

## Justice May Yet be Served in 30-Year-Old EPA Wetlands Case Against Small Erie Pa. Farmer

Erie County, PA, July 10, 2017 – On June 15, 2017, a Federal Magistrate Judge from the Western District of Pennsylvania issued a potential “game-changer” of a ruling that could potentially end *30 years* of wetlands-related harassment of a small Erie, Pa. farmer and his family by the U.S. Environmental Protection Agency (“EPA”).

EPA first filed this Clean Water Act (“CWA”) Section 404 lawsuit against Robert Brace in 1990, (*United States v. Brace*), but had tried, along with the U.S. Army Corps of Engineers (“Corps”) and the U.S. Fish & Wildlife Service (“FWS”), to administratively limit Mr. Brace’s normal farming activities on government-designated wetlands since, at least, 1987.

CWA Section 404 prohibits the dredging and filling of “Waters of the United States” (“WOTUS”), including adjacent wetlands, without a Corps permit. Congress and the agencies, however, subsequently limited this provision’s impacts on agriculture with the enactment of the Food Security Act of 1985 and implementing regulations and guidance. [Prior converted croplands](#) do not qualify as WOTUS and are not covered by CWA Section 404 at all, while [normal farming activities](#) are exempt from permitting.

Apparently frustrated with its inability, thereafter, to subdue Mr. Brace, [a well-known property rights advocate](#), EPA reopened the case 11 days prior to President Trump’s inauguration, alleging further 404 permit violations in an apparent effort to claim additional Brace farmlands as WOTUS-adjacent wetlands.

The [Judge’s order](#) directed EPA, against the government’s wishes, to grant Brace’s attorneys six months of new discovery and the opportunity to engage in additional briefing to clarify for the Court the true purpose of an unusually short and ambiguous EPA-drafted Consent Decree Brace had executed with the U.S. Justice Department in 1996.

In EPA’s view, the Consent Decree required Brace to restore 32.5 acres of one farm tract designated as wetlands to its prior 1984 condition. Brace complied with the Consent Decree, but soon found that it went much further. Indeed, when fully implemented, it not only transformed the 32.5 acres to wetlands (*a condition not present in 1984*), but also caused surface flooding and subsurface erosion of between 67 and 92 additional acres of his three contiguous and adjacent farm tracts, thereby rendering that portion of them nonfarmable from 1996 to 2016.

According to Brace, “the Magistrate Judge should be given due credit for recognizing the weaknesses in the Justice Department’s portrayal of this case, and EPA’s over-enforcement of the ‘96 Consent Decree to the detriment of my family and its generations-old farming business. I thank the Judge for being fair and understanding the hardships we have long suffered as the result of runaway government regulation, as well as, the need to preserve both the environment and our constitutionally protected private property rights against the tyranny of an ever-expanding administrative state.”

As an added measure of insurance, Brace [filed](#), on July 3, 2017, and [notified the Court](#), on July 7, 2017, of \$8 million of administrative claims he has since brought against the EPA, Corps and FWS under the Federal Tort Claims Act. Brace justifiably seeks compensation for damages to his farmlands and for 20 years' worth of [lost harvest revenues](#) resulting from the flooding and erosion caused by EPA's improper, negligent and wrongful over-enforcement of the Consent Decree.

Robert Brace, a resident of the [Great Lakes Region](#), is only one of many small farmers nationwide who have unnecessarily suffered from EPA's aggressive wetlands enforcement policies. He like they, remain concerned that these and other nonsensical FWS policies in the West, if not corrected, will compromise [U.S. national food security](#) by raising the likelihood of increased U.S. dependence on unsafe and unsecure third world food imports.

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