

UNITED STATES COURT OF FEDERAL CLAIMS

ROBERT BRACE,)	
)	
Plaintiff,)	
)	
v.)	Docket No.: 98-897L
)	
UNITED STATES,)	
)	
Defendant,)	

Pages: 600 through 897
Place: Washington, D.C.
Date: January 13, 2005

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1 A Well, I don't know the answer to that,
2 because if let's say these -- let's say we had this
3 discussion.

4 Q Right.

5 A And we came up with a resolution. Certainly
6 that discussion could take place without lawyers. It
7 could be amongst the technical people. There could be
8 resolutions that would be done outside of the
9 restoration plan itself that would assist Mr. Brace.

10 As I believe I testified to earlier, there
11 was nothing in the consent decree that precluded
12 activity within the 30 acres; just that it had to be
13 authorized through the Clean Water Act.

14 Q Right.

15 A So if there were activities that could be
16 undertaken which would either meet one of the
17 exemptions or meet one of the nationwide permits, or
18 you know, perhaps it might be a permit application if
19 had to be significant. Those would be things that I
20 believe you could do and wouldn't undermine again the
21 consent decree or the restoration plan.

22 Q Right.

23 A So I can't answer whether you would need to
24 get a lawyer for that or not. I mean, you know, I
25 would say many or most instances we resolve both

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1 permitting, regulatory issues, and enforcement issues
2 without the involvement of counsel.

3 Q Okay. But that's not generally true after
4 trial and the entry of a court judgment, is it?

5 A I don't know what -- Justice would be able
6 to answer that.

7 Q But I mean, in your experience what you were
8 just talking about is not cases that have gone to
9 trial, but cases before trial. You resolve most
10 crises --

11 Q Correct.

12 Q -- before trial?

13 A That's correct.

14 Q Okay. But after trial, it's more
15 complicated, isn't it?

16 A Yes, it is.

17 Q And you talk about the technical people.
18 Mr. Brace or whoever owns this property will also have
19 to hire a wetlands consultant probably, right?

20 A Again, is that a possibility? Yes. Without
21 having the discussions, it's difficult for me to
22 answer whether that's a probability or not.

23 Q Really. You think Mr. Brace would be able
24 to design and to respond to the wetland concerns of
25 EPA himself?

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1 A I think that if let's say, and again I'm
2 giving you a scenario because we're talking about
3 hypotheticals at this point, but if there was an issue
4 with facilitative drainage off of one of his upland
5 agricultural crops, that would be something that we
6 could sit down, see what the issues are. Perhaps get
7 other folks who are, you know, versed in this, you
8 know, from either the federal or state entities, and
9 possibly come up with a plan that would help him.

10 And so whether he would need a consultant
11 for that, it depends on the magnitude. Whether he
12 could perform that work himself, again it would depend
13 on the magnitude.

14 It could be a simple dip-out of an upland
15 drainage ditch. I don't know. So without really
16 knowing the context of what we are trying to do, it's
17 tough for me to say how many folks would need to be
18 there to be part of that cure.

19 Q Well, how about if what we are trying to
20 cure is water backing up across South Hill Road onto
21 the Homestead property?

22 A Okay. Then again we would have to look at
23 what the root causes for that would be. It could be
24 that perhaps the ditches that are moving water off of
25 those agricultural fields are not sufficient in size.

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