

Waterford farmer appeals federal case over wetlands, again

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WATERFORD — As he promised, Robert Brace is not giving up in his expensive legal fight over his use of wetlands on his farmland in southern Erie County.

Brace is appealing his latest defeat in the case to the 3rd U.S. Circuit Court of Appeals, in Philadelphia.

Brace is challenging U.S. District Judge Susan Paradise Baxter's Sept. 24 decision in federal court in Erie. She said Brace had violated a consent decree regarding wetlands on his property.



Brace

In response to Baxter's decision, Brace in a September interview said "environmental law is the same as Sharia law," referring to Islam's legal system, and he vowed to appeal.

A lawyer for Brace filed a notice of appeal on Friday. Brace's lawyers and lawyers for the government will get to file appellate briefs and argue their cases before the 3rd Circuit.

Brace, 82, who farms corn and soybeans on 130 acres, said he has spent "millions and millions" of dollars fighting the government over the wetlands since the 1990s. Part of his farm is located in McKean and Waterford townships, immediately east of Sharp Road, north of Lane Road and south of Greenlee Road.

In ruling against Brace, Baxter, in an 86-page opinion, agreed with the Department of Justice that Brace violated a 1996 consent decree by, among other things, clearing, draining, plowing and planting on wetlands that the decree was designed to protect.

She found that the Environmental Protection Agency's notice of violations against Brace, filed in 2016, was valid, and that Brace had waited too long to ask the courts to set aside the

consent decree — an agreement between two parties that includes judicial oversight.

Though she ruled against Brace, Baxter held off on deciding whether to grant the government's request that she penalize him as much as \$1,562,250 under the terms of the consent decree.

Baxter wrote that she will defer a decision on the penalties and costs pending the development of a plan between the government and Brace on how Brace will restore the wetlands that were subject of the violations.

Brace's fight with the government case originated with a lawsuit the government filed against him in 1990 in U.S. District Court in Erie.

Brace clashed with the U.S. Fish and Wildlife Service about his right to repair drainage pipes on a section of his farm. The federal judge who first heard the case, Glenn Mencer, ruled in Brace's favor in 1993, finding that Brace had done nothing but follow normal and accepted farming practices.

The 3rd Circuit reversed Mencer's decision and ruled in favor of the government. The U.S. Supreme Court declined to hear the case in 1995, letting the 3rd Circuit's decision stand. After the 3rd Circuit ruling, Brace signed the consent decree, entered in 1996.

Since then, Brace and the government have been at odds over whether he has abided by the consent decree and environmental laws regarding the wetlands. In another recent decision, another federal judge, Barbara A. Rothstein, in 2019 rejected Brace's challenge of the government's claim that he violated environmental regulations by clearing wetlands without a permit in 2012.

The 3rd U.S. Circuit Court of Appeals in June unanimously affirmed Rothstein's ruling, including her unusual finding that Brace's previous lawyer had handled the case so poorly that the government prevailed by default.

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