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U.S. OF AMERICA,
PLAINTIFF

VS

ROBERT BRACE AND ROBERT BRACE
FARMS, INC. A PENNSYLVANIA
CORPORATION,
DEFENDANTS

: IN THE U.S. DISTRICT COURT
: FOR THE WESTERN DISTRICT
: OF PENNSYLVANIA
:
: NO. 1990-229
:
:
:

DEPOSITION OF: DAVID J. PUTNAM

TAKEN BY: DEFENDANTS

BEFORE: BETH KRUPA, REPORTER
NOTARY PUBLIC

DATE: APRIL 7, 1992, 11:12 A.M.

PLACE: BEST WESTERN
SOUTH ATHERTON & BRANCH ROAD
STATE COLLEGE, PENNSYLVANIA

APPEARANCES :

U.S. DEPARTMENT OF JUSTICE
BY: DAVID A. DANA, ESQUIRE

FOR - PLAINTIFF

BUCHANAN INGERSOLL
BY: JOHN D. WARD, ESQUIRE

FOR - DEFENDANTS

ALSO PRESENT:
RHONDA MCATEE
ROBERT BRACE

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STIPULATION

It is hereby stipulated by and between counsel for the respective parties that sealing, certification and filing are waived; and that all objections except as to the form of the question are reserved to the time of trial.

DAVID J. PUTNAM, called as a witness, being sworn, testified as follows:

MR. WARD: This is the deposition of David Putnam, April 7th, 1992 in State College pursuant to notice submitted to the U.S. attorneys. It's in the matter of U.S. v. Brace, and you have the captions and Mr. Putnam has been sworn.

I am John D. Ward of Buchanan Ingersoll, attorney for the defendants Robert Brace and Robert Brace Farms, Inc. also in attendance are Robert Brace and Rhonda McAtee who serves as his assistant.

MR. DANA: His daughter.

MR. WARD: His daughter and David Dana of the U.S. Attorney's office.

DIRECT EXAMINATION

BY MR. WARD:

1 Q Mr. Putnam, you've been sworn. Please state your
2 name for the record.

3 A David John Putnam.

4 Q Your address?

5 A RD 1, Box 182 Centre Hall, Pennsylvania.

6 Q Your office address?

7 A 315 South Allen Street, Suite 322, State College,
8 Pennsylvania.

9 Q By whom are you employed, Mr. Putnam?

10 A United States Fish and Wildlife Service.

11 Q That is the Department of Interior of the United
12 States government?

13 A It is.

14 Q What is your position with that agency?

15 A I'm a fish and wildlife biologist.

16 Q How long have you had that position?

17 A Fourteen years.

18 Q How long have you been with the Fish and Wildlife
19 Service?

20 A Fourteen years.

21 Q Prior to your employment with the Fish and Wildlife
22 Service, where were you employed?

23 A I worked for the Pennsylvania Game Commission.

24 Q What years was that, please?

25 A 1976 to 1977.

1 Q Upon leaving the the game commission, was it then
2 that you went to the Fish and Wildlife Service?

3 A It was.

4 Q Prior to 1976, where were you employed?

5 A I was a student at Penn State.

6 Q Would you describe your education, please?

7 A I have a Bachelor of Science degree in forestry
8 from Penn State and graduate training in wildlife management
9 from Penn State.

10 Q Wildlife management?

11 A Yes.

12 Q Did you get a Masters in that?

13 A I didn't complete my Masters degree. I didn't
14 complete a thesis.

15 Q Would you describe the special training you
16 received in your work as a wildlife biologist?

17 A Post college training?

18 Q Post college training?

19 A I've had training in identification of wetlands
20 conducted by the Fish and Wildlife Service, training in the
21 identification of hydrosols conducted by the Soil
22 Conservation Service, training and evaluation of habitats
23 conducted by the Fish and Wildlife Service, training in
24 electrofishing and sampling of fish aquatic populations
25 conducted by the Fish and Wildlife Service.

1 Q Were they conducted in your offices, or did you
2 attend other facilities?

3 A The ones I mentioned were conducted outside of our
4 office. These are generally one week courses.

5 Q Do you recall in terms of the year when those
6 training courses were held that you attended, for instance,
7 1983?

8 A I really can't state that specifically. I
9 generally have one or two weeks of training each year.

10 Q Your present position or title is wildlife
11 biologist?

12 A Fish and wildlife biologist.

13 Q To whom do you report?

14 A Charles Kulp.

15 Q Mr. Kulp's job?

16 A He is the supervisor of the Pennsylvania office of
17 the Fish and Wildlife Service.

18 Q Do you have anyone who reports to you?

19 A I do not.

20 Q Can you describe the structure of your office here
21 in State College as far as personnel goes?

22 A I can. The supervisor is Charles Kulp under him is
23 an assistant supervisor Edward Perry. Under Edward Perry are
24 a number of staff biologists, about eight staff biologists
25 that report to Edward Perry. There are two or three other

1 staff biologists that also report directly to Charles Kulp.

2 Q You are a staff biologist, you report to Perry or
3 Kulp?

4 A Kulp is the supervisor of the office, Perry is the
5 assistant supervisor. I really go through Perry.

6 Q You are not one of the two or three staff
7 biologists who reports directly to Kulp?

8 A That's correct.

9 Q What is the geographical jurisdiction of this
10 particular field office?

11 A The Pennsylvania field office covers both
12 Pennsylvania and the State of West Virginia.

13 Q Are you assigned to any particular geographic area
14 within that jurisdiction?

15 A No, I'm not.

16 Q You're not?

17 A I'm not assigned to any specific geographical area.

18 Q Who gives you your assignments?

19 A Edward Perry or Charles Kulp. It's not 100 percent
20 from either one.

21 Q How long have you been in this particular area,
22 this office?

23 A Fourteen years.

24 Q Is most of your work, say west, in the western part
25 of the state?

1 A Yes.

2 Q Describe the functions of a wildlife biologist in
3 your particular function or category?

4 A That covers a very broad area, and I work in a
5 large number of different types of activities and it varies
6 with the emphasis placed on our programs by Congress and the
7 Fish and Wildlife Service.

8 Generally, I work in enforcement of the Clean Water
9 Act, and I work a fair amount of my time on farm related
10 programs with U.S. Department of Agriculture or individual
11 land owners under fish and wildlife programs.

12 Q By enforcement, do you have authority to issue
13 cease and desist orders?

14 A I don't issue them myself. I do prepare letters to
15 be signed by Charles Kulp or Edward Perry.

16 MR. DANA: Do you understand what that is?

17 A I understand what a cease and desist order is.
18 They are issued about, for instance, by the Corps of
19 Engineers. I do not have authority to -- I do not have
20 authority to issue those orders.

21 BY MR. WARD:

22 Q Is your function more of a recommendation?

23 A Yes.

24 Q Do you get involved in the 404 permitting program
25 at all?

1 A Yes, I do.

2 Q In what manner?

3 A Reviewing and advising the Corps of Engineers on my
4 recommendation regarding the issuance or denial of 404
5 permits.

6 Q In the enforcement of the Clean Water act, have you
7 been involved with that program under the 404 program, have
8 you been involved with that since its inception?

9 A Actually, I didn't -- I wasn't working right when
10 it -- since my employment with the Fish and Wildlife service
11 of 14 years, I've been involved with it.

12 Q If you can recall, what would you say would be, on
13 an annual basis, the frequency in which you're involved in
14 wetland enforcement procedures?

15 A I would say between 50 and 100 separate cases per
16 year.

17 Q Are we talking about violations that have been
18 charged of the wetland law?

19 A Actual citations or charges, no, many of these
20 would be informal resolutions.

21 Q How about your work as it might involve actual
22 violations being issued by either EPA or the Corps of
23 Engineers, how many would you say you've been involved in?

24 MR. DANA: With violations, do you mean an
25 administrative order?

1 MR. WARD: Whatever, yes.

2 A With EPA in the last three or four years, I would
3 say five to ten EPA cases per year. In recent years with the
4 Corps of Engineers in that same number, five to ten.

5 BY MR. WARD:

6 Q How does your work relate to other federal
7 agencies? Again, I'm referring to the Clean Water act and 404
8 program.

9 A We serve as an expert in the field of wetlands and
10 impacts of wetlands on fish and wildlife resources and advise
11 other federal agencies of our findings.

12 Q How about state agencies?

13 A We also have the essentially identical role on
14 advising state agencies.

15 Q You work closely with the Pennsylvania Fish and
16 Game Commissions?

17 A Yes, I do.

18 Q Is that an advisory role as you mentioned?

19 A Yes, it is.

20 Q Do you know Andrew Martin of the Pennsylvania Fish
21 Commission?

22 A Andrew Martin. I do know Andrew Martin. He's not
23 with the Pennsylvania Fish Commission.

24 Q The Game Commission; is that correct?

25 A Yes, he was formerly with the Pennsylvania Game

1 Commission.

2 Q Yes, do you know him?

3 A ~~I know him, yes.~~

4 Q ~~Did you work with him when you were with the Game~~
5 ~~Commission?~~

6 A ~~No, I did not.~~

7 Q ~~In 1987, May of 1987, Mr. Putnam, what definition~~
8 ~~of a wetland was being used by the scientists in the Fish and~~
9 ~~Wildlife Service?~~

10 A Areas that are inundated or saturated at a
11 frequency to support a prevalence of vegetation typically
12 adapted for life -- let me start over on that. ~~Areas that are~~
13 ~~inundated or saturated ground surface at a frequency to~~
14 ~~support prevalence of life typically adapted for life in~~
15 ~~saturated soils --~~

16 MR. DANA: Quite a mouthful.

17 MR. WARD: And under normal circumstances.

18 A Normally I can rattle that off quite directly.

19 BY MR. WARD:

20 Q You can try it again.

21 A Wetlands or areas that are inundated or saturated
22 surface or ground waters at a frequency to support prevalence
23 of vegetation typically adapted for life under saturated soil
24 conditions -- I still haven't gotten under normal
25 circumstances in there -- normally would support prevalence of

1 that vegetation.

2 Q That's the definition you were using in May of
3 1987?

4 A Yes, it is.

5 Q Is that the very same definition that the Corps of
6 Engineers was using, if you know?

7 A Yes, it is.

8 Q Is it the very same definition that EPA was using,
9 if you know?

10 A Yes, it is.

11 Q Has that definition undergone any change, to your
12 knowledge over the past since 1987?

13 A No, it has not.

14 Q Did the Corps of Engineers, the EPA, Fish and
15 Wildlife Service, and Soil Conservation Service cooperate and
16 issue a manual on wetland definition?

17 A Wetland delineation, yes. Yes, they did cooperate
18 and issue a manual.

19 Q Have you been called upon yourself to make wetland
20 determinations for another agency?

21 A Yes.

22 Q Have you testified in court as to a wetland
23 determination?

24 A Yes, I would say I have.

25 Q You either have or haven't?

1 A Yes, I have.

2 MR. DANA: Can we break for a second?

3 BY MR. WARD:

4 Q Have you ever testified in any court?

5 A Yes, I have.

6 Q The issue your testimony was directed at defining
7 was a wetland?

8 A Yes, I have.

9 Q Do you recall how long ago that was?

10 A I would say the last time that I did it was two
11 years ago.

12 Q How many times have you done it totally in your
13 career?

14 A At least three separate occasions.

15 Q In those instances where you testified in court, do
16 you recall if you were qualified as an expert?

17 A Yes, I was.

18 (Recess.)

19 BY MR. WARD:

20 Q Mr. Putnam, when we left off ~~you stated that you~~
21 ~~testified three times in court as an expert?~~

22 A Yes.

23 Q Was that in Pennsylvania?

24 A ~~Yes, every time was in Pennsylvania.~~

25 Q Do you recall those cases, the names of the cases?

1 A Yes, the last case was Baldwin versus Erie County.
2 Several cases were before the Pennsylvania Environmental
3 Hearing Board in Pittsburgh dealing with Willowbrook Coal
4 Mining, Perry Brothers Coal Mining. Another case was in the
5 U.S. District Court in Harrisburg, United States versus
6 William Walters. I could provide you with a list of them. I
7 can't recall them all right now.

8 MR. WARD: I would ask for a list of those cases,
9 please?

10 MR. DANA: Yes, the United States will provide
11 that.

12 A One was in Elk County, Louis Geis versus Benzinger
13 Township.

14 BY MR. WARD:

15 Q Were these government enforcement, like some of
16 these Louis Geis versus the township?

17 A No, it was a dispute between a land owner and the
18 township over evaluation of his property.

19 Q Did the others, Baldwin versus Erie city was that
20 --

21 A That was a dispute over a land owner with a land
22 owner over the evaluation of his property.

23 Q Were the others enforcement?

24 A The others were appeals of permit denials where the
25 state had denied a permit on some environmental grounds.

1 William Walters was a federal enforcement case.

2 Q When did you first become aware of the Robert Brace
3 Farm in Erie County?

4 A About May 4th, 1987.

5 Q You had never been on his property prior to that?

6 A No.

7 Q Did you know Mr. Brace prior to that?

8 A No, I did not.

9 Q As part of your work, do you always have specific
10 assignments?

11 A No, I do not.

12 Q Do you sometimes, what we'll call, patrol?

13 A No. Going out looking for violations?

14 Q Yes.

15 A No.

16 Q How did you first become aware of the Robert Brace
17 Farm property?

18 A I was informed of it by my supervisor Charles Kulp.

19 Q What form of information was that?

20 A He advised me of a telephone conversation he had
21 with Andrew Martin and showed me a topographic map with the
22 site indicated on it.

23 Q That was not a written memo to you?

24 A No, it was not.

25 Q Then what did you do?

1 A I attended a meeting on the following day at Mr.
2 Brace's property.

3 Q Who called that meeting?

4 A I don't recall. I believe that Mr. Kulp had dealt
5 -- he had talked to some of the other agencies, and I can't
6 say exactly who arranged the meeting.

7 Q Who all was contacted for the purpose of that
8 meeting, if you know?

9 A As I recall I can only recall the people that were
10 present at the meeting, Pennsylvania Game Commission was
11 represented by Andrew Martin. Pennsylvania Fish Commission by
12 James Carter. Department of Environmental Resources by Thomas
13 Delfonso. The Corps of Engineers by James Pabody.

14 Q The notice of this deposition that we submitted the
15 government asks that you bring all memorandum or information
16 and material of any kind involving your work on the Brace
17 property, did do you that?

18 A I believe you already have all the memoranda except
19 for the one I found in my files.

20 MR. DANA: The United States has produced all
21 documents.

22 MR. WARD: All right.

23 BY MR. WARD:

24 Q Again, when was this site meeting?

25 A May 5th, 1987.

1 Q Upon arrival of the site, did you go there with
2 anyone?

3 A I believe I traveled by myself.

4 Q What did you see upon your arrival?

5 A We met at the intersection of a road. Upon my
6 arrival all I saw was the other people standing around. We
7 were not at the site where the wetland activities took place.

8 Q Do you recall what that intersection was?

9 A I do not.

10 Q Did you walk to what has become known as the site?

11 A No, we drove.

12 Q Did somebody lead you to the site?

13 A Yes, I don't recall who did, but it was a caravan.

14 MR. DANA: Just for clarification, the site that's
15 been used in the deposition refers to the 30 acre or so that's
16 the subject of the actual litigation and complaint that was
17 filed?

18 MR. WARD: Right.

19 BY MR. WARD:

20 Q When you arrived at the site, what did you see?

21 A I saw that the stream traveling through the site
22 had been excavated and the material deposited along the side
23 of the stream. I saw other areas of wetlands that had been
24 bulldozed with the brush pushed off.

25 Q Bulldozed?

1 A Yes.

2 Q And brushed?

3 A The brush had been pushed with the bulldozer.

4 Q Did you see this?

5 A There was a bulldozer on site. I'm describing as I
6 stood.

7 Q There was a bulldozer on site?

8 A Yes, there was.

9 Q Was Mr. Brace present at this meeting?

10 A Yes, he was.

11 Q Was he on the scene at the same time this group
12 arrived?

13 A We waited at the initial site for Mr. Brace to
14 arrive then we traveled together to the site.

15 Q Did you all stand around? What did you do? Did
16 you all stand around and talk or did you walk around the
17 property together?

18 A We walked around the property together to a certain
19 point, and then Mr. Brace and Mr. Pabody got in Mr. Brace's
20 truck and traversed much of the site together and separate
21 from the rest of the group.

22 Q Other than walking, what did you do on the site?

23 A Primarily just walked and observed the extent of
24 the area that had been disturbed.

25 Q Did you take any samples at the time?

1 A I observed the soil samples. I did not take any
2 soil samples. I noted the coloration of the soils.

3 Q Did you pick up some of it?

4 A Yes.

5 Q What was the weather that day, do you recall?

6 A I don't have a good recollection of the weather
7 that day. It was cool and cloudy.

8 Q Did you, yourself, talk with Mr. Brace at all on
9 that occasion?

10 A I don't recall actually engaging Mr. Brace in
11 conversation myself, we did -- Mr. Brace did talk to the
12 group, and I can't recall if I said anything myself or not.

13 Q What did Mr. Brace say to the group, do you
14 remember?

15 MR. DANA: If you can remember.

16 A I only recall one or two specific things. One
17 thing was he made a reference to the fact that he may want to
18 develop around the periphery of the property some day, and
19 that he was -- he described that he was -- he was trying to
20 restore the property back to some prior condition that it had
21 been at previously.

22 Q Did he say how long he had owned the property?

23 A I don't recall that that day.

24 Q Did he mention to the group what the purpose was of
25 his activity there?

1 A As I recall at that meeting the main purpose was to
2 clean up the property.

3 Q That's what Mr. Brace said?

4 A Yes. I do not recall anything specific, except for
5 a specific reference to the fact that he may want to put
6 houses around the periphery of the property at one particular
7 point where we were standing and other than that I don't have
8 many specifics.

9 Q In looking around the site and the property in
10 general there, what was your observation as to the land use?

11 A There was two types of land use in the vicinity,
12 one was farming and one was wetlands.

13 Q I think by land use I'm generally referring to the
14 use of land by people? Were people using wetlands there too,
15 other than farming?

16 MR. DANA: If you understand.

17 A It's difficult for me to answer that the way you
18 ask it. I guess the way I look at property if we normally map
19 habitats. If I map those habitats, I would map it in two
20 categories, areas that were being used by man or the areas
21 that were in agriculture. The wetland areas would be the idle
22 areas.

23 Q Can you characterize generally the surrounding area
24 was being used for farming?

25 MR. DANA: Objection. Area surrounding?

1 MR. WARD: The site.

2 A Yes, I would say that's accurate. A good
3 percentage of the property is a farm in agriculture.

4 BY MR. WARD:

5 Q Is there any industry of any kind nearby in
6 proximity of the site?

7 MR. DANA: If you know.

8 A I didn't look for that.

9 BY MR. WARD:

10 Q Are you familiar with the general area of the site
11 there, the surrounding area from there to Erie to -- what's
12 the closest town?

13 A Waterford.

14 Q What is the overall major land use in the area, is
15 it farming?

16 MR. DANA: If you know.

17 A It would either be farming or forestry. It's not
18 heavy industry.

19 BY MR. WARD:

20 Q All right. Fine. How many ditches did you observe
21 at the time on the site

22 MR. DANA: Objection, he hasn't testified about
23 observing any ditches.

24 MR. WARD: He said he saw a ditch.

25 BY MR. WARD:

1 Q Did you see just one ditch?

2 A No, I said the stream had been channelized is what
3 I said. We may be dealing with semantics whether we call this
4 Elk Creek or a ditch. I would refer to it as Elk Creek. Elk
5 Creek was divided. It was a single channel until
6 approximately 700 feet or a thousand feet and it was
7 bifurcated into two channels. All the channels were connected
8 into one system.

9 Q That ultimately went in what direction, did it go
10 off the site property?

11 A Off the --

12 Q Did it flow northward?

13 A Yes, it flows northward.

14 Q And several other ditches came into the main
15 channel?

16 A Yes.

17 Q Do you remember how many?

18 A There were two main channels coming into the
19 central channel of Elk Creek.

20 Q What you're calling Elk Creek and you said it had
21 been channelized, did Mr. Brace explain that channelization to
22 you or the group?

23 A Over the course of our dealings, several years it
24 was --

25 Q No, I mean that day?

1 A I would say he did explain that the channel had
2 been blasted prior to this, at some time in the past. He did
3 explain that.

4 Q Did he say when?

5 A I don't know if I got that date at that particular
6 meeting.

7 Q Did you inquire about how that particular property,
8 the site, had been used in the past?

9 A At the first meeting Mr. Brace did say that someone
10 had attempted to use it in the past. There was evidence of a
11 wooden drainage tile that he pointed out. There was also
12 evidence of fence posts indicating that at least part of it
13 had been pastured sometime in the past.

14 I don't recall anything other than the one wooden
15 drainage tile and the fact that it had been pastured sometime
16 in the past.

17 Q Are you familiar with the drainage practices in
18 Erie County in your work?

19 A Yes, I am.

20 Q You mentioned wooden drainage tiles, I believe?

21 A Yes.

22 Q What are they?

23 A It is a wooden -- a channel through the ground --
24 drainage for agriculture is usually referred to by tiles
25 either made by plastic, clay tile, or wood. This was a

1 channel through the ground made out of wood designed to convey
2 water.

3 Q Did he tell you that when he blasted he found
4 evidence of wooden drainage tiles in that area?

5 A I don't recall any discussion of evidence other
6 than the single drainage tile that was indicated.

7 Q Is the drainage use by farmers with tiles is that,
8 if you know, a common practice in Erie County?

9 A Yes, it is.

10 Q Are irrigation ditches installed by farmers a
11 common practice in Erie County, if you know?

12 A I don't believe so. I've never seen an irrigation
13 ditch.

14 Q Drainage ditch?

15 A Drainage ditch, yes, I would say they are.

16 Q On that particular day the first site meeting when
17 Mr. Brace was discussing this with the group, did he say when
18 the blasting occurred in the main channel that you described,
19 what year?

20 A I don't recall.

21 MR. DANA: I believe it's been asked and answered
22 as to whether he could recall that.

23 A I don't recall that at that meeting.

24 BY MR. WARD:

25 Q You did not take samples of water?

1 A I did not.

2 Q ~~You did not measure the water flow?~~

3 A ~~I did not.~~

4 Q Did you notice were there trees still there?

5 A Yes, I noticed trees on the site.

6 Q The fact that there were trees on the site, did you
7 have an opinion as to the presence of trees in that situation
8 or why they were there? Did you ask why they were there?

9 A Yes, I did.

10 Q Did you ask Mr. Brace?

11 MR. DANA: I'm sorry. The question is did you ask
12 Mr. Brace if there were trees there?

13 BY MR. WARD:

14 Q Yes, did you ask Mr. Brace why there were trees
15 there?

16 A I did ask Mr. Brace if there was trees there. I'm
17 not sure if I did that on the first site visit or some
18 subsequent site visit.

19 Q But you did see trees there?

20 A Yes.

21 Q ~~Were these large trees?~~

22 A ~~No, they would be approximately eight to ten inches~~
23 ~~in diameter measured at three feet off the ground.~~

24 Q A clump of them, an understory?

25 A ~~Some were clumps, there was no understory.~~

1 Q The fact that there were trees there, did that have
2 any bearing at all upon your determination as to whether or
3 not this property was to be used for farmland or converted for
4 farmland?

5 MR. DANA: Objection, Mr. Putnam didn't control
6 what its use was.

7 MR. WARD: No, I'm asking him if he had a -- if the
8 fact that trees were present, did it have any bearing upon his
9 impression of the use of that property?

10 A Yes, I would say it did.

11 BY MR. WARD:

12 Q What was that?

13 A That many types of agriculture, if this was a
14 conversion for agriculture, most agricultural activities
15 involving row crops would not -- leaving trees would not be
16 compatible with that.

17 Q Trees are beneficial for erosion control?

18 A Yes.

19 Q In general farming practices, if you know, are
20 farmers encouraged to leave trees where they can?

21 MR. DANA: Objection, encouraged by whom?

22 MR. WARD: Encouraged by conservationists or
23 biologists?

24 A That's true. The Fish and Wildlife Service would
25 encourage farmers to leave trees where they can.

1 BY MR. WARD:

2 Q Did you ever make the comment that the presence of
3 trees gave you the impression that probably they were there
4 for the development of a golf course?

5 A I don't believe that I made the comment that that
6 was my original idea. That was suggested to me by -- there
7 was a second or thirdhand statement that was circulated.

8 Q Which you included in memorandum and letters?

9 A Yes, I did.

10 Q What happened after the site meeting?

11 A I believe after the initial site meeting the Corps
12 of Engineers assumed the lead as far as pursuing the case as a
13 violation of the Clean Water Act.

14 Q Was that determined at that day at the site or
15 subsequently?

16 A I believe it was at least by my part it was assumed
17 that the Corps would assume the lead just as a matter the way
18 business had been conducted prior to that point.

19 Q This again is May 5th?

20 A May 5th.

21 Q In your work as a staff biologist in your office,
22 is it part of your function to prepare draft letters for
23 issuance by the office?

24 A Yes, it is.

25 Q I hand you what has previously been marked as

1 Defendant's Exhibit A and ask you to review that packet. It
2 consists of a cover letter and some other material if you
3 will, please?

4 A Yes.

5 Q Have you had a chance to review that?

6 A Yes.

7 Q Do you recall whether or not you prepared the draft
8 for that letter?

9 A I do not believe I prepared this draft. I believe
10 that Charlie prepared this one himself. This particular one
11 here I believe he prepared himself.

12 Q You don't know where he got the information that's
13 contained in that letter?

14 A I note that when I look and review this stack I
15 believe there's been an error in copying or transcription that
16 I prepared this form. I prepared -- this is titled
17 enforcement investigation referral form. I prepared that.

18 I prepared the exhibits that are attached on top of
19 that. One is a soil survey of the site. One is aerial
20 photograph dated 1968, another one dated 1981. I prepared
21 those exhibits to attach to the form on the back. This was
22 not attached to the original letter that was sent to the Corps
23 of Engineers.

24 The original letter that went to the Corps of
25 Engineers contained one attachment that is a copy of a

1 Cambridge Springs northeast quadrangle map with a wetland
2 outlined on it.

3 This amounts to an error when the files were all
4 copied and transmitted to you someplace along the way. It was
5 assumed that the second attachment was an attachment to the
6 letter.

7 MR. DANA: Right. As the government, I think we
8 stated in the deposition of Mr. Kulp that I believe we stated
9 that the order may be incorrect.

10 BY MR. WARD:

11 Q To the best of your recollection, you did not
12 assist in the preparation of that letter?

13 A I discussed this matter with Mr. Kulp, and he had
14 this topographic map. I may have taken the map back and
15 measured the approximate area that he had outlined on the map
16 and given him that acreage figure, but this is a very simple
17 straightforward letter. I don't believe I actually drafted
18 that. I believe Charlie did that himself.

19 Q The 150 acres referred to in there would have come
20 from you?

21 A I believe I did the measurements or may have just
22 estimated from looking at the topographic map, but I would
23 believe that I'm the one that provided the 150 acre figure.

24 Q Was your information as to acreage drawn from a
25 USGS topo map?

1 A Yes, it was.

2 Q If a USGS topo map indicated their symbol for
3 wetlands, you took that entire acreage?

4 A Yes.

5 Q Did you determine property ownership where that
6 acreage was located?

7 A No, I did not.

8 Q I believe you stated in there Mr. Brace's activity
9 affected 150 acres.

10 MR. DANA: Again, he said --

11 BY MR. WARD:

12 Q Do you know where the information came from about a
13 mile long channel?

14 A I do not. I would assume that's from Mr. Kulp's
15 discussion with Mr. Martin.

16 Q When you get reports like that say from an outside
17 party, outside your office, is it procedure at all to verify
18 the facts that are sent into you?

19 A Yes, it is.

20 Q Was it done in this case, if you know?

21 A Yes, I would say it was. It's a great deal of
22 range of what you can do to verify information from one
23 starting with the individual that provided the information.
24 In this case the initial verification was that U.S. geological
25 survey indicated there was a large wetland at the same site

1 ~~that a violation was reported.~~

2 Q The facts in that generally were verified by
3 outside inquiry?

4 MR. DANA: He's testified that at that point they
5 referred to a topographical map.

6 A ~~We had the report from the officer in the field who
7 we had worked with on previous cases who did have an
8 understanding of wetlands and the USGS map indicated that
9 wetlands were present at the site.~~

10 BY MR. WARD:

11 Q I hand you what has been marked as Defendant's
12 ~~Exhibit B in the deposition of Charles Kulp~~ which is a letter
13 ~~out of the Fish and Wildlife Service office~~ and ask you to
14 review that and see if you recognize it, please?

15 (Recess.)

16 BY MR. WARD:

17 Q Mr. Putnam, I've handed you Defendant's Exhibit B
18 as such was marked in the deposition of Charles Kulp and ask
19 you to review that. Had you had an opportunity to do that?

20 A Yes, I have.

21 Q ~~Did you participate in drafting that letter?~~

22 A ~~Yes, I did.~~

23 Q I'm looking from another copy here, and I want to
24 make reference to a couple of things. That ~~letter is
25 addressed to Colonel Clark of the Corps of Engineers, correct?~~

1 A Yes, it is.

2 Q And dated ~~May 11th and signed by your supervisor,~~
3 ~~Charles Kulp?~~

4 A ~~Yes, it is.~~

5 Q There's a lengthy recitation and quotation on Page
6 2 from the soil survey of Erie County in that letter, do you
7 see that?

8 A Yes, I do.

9 Q The quotation marks attributed to that publication.
10 Two-thirds of the way down there's just as a matter of
11 interest, "The height of the permanent water table in these
12 soils ranges from 12 to 18 inches above the surface." Do you
13 see that?

14 A Yes, I do.

15 Q How can a water table range above the surface?

16 A These areas are located in depressions and normally
17 would be flooded, much of the year they would be flooded.

18 Q What kind of a condition, there's a reference to a
19 typical profile of a Sloan silty clay loam, you're familiar
20 with that?

21 A Yes, I am.

22 Q Does the Erie County map also published along with
23 that survey, does that indicate in terms of either percentages
24 or acreage of the presence of that kind of a soil situation in
25 Erie County?

1 A That soil is located in Erie County.

2 Q Is it a dominant soil?

3 A I would say it is not. I don't know the percentage
4 of it. I don't believe it's a very high percentage.

5 Q Does it occur sporadically from one area to another
6 without any uniformity, is that it?

7 MR. DANA: You're talking about the whole county?

8 MR. WARD: Yes.

9 A I would say it occurs -- it does not occur at
10 random. It would occur at certain places within the
11 landscape. It would not be random, but it would be influenced
12 by landscape features.

13 BY MR. WARD:

14 Q Depending on the geology?

15 A Yes.

16 Q Have you had occasion to run across circumstances
17 involving the Sloan structures?

18 A Yes, I have.

19 Q Many?

20 A I would say not. I really don't recall how many
21 times, but I know I definitely had run into Sloan on other
22 occasions.

23 Q Are they also pertaining to wetland situations?

24 A In a natural undrained state, they would always be
25 wetlands.

1 Q Over on Page 4 of that letter at the very top, the
2 second full paragraph there's reference to beavers and Mr.
3 Brace admitted to destroying dams and houses illegally?

4 A Yes.

5 Q What's the basis of that information?

6 A The Pennsylvania Game Commission requires that
7 before a land owner remove beavers that they have permission
8 from the Game Commission. Mr. Martin -- Mr. Brace indicated
9 that he had removed the structures, and Mr. Martin indicated
10 that Mr. Brace did not have permission from him to remove the
11 structures.

12 Q Do you know Wayne Lugilia?

13 A Yes, I do.

14 Q Do you know whether or not he had been contacted by
15 Mr. Brace to deal with the beaver problems?

16 MR. DANA: If you know.

17 A I believe that he was contacted, but Mr. Lugilia
18 was on vacation during this time period.

19 BY MR. WARD:

20 Q Do you know of any other circumstances where Mr.
21 Brace requested the Pennsylvania Game Commission to remove
22 dams and beavers?

23 A I really can't answer that directly. I've heard
24 references or discussions regarding that particular issue, but
25 Mr. Brace never told me that directly. And I don't recall if

1 I even got that directly from the Pennsylvania Game
2 Commission.

3 Q Did Mr. Martin ever tell you why he was on the
4 property in the first place?

5 A He was requested to go there by Mr. Brace to remove
6 the beavers.

7 Q Mr. Lugilia was with him. Was Mr. Lugilia with him
8 on the day that Mr. Martin --

9 A I do not know that. I believe Mr. Martin was by
10 himself, but I do not know if Mr. Lugilia was there or not. I
11 believe Mr. Lugilia was on vacation, and Mr. Martin went in
12 Mr. Lugilia's place.

13 MR. DANA: Do you know that?

14 A No, that's just my assumption. I do not know that
15 for sure.

16 BY MR. WARD:

17 Q You have no reason for that assumption.

18 A I can't state what the basis is. This has gone on
19 for so long, some of these things, it's difficult to remember
20 exactly what I knew at what particular time.

21 Q Down there in the fourth paragraph, the large
22 paragraph, you talk about the field visit and the unauthorized
23 work does not comply with certain guidelines and it also
24 appears that based upon Mr. Brace's statements that a number
25 of other environmental statutes may have been violated by that

1 project; is that correct?

2 A Yes.

3 Q Then it lists a litany of possible violations; is
4 that correct?

5 A Yes, it does.

6 Q Did you ever contact any of the appropriate
7 agencies to pursue those charges?

8 A Yes, I talked to the Pennsylvania Fish Commission
9 regarding the blasting, and I believe the blasting was done
10 prior to when the regulations would have prohibited that or it
11 had been done so far in the past that it was no longer
12 regulated.

13 The Pennsylvania Game Commission said they did not
14 wish to pursue any violation regarding the destruction of the
15 beaver dams and lodge without a permit. The disturbance of
16 aquatic habitats without a permit and pollution was pursued by
17 the Pennsylvania Fish Commission, Fish and Boat Commission.

18 Q What was the result of that?

19 A The charges were demurred because the state did not
20 produce a witness to testify that a permit was not issued.

21 Q There was a hearing?

22 A Yes, there was.

23 Q In Waterford?

24 A Yes.

25 Q Before a justice?

1 A Yes.

2 Q By demurred, what do you mean.

3 A Demurred by understanding was that the case was not
4 decided. It was --

5 Q It wasn't dismissed?

6 MR. DANA: Mr. Putnam is not a legal expert. He
7 can say what he knows. In fact, I don't know if any of us can
8 define demurred. It's one of the old legal terms.

9 MR. WARD: It's a very, very shy woman.

10 MR. DANA: He can obviously tell you what he knows
11 about any hearing.

12 A ~~The result, as I understand it, was the justice did~~
13 ~~not dismiss the charges, but he did not find for the state~~
14 ~~because the state had a piece of evidence that they did not~~
15 ~~produce and apparently allowed them the opportunity to come~~
16 ~~back at some future date and produce that evidence.~~

17 BY MR. WARD:

18 Q That's your understanding?

19 A Yes.

20 Q ~~Have they ever done so?~~

21 A ~~No, they have not.~~

22 Q When was that?

23 A It was late in 1977 approximately.

24 Q I think you mean '87?

25 A ~~1987, yes.~~

1 Q Five years ago?

2 A Yes.

3 Q Down below that you recommended to the Corps of
4 Engineers, or Mr. Kulp did through you, that the activity be
5 resolved with the federal and state agencies that a cease and
6 desist order be issued to prevent further damages?

7 A Yes.

8 Q What damages did you see?

9 A The draining and filling of wetland habitats.

10 Q For instance, what evidence of damage?

11 A The side cast material from the excavated channel
12 was placed on top of wetland habitats which in itself would
13 smother the areas exactly where it was placed. The excavation
14 of the channel had removed the -- much of the hydrology from
15 the wetlands. The surface water was --

16 Q How much hydrology?

17 MR. DANA: If you know.

18 A I could observe that certain areas had been
19 inundated prior to the most recent ditching and the excavation
20 had caused that surface water to leave the site. The large
21 beaver dam that was located on the boundary of the property
22 had been drained, which I would submit was about 30 acres of
23 water had left that site.

24 Impacts, the damage that I would see from that
25 would be many of the species that would have used that wetland

1 ~~habitat would no longer use it.~~

2 BY MR. WARD:

3 Q What species do you have evidence of that used the
4 habitat?

5 A ~~It was a Canada Goose or water fowl in general~~
6 ~~would have used that site prior to the draining. Once it was~~
7 ~~drained, use by water fowl would be very limited.~~

8 Q ~~Do you know when the drainage first occurred on~~
9 ~~that site?~~

10 A ~~The site has been drained and flooded at a number~~
11 ~~of times in the past. The drainage I'm talking about is the~~
12 ~~drainage that occurred within a week or two prior to my coming~~
13 ~~on site.~~

14 Q If this was your first visit, how did you know how
15 much water was there in the first place?

16 A ~~I could observe the evidence of flooding, areas~~
17 ~~that were now mud flats that were not vegetated, and the~~
18 ~~reason they were not vegetated was because they were~~
19 ~~submerged.~~

20 ~~I could see water lines on the trunks of the alders~~
21 ~~which could indicated water had stood there within a short~~
22 ~~period of time prior to my visit.~~

23 Q How do you know that?

24 A It's my experience from working in the field.

25 Q Did you have any equipment with you?

1 A I did not.

2 Q You took no samples?

3 A I took photographs.

4 MR. DANA: Which have been provided.

5 BY MR. WARD:

6 Q Did you see any dead animals?

7 A ~~I don't believe I saw any dead animals.~~

8 Q ~~Do you know, if you know of your own personal~~
9 ~~knowledge, whether or not animals have used that property,~~
10 ~~that site property since 1987?~~

11 A ~~Yes, I do.~~

12 Q Have they?

13 A Yes, they have.

14 Q Any fish kills?

15 MR. DANA: ~~Did you see dead fish?~~

16 A ~~I did not see evidence of dead fish.~~

17 BY MR. WARD:

18 Q ~~You say this is the most serious wetland violation~~
19 ~~we have seen in Pennsylvania in recent years. What do you~~
20 ~~mean by recent years?~~

21 A ~~Previous three to five years.~~

22 Q You're advising EPA of this matter?

23 A Yes.

24 Q That's your letter to the Corps. Now the EPA
25 generally is not called in to take the lead in cases, are

1 they?

2 MR. DANA: Are you asking currently or --

3 MR. WARD: Generally, how does it work? When does
4 EPA become a lead?

5 A In this particular case it occurred at a time when
6 EPAs role was changing. In a year prior to this, EPA had a
7 very low profile with regarding enforcement. Years since this
8 EPA had a much higher profile and much more active
9 involvement. I'm speaking within the state of Pennsylvania.

10 BY MR. WARD:

11 Q You say this activity is the most serious wetland
12 violation we've seen, compared to what?

13 A That would be characterized in terms of size or
14 acreage affected. We work on hundreds of violations in our
15 office each year, and there are very few of them in excess of
16 one acre. This was certainly much larger than the average.

17 Q You had 150 acres in your letter?

18 A The original letter stated it could affect 150
19 acres.

20 Q Do you know how many acres are alleged to be
21 affected now?

22 A Yes, I do.

23 Q How many is that?

24 A Thirty.

25 MR. DANA: I would state for the record that what

1 is alleged or what the suit involved is an area for violation
2 purposes. It doesn't necessarily discuss what might or might
3 not be affected off the site.

4 MR. WARD: I'm sure the government in its pursuit
5 of its charge and responsibility would go after every bit of
6 acreage that they thought would be affected, wouldn't they?

7 MR. DANA: I'm just stating that the suit's scope is
8 a thirty acre area.

9 MR. WARD: I just want to know that you're out
10 there doing your job, David.

11 (Recess.)

12 BY MR. WARD:

13 Q Mr. Putnam, I hand you what's been marked as
14 Defendant's Exhibit C in the deposition of Charles Kulp which
15 is a letter to a Gene Thompson, it has Mr. Kulp's signature on
16 it dated July 16th, and I ask you to review that document if
17 you will please?

18 A I've reviewed the document.

19 Q Did you help in the preparation of that document?

20 A Yes, I did.

21 Q What was the purpose of that document?

22 A The purpose of this document was to advise the
23 Agricultural Stabilization and Conservation Service that we
24 believed the activities by Mr. Brace on his property in
25 Waterford Township could be a violation of the Food Security

1 Act.

2 Q What followed that as far as the ASCS went? Was
3 any action taken?

4 A I don't believe any action was taken. We never
5 received a response to this.

6 Q Do you know whether or not the ASCS made a
7 determination which qualified Mr. Brace under the swamp buster
8 act as a prior converted wetland?

9 A The ASCS subsequent to this letter, but not in
10 response to this letter did make a determination that the area
11 was -- met the definition of prior converted wetlands under
12 their program.

13 MR. DANA: Off the record for a second.

14 (Discussion held off the record.)

15 MR. DANA: Mr. Putnam just wants to clarify the
16 terminology upon the last answer.

17 MR. WARD: In his own words.

18 A To clarify what I just said, the actual
19 determination was that the conversion of this area from
20 wetlands to cropland had commenced prior to December 23rd,
21 1985.

22 BY MR. WARD:

23 Q In your fourth paragraph of that letter you make
24 the statement that Elk Creek is an important salmonid fishery
25 and its headwater wetlands help to stabilize flows. One, can

1 you describe a salmonid fishery?

2 A Yes, I can. It's a fishery that supports fish of
3 the salmonid species, trout and salmon.

4 Q What are indicators of that?

5 A The primary indicator in this case is the presence
6 of fish of those species. Trout and salmon are found in Elk
7 Creek.

8 Q By indicators, is there a dominant food source that
9 gets the fish there?

10 A In the case of salmonids, and the salmonids in Elk
11 Creek that we're talking about they use Elk Creek primarily as
12 a spawning area. They return to Elk Creek to spawn. They're
13 primarily raised in the waters of Lake Erie.

14 Q How far up Elk Creek do they come?

15 A They come up entirely through the site that we're
16 talking about.

17 Q Have you ever had any specimens of salmon in the
18 site that we're talking about?

19 A Yes, I've observed them. I've observed rain barrel
20 or steelhead trout.

21 Q Salmon?

22 A They're salmonids, they're of the same family.

23 Q When did you observe the trout?

24 A I believe it was in March of 1988.

25 Q They were on the site?

1 A Yes, they were on the site.

2 Q The site is a wetland, right?

3 A They were within the channel of the Elk Creek.

4 Q What about the food supply at the site there in the
5 channel for fish purposes, what has to be there?

6 A It depends again on the size of fish we're talking
7 about. The fish I observed were not feeding. The salmonids
8 don't feed very much on their spawning runs. They primarily
9 go up there to reproduce. And so if you're talking about a
10 food source, we would be talking about food for the adults is
11 essentially irrelevant. They don't come there to feed.

12 Q What evidence of spawning did you see?

13 A I saw a pair of fish apparently mated. I didn't
14 actually see them spawn.

15 Q Did you actually ever see any babies?

16 A I did not, but we requested surveys to be done and
17 the surveys did find young salmonids.

18 Q The fact that in this particular channel is a
19 wetland -- is a channel surrounded by a wetland considered a
20 healthy circumstance for a fishery?

21 A In general in an undisturbed situation, I would say
22 that a wetland adjacent to a stream channel does add to the
23 value of that stream channel.

24 Q In this particular stream channel, was not the
25 water flow rather slow?

1 A No, it was not.

2 Q It was fast, high energy water flow?

3 A Moderately fast water flow.

4 MR. DANA: Obviously with the terms fast and slow
5 you're not getting a technical --

6 A I have photographs of the site that would indicate
7 the vegetation fluttering in the current.

8 BY MR. WARD:

9 Q Again, were there any dead fish in the channel?

10 A On that particular visit, I did not see any dead
11 fish in the channel.

12 Q On any particular visit?

13 A I don't believe I ever saw any dead fish on the
14 property.

15 Q Very, very quickly I'll just ask you about what has
16 been marked as Exhibit D in Charles Kulp's deposition and ask
17 if you helped in the preparation of that document.

18 MR. DANA: Just for the record, not to be
19 repetitive, the United States has a standing objection on
20 relevance grounds to questions regarding the commenced
21 determination of the swamp bustor provision since it's
22 entirely separate program unrelated in this case as to whether
23 a violation occurred of the Clean Water Act.

24 A Yes, I prepared this document.

25 BY MR. WARD:

1 Q What was the purpose of that document, to whom is
2 it addressed, the date, and who signed it, please?

3 A It's dated February 7th, 1989, it's addressed to
4 Carol S. Lesik, the county executive director of the
5 Agricultural Conservation and Stabilization Office in
6 Waterford, Pennsylvania, it's signed by Edward Perry the
7 acting supervisor.

8 Q What's the purpose of that letter?

9 A The Fish and Wildlife Service has a role under the
10 Food security Act or the farm bill programs that are
11 administered by the Department of Agriculture. We are
12 advisors, technical advisors to the Department of Agriculture.

13 They are required by their regulations to consult
14 with the Fish and Wildlife Service prior to making any
15 determinations that an activity would be commenced prior to
16 the date of the act.

17 Q The date again?

18 A The date of the letter is February 7th, 1989.

19 Q One of these letters that we've been testifying to
20 refers to a map and the copy did not have a map -- at least
21 the copies I had did not have a map -- do you recognize this?
22 It indicates a wetland map, Robert Brace illegal fill,
23 prepared by Fish and Wildlife June 15th.

24 MR. DANA: Off the record.

25 (Discussion held off the record.)

1 BY MR. WARD:

2 Q Did you help in the preparation of that letter?

3 A Yes, I did.

4 MR. WARD: Would you mark this as Putnam Exhibit 1.

5 (Map marked as Exhibit No. 1.)

6 BY MR. WARD:

7 Q Do you recognize that?

8 A Yes, I do.

9 Q Do you know who prepared it?

10 A Yes, I did. I prepared the map.

11 Q May I see it a moment, please?

12 A Yes.

13 Q Where did you get your information that's reflected
14 on the map?

15 A I examined an aerial photograph that was flown on
16 October 23rd, 1980, and my site -- my experience walking
17 around on the site.

18 Q An aerial photo in 1980?

19 A The aerial photo was flown October 23, 1980.

20 Q And your time of visit was 1987?

21 A Yes, it was.

22 Q Some seven years later?

23 A Yes.

24 Q Did the property look any different in '87, if you
25 can recall what it appeared to be in 1980?

1 A Yes, it did.

2 Q You have in here annotations called recently
3 cleared, recently cleared, farmed and drained, trailer and
4 septic on wetlands, and a crosshatched area, what do some of
5 those things mean?

6 A The crosshatched area is the approximate extent of
7 the entire wetland ecosystem. It does not reflect any
8 property boundaries. The areas that were recently cleared
9 were areas where I could see on the ground that had been -- I
10 could still see evidence of the bulldozer tracks working in
11 those areas.

12 Q The farm -- the areas that are indicated as farmed
13 and drained appeared to me to have been cleared and drained
14 sometime in the past.

15 Q Did you interpret the aerial photo?

16 A Yes, I did.

17 Q What's your background for that?

18 A My training in forestry involved some training in
19 interpretation of aerial photography. My work with the Fish
20 and Wildlife Service involved a fair amount of on the job
21 experience in aerial photo interpretation.

22 Q What kind of equipment do you use for that?

23 A I used a Bausch and Lomb zoom stereoscope, and a
24 Bausch and Lomb zoom stereotransferscope.

25 Q I think you have a notation about the affected

1 acreage?

2 A Yes, I do.

3 Q What is that?

4 A Approximately 200 acres of wetlands may be affected
5 by the project.

6 Q How did you measure the 200 acres?

7 A I used a Neumonix digital planimeter, a machine
8 that I can trace the outline of the area and plug in a scale
9 and it will give me a reading as to what the area is I just
10 measured.

11 Q That's off a 1980 photo?

12 A Yes, it was.

13 Q You don't know what transpired in that land between
14 1980 and 1987, do you?

15 MR. DANA: He testified that he saw evidence of
16 recent clearing.

17 MR. WARD: He's got 200 acres.

18 A The 200 acres is mapped irrespective of property
19 boundaries, and like I said, it's the entire ecosystem. I did
20 observe by the time I prepared this map, I did observe other
21 photographs. I guess throughout the entire time working on
22 this, I observed lots of photographs of this site, so I do
23 have a feeling for what was done and when it was done.

24 BY MR. WARD:

25 Q As far as representations made on that particular

1 map, that has to come off a 1980 photo?

2 A Yes.

3 Q In your preparation of drafts for Mr. Kulp and also
4 in other material which we'll look to later, you refer to 150
5 acres from time to time and 200 acres from time to time?

6 A Yes.

7 Q Again, those statements are made in letters to
8 other officials, are they not?

9 A Yes, they are.

10 Q With those acreages?

11 A Yes.

12 Q Do you not qualify in your letters whether or not
13 the boundaries of property ownership are involved?

14 A That's correct.

15 Q So the general description of 150 acres to 200
16 acres in letters concerning Mr. Brace omitted to use whether
17 or not he owned the property?

18 MR. DANA: I object to omitted. You're assuming
19 that they --

20 MR. WARD: Find it.

21 MR. DANA: He's answered the question that the
22 letters don't address the property boundaries. He's answered
23 it twice. Unless you have a different question, he's answered
24 it.

25 A I think I can answer that and make you both happy.

1 MR. WARD: You're not going to make me happy, but
2 go ahead.

3 A I think I can answer the question. What I'm saying
4 is that it's affected. Some of the aerial photographs
5 indicate that the effects do extend beyond the property
6 boundaries.

7 BY MR. WARD:

8 Q But you don't say that in your letters?

9 A What I'm saying is it may affect up to the entire
10 ecosystem that we're dealing with.

11 Q But you do not say that the property involved?

12 MR. DANA: Mr. Ward, the property boundaries were
13 not specifically stated in the letters. The letters speak for
14 themselves. You've confirmed that three times. Unless you
15 have a different question, I don't see what you're doing
16 besides giving a speech.

17 MR. WARD: Well, I'll give my speeches. I'll hire
18 the girl, and I'll speak all day if I want to.

19 BY MR. WARD:

20 Q The fact is that your letters, do they not
21 reasonably imply that Mr. Brace's activity affected 200 acres
22 because of his activity on his property?

23 A No, I don't believe that's true. The statement is
24 made on that particular Exhibit 1 that says the work could
25 affect up to 200 acres of wetlands.

1 Q The purport of your letters is that Mr. Brace
2 allegedly violated the Clean Water Act, he affected 200 acres
3 of wetlands period; is that correct?

4 A I don't know if the 200 acre figure is used any
5 place but on that map, but I would say that is a correct
6 statement that the activities that were done could affect up
7 to 200 acres of wetland.

8 Q Fine. Mr. Putnam, I hand you -- and I'm not going
9 to enter this as an exhibit, but simply for reference in your
10 testimony -- findings of violation and order for compliance
11 issued by the EPA to Mr. Brace, and I'm not asking you to
12 testify as to the content of that. However, attached to the
13 order is a map which appears to be a restoration plan, was
14 that prepared by you?

15 A Yes, it was.

16 MR. DANA: If you want to take a look at the entire
17 document, feel free.

18 MR. WARD: Yes.

19 BY MR. WARD:

20 Q Who asked you to prepare that?

21 A I believe it was James Butch of the Environmental
22 Protection Agency.

23 Q He asked you to prepare a restoration map or a
24 plan?

25 A I believe he did.

1 Q To your knowledge, was Mr. Brace required to submit
2 a restoration plan with those perimeters under the EPA to your
3 knowledge?

4 A This is a substitute for a plan that Mr. Brace was
5 requested to prepare. Mr. Brace did not prepare a plan to my
6 knowledge, and this was prepared as a point of discussion.
7 Mr. Brace was requested to prepare a plan and did not submit
8 one. This was prepared to facilitate discussion.

9 Q It does require him to submit a restoration plan,
10 that's correct, right?

11 A Yes.

12 Q If you know, why was that plan attached to the
13 order?

14 MR. DANA: Can I take a look at the document?

15 MR. WARD: Yes, that's why I wanted to look at it.

16 A Again, ~~it was prepared to facilitate discussion.~~
17 ~~The government to my knowledge never had any single~~
18 ~~restoration plan that had to be completed. The government was~~
19 ~~interested in seeing the wetlands restored.~~

20 We had discussed conceptual restorations during
21 several site visits. This is a depiction of the conceptual
22 restoration that was presented during several site visits.

23 MR. DANA: You testified it was to facilitate
24 discussion?

25 A Yes.

1 BY MR. WARD:

2 Q Is this to scale of any particular kind, do you
3 recall?

4 A It is not to scale. It's a tracing -- that was
5 made on an acetate overlay that would lay over top of an
6 aerial photograph. It loses much of its utility when it's
7 been xeroxed.

8 Q Can you explain in the legend there the requirement
9 of a plan at least proposed by your office would be to plug
10 the drainage tiles, plug ditches to restore wetlands, and then
11 there's an annotation there of "wetlands drained prior to
12 1984"; is that correct?

13 A Yes.

14 Q Is the design and the intent of that proposed
15 restoration plan to restore all lands that were wet back to
16 1984?

17 MR. DANA: Could you try and restate that?

18 BY MR. WARD:

19 Q It has in there wetlands restored --

20 A Wetlands drained prior to 1984.

21 Q Yes.

22 A The intent was to restore the site to the
23 conditions that existed prior to the violation. The intent
24 was to allow any areas that were drained prior to the
25 violation or drained prior to the need for permits to remain

1 ~~in production. It was an important part of this plan not to~~
2 ~~affect any areas that were in production prior to the~~
3 ~~violation.~~

4 Q Have you had experience in designing drainage
5 systems for farms?

6 A I have a fair amount of experience with working
7 with systems that have been drained not specifically -- I
8 understand the principles involved in drainage. I don't
9 design drainage systems.

10 Q When did you next go back to the site after you
11 visited on the May 5th?

12 A November of the same year, 1987.

13 Q Among the materials supplied to us by the U.S.
14 attorney, copies of a chronology of events pertaining to the
15 Robert Brace matter apparently filed or prepared by you?

16 A Yes.

17 MR. WARD: The ones that I've looked at there's
18 some variations -- no, I guess this one. I will ask that this
19 version be marked as Exhibit 2.

20 (Document marked as Exhibit No. 2.)

21 BY MR. WARD:

22 Q Do you recognize that document?

23 A I do not. I did not prepare it.

24 Q Who would have, if you know?

25 A It says at the bottom of this J. Butch's disk

1 number 125, document number 26. I would assume it was
2 prepared by James Butch of the Environmental Protection
3 Agency.

4 Q Did you ever prepare a chronology of events?

5 A Yes, I did.

6 Q When was that, if you know?

7 A I don't recall the date.

8 MR. WARD: I have a copy of a chronology -- I have
9 marked this up somewhat, and I will delete those. Why don't
10 you examine it and see before I hand it to him.

11 MR. DANA: As long as the record reflects that, I
12 don't have any objection. If you want to go ahead, if you
13 want to use this and substitute a clean copy.

14 MR. WARD: We'll do that. Do you want to mark that
15 as Exhibit 3?

16 (Document marked as Exhibit No. 3.)

17 BY MR. WARD:

18 Q Have you had a chance to review that?

19 A I prepared this document.

20 Q May I see it a moment, please?

21 A Yes.

22 Q This generally appears to be short statements
23 regarding certain activity with the Robert Brace matter dating
24 from May 1, 1987 through November 8, 1987; is that your
25 recollection?

1 A Yes, it is.

2 MR. DANA: I believe it says November 18.

3 MR. WARD: Yes, November 18, 1987, right.

4 BY MR. WARD:

5 Q It recounts in here May 1, and again Andrew
6 Martin's reporting the incident of what he found at the Brace
7 property?

8 A Yes.

9 Q May 4th that Mr. Kulp reported to Mr. Pabody -- I
10 guess by phone to Pabody, correct?

11 A Yes.

12 Q Then the letters, the Kulp letters which we've been
13 discussing, and that it recounts on May 5th a meeting on site?

14 A Yes.

15 Q Again the letters. On August 19th it talks about
16 July 23rd, 1987.

17 A Yes.

18 Q Up until EPA issued findings of violation July
19 15th?

20 A Yes.

21 Q July 23rd the Court issued a cease and desist?

22 A Yes.

23 Q On August 18, 1987, you attended a meeting with Mr.
24 Brace, Andrew O'Connor his attorney, Jed Callan the EPA
25 attorney and James Butch of EPA to discuss the case and

1 outline the position, right?

2 A Yes, that's correct.

3 Q That was in Philadelphia?

4 A Yes.

5 Q Who requested your presence at that meeting?

6 A Environmental Protection Agency.

7 Q Mr. Butch?

8 A Mr. Butch.

9 Q Mr. Brace was there with his attorney?

10 A Yes, he was.

11 Q Do you recall whether or not there was a discussion
12 between the parties present between Mr. Brace and his
13 attorney, whether or not the agencies had considered the
14 agricultural exemption that's provided for in the corps of
15 regulations?

16 A I do not recall any discussions regarding that.

17 Q What were the discussions from the government's
18 statements to Mr. Brace, what sort of general content, what
19 did they want?

20 MR. DANA: Are you asking what he can recall?

21 MR. WARD: Sure.

22 A Part of the discussion centered around a map that
23 Mr. Brace produced showing what work occurred on the site and
24 when that particular work occurred. My understanding that the
25 overall tone of the meeting was to discuss settlement of the

1 case to try to reach a voluntary resolution at that point in
2 time.

3 BY MR. WARD:

4 Q By Mr. Brace?

5 A By Mr. Brace and the government.

6 Q What was required of Mr. Brace?

7 A To essentially restore the wetland hydrology in the
8 area that had been affected back to the point that it was back
9 to the most recent disturbance.

10 Q Which included plugging tiles?

11 A Plugging tiles and plugging -- raising the channel
12 of Elk Creek back to its former elevation.

13 Q Was he asked to submit a plan at that time?

14 A I believe he was requested to submit a plan in a
15 letter written prior to that date. I don't know if the plan
16 was discussed at that meeting or not.

17 Q ~~Did anybody at that meeting discuss at all whether~~
18 ~~or not an after-the-fact permit should be considered?~~ Excuse
19 me. Are you familiar with the after-the-fact permit
20 procedures?

21 MR. DANA: Objection, I believe you had an
22 objection to producing any documents regarding that permit.

23 MR. WARD: That's right, and I've said in the
24 earlier responses we never filed for an after-the-fact permit.
25 We discussed it, that's all. The only material we held back,

1 since nothing was filed, is still material between Mr. Brace
2 and his attorneys. There was never any filing of any kind,
3 and we never claimed -- the only material we claimed
4 privileged was the --

5 MR. DANA: You're claiming that all the materials
6 are attorney-client privilege regarding the after the fact
7 permit?

8 MR. WARD: Yes, because none was ever filed.

9 MR. DANA: You're claiming the attorney-client
10 privilege covers all of those materials?

11 MR. WARD: Yes. But that doesn't forbid me from
12 asking if there was ever a discussion about it.

13 MR. DANA: For the record -- can we go off the
14 record?

15 (Discussion held off the record.)

16 BY MR. WARD:

17 Q Were there any discussions?

18 A I don't recall one way or the other.

19 Q You also note in there that the Pennsylvania DER
20 issued a notice of violation in August of '87?

21 A Where is that?

22 Q Right here.

23 A It's in there, yes.

24 Q You note in there also that Mr. Brace and some of
25 his friends have posted 20,000 acres against hunters?

1 A ~~Yes~~ .

2 Q Did you ever issue a memorandum or a note
3 characterizing that action as blackmail?

4 A It's contained -- a reference to that is a quote
5 that is contained in this memorandum.

6 MR. DANA: I believe the memorandum reflects a
7 statement that was made to Mr. Putnam if that's what you're
8 getting at. He reported it in the memorandum.

9 A Yes.

10 BY MR. WARD:

11 Q You also had contact regarding this matter with
12 Congressman Ridge's office?

13 A Yes, I did.

14 Q Did Congressman Ridge come to the site and did you
15 meet with him?

16 A We met with Congressman Ridge, but it was not at
17 the site. It was a context of a separate meeting. It was a
18 meeting of the landowners and organization, and we did not
19 discuss this case at that meeting.

20 Q You note in here you discussed wetland valleys of
21 Erie County Council Sportsmen Club?

22 (Brief pause.)

23 BY MR. WARD:

24 Q The last question had to do with Erie County
25 Council Sportsmen Club.

1 A Yes.

2 Q Did you make any statements to the club, did you
3 make a presentation or talk to them?

4 A They requested me to come and talk about wetlands.
5 It was a general talk on wetlands.

6 Q Did you make any references to Mr. Brace's
7 situation?

8 A I can't recall.

9 Q If there were published reports of that meeting,
10 would that help?

11 A Yes, it would.

12 Q Were you ever interviewed by a publication known as
13 the Pennsylvania Sportsman?

14 A I was interviewed by a writer who just published an
15 article in the Pennsylvania Sportsman.

16 Q Do you recall that interview?

17 A Yes, I do.

18 Q August 1991?

19 A I don't recall the exact date the interview took
20 place, but sometime prior to that.

21 Q I'll ask you to just read, and if you want to read
22 the whole thing go right ahead.

23 MR. DANA: Let's start on the first page.

24 BY MR. WARD:

25 Q Have you had a chance to review the article?

1 A Yes, I have.

2 Q Down at the very bottom of the middle column, would
3 you just read that, "one landowner"?

4 A "One landowner claimed he wanted to drain a wetland
5 to grow cabbage. When we checked it, it was skunk cabbage he
6 was growing in patches around the trees he forgot to clear off
7 the field."

8 Q Then continue.

9 A "The site appeared to be more suitable to golfing
10 than farming."

11 Q And?

12 A "It says since 1978 the federal government has
13 discouraged farmers from draining wetlands when President
14 Jimmy Carter signed an executive order directing the federal
15 government to take the lead in protecting wetlands.

16 "Look at the state now, and you'll see that most of
17 the wetlands suitable for agriculture were drained before then
18 when such drainage sanctions were even encouraged by the
19 government."

20 Q It was also up until 1985, I believe you said with
21 the Swamp Busto Act?

22 MR. DANA: What are you saying, John?

23 MR. WARD: Strike that.

24 MR. DANA: The Swamp Busto Act again goes to
25 qualifications of government benefits. It doesn't go to

1 legality or illegality per se. That's the Clean Water Act,
2 if you understood that.

3 MR. WARD: I understand your argument. I'm not
4 saying I agree with you.

5 MR. DANA: I don't believe Mr. Putnam said anything
6 to the contrary here today.

7 BY MR. WARD:

8 Q Down at the bottom, are these your words, "If a
9 maintenance is a subterfuge?"

10 A I can't say these are 100 percent quotes as I said
11 them. I don't recall the -- the interview was not taped, but
12 I would say that would be the essence of what I said.

13 Q Do you recall ever alluding to the Brace case
14 either in private conversations with people in the Waterford
15 area or in public meetings of any kind?

16 A I would say the case in particular is a high
17 visibility, well-known case, and I get a lot of questions
18 regarding it. In public meetings, I would generally speak in
19 generalities and not speak in specifics and not speak
20 specifically to Mr. Brace.

21 Q You say it's a highly visible case?

22 A Yes, I would say it is.

23 Q Do you recall whether or not at the time the EPA
24 issued, I believe, their first violation and compliance order,
25 whether or not a press release was made in the local papers?

1 A Yes, there was a press release.

2 Q That was issued by the government?

3 A That was issued by EPA, yes.

4 Q That described the Brace case?

5 A Yes, yes, it did.

6 Q If I may go back very quickly to what is marked as
7 Exhibit 3, you have an area called issues in which you
8 discussed certain subjects?

9 A Yes.

10 Q You make a statement here, "This project clearly
11 goes beyond the scope of maintenance?"

12 A Yes.

13 Q What's your basis for that statement?

14 A My observations of my initial field visit indicated
15 that the material removed was native soils was not the type of
16 material that would accumulate in ditches. It was not gravel,
17 silt, sticks, but it was the same soil that was excavated and
18 placed in the side cast berm as was present in the soil
19 profile along the edge of the channel.

20 Q There was no unconsolidated material on the top?

21 A The unconsolidated material would have been buried
22 underneath the native soils.

23 Q Have you ever operated a backhoe?

24 A Yes, I have.

25 Q Is it likely that you will not take any solid

1 material when you're removing other material?

2 A No, it's likely that some solid material would be
3 removed.

4 Q You say this project clearly goes beyond the scope
5 of maintenance. Was the ditch you saw part of a system for
6 draining, not just this area but other areas?

7 A Yes, it was.

8 Q You either knew or were told that there was a
9 tilage system in there, a tile drainage system, right?

10 A Yes.

11 Q In the public interest, you're discussing Mr. Brace
12 in a northwest Pennsylvania landowners, midway in there, would
13 you read that sentence there?

14 A Would you point to it exactly?

15 Q While there were three individuals.

16 A "While there were 300 individuals who have signed
17 the form letters, a lot of sportsmen resent being blackmailed.
18 Based on secondhand reports, it appears the landowner
19 associate has not received a very accurate picture of the 404
20 program."

21 Q The term blackmailed is yours, I mean this is your
22 writing?

23 A Yes, it is.

24 Q What does blackmail mean to you?

25 A It means being -- having to do something that they

1 don't want to do.

2 Q With illegal methods?

3 A I would not say illegal, no.

4 Q There is such a thing as legal blackmail?

5 MR. DANA: The term is used in a vernacular sense
6 there.

7 MR. WARD: This is a public document, and he's
8 accusing these people of blackmailing sportsmen.

9 A I think I picked that word up from a page or two
10 prior to that. It's just an unfortunate choice of words.

11 BY MR. WARD:

12 Q The very last sentence, just read the last sentence
13 and then there's an annotation there, and I don't know whose
14 that is but if you'll just read it. It may not be yours.

15 A "The high public interest generated by Mr. Brace
16 will give our wetland protection efforts a significant boost
17 when the case is successfully resolved.

18 Q There's an annotation there?

19 A The annotation says, "using us as an example."

20 Q You don't know who made that annotation?

21 A I would assume it would be the defendant.

22 Q Why would you assume that, we got this from the
23 government?

24 A You asked me, and that was my answer.

25 MR. DANA: I just note that although that document

1 might be producable from a formal request, I don't know. It's
2 not a public circulated document, and it certainly wasn't a
3 part of a press release or any kind of distribution of that
4 sort.

5 (Document marked as Exhibit No. 5.)

6 BY MR. WARD:

7 Q I ask to you review what's been marked as
8 Defendant's Exhibit 5 and ask you if you recognize that
9 document?

10 A Yes, I do. It's a telephone conversation record
11 prepared by me.

12 Q Is this generally a procedure that's followed in
13 your office when you've had telephone conversations?

14 A It's only used when it appears that there's
15 evidence or information in the conversation which should be
16 recorded. It is not used 100 percent of the time.

17 Q Jim called, is that reference to Carter?

18 A Yes. Excuse me. Let me see this. There were two
19 Jim's involved.

20 Q It says that Brace's brother Buckey?

21 A Yes.

22 Q Are we talking about the site here? What we're
23 calling the wetland site?

24 A What we're talking about is site number 2
25 referenced in Mr. Pabody's notes. It's also referenced on the

1 map that we discussed earlier. It's a site that is not on
2 Robert Brace's property. It's on his cousin's property.

3 Q That had to do with that particular property,
4 right?

5 A That had to do with Buckey's property, yes.

6 Q But then you go on and talk about other things that
7 R. Brace was going to resist?

8 A Yes.

9 Q Again, this was Carter and read what Mr. Carter had
10 to say, if you will?

11 A He said that Mr. Brace has a bad temper and that he
12 has assaulted a state policeman.

13 Q Did you inquire as to the proof of that statement?

14 A I did not.

15 Q I'm going to hand you a packet of handwritten,
16 almost illegible notes, that I think are yours, you'll be able
17 to read them, and ask you if these are the notes on which you
18 base your chronologies. You're not going to testify from them
19 particularly?

20 A These are not my notes.

21 Q This is apparently a conversation record between JB
22 and myself, JB would be James Butch.

23 MR. WARD: The understanding is that I will have
24 this cleaned up.

25 MR. DANA: And substitute it. For the record,

1 Defendant's Exhibit 3 is a chronology of events that now
2 contains what appears to be side notations by counsel for the
3 defendants. A clean copy will be substituted after the
4 deposition.

5 BY MR. WARD:

6 Q Again, I'm not going to enter this into the record,
7 but this is a memo to the Brace file apparently from you
8 regarding certain activity that has nothing to do with this
9 particular site; is that correct?

10 A That's not correct. It has to do with this
11 particular site.

12 Q That has to do with dams?

13 A Yes, that's correct.

14 Q The installation of a dam is not part of the
15 activity here, is it?

16 A This is an activity that occurred subsequent to EPA
17 issuing their administrative orders and the Corps of Engineers
18 issuing their cease and desist order.

19 Q He was being given an emergency permit to construct
20 a plywood dam on Elk Creek?

21 A That's correct.

22 Q You're claiming that that permit had to do with
23 activity on what we call the site today?

24 A That actual activity did not and would not affect
25 -- would not be regulated, whether it would affect the site or

1 not it would not be a regulated activity, if the plywood dam
2 was constructed according to that emergency permit.

3 Q Wasn't this a completely separate activity other
4 than what he's alleged to have been doing on the site?

5 A I believe the activity directly relates to the
6 entire enforcement action. It is subsequent to the initial
7 citation. It is not part of the government's case.

8 Q Not part of the government's case?

9 A Not part of the government's case.

10 Q Your impression or --

11 MR. DANA: I think, John, the problem may be that
12 you asked if it had anything to do with the site, which I
13 think is a locational issue.

14 MR. WARD: Right.

15 MR. DANA: Maybe that would help clarify things if
16 you could discuss the location of what this is talking about.

17 A It has a direct impact on the case in my opinion,
18 although, it has not been addressed by the government.

19 BY MR. WARD:

20 Q There's been no additional violation charged as the
21 federal government goes?

22 A That's correct.

23 Q But a violation was charged, was it not, by the
24 Pennsylvania Fish Commission?

25 A Yes, it was.

1 Q On the installation of these dams?

2 A That's correct.

3 Q Again, that's the outcome we discussed earlier?

4 A That's correct. I was mistaken with regard to what
5 I said earlier.

6 (Discussion held off the record.)

7 MR. DANA: Mr. Putnam, for clarification why don't
8 you just state what you just said off the record.

9 A The charges that I discussed earlier were with
10 regard to the magistrate's case that was held in Waterford
11 with regard to the earth and dam, not with regard to the
12 wetland activity.

13 BY MR. WARD:

14 Q I have here what appears to be some notes by David
15 Putnam, and I just see a 2/4, it might be a daily log, but I
16 don't see a year and ask you if you recognize that.

17 MR. DANA: Are you marking these?

18 MR. WARD: If he knows that, it may not be
19 necessary. Just for his recollection.

20 A Yes, I recognize these as my notes. I believe it
21 was 1988. I believe 1988 or '89.

22 BY MR. WARD:

23 Q You make a notation in there that you discussed --
24 you talked with a Bob Sheldon who is a contractor for R.
25 Brace?

1 A Yes.

2 Q There was a description of when he worked on the
3 property, and these are not my marks. I don't know whose they
4 would be.

5 MR. DANA: I believe those notes were produced to
6 you without any marks.

7 BY MR. WARD:

8 Q You are quoting Sheldon about not going into the
9 areas. Can you see that quotation mark there?

10 A Yes, I see them.

11 Q They were south side of the lane?

12 MR. DANA: South side of South Hill.

13 BY MR. WARD:

14 Q Is that correct?

15 A Yes.

16 Q Your note here is that Mr. Brace was going against
17 the advice of Mr. Sheldon, who was his drainage contractor,
18 correct?

19 A Yes.

20 Q In draining certain aspects of the property?

21 A It was with regard to the technical suitability of
22 the site for draining.

23 Q Did Mr. Sheldon in fact say to you that any place
24 can be drained, it depends on the money you wish to spend?

25 MR. DANA: If you recall.

1 A I don't recall him saying that.

2 BY MR. WARD:

3 Q Did he say why it would not drain under those
4 circumstances? Did he explain this statement to you at all?

5 MR. DANA: I believe Mr. Putnam said it wasn't
6 suitable for draining, which might mean that it would be
7 prohibitively costly or impractical or just not beneficial to
8 drain. It doesn't mean it would be impossible.

9 MR. WARD: Right.

10 A We didn't really get into that level of detail. I
11 think I specifically said, "Do you think this drainage would
12 work?" And he responded negatively.

13 (Letter dated March 17, 1989 marked as Exhibit
14 No. 6.)

15 A I prepared this letter.

16 BY MR. WARD:

17 Q I hand you what's been marked as Defendant's
18 Exhibit 6 which is a letter to Mr. Jim Butch, correct?

19 A Yes.

20 Q It's dated March 17th of 1989, almost two years
21 later from the incident of the citation, and it is signed by
22 you. Would you -- it's a short paragraph -- would you mind
23 just reading that for the record?

24 A "In reference to the Robert Brace case, all
25 individuals involved in this case should be aware that the

1 defendant has been reported to have a short temper and be
2 prone to physical violence.

3 "He has been reported to have assaulted others in
4 connection with this case. He has also been reported to have
5 made the statement, 'If this keeps up, somebody is going to
6 get hurt' in connection with this case.

7 "Pennsylvania State Police should be contacted to
8 verify this information. This behavior has been reported to
9 the FWS by a number of different sources. The District
10 Conservationist for the Soil Conservation Service in Erie
11 County (Steckler) advised FWS (Putnam) that people around here
12 will be afraid to testify when this case was discussed with
13 him."

14 Q Has he been reported to have assaulted others in
15 connection with this case?

16 A Yes.

17 Q Who?

18 A ~~This is reports that are not verified, was Leslie~~
19 ~~Brace.~~

20 Q You pass on unverified reports?

21 A Yes.

22 Q This behavior has been reported to the Fish and
23 Wildlife Service by a number of different sources?

24 A ~~Lou Steckler who is referenced in that letter.~~

25 Q ~~What did Mr. Steckler say?~~

1 A It's quoted --

2 MR. DANA: The letter speaks for itself.

3 MR. WARD: I think I can get into the content of it
4 and the basis of its content.

5 MR. DANA: If you have a recollection independent
6 of the letter, you can testify to it.

7 BY MR. WARD:

8 Q ~~Mr. Steckler didn't say that he was assaulted?~~

9 A ~~No, I was going to try to -- in that conversation~~
10 ~~with Mr. Steckler, he made another statement. I was trying to~~
11 ~~recall it exactly. The quote was approximately, if you guys~~
12 ~~keep pissing around, somebody is going to get hurt.~~

13 Q To whom did he say that?

14 A He said that to me quoting --

15 Q ~~Steckler said that to you?~~

16 A ~~Steckler said that to me supposedly quoting Robert~~
17 ~~Brace. He stated that Robert Brace made that statement in his~~
18 ~~presence.~~

19 Q ~~Who is Lou Steckler?~~

20 A ~~He is the District Conservationist for the Soil~~
21 ~~Conservation Service located in Waterford.~~

22 Q Was he involved in any of this enforcement or any
23 of the investigation?

24 A He was not involved in any of the Clean Water Act
25 activities.

1 MR. DANA: With respect to verification, just note
2 for the record, the letter says the reports aren't verified
3 and should be verified if a problem developed.

4 A I didn't feel it was my place to contact the State
5 Police. I was advising EPA that they should. Over a thousand
6 conservation officers are assaulted each year. We routinely
7 warn other people if there's a possibility there's a problem.

8 We're not saying there is a problem. It's if you
9 go here, you should be aware that there's a possibility that a
10 problem could occur. You should take proper precautions.

11 BY MR. WARD:

12 Q Are those problems referring to specific people?

13 A Yes.

14 Q So if we subpoena the files from your office, we're
15 going to find other letters similar to this concerning other
16 people?

17 A No, you'll only --

18 MR. DANA: Objection, what letters concerning whom?

19 MR. WARD: Concerning other people. He said we
20 send out many letters to people warning them of other people's
21 conduct. I want to find out if he's just using Mr. Brace or
22 if it's a general temperament reaction to conservation people.

23 A Let me clarify. It's within the conservation
24 group. The Fish and Wildlife and Fish Commission/Game
25 Commission. If there's a potential problem, we will warn

1 them. There wouldn't necessarily be lots of letters in that
2 exact format. It may be telephone calls.

3 It may be minor memorandums. I know I just
4 recently have an example I received one from Farmer's Home
5 Administration that says don't go on this guy's property
6 without an escort. That's one I can remember.

7 BY MR. WARD:

8 Q On Mr. Brace's property?

9 A No, it is not Mr. Brace's property. I'm just
10 saying it's a common practice just as you would do if you
11 thought someone was going to go near --

12 MR. DANA: That's fine.

13 BY MR. WARD:

14 Q It's a common practice to portray people as violent
15 on unverified facts?

16 MR. DANA: Objection, the question is
17 argumentative. Do you have a question?

18 MR. WARD: He said he didn't verify any of those
19 things. He said it's a common practice to warn. What he did
20 here was --

21 MR. DANA: Objection, do you have a question?

22 MR. WARD: Yes, and I'm asking it.

23 BY MR. WARD:

24 Q Is it common practice to portray people as being
25 violent based upon unverified facts?

1 MR. DANA: Objection, this is an argumentative
2 question.

3 MR. WARD: The purpose of the letter was to --

4 MR. DANA: No, it's not the purpose of that letter.

5 A The purpose of that letter was requested that they
6 do verify it. It says right in there clearly, you should
7 verify this report. It states there are allegations, and they
8 should be verified. I'm not portraying Mr. Brace as a violent
9 person. I'm saying this is what was told to me. Before you
10 go up here and get into a compromise or an unfortunate
11 situation, you should take proper precautions.

12 MR. DANA: I believe the question has been
13 answered.

14 MR. WARD: The thing will speak for itself. The
15 word verification or request to verify is not in there. It
16 should be aware of.

17 MR. DANA: For the record, I'd like to read on from
18 Defendant's Exhibit 6 a sentence contained in the paragraph
19 which says, "The Pennsylvania State Police should be contacted
20 to verify this information, end quote.

21 MR. WARD: Okay. I stand corrected.

22 (Recess.)

23 BY MR. WARD:

24 Q Did you only have one site meeting?

25 A No, I was on site seven different times.

1 Q Seven different times?

2 A Yes.

3 Q Were they organized meetings, or were you there
4 yourself doing your own work?

5 A Only one time was I there by myself. I was looking
6 at another property nearby, and I just drove by. I didn't
7 actually go on the property that time.

8 Q This is seven different times from May to the
9 present?

10 A Yes.

11 Q Did you take part in any EPA investigations up
12 there?

13 A I accompanied EPA during their investigations, yes.

14 Q In both of them in May of '89?

15 A Yes and May of '90.

16 Q What did you do?

17 A I helped them dig the holes. I helped them gather
18 their data.

19 Q Did you take notes?

20 A On one occasion I took one page of notes.

21 Q That had to do with?

22 A I just recorded the plants. I made a general list
23 of plants that I observed on site. I made a list of wildlife
24 species I observed on site.

25 Q What was the weather that day?

1 A I recorded that in my notes. It was cool,
2 overcast, and a light mist.

3 Q Did you notice whether or not the water flow had
4 changed in the channels from the time you first visited the
5 site in '87 from either less, the same, or more?

6 A I didn't make any observation regarding that. I
7 didn't see anything that would change the flow other than
8 hydrologic factors, other than rainfall.

9 Q How far away is this what we're calling the site in
10 terms of straight crow miles, does Elk Creek empty into Lake
11 Erie?

12 MR. DANA: Are you asking how far this site is from
13 Lake Erie?

14 MR. WARD: Yes, using the direction of Elk Creek as
15 a line of direction.

16 MR. DANA: You mean if you measure the entire
17 length of Elk Creek.

18 MR. WARD: Yes.

19 MR. DANA: If you know.

20 A I don't know.

21 BY MR. WARD:

22 Q This area you would generally say is 19 miles from
23 Erie, 20 miles from Erie?

24 A 10 to 20, I don't know. It's 10 to 20.

25 Q Have you studied the topography of Erie County in

1 any way, contour maps, read any articles on it?

2 A I'm generally familiar with the topography of Erie
3 County.

4 Q How about the hydrology of it, the drainage
5 systems?

6 A The stream drainage systems?

7 Q Yes.

8 A I'm generally familiar with the stream drainage
9 systems.

10 Q By the time Elk Creek, what we're calling Elk
11 Creek, leaves the site, is it a discernable channel on the
12 other side of South Hill Road?

13 A Yes, it is.

14 Q Does it ever go into the substraights so that it's
15 not discernable?

16 A I never followed it down from South Hill Road.

17 Q You never followed Elk Creek downstream?

18 A I looked at it at various points, but I never
19 noticed any place where it does not have a defined bed bank
20 and channel.

21 Q How many places between the site and where Elk
22 Creek empties into Lake Erie have you visited to make
23 observations, if you have?

24 MR. DANA: Are you asking whether he's walked the
25 entire?

1 MR. WARD: Well, or stopped in, driven by and
2 gotten out and looked at it.

3 A In the course of my normal work, I traverse that
4 area quite frequently. I really can't say, but at least a
5 half dozen sites between the mouth of Elk Creek and the site.

6 BY MR. WARD:

7 Q Who, if you know, what agency tests water quality
8 in Elk Creek?

9 A The Pennsylvania Fish Commission would do some, the
10 Erie County Department of Health would probably be the primary
11 protector of water quality in Erie County.

12 Q Are you aware of reports where the water has been
13 unduly contaminated or reports of contamination in Elk Creek?

14 A I'm not aware of any.

15 (Recess.)

16 BY MR. WARD:

17 Q In this area known as the site on the Brace Farm,
18 did you ever observe any endangered species of animal life
19 there?

20 A No, I did not.

21 Q Any endangered species of plant life?

22 A I did not observe any.

23 Q Is there a public drinking supply area nearby?

24 A I can't answer that.

25 MR. WARD: I have no further questions.

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MR. DANA: The government has no questions.

(The deposition was concluded at 2:00 p.m.)

I N D E XWITNESSESFOR THE DEFENDANTSDIRECTCROSS

David J. Putnam

2

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EXHIBITSEXHIBIT NO.PRODUCED
AND MARKED

No. 1 - Map

47

No. 2 - Document

55

No. 3 - Document

56

No. 5 - Document

68

No. 6 - Letter dated March 17, 1989

74

1 COUNTY OF CLEARFIELD :
 2 COMMONWEALTH OF PENNSYLVANIA : SS.

3

4 I, Beth Krupa, Reporter-Notary Public, authorized
 5 to administer oaths within and for the Commonwealth of
 6 Pennsylvania and take depositions in the trial of causes, do
 hereby certify that the foregoing is the testimony of
 DAVID J. PUTNAM.

7 I further certify that before the taking of said
 8 deposition, the witness was duly sworn; that the questions and
 9 answers were taken down stenographically by the said Beth
 Krupa, a Reporter-Notary Public, approved and agreed to, and
 afterwards reduced to typewriting under the direction of the
 said Reporter.

10

11 I further certify that the proceedings and evidence
 12 are contained fully and accurately in the notes taken by me on
 the within deposition, and that this copy is a correct
 transcript of the same.

13

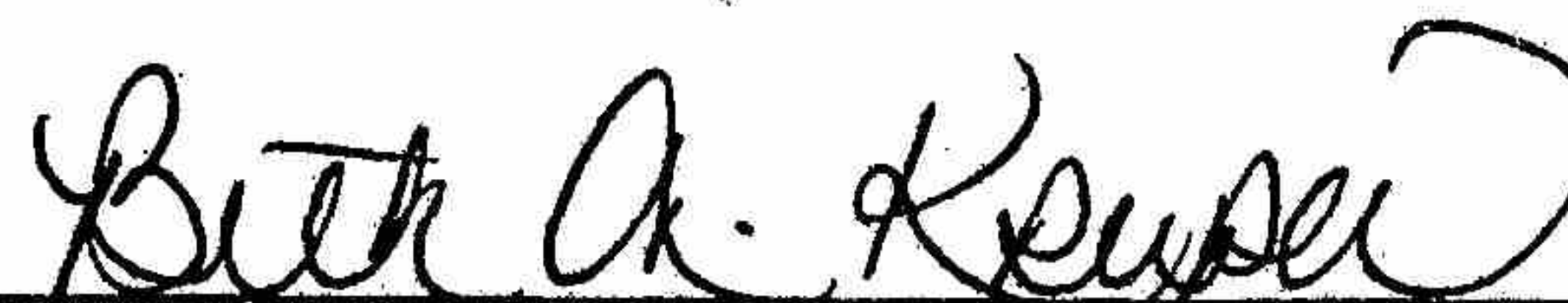
In testimony whereof, I have hereunto subscribed my
 hand this 2nd day of May, 1992.

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Beth A. Krupa, Reporter
 Notary Public

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22 My commission expires
 on April 11, 1994.

23

24

25

EXHIBITS



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

Suite 322
315 South Allen Street
State College, Pennsylvania 16801

June 16, 1987

Source:

Batch

Mr. Jim Pabody
U.S. Army Corps of Engineers
Cleveland Projects Office
Foot East 9 Street
Cleveland OH 44114

Dear Mr. Pabody:

Enclosed is a draft wetland map of the Robert Brace site in Waterford Township, Erie County, Pennsylvania. The map shows the extent of high quality wetlands affected by the unauthorized work. Approximately 200 acres of wetlands could be affected by the project.

We have also enclosed three aerial photographs of the site for your use. We would like to receive copies of your most recent aerial photographs of the site. We can prepare a revised map to show the extent of the recent work once we receive them.

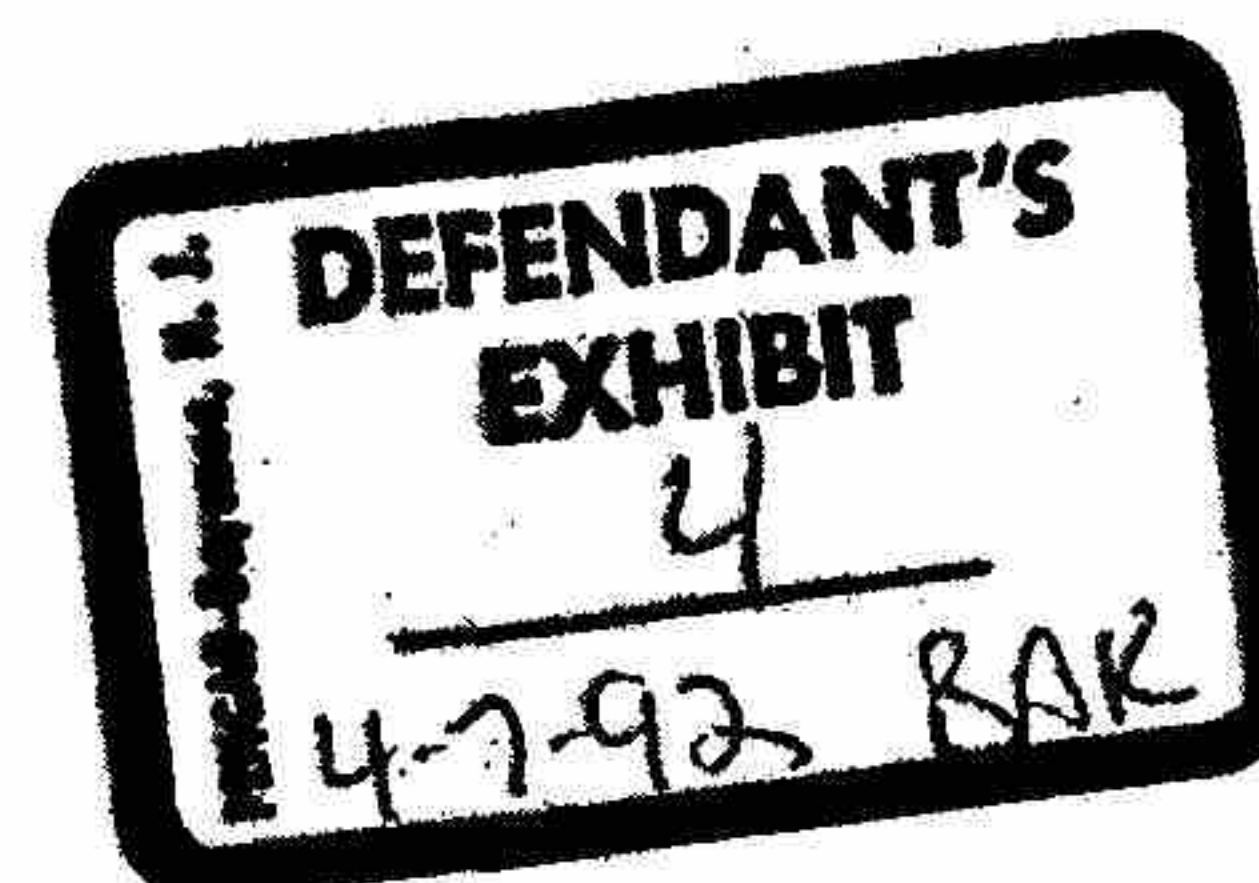
We understand that the Buffalo staff has been severely cut and that this is the peak workload season for you, however, we urge you to move forward with this case as rapidly as possible. As we stated in our letter of May 11, 1987, we consider this to be one of the most significant 404 violations that we have seen in recent years. A rapid resolution of this case would be in the best interest of Mr. Brace and all the involved agencies.

If we can be of any assistance, please contact Mr. David Putnam of my staff.

Sincerely,

David J. Putnam
David J. Putnam
Acting Field Supervisor

Enclosures



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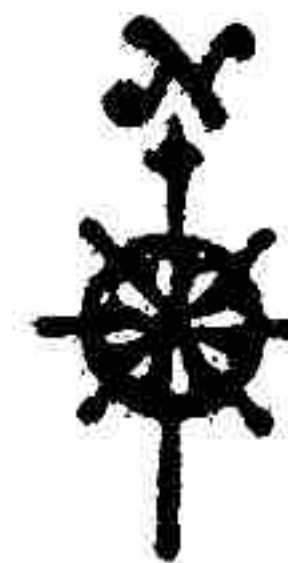
0413

Trailer & Septic on Wetlands

ILLEGAL FILL

Farmed & Drained

Recently Cleared



WETLAND MAP

ROBERT BRACE ILLEGAL FILL

PREPARED BY U.S. FISH & WILDLIFE SERVICE
JUNE 15, 1987

BASED ON CIR PHOTOGRAPHY
FLOWN OCTOBER 23, 1980
APPROXIMATE SCALE 1: 4500

FARMed WETLANDS

SOUTH HILL ROAD

WEBLEY ROAD

Recently Cleared

ILLEGAL FILL

Recently Cleared

Reverting to Wetlands on
Western Portion

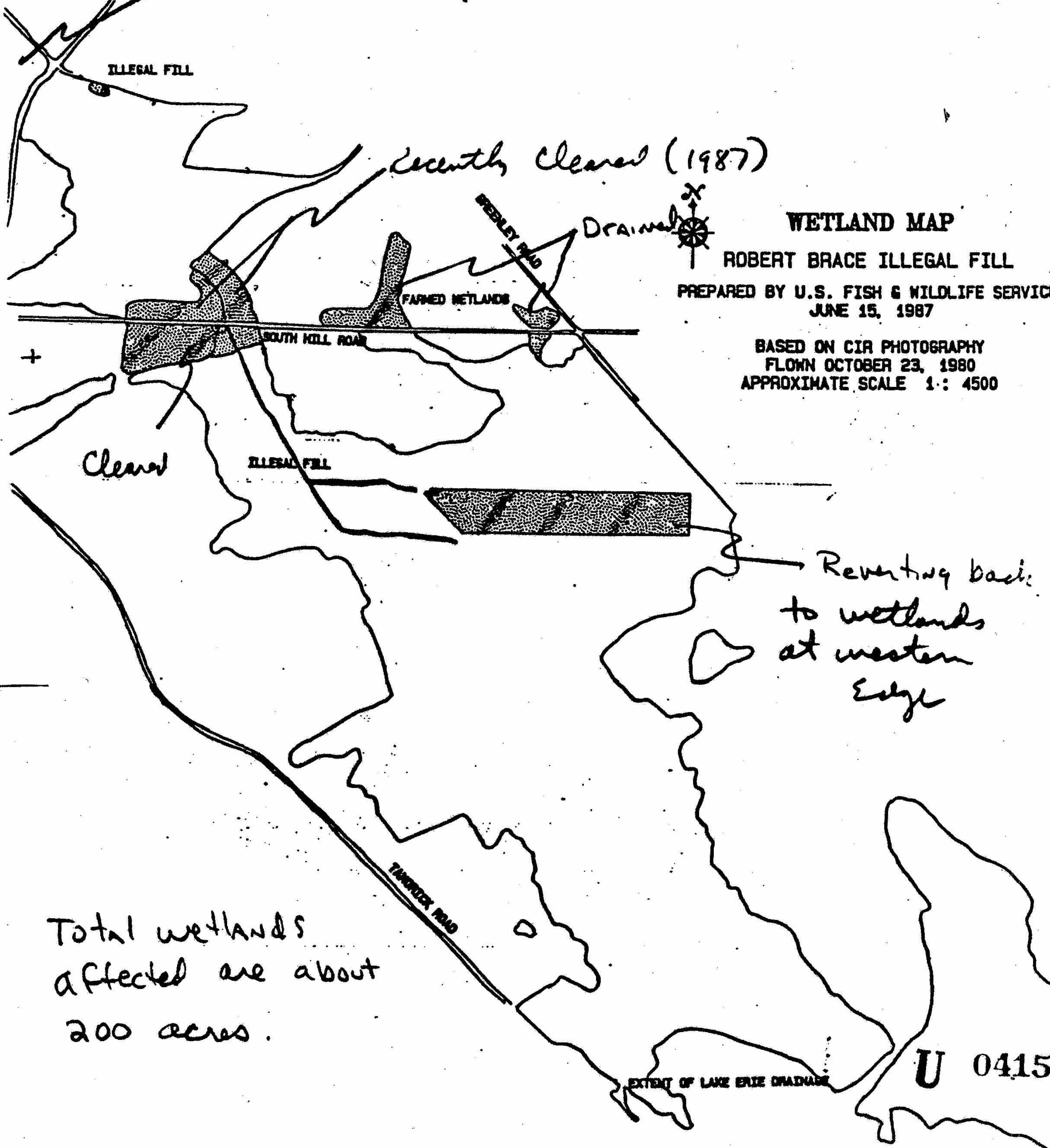
Approximately 200 acres
of wetlands may be affected
by the project.

THORPE ROAD

EXTENT OF LAKE ERIE DRAINAGE

U 0414

Trailer with septic in wetlands



WETLAND MAP

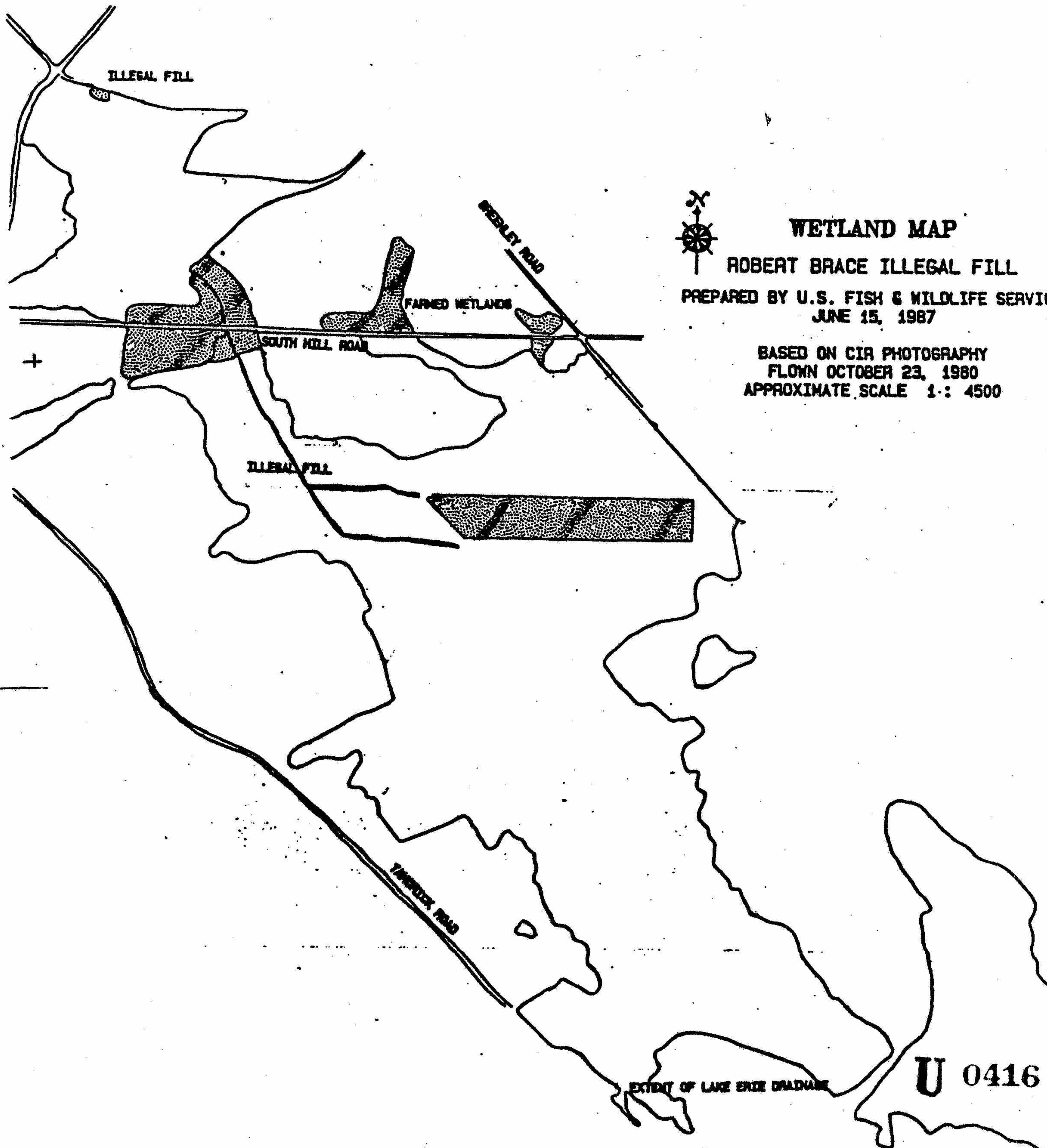
ROBERT BRACE ILLEGAL FILL

PREPARED BY U.S. FISH & WILDLIFE SERVICE
JUNE 15, 1987

BASED ON CIR PHOTOGRAPHY
FLOWN OCTOBER 23, 1980
APPROXIMATE SCALE 1: 4500

Total wetlands
affected are about
200 acres.

U 0415



WETLAND MAP

ROBERT BRACE ILLEGAL FILL

PREPARED BY U.S. FISH & WILDLIFE SERVICE
JUNE 15, 1987

BASED ON CIR PHOTOGRAPHY
FLOWN OCTOBER 23, 1980
APPROXIMATE SCALE 1: 4500

U 0416

TELEPHONE CONVERSATION RECORD

Department of the Interior
U.S. Fish and Wildlife Service

ROUTING			DATE
1	C.J. Kulp, Field Supervisor	4	6/18/87
2	J. Butch, EPA	5	FILE REFERENCE
3	J. Pabody, Buffalo COE	6	

RECORD

RECEIVED FROM (NAME) Jim Carter	RECEIVED BY (NAME) Dave Putnam
ORGANIZATION Pennsylvania Fish Commission	TELEPHONE NO. 814-796-2450

SUBJECT
ROBERT BRACE - ILLEGAL FILL

CONVERSATION
 Jim called to give me R. Brace's address. He said that he visited the site last week and that additional fill had been placed at the fill site located on the south side of Greenlay Road on the northern edge of the wetland complex. He said that all of the trash and potatoes had been buried. He also said that R. Brace's brother Buckey owned this site and did the filling.

He also said that R. Brace was planning to resist any efforts to regulate his wetland filling/draining and that he has hired a lawyer and is ready to go to court.

He said that Mr. Brace has a bad temper and that he has assaulted a State Policeman.

DEFENDANT'S EXHIBIT

5

4792 BAK

WHITE: ROUTING COPY
 YELLOW: SUBJECT FILE COPY
 PINK: CHRON FILE COPY

U 0516



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Suite 322

315 South Allen Street
State College, Pennsylvania 16801

March 17, 1989

Mr. Jim Butch
U.S. Environmental Protection
Agency
841 Chestnut Building
Philadelphia, PA 19107

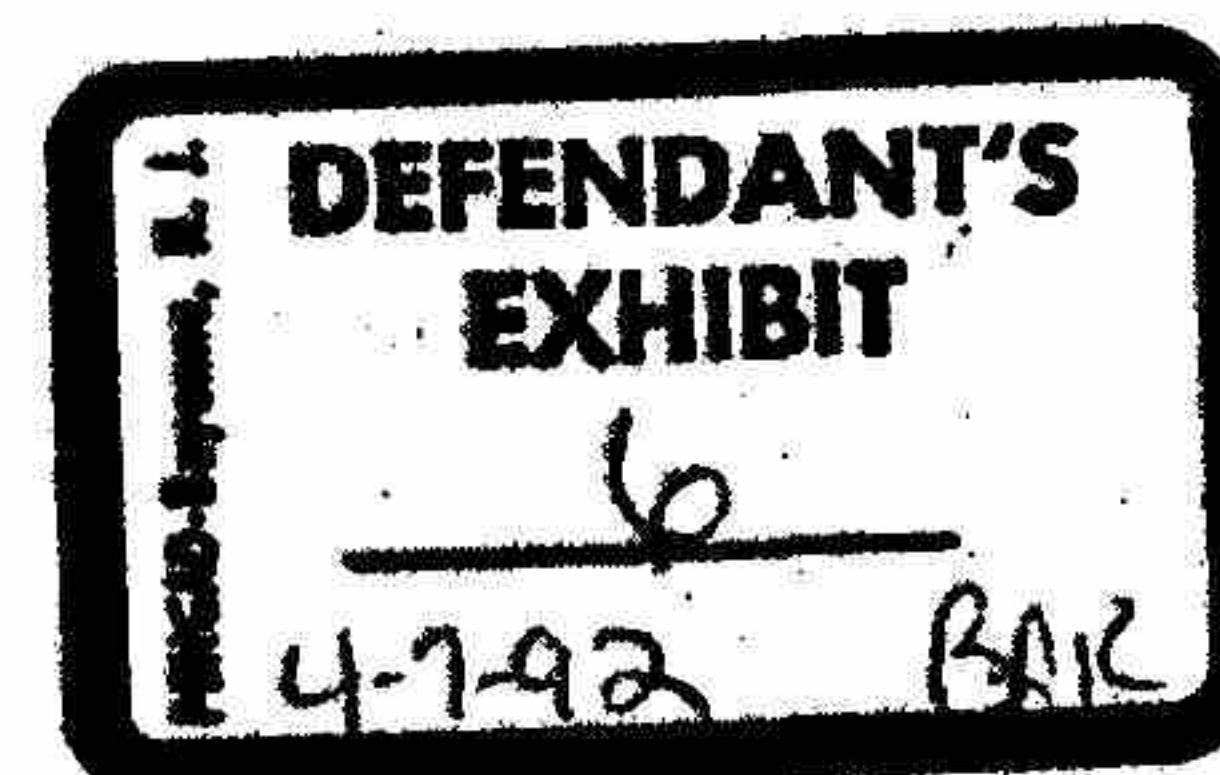
Re: Robert Brace Case

Dear Mr. Butch:

In reference to the Robert Brace case. All individuals involved in this case should be aware that the defendant has been reported to have a short temper and be prone to physical violence. He has been reported to have assaulted others in connection with this case. He has also been reported to have made the statement, "If this keeps up somebody is going to get hurt" in connection with this case. The Pennsylvania State Police should be contacted to verify this information. This behavior has been reported to the FWS by a number of different sources. The District Conservationist for the Soil Conservation Service in Erie County (Steckler) advised FWS (Putnam) that "people around here will be afraid to testify" when this case was discussed with him.

Sincerely,

David J. Putnam
Fish and Wildlife Biologist



U 0535