

# A NICE SANCTUARY

## Editors Note:

On a cold rainy day last November, Bob Brace and Hank Ingram stood on a country road in Erie County, watching bureaucrats from the EPA, Fish and Wildlife Service and Natural Resources Conservation Service disappear into the overgrown brush and weeds which had overtaken what was once a key part of the Brace's Homestead Farm. The bureaucrats, armed with sophisticated laser surveying equipment, were there along with a lawyer from the Department of Justice, to figure out how Brace was to restore what appellate judges in Philadelphia had declared to be navigable waters of the United States. In effect, they were going to tell Brace what he could do with his own land and it wasn't going to be what Brace does - farm it. The bureaucrats were figuring out how to make the land permanently unusable for productive farming.

Ingram thought: How can this be happening in America? This is crazy. Here are guys from the government with nothing better to do with the taxpayers' money than poke around in a now ruined farm field in Erie County to try to figure out how to make privately owned farm land unusable. Brace's thoughts ranged from outrage to utter despair. He has been a good steward of his family's land and he had always believed that farming was a worthwhile calling. He had been willing to take a stand for his land and fight the government for the right to use his property for farming. After a long battle, the government had prevailed and his land was passing out of his hands into the clutches of the federal bureaucracy. All this without the title changing hands or, just compensation offered. The sense of frustration was overwhelming. His story had been told over and over but often it seemed that no one listened or even cared.

Shortly thereafter, Brace was heartened to learn that noted property rights advocate Tim Walters had picked up on the Brace story and gotten it just about right in his new book *The Endangered American Dream*. The *Landowner* is pleased to reprint here an excerpt about Bob Brace from this compelling book which tells it like it is.

*"The right to hold property is a natural right. It is the safeguard of family life, the stimulus and reward of work."*

—Pastoral Letter of the  
French Roman Catholic Hierarchy, 1919

**W**hen Robert Brace bought his father's homestead farm in 1975, he had no idea he was buying a nightmare. The acreage near Waterford, Pennsylvania, had been a beef and dairy farm, but Brace thought he would work it into his truck farm operation. Thirty years a vegetable farmer, Brace believed he could convert the pastures and some existing cropland to suit his needs.

Robert Brace Farms, Inc., worked the newly-acquired farm for more than a decade. Bob Brace and his sons, Ronnie and Randy, maintained a ten-year conservation project on the land, which included regular cleaning

of an existing system of drainage ditches. In 1987 a colony of beavers moved in and built a dam in one of the ditches, blocking the natural flow of water and interfering with normal farming practices.

Brace reported the problem. In May of that year, two wildlife specialists arrived from the Pennsylvania Game Commission (PGC) to take the beavers out of the drainage system. One of those individuals was a man named Andrew Martin.

The Brace farm, by this time, was in excellent condition. The years of planning and thoughtful management had transformed the property into a picturebook setting. Martin looked around and said he thought the farm would "make a nice sanctuary." He asked Bob Brace to show his permits for

cleaning the ditches. He was not impressed or convinced by Brace's explanation that regular cleaning of the ditches was allowed under agricultural exemptions.

Bob Brace and Martin were not stepping to the same fiddler. A verbal exchange resulted between them and ended abruptly when Martin told Brace "he didn't know what trouble could be." Within a few days the Brace farm was crawling with uninvited federal, state and local officials excavating soil and identifying plant species.

Two months later the Brace family received notice from four different federal and state regulatory agencies that they were in violation of "wetlands" provisions in the Clean Water Act. The Environmental Protection Agency (EPA), the Corps of Engi-

neers (COE), the U.S. Fish and Wildlife Service (FWS) and the Pennsylvania Department of Environmental Resources (DER) had determined that the Braces were guilty of filling wetlands while cleaning their drainage ditches. They were ordered to "restore" the property to its original condition or face penalties exceeding \$100,000 per day and possible imprisonment.

Bob Brace decided to stand his ground, literally. The case went to federal district court. Brace won, but not until *seven years later!* District Judge Glenn Mencer exonerated Robert Brace and Robert Brace Farms, Inc., of all charges aimed at him from the U.S. Department of Justice. Mencer, upon visiting the Brace farm, noted that less than a fourth of the land at issue even met the definition of a wetland. He found in his judgment for Brace:

*This certainly does not appear to be the type of case where a corporation or large farming enterprise takes control of a parcel of land and dramatically alters the composition of the land and runs roughshod over the requirements of the Clean Water Act.*

The regulatory agencies hate to lose control of any portion of what they decide is theirs. Therefore, Bob Brace found his reprieve short-lived. Sixty days after Judge Mencer's ruling (the last day possible), the Department of Justice filed a notice of appeal. Brace said reflectively, "It's changed the way I look at everything. Land use regulations have become so over-burdensome and confiscatory that there's no longer any incentive for property owners and businesses to continue risking everything day after day."

Unfortunately, that's exactly how the control-greedy powercrats of the regulatory government bureaucracies want Bob Brace and other landowners to feel. It makes their jobs easier. Regulation equates to control. To control a man's property is to control the man. Big government and its offspring bureaucracies are self-conditioned to thrive on control. The freedom of a property owner to manage and work his own land without government intervention (as intended by the Founding Fathers) is the highest obstacle in the path of total government control. Alas, the sword of control has many sharp edges.

The Third U.S. Circuit Court of Appeals in Philadelphia reversed Judge Mencer's rul-

ing. The appellate court found instead that Robert Brace was *not* entitled to the agricultural exemption in his cleaning of the drainage ditches and, therefore, had violated Section 404 of the Clean Water Act by not filing for a permit. The conservation benefits derived from maintaining the drainage system for ten years *before* the land was declared a wetland did not matter to the court. Nor did it matter that there was no reason to get a permit — and no law to break by *not* getting a permit — until *after* the run-in with Andrew Martin resulted in the cursory designation of the property as a wetland. The order to "restore" the property was upheld and the case turned back to the district court for handling of the restoration order and deciding civil penalties. Robert Brace requested a review of his case before the U.S. Supreme Court.

Bob Brace's attorney Henry Ingram said, "The odds are about 4,000-to-one that the court will accept the request." He added, "Bob Brace is now subject to millions of dollars in civil penalties because he's been 'in violation' for a long time," Ingram says Robert Brace is a "man of great strength and character," but more than eight years of bureaucratic persecution over what Brace believed was conscientious management practices on his own land have taken a heavy toll — physically and emotionally. In June, 1995, Ingram said Pennsylvania Governor Tom Ridge was beginning to lose interest in the long-running issue. A bank had canceled its line of credit to the Brace farm. Ingram emphasized, too, that "to comply with the restoration order will destroy the drainage system and ruin the farm."

Brace noted during the bureaucratic melee over his farm that "the government didn't have to prove that what I did harmed the environment or caused harm to my neighbors." An allegation of wrongdoing prompted by a vindictive bureaucrat is all it took to inflame four government agencies and the U.S. Department of Justice against one honest farmer.

Robert Brace summed it up. "Without private property ownership and a strong economy, everyone loses, including private citizens who depend upon the existence of the business community for their livelihoods. People need to realize that their voice *does* make a difference, and that the days of thinking things will magically get

better or that 'someone else will take care of it' are over. They need to contact their Congressmen and Senators about the unfairness of it all . . . *before* it's too late."

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On June 26, 1995, the Supreme Court — without explanation — refused to hear Brace's appeal. Short of congressional intervention, there is no higher level of authority. Faced with a court order to, in effect, convert his own farm into a wetland sanctuary, Brace reflected, "I've gotten to know the ways of the legal, legislative and judicial systems . . . They aren't much help to ordinary citizens like me."

Incidentally, Andrew Martin left the Pennsylvania Game Commission a short time after starting Bob Brace's nightmare. As a self-proclaimed "wetland and environmental specialist," he formed his own company, Andrew Martin & Associates. In a subsequent interview with the *Erie Times*, he boasted, "My business is driven by regulations."

*Editors Note:*

*It is of interest to note that the Farm Credit Bank, which Bob dealt with for over 30 years, did not cancel his line of credit due to poor farm management or unpaid debts. Rather, the bank canceled Bob's line of credit because of their fear of potential liability associated with the government's impending order.*

*Ironically, Bob Brace, as frugal a money manager as he is a land conservationist, owed the bank no money when they decided to pull out on a loyal, long time customer.*

*Bob noted for the record that he is now doing business with a new bank which he is happy with and which he feels is responsive to the needs of farmers like himself.*