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February 13, 2018

Kogan Law Group, PC
Attention: Lawrence Kogan
100 United Nations Plaza
Suite 14F
New York, NY 10017

Subject: Response to Edwards 2017 Flood Report
United States v. Robert Brace and Robert Brace Farms, Inc.
(Civ. No. 90-229, W.D. Pa)
Homestead, Murphy, and Marsh Farms
Waterford Borough, Erie County, Pennsylvania

Dear Mr. Kogan,

Per your request, EcoStrategies Engineering & Surveying, PLLC (EcoStrategies) reviewed the Expert Report Prepared for the United States Department of Justice by Dwayne R. Edwards entitled *Analysis of Potential Flood Magnitude and Severity for Land Surrounding the Consent Decree Area, Robert Brace Farm, Waterford, Erie County, Pennsylvania*, dated December 18, 2017 (hereinafter referred to as the "Edwards 2017 Flood Report").

The purpose of the report was to "conduct a flood analysis of the area immediately upstream (south) of the Lane Road Culvert..." and to "analyze flooding... the physical impact thereof... and assess the circumstances and degree to which inundation due to flooding might expand outside the wetland region known as the "Consent Decree Area ("CDA")"". It appears the impetus for this report is to address the defendant, Robert Brace's, claim that is quoted under paragraph 40 on page 65, where he states that "periodic ongoing surface flooding occurred on or around the edge of the CDA, expanding into the upland portion (of his existing farm) by approximately 5-10 feet". The report goes on to state under the Summary of Opinions and Conclusions sections that "very little farmed land adjoining the CDA, if any, floods under any conditions considered".

Based on our review, the Edwards 2017 Flood Report has a different purpose than the EcoStrategies report entitled *Wetland Evaluation Report – Homestead, Murphy, and Marsh Farms, Waterford Borough, Erie County, Pennsylvania*, dated August 5, 2015 (hereinafter referred to as the "EcoStrategies 2015 Report"). The purpose of our report was to review historical documents, conduct a hydrologic survey and evaluate the wetland areas. The goal of the report was "to provide an understanding of the land use history, explain the agricultural exemption, and describe the past and present conditions of the hydrology and wetlands on the property". By doing so, the defendant and his counsel believed that the evidence would show that the existing wetland areas of concern were already a part of a commenced farming operation and they have a right to return the property to its pre-1984 condition via the Consent Order. The areas that are currently wet with standing water used to be dry prior to 1984 when the drainage ditches were functional.



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When EcoStrategies was contracted for this project, we did not feel it was necessary to spend time and money on sophisticated hydrologic modeling and predictive scenarios. We observed that the United States government had already spent a significant amount of time and money to study the *existing* conditions and focus on the *current* wetland areas, while there was no root cause study showing (with factual evidence) how the actual historical chain of events unfolded and how the land and water subsequently changed over time. We felt that real pictures are worth a thousand words versus predictive modeling. Therefore, our time and effort was spent 1) interviewing the defendant to understand the background and his claims regarding how the land changed over time, 2) obtaining and reviewing authentic historical aerial photos showing *actual* land use changes that occurred over time (in an effort to verify the claims made by the defendant), and 3) conducting an elevation survey of the Sharp Road and Lane Road culverts to measure invert elevations and verify the defendants claim that the Sharp Road culvert installation created a dam that backed up water in the farm ditches and submerged drain tiles.

The key point the defendant is trying to make is that he already invested in the drainage ditches and had an agricultural exemption in place with the USDA ASCS who approved the 43.4-acre CDA as "Converted Wetlands". This documentation is provided in the EcoStrategies 2015 Report. The defendant claims that his commenced conversion to farmland in the CDA should have never been stopped and therefore he has a right to restore it to the pre-1984 condition, which is presented on Figures 2, 5, and 8 (showing the May 11, 1983 USDA aerial photo) and Figure 6 (defendant's personal aerial photo). When viewing this evidence, one can clearly see functional drainage ditches and a well-drained site with no areas of ponding or standing water. By not allowing the defendant to maintain the farm ditches, the beaver dams were created and the site was transformed over several decades to what it is today. Figure 7 (2006 aerial photo) is a good representation of what the land looks like today (along with current site photos from the plaintiff and defendant) showing ponding and areas of standing water that were otherwise dry and well-drained prior to 1984. The incorrect installation of the Sharp Road culvert (i.e. installing it 1.75 feet higher in elevation than the "uphill/upstream" Lane Road culvert 1,800 feet away) further exacerbating the farm drainage problem. Predictive hydrologic modeling and flood analysis are not necessary because the authentic aerial photos and survey data present the real story.

EcoStrategies stands by the conclusion of our 2015 Report, which states that the defendant should be allowed to pursue his original farming goals and return the property to its pre-1984 condition via the Consent Order. Our job was to provide factual evidence in the form of authentic photographs, ASCS documentation, conduct an elevation survey of the two culverts, and provide a professional opinion of the results and conclusions. The Edwards 2017 Flood Report focuses on assessing flooding in farmable areas outside the CDA and does not conflict with the stated purpose and conclusions of the EcoStrategies 2015 Report. Therefore, the purpose, scope and conclusions for the two reports are different. We believe the EcoStrategies 2015 Report provides more factual evidence to understand the real background of how the drainage and standing water changed over time versus only studying current conditions and predictive scenarios.



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Disclaimer

This response was provided using an objective and scientific approach based on factual evidence. EcoStrategies understands that there may be other information that was not discovered or brought to our attention during this evaluation. EcoStrategies reserves the right to revise our observations outlined in this response letter if additional evidence or information becomes available. This document was prepared for the defendant's attorney in an effort to help resolve the court case. EcoStrategies disavows any liability for the use of this document by others.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew R. Johnson".

Andrew R. Johnson, PE, CPESC
Principal Engineer

Larry – Just my \$0.02 below to you.... Do not include in the report... just general thoughts and venting!

It is my opinion that the defendant should be allowed to return his farm to the pre-1984 condition. He was already invested in converting it to farmland and the wetland laws were still in their infancy at the time. The farm should be allowed to continue with the commenced conversion. If the United States government wants to protect this area, they should 1) reimburse the defendant for what he spent on the conversion (mostly to build the drainage network), and 2) purchase say a 100-foot buffer along the drainage ditch (50-feet on each side) that was built by the defendant and is now referred to as "Elk Creek" and pay the market value each year for this area that he could otherwise be farming (even though Bob would probably not entertain that option). In my experience, none of these issues would even happen nowadays because the laws are more clear and every buyer should be aware of the rules and regulations when they purchase a new property in the 21st century. The history of this project is convoluted because Bob was in the process of converting the farm when the rules and regulations were being promulgated and implemented at local levels. It is a sad case of a long chain of events that cost a hardworking family farmer a lot of money. I believe there are "bigger fish to fry" in the environmental world and government money would be better spent investigating hazardous polluters or cleaning up legacy brownfield sites throughout the country.