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July 27, 2016

Laura J. Brown, Esq., Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044

RE: Brace/EPA and DOJ

Dear Attorney Brown:

I am writing in response to your July 13th letter. Needless to say, my client is disappointed at the position the Government continues to take in this matter. That being said, my client recognizes that he has no choice but to take steps to appease the Government to avoid subjecting himself and his family to serious financial consequences associated with disputing the Government's position. To that end, I am authorized to propose the following:

1. My client will agree to give the EPA access to perform a demarcation of the approximately 30-acre area discussed in the consent decree. My client will then review that demarcation to determine if he agrees that it accurately describes the area intended to be covered by that decree. Importantly, my client believes that Jeff Lapp should be present for this and all other site visits. He is the individual who testified on behalf of the EPA in the takings case, and has been consistently involved in this entire matter for many years.
2. My client will also agree to give the EPA access to the property to identify restoration within the 30-acre areas that it believes needs to occur to resolve the current dispute. As with the demarcation, my client will then review that proposed restoration plan to determine if he will agree to it.
3. My client will not agree to pay any civil penalties. The EPA's August 29, 2013 letter made it clear that no such penalties would be involved in this matter. Further, to the extent the Government is taking the position that Mr. Brace did work in excess of what was discussed during that meeting, Mr. Brace fundamentally disputes that assertion.

4. While I had hoped that we could wrap up all potential areas of dispute in one negotiated resolution, the Government's position regarding the Marsh property appears to prevent that. That property is now, and has always been, part of an integrated and on-going farming operation. My client has not done anything more than what he is legally entitled to do on that property. Unfortunately, it appears that employees from the Army Corps of Engineers and the Fish Commission decided that they wanted to make an example of Mr. Brace, and have tried to cast his work on the Marsh Property as illegal. This is simply not true. Therefore, my client is willing to proceed as outlined above with regard to the consent decree area, and to continue discussions regarding the Marsh property, but will not agree to any restoration or other physical (or economic) activities related to the Marsh Property at this time.

My client is taking these steps because he is left with no practical choice. For the better part of his entire life, Mr. Brace has done nothing more than try to use his property to farm. He interacted with the correct agencies (including the conservation district) to obtain PC and CW designations for all of the farms at issue in this case. As the Eco-Strategies report indicated, the problem began when with an overzealous game commission employee and his decision regarding a beaver dam that existed on Mr. Brace's property. After the EPA came in to challenge Mr. Brace, the only Judge to actually engage on the facts correctly found that Mr. Brace had done nothing wrong. Then, the Third Circuit deviated from the established facts and law, and carved up Mr. Brace's property in a way that makes no practical sense. The Third Circuit's decision is also highly suspect after the 2014 Farm Bill's passage.

After begin forced into signing the consent decree due to the practical consequences that individuals must face when dealing with this type of issue, Mr. Brace then proceeded on a decade's long effort to be fairly compensated for the 30 acres of property that he is no longer able to use. While denying his request, Judge Allegra's opinion made it clear that the EPA needed to work with Mr. Brace to ensure that the consent order was not over enforced.

My involvement in this matter then began, and we made repeated and concerted efforts to get that cooperation. The one time it happened, and the EPA allowed appropriate work to be done to avoid over enforcement of the consent decree, the Government quickly reversed that decision. This is perhaps the best illustration of the ever changing rules that Mr. Brace has been forced to endure. Now, he is essentially back where he started, forced to make changes to his property or risk financial ruin.

As I hope this letter makes clear, my client is adamant in his position. However, he recognizes that continuing this fight with the EPA and DOJ will, once again, place his family in a very difficult position. Therefore, he is willing to proceed as outlined above in an effort to reach a resolution.

Very truly yours,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.

By: 

Neal R. Devlin