.

11 Q. Then how would they know what fields --

12 A. That's my point.

13 MS. BUCKLEY: Objection.

14 Q. I don't understand.

15 MS. BUCKLEY: Sorry. Objection. I'm going to
16 state my objection, which is this has been asked
17 and answered about 20 times. And you are calling
18 for speculation. And a lot of your questions lack
19 foundation.

20 I think we need to move along.

21 MR. KOGAN: No.

22 MS. BUCKLEY: If you have a problem with that,
23 we --

24 MR. KOGAN: I do have a problem with that.

25 MS. BUCKLEY: -- can call the judge.

1 MR. KOGAN: I do have a problem with the fact that
2 Mr. Steckler's testimony is insinuating that the
3 entire ASCS Committee, Executive Committee, in his
4 absence fabricated a result. That is the
5 insinuation.

6 A. No.

7 Q. And I just want to make sure for the record --

8 MS. BUCKLEY: That's a conclusion you're drawing.

9 Q. Well, what is the conclusion that I should draw,
10 Mr. Steckler? Please tell me.

11 MS. BUCKLEY: Objection. Can we go off the
12 record?

13 MR. KOGAN: No.

14 MS. BUCKLEY: Larry, you can not badger --

15 (Court reporter requests clarification.)

16 MS. BUCKLEY: We have to agree. Okay. All right.
17 We can continue to have this conversation on the
18 record if you wish, Mr. Kogan.

19 Q. My intent is not to badger you. My intent is to
20 try to find out what it is -- what is the meaning of what
21 you're saying. If they didn't -- if they made a decision in
22 your absence --

23 A. I was actually hoping we would go to the field and
24 take a look at it with the County Committee.

25 Q. Because it was a first-time CW?

1 A. Yes.

2 Q. Okay. But they did not go to the field with you.

3 A. No.

4 Q. They let you go to the field.

5 A. Plus, I was talking to our specialist because that
6 was the first one we ever did.

7 Q. Okay. So my --

8 A. So while I was at Clarion on the 14th, they had
9 their meeting and decided whatever they decided. And the
10 paperwork was completed the next day and handed in.

11 Q. Now, did your determination support their
12 determination?

13 A. That's kind of what -- when I talked to my
14 specialist in Harrisburg, again, that's kind of what he
15 said.

16 Q. I'm asked you what your determination indicated.

17 A. Well, they knew which field it was because they
18 had the map. They had the map that was unmarked.

19 Q. Unmarked in what sense? Unmarked in -- what was
20 unmarked?

21 A. All these pictures are taken from the big area
22 photograph.

23 Q. Right.

24 A. Both offices had a great big area photograph.

25 Q. Right.

1 A. And all the farms that participate have lines
2 outlined where the -- how many acres, and they stick the map
3 in the photocopy machine and make copies. They would have
4 had a blank copy.

5 Q. But they would have had the -- would they have had
6 the field separated as you do in that picture?

7 MS. BUCKLEY: Objection.

8 A. They would have had the numbers. They would have
9 had the numbers, but no ATL or no Nos or no PCs or no CWs.

10 Q. So are you saying that they blindly granted this
11 determination not knowing what it pertained to?

12 MS. BUCKLEY: Objection.

13 Q. Is that you what you're saying?

14 MS. BUCKLEY: Objection.

15 A. No. I'm not saying that. I'm just saying they
16 didn't have the information. They didn't have this piece
17 and this piece, but they had blank ones with the field
18 numbers on them.

19 Q. So --

20 A. Joe and I looked at it. We talked about it.

21 Q. Before the meeting?

22 A. Yeah. We talked about it. They knew what areas
23 was going to be CW. It wasn't a surprise.

24 Q. Did you have extensive discussions with Joe?

25 MS. BUCKLEY: Objection.

1 A. Well, I saw him every day over coffee.

2 Q. Did you show him the form before you gave it to
3 them?

4 MS. BUCKLEY: Objection.

5 A. I can't remember that. No.

6 Q. But you don't -- but you do remember not giving
7 him a copy of the form.

8 A. Until I signed it and turned it back in the next
9 day, yes, on the 15th.

10 Q. So are you testifying that you never gave him a
11 preliminary copy --

12 MS. BUCKLEY: Objection.

13 A. Right.

14 Q. -- before your signature?

15 A. That's true.

16 Q. So that --

17 A. Most likely that's true.

18 Q. Most likely. Okay. But it's a long time ago.

19 A. That's right.

20 MS. BUCKLEY: Objection.

21 Q. And it is possible that you may not recall.

22 MS. BUCKLEY: Objection.

23 A. Like I say, he had copies of all the maps.

24 Q. He did. And because of extensive discussions with
25 you --

1 MS. BUCKLEY: Objection.

2 Q. -- he was briefed before the meeting. Was he not?

3 MS. BUCKLEY: Objection.

4 MR. KOGAN: Mr. Steckler just testified that he
5 met with Joe every day. He had coffee with him
6 every day.

7 A. We likely talked about --

8 MS. BUCKLEY: Objection to the characterization of
9 the witness' testimony.

10 A. We likely talked about it. We talked about
11 business all the time. Like I said, there was a good
12 working relationship between the two offices.

13 Q. But your fieldwork had been completed before the
14 14th, and you said that you were out of town on the 14th.

15 A. Uh-huh.

16 MS. BUCKLEY: Objection.

17 Q. Is that a yes?

18 A. Yes.

19 Q. So it was already completed. And did you see
20 Mr. Burawa before the 15th -- before the 14th, did you see
21 him? Do you remember? You must have seen him.

22 MS. BUCKLEY: Objection.

23 A. Yeah. Sometime.

24 Q. Okay. Having coffee, if not for other reasons.

25 A. Yes.

1 Q. We needn't continue on this course then.

2 Okay. So Mr. Steckler, I would like to change the
3 subject just for a short moment to the restoration plan tied
4 to the lawsuit.

5 Do you recall being involved at all with
6 overseeing Mr. Brace's satisfaction of the restoration plan
7 tied to the consent degree?

8 MS. BUCKLEY: Objection.

9 Q. Do you recall that there's a lawsuit involving Mr.
10 Brace's property?

11 A. Yes. I recall both things that you're talking
12 about because the Fish & Wildlife Service and the Justice
13 Department cleared it with my people in Harrisburg for me to
14 take pictures of when they pulled the yellow pipe out.

15 Wasn't that yellow, Bob? Oh, he can't say
16 anything.

17 Q. Actually, to tell you the truth, I'd like to back
18 up for a minute. Okay?

19 A. They had an excavator there digging out the yellow
20 pipe, drainage pipe, every 50 feet or something like that.

21 Q. If I can just interrupt your train of thought. I
22 apologize. Was there a second meeting at the ASCS
23 concerning the commenced conversion --

24 MS. BUCKLEY: Objection.

25 A. Not to my knowledge.

1 Q. -- that you attended?

2 MS. BUCKLEY: Objection.

3 (Exhibit D-9 Steckler - ASCS Meeting Minutes,
4 February 8, 1989 - marked for identification.)

5 Q. I'd like to submit into evidence the minutes to a
6 meeting dated February 8, 1989 of the ASCS Committee of Erie
7 County where your name is listed as one of the attendees.
8 So it has been previously entered into evidence as
9 Defendant's Exhibit D-8 Lesik, and that will be D-9.

10 A. (Witness reviews document.) Yeah. I see where
11 the Swampbuster commenced was discussed by Dave Putman.

12 Q. Right. But there was another meeting on this
13 because of the importance of the matter and because of,
14 perhaps, Mr. Putman's involvement.

15 MS. BUCKLEY: Objection.

16 Q. Does that -- do those minutes indicate that there
17 was an official Wildlife Service person involved in
18 attending that meeting, Mr. Steckler?

19 A. Yeah. He must have been there.

20 Q. And do you recall being there as well?

21 A. It says I was, so I probably was.

22 Q. Do you recall being -- traveling on that meeting,
23 too?

24 A. No. If I -- I'm listed as being there, so I
25 probably was there.

1 Q. Okay. And what was the determination at the
2 backside that you were reading from?

3 A. Well, Mr. Putman thought that just having one
4 ditch didn't constitute commencing a converted wetlands. He
5 was not in complete agreement with their determination.

6 Q. And what was their determination for the second
7 time?

8 A. They did not change. The County Committee
9 determination still remained the same as of September 14th.

10 Q. And they had your information at that time, sir,
11 didn't they, your form, with the September 15, 1988 date on
12 it?

13 A. Oh, yeah. They would have had the information by
14 then. Certainly.

15 Q. Did they -- they went to the added length of doing
16 it a second time. Did they not?

17 MS. BUCKLEY: Objection.

18 A. It doesn't say that. It just says they didn't
19 change it.

20 Q. They didn't change it, but they had to look at it
21 twice. Right? They looked at it again.

22 A. I can't remember what they did. Mr. Putman must
23 have spoke. I don't recall that meeting at all. I'm just
24 going by what I'm reading.

25 Q. Okay. Just for the record, thank you for looking

1 at that.

2 Going back to the restoration plan -- and I'm
3 going to end this deposition sort of the 5:00 time, so
4 please don't think you're going to be here the whole time.
5 I won't do that to you, but I do want to focus on your
6 involvement.

7 And if you can describe your involvement in this.

8 A. I didn't want to do it, but I was asked.

9 Q. By whom?

10 A. By the Justice Department official and Wildlife
11 Service.

12 Q. What did they --

13 A. To document the removal of the drainage tiles and
14 a couple of the ditch blocks, they called them, where they
15 blocked off the drainage ditches.

16 Q. Okay.

17 A. Since I was the closest person they could get --
18 that's their logic -- so somebody didn't have to travel from
19 State College.

20 Q. That must have been not an easy job.

21 MS. BUCKLEY: Objection.

22 Q. How did you find that having to be there at that
23 point to oversee this? How many days were you there?

24 A. Three days.

25 Q. Three days. And did you have a guide to go by?

1 MS. BUCKLEY: Objection.

2 Q. What were you using to evaluate whether it was
3 being done properly?

4 A. They must have sent me some guidelines, like I
5 mentioned, about the ditch block and the pipe coming out
6 every 50 feet or something like that.

7 Q. Did you ever see the consent decree?

8 A. Not to my knowledge. No.

9 Q. Did you ever see a map tied to the consent decree?

10 A. I probably glanced at it when I was in Washington
11 that time.

12 (Exhibit D-10 Steckler - Consent Decree - marked
13 for identification.)

14 Q. Okay. Let me try to refresh your memory. I'd
15 like to enter into evidence Defendant's Exhibit D-10
16 Steckler, which is the 1996 consent decree in Civil Action
17 No. 90-229 accompanied by a restoration -- Wetlands
18 Restoration Plan and a hand-drawn map.

19 A. (Witness reviews document.) Well, there's the
20 check dam. There's the -- I guess they dug trenches to
21 interrupt the flow of the drainage pipe that was installed.

22 Q. Did you ever talk to the designer of that plan?

23 MS. BUCKLEY: Objection.

24 Q. When you were asked to --

25 A. I don't know who made it. Did Dave Putman make

1 it? If it was Dave, I did talk to him. But I don't know if
2 he did this map or not.

3 Q. Well, do you know whether it was EPA perhaps?

4 MS. BUCKLEY: Objection.

5 Q. Do you know an EPA official by the name of Jeffrey
6 Lapp?

7 A. I can't remember.

8 Q. That would be the Philadelphia connection. He
9 works out of the EPA Region 3 Philadelphia office.

10 A. I really can't recall.

11 Q. Okay. So you didn't -- you just had the plan as
12 it was written right there to go by. Correct?

13 MS. BUCKLEY: Objection.

14 A. I didn't have this document. No.

15 Q. Did you have the restoration plan attached to it
16 or the map attached to it?

17 A. I can't remember now. I knew -- they might have
18 told me over the phone what needed to be done as far as
19 the -- you know.

20 Q. How would you know it was done correctly then?
21 How did you know?

22 A. I reported what I saw.

23 Q. How did you know that the check dam was placed in
24 the right position?

25 MS. BUCKLEY: Objection.

1 Q. How did you know that the tile was broken in the
2 right location?

3 MS. BUCKLEY: Objection.

4 Q. How did you know that the ditches were clogged up
5 or filled in the right location --

6 MS. BUCKLEY: Objection.

7 Q. -- if you did -- if you're testifying that you
8 didn't have a map or you don't recall having such a map?

9 A. I don't recall. I know I was there. I took
10 pictures. There's photographs somewhere.

11 Q. There are?

12 A. Yellow pipe coming up. It's black and white.
13 It's a black-and-white camera.

14 Q. Okay. That's very helpful.

15 A. No. I do recall the yellow pipe being pulled out
16 of the ground, and it was an excavator on the tracks. I
17 think it was Showman, the contractor.

18 Q. I'm asking you. I don't know.

19 A. But the check dams could only be in ditches
20 because it's no good to put a check dam anywhere else but in
21 a ditch.

22 Q. What would the purpose of a check dam be, based on
23 your knowledge?

24 A. To stop the flow of water. To let the water build
25 up until it went over the top of it.

1 Q. If you didn't talk to the designer of the plan, as
2 you just testified, and you didn't necessarily --

3 A. Well, I don't know who did that. There's no name
4 on it.

5 Q. Right. It's anonymous.

6 A. So I can't say. Like I told you, if it was
7 Mr. Putman that drew this up, then I probably talked to him.

8 Q. But if it wasn't Mr. Putman, you didn't talk to
9 him?

10 A. Likely.

11 Q. And was it your job to know -- what was your job,
12 to know whether it was being followed properly, that
13 restoration plan? Was that your task?

14 A. Yes. They wanted to be sure it was completed to
15 the -- whatever they deemed necessary to undo the drainage
16 that was done.

17 Q. Now, if you spoke with Mr. Putman and
18 Mr. Putman -- whether Mr. Putman was or was not the designer
19 of the plan, did you talk to him about this restoration?

20 A. They may have come and looked at it later on. I
21 can't recall. I'm sure they must have signed off on it at
22 some time.

23 Q. Did USDA have to sign off on it?

24 A. No. We did not.

25 Q. Did you have to know whether it was designed

1 properly or operated properly?

2 MS. BUCKLEY: Objection.

3 A. I had no input into that at all.

4 Q. Did anybody from USDA have any input into that?

5 A. No. To my knowledge, no. Like I said, I was the
6 closest government employee to go and document it, that it
7 was actually done, because somebody was going to have to
8 drive from State College or Philadelphia and they got
9 clearance through my State office for me to do it.

10 Q. Okay. Now, did Mr. Brace ever contact you after
11 it was installed, after all this work was done to say that
12 it wasn't operating properly?

13 A. Oh, I don't know.

14 Q. Did you find out after the fact whether it was
15 causing any problems or not?

16 A. I don't know the answer to that.

17 MR. KOGAN: Okay. Okay. Well, I'm trying to
18 think of what else. I guess we're finished here
19 this afternoon, unless Counsel has some questions
20 to ask.

21 MS. BUCKLEY: Yes. We may. We'll just take a
22 break and confer and we'll be right back.

23 (Recess taken.)

24 MS. BUCKLEY: We do have a couple of questions.
25

CROSS-EXAMINATION

BY MS. BUCKLEY:

Q. Mr. Steckler, you testified at a deposition for this case back in the early 1990s. Correct?

A. You have the records of that. My recall on the dates aren't very good.

Q. But you testified in this case sometime in the 1990s?

A. Yes.

Q. And was your memory better with respect to this case at that time or today?

MR. KOGAN: Mr. Steckler, are you enfeebled mentally now than you were before?

MS. BUCKLEY: Excuse me, Counsel. That wasn't my question.

MR. KOGAN: Well, that is the insinuation. If you're 80 years old, sir, you can't think clearly is the insinuation.

MS. BUCKLEY: Excuse me.

MR. KOGAN: I'm offended by your question, Counsel.

Q. Mr. Steckler, that is not my insinuation. I am simply asking whether you --

A. I understand.

1 Q. -- remembered the facts about this case better in
2 the 1990s or today?

3 A. I remembered it better back then, of course.

4 Q. Okay. Thank you. I want to refer to Defendant's
5 Exhibit D-1 Steckler. Could you please flip to Page 29.

6 A. Okay.

7 Q. And if you can take a look at Lines 22 to 24 on
8 that page. So you mentioned earlier that you completed your
9 paperwork about the highly erodible land and converted
10 wetland determinations on September 15th.

11 A. That's when this paper was signed.

12 Q. Yeah. So having reviewed this testimony, do you
13 recall or does this give you a better idea of when you
14 conducted the fieldwork for that -- that you used to fill
15 out the paperwork?

16 A. It says here I did the fieldwork on the 15th.

17 Q. And was that the day that that form was signed?

18 A. Like I said, that was the only one we had with
19 that CW determination. I probably -- like I told you
20 before, I probably was there at least one or two times
21 before the 15th. And then after conferring with the
22 specialist from Harrisburg, that's when I finished that 1026
23 or whatever that was.

24 Q. Okay. Thank you. And then I want to go back to
25 Defendant's Exhibit 10 Steckler, that's the consent decree.

1 It's the last thing we were talking about. And if you
2 could, flip to the map at the back.

3 A. (Witness complies.)

4 Q. You described witnessing over three days the
5 implementation of the restoration plan and, in part, the
6 removal of some yellow pipe.

7 To the best of your recollection, could you mark
8 on this map with this pen here where you saw a pipe being
9 removed?

10 A. I would say it's roughly in this area here,
11 because I didn't stay there all day. I drove out. I
12 walked -- parked the car, I walked down, took a few pictures
13 and saw what they were doing. And I was probably there 45
14 minutes and I left. I went out the next day and they were
15 still digging.

16 Q. Great.

17 A. I think the operator or somebody from the -- the
18 contractor had a copy of this. So they were -- they knew
19 what to do, because they obviously must have had a copy.
20 Because I sure didn't. I had a camera and that was it.

21 MR. KOGAN: Mr. Steckler --

22 MS. BUCKLEY: Excuse me. This is my time. Thank
23 you.

24 A. But I know the one day I parked up here and walked
25 down and they were digging down in here. I don't recall

1 this over here. But you could still see -- like when they
2 dug this ditch, obviously you could see when they filled it
3 back in. The same way with these other ones. But some of
4 the pictures would have probably showed that.

5 Q. Okay. And one last thing. We were talking
6 earlier about a drainage tile map for one of Mr. Brace's
7 properties.

8 So we're looking at the map that is the last page
9 of D-3 that seems to reflect a pattern of drain tile that
10 was laid on a property. Can you tell me, this drainage tile
11 pattern, is this north or south of Lane Road?

12 A. North.

13 Q. And --

14 A. Lane Road is running east and west.

15 Q. Right. And the outlet for this drainage tile
16 pattern, where was that outlet that you remember?

17 A. I'm just going from what I see and what's recorded
18 on here, but they put 30 foot of steel pipe under the road.

19 Q. And the tile coming under the road would be
20 draining water from where?

21 A. (Witness indicates.)

22 Q. And you're pointing to the drainage tile pattern
23 that's north of Lane Road.

24 A. On the north side.

25 MS. BUCKLEY: All right. I'm done. Thank you.

1 MR. KOGAN: I'd like to redirect on that.

2

3 REDIRECT EXAMINATION

4 BY MR. KOGAN:

5

6 Q. Just to correct the record, Mr. Steckler, I heard
7 your testimony earlier saying that -- confirming that there
8 was 300 foot of pipe coming forth from the road based on
9 that diagram and based on the data sheets corroborating the
10 diagram.

11 MS. BUCKLEY: Objection to the characterization.

12 MR. KOGAN: I object to the characterization of
13 the drainage only relating to above Lane Road.

14 A. I only referred to the sketch.

15 Q. Was there 300 feet of pipe from the roadside on
16 the other side of Lane Road?

17 MS. BUCKLEY: Objection.

18 A. To me it looks like the 300 feet included going
19 under the road.

20 Q. Well, how do you make the determination if you
21 said that --

22 A. Because the arrow is pointing up here. The arrow
23 goes to the other side of the road.

24 Q. Right.

25 A. So it may have gone from the road ditch or -- I

1 guess there wasn't a road ditch.

2 Q. What does the sheet say on the data sheet? Does
3 it say 30 feet of pipe plus 330 feet of pipe thereafter?

4 A. No. It does not.

5 Q. Does it say 270 and 30 feet?

6 A. No. It only says 30 feet of steel under the road
7 and two 10-foot sections of steel other places -- other
8 outlets.

9 Q. Okay. But it does say in two of your testimonies,
10 both in deposition in 1991 and also in trial in 2005 that
11 there were 300 feet from the road.

12 MS. BUCKLEY: Objection.

13 Q. Let's pick up again you're Exhibit D-2 pages 708
14 to 710, and then we go back to --

15 A. Well, there's no way of telling.

16 Q. Okay.

17 A. You want to say it's 300.

18 Q. I just want to look at what it says.

19 A. I didn't do it, so I don't know. I'm not
20 Mr. Sheldon.

21 Q. But what direction was that 300 feet or 270 feet
22 going --

23 MS. BUCKLEY: Objection.

24 Q. -- based on the schematic?

25 A. It looks like it went southwest -- no, southeast.

1 See, it turned and went southeast.

2 Q. Okay. And went southeast. If we were to look at
3 this map, D-4, if it came across the corner, approximately
4 the corner of Greenlee and Lane and it went southeast, is
5 there a watercourse? Is there a watercourse here anywhere
6 that that would have ended?

7 MS. BUCKLEY: Objection.

8 A. To my -- after looking at this, my guess is since
9 I looked at the other plan, some of that drainage was up in
10 here, the upper part of the system.

11 Q. Yes.

12 A. That came down here and went southeast to get to
13 this -- see, this watercourse?

14 Q. Is that a ditch?

15 A. This is a natural watercourse.

16 Q. No. To get to this open area there, that outlet.

17 A. So it came down and went like that to get to this.

18 Q. And what is that?

19 A. It's a natural watercourse.

20 Q. This is a natural watercourse? Is it a ditch?

21 Could it be a ditch or a channel or --

22 A. Or both.

23 Q. Or both.

24 A. I don't know.

25 Q. Okay.

1 A. Like I said, I wasn't there.

2 Q. Right.

3 A. This is my assumption of why they did that.

4 MR. KOGAN: Counsel, can you show me the orange
5 marking that was on the consent decree in Exhibit
6 D-11 -- or D-10.

7 Q. So that orange area is where the parallel -- is
8 that where the tiling was removed?

9 A. She asked me if I -- where I saw the yellow
10 drainage pipe.

11 Q. Being removed. A section of tile being removed at
12 that section.

13 A. Uh-huh.

14 Q. Is that consistent with the lines on that plan?

15 A. Kind of. Yeah. The lines are going this way
16 (indicating).

17 Q. Mr. Steckler, to whom did you provide those
18 photographs?

19 A. I don't know. They were left in the office.

20 Q. You didn't submit them into the other agencies?

21 A. I don't know. I can't remember. I don't know if
22 they were in our SCS office or Fish & Wildlife or the
23 Justice Department.

24 Q. You testified that -- which agency asked you to be
25 present?

1 A. Fish & Wildlife and, I think, the Justice
2 Department.

3 Q. Did they ask for any write-up?

4 A. No.

5 Q. Did they ask for any pictures?

6 A. Yeah. I took pictures. I remember taking the
7 camera.

8 Q. But did they ask you to take the pictures?

9 A. Yeah. I think they did.

10 Q. And you don't recall whether you provided them
11 with the pictures, though.

12 A. I can't remember. I don't know who has them.

13 Q. Okay. That's something that Counsel and I can
14 talk about.

15 MR. KOGAN: Okay. Thank you.

16 MR. UHOLIK: Just to jump in for a second, I
17 believe -- I'm not 100 percent sure, but I believe
18 that all of Mr. Steckler's photos have been
19 produced to you.

20 MR. KOGAN: They have?

21 MR. UHOLIK: I believe so.

22 MR. KOGAN: In one of those several discs?

23 MR. UHOLIK: Yeah. I believe it would have been
24 the first.

25 MR. KOGAN: If there's a way to confirm that, I

1 guess we can confirm it by reference at some
2 point. Okay.

3
4 (Deposition concluded at 3:09 p.m.)
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MR. KOGAN: [52] 6/14 6/18 7/21 8/2 8/7 8/12 8/18 9/10 10/18 11/15 14/23 21/3 23/25 24/3 29/24 31/8 32/25 35/10 36/22 36/25 40/25 45/9 47/11 48/6 48/17 49/9 49/11 49/15 49/17 59/17 65/12 65/19 66/9 66/21 67/12 68/20 68/23 68/25 69/12 73/3 82/16 83/12 83/16 83/20 85/20 86/25 87/11 90/3 91/14 91/19 91/21 91/24 MR. UHOLIK: [3] 91/15 91/20 91/22 MS. BUCKLEY: [158] ' '50s [1] 7/10 '70s [1] 11/10 '78 [1] 4/16 '80s [2] 7/10 11/10 '85 [2] 18/20 57/23 '90s [1] 7/10 '96 [1] 28/12 '97 [1] 28/12 0 0006 [1] 1/5 002229 [1] 1/4 026 [1] 53/16 1 10 [10] 3/21 7/17 54/9 58/10 58/14 61/9 78/12 78/15 84/25 90/6 10-foot [1] 88/7 100 [4] 2/13 21/17 22/8 91/17 10017 [1] 2/13 1026 [9] 51/22 51/24 52/1 52/1 52/4 52/5 52/11 52/11 84/22 105 [1] 1/24 11 [2] 52/10 90/6 12 [3] 18/9 59/1 59/2 120 [1] 1/15 12:59 [1] 1/14 13 [3] 3/12 30/4 54/9 13th [1] 30/12 14 [6] 30/7 30/22 55/7 60/19 62/12 66/14 14F [1] 2/13 14th [9] 56/12 60/7 65/2 66/24 70/8 73/14 73/14 73/20 76/9 15 [7] 7/17 55/7 60/19 62/13 63/5 65/1 76/11 15th [6] 57/1 72/9 73/20 84/10 84/16 84/21 16501 [1] 1/16 16507 [1] 1/24 18 [2] 28/19 28/22 19 [1] 44/2 1961 [1] 44/6 1977 [5] 31/1 31/9 39/7 44/13 46/20 1978 [1] 8/23 1985 [5] 18/6 21/23	21/24 46/23 58/1 1988 [5] 51/14 62/13 62/13 66/14 76/11 1989 [3] 3/20 75/4 75/6 1990 [1] 5/9 1990s [3] 83/5 83/9 84/2 1991 [4] 30/7 30/22 31/20 88/10 1992 [2] 28/19 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<p>A</p> <p>ASCS... 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C E R T I F I C A T I O N

I, Sonya A. Hoffman, Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes in the above-captioned matter.



Sonya A. Hoffman

Court Reporter

Dated: December 11, 2017

