



Despite negative ruling, Waterford farmer vows to keep fighting for land

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Robert Brace was dealt a substantial setback as U.S. District Judge Barbara J. Rothstein issued an order granting the U.S. government's motion for summary judgment.

WATERFORD — Robert Brace was a relatively unknown 48-year-old farmer when he began his battle with the federal government over what he saw as his right to use his own land.

In the 32 years since, Brace has amassed legal fees of more than \$2 million, helped form the Pennsylvania Landowners' Association and ultimately sued the federal government, seeking more than \$8 million in a federal tort claim.

Brace was dealt a substantial setback on Monday as U.S. District Judge Barbara J. Rothstein issued an order granting the U.S. government's motion for summary judgment, essentially throwing out his claim.

Like most court documents, the judge's order is written in legal language. It's clear, however, that the 59-page order amounts to a bit of a legal scolding.

"This case has a long and taxing history," according to the background section of the judge's order. "The complexity of the issues in this case, the volume of the record (of) evidence, and the span of time have all led to the case's sloth-like progression. However, the main cause of delay has been the dilatory and insolent behavior of Defendants. Having repeatedly directed Defendants to comply with the Court's orders and the Federal Rules of Civil Procedure and having Defendants repeatedly disregard opportunities to correct their behavior, the court has reached its limit."

The judge wasn't the only one.

Calling the ruling "bullcrap," Brace, now 80, was fuming but determined to keep fighting when contacted Tuesday.

"I have paid over \$700,000 in the last two and a half years alone," Brace said. "You have to remember this has been 32 years of litigation. For what? I don't have due process. It's not just me. It's the country. This country is in dire shape. Am I going to continue to fight? What the hell is there to not fight about?"

The details of Brace's case are voluminous. The files fill boxes. Links to articles and pieces of testimony, dozens of them, can be found on the Pennsylvania Landowners Association website, www.palandowners.org.

The source of some of Brace's frustration can be found in 1996 testimony he gave to the U.S. House Judiciary Committee.

Brace, who bought the family farm from his father in 1975, testified: "In 1976 and 1977, I began working with the U.S. Agricultural Stabilization and Conservation Service in order to renovate the existing drainage system. This project was encouraged by the USDA because it promoted soil and water conservation. The ASCS drew up the original plan and I worked closely with them for the next eight years in repairing the drainage system. ... Little did I dream, nor have any reason to, that someday bureaucrats and appellate judges would declare my farm to be waters of the United States and my normal farming activity to be unlawful."

In that testimony, Brace went only to explain that the Department of Agriculture determined that wetlands work that began before December 1985 could continue if completed by 1995.

"Also, they paid me to clean out the drainage ditches after a season of heavy rainfall. ... Neither the Department of Agriculture nor any other agency ever indicated or stated I needed a Clean Water Act permit to pursue my farming activity."

Activity on his farm fit squarely in that category, he said.

Speaking fast and with the fresh anger of a man with a newly stubbed toe, Brace serves up reason after reason why the judge's order doesn't square with the facts.

"It was all done legal," he said. "Why are we here? I am so frustrated."

The judge hinted at some of her own frustration toward Brace's legal team, noting that the defendant had filed motions on Sept. 26 to exclude the government's testimony.

She wrote: "The astute reader will recall that the Court set the deadline for such motions as September 25, 2018."

Brace, who said he has fired his New York City lawyer Lawrence Cogan, said he understands that frustration.

"They are mad at my lawyer and they are taking it out on me," he said.

Missed deadlines aside, Rothstein cites the testimony of an expert witness to determine "Wetlands were present on the Marsh Site before being altered by Mr. Brace and ... the structure and function of wetlands on the Marsh Site and reach of Elk Creek ... have been severely altered causing negative impacts."

Brace said he plans to appeal the judge's decision, despite a growing mountain of debt and the challenge of a multi-million-dollar federal government lien that's been placed on his property. Brace, who said he needs \$1.5 million a year to operate his farm, said that's put him in a difficult position and has forced him to withdraw the cash value of his life insurance policies to cover expenses.

But he has no plans to end his legal battle.

"I'm 80. My life is over," he said. "I know what the hell I'm up against. Why would I quit?"

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