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VIA FAX

Ms. Paula Easley  
2134 Crataegus Avenue  
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Anchorage, Alaska 99508

Re: Robert Brace and Robert Brace Farms, Inc. v.  
U.S. Supreme Court Docket No. 94

Dear Ms. Easley:

Thank you in advance for your willingness to consider helping us line up some Amicus support for Bob Brace's petition for writ of certiorari. The petition was filed on Monday, April 10, 1995. Amicus briefs supporting the petition must be filed on or before May 9, 1995.

The Pacific Legal Foundation will be filing an amicus brief on behalf of the California Farm Bureau, National Cattlemen's Association and the California Cattlemen's Association. The American Farm Bureau Federation, joined by the Pennsylvania Farm Bureau and other farming groups will also be filing an amicus brief.

The Brace appeal is essentially an attack on EPA and COE wetlands regulations promulgated in connection with those agencies' implementation of Section 404 of the Clean Water Act.

Bob Brace is a third-generation farmer in Erie County. He has clean hands in this matter. His purported unlawful activity consisted of cleaning existing drainage ditches on his farm to restore the natural flow of water and convert a "wetland" cow pasture into crop-bearing field. The only "discharge" in the case was Brace's removing sediment from his drainage ditches and sidecasting it back onto the adjacent fields from whence it came. For this EPA and COE cited Brace for unpermitted discharge of fill into waters of the United States.

The case is peppered with ironies. Brace's water problem began when beavers introduced to the area by the Commonwealth of Pennsylvania blocked his farm's drainage system. Beginning in 1976, before section 404 jurisdiction was extended up to headwaters areas, Brace cleaned the drainage ditches using plans prepared specifically for him by the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture. Subsequent to his receiving cease and desist orders from EPA and

redepositing it on the farm fields from which it had washed in the first place.

The Third Circuit's decision sent shock waves through the Nation's farming communities and farm organizations from New York to California, alarmed by the Third Circuit's decision, supported Brace's petition to the Supreme Court by filing Amicus Curiae briefs. The American Farm Bureau Federation, which has member organizations in all 50 states and represents 4.4 million farm families, the Farm Bureaus of California, Pennsylvania and New York and the National Cattleman's Association, represented by the nationally prestigious Chicago law firms, Jenner & Block and Mayer, Brown & Platt, all urged the high Court to hear Brace's appeal and reverse the Third Circuit. One brief stated:

Although the court of appeals' decision will have nationwide impact, amicus Pennsylvania Farm Bureau, which represents over 26,600 families in the Commonwealth, notes that it is of special and immediate concern to the approximately 5,800 farms located in northwestern Pennsylvania. The topography and quality of the land farmed by petitioner Brace is typical of that region, where poor drainage that diminishes crop productivity and yield is the norm. Similar conditions exist in portions of New York State, where amicus New York Farm Bureau represents over 25,000 member families. In the southwestern portion of Chautauqua County, New York, alone, hundreds of farms would be directly impacted by the court of appeals' decision, as would thousands of farms statewide. The Third Circuit's misconstruction of the CWA harshly limits the ability of Pennsylvania and New York farmers to use historically proven soil management practices, thereby jeopardizing their ability to meet needed levels of feed crop production and casting doubt on the economic viability of both the farms themselves and the families who operate them.

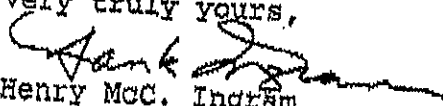
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COE in 1987, Brace applied for an after-the-fact permit. The agencies refused to process his application.

EPA is insisting that Brace plug his drainage system with concrete so that the 30 acre wetland site which meets the technical definition of "wetland" will revert to its "natural state." However, the drainage system servicing the 30 acre site is integrated with the rest of the farm. Thus, EPA's remediation scheme is likely to ruin the entire farm.

Please do not hesitate to contact me with any questions or comments.

Very truly yours,

  
Henry McC. Ingram

HMI:km

Enclosures