

Farmer asks U.S. high court to hear case

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WATERFORD — A Waterford farmer's 20-year battle with the federal government could soon be over.

Robert Brace, who first clashed with the U.S. Fish and Wildlife Service over his right to replace and repair an aging



Robert Brace: Waterford man has battled two decades for the right to replace and repair a drainage system.

drainage system on his farm, has filed an appeal with the U.S.

Supreme Court. The appeal — a petition for writ of certiorari, or a request for the Supreme Court to hear his case — will likely be his last.

"This is his final appeal," said Erie attorney Neal Devlin, who drafted Brace's appeal along with Richard Lanzillo.

It didn't come to this overnight.

It was May 1987 when the USFWS told Brace he was in violation of the Clean Water Act and ordered him to pay a fine of \$25,000 a day and to dismantle his drainage system.

Brace's battle would lead to the formation of the Pennsylvania Landowners Association

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NEWS



FILE PHOTO VIVIAN JOHNSON/Erie Times-News

Robert Brace has been fighting the federal government for 20 years to get compensation for land he is unable to use due to federal wetlands rules. He began his fight in 1987, and it has wended its way through the court system. Now he is asking the U.S. Supreme Court to weigh in.

Appeal: Farmer turns to high court

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and an invitation for Brace to testify before Congress.

None of it did much to help Brace's case in the courts.

Ultimately, Brace would sign a consent decree in 1994. He avoided a \$125,000 fine by agreeing to pay \$10,000 and dismantle the drainage system that once made it possible to farm a parcel of land he had bought from his father.

Although he still owns the land that figured in that dispute, it's swampy and all but useless to him today.

It's for that reason that Brace argues that the government took a valuable asset from him without compensation. And it's why he's going to court one more time.

Brace lost his most recent battle in August when the U.S. Court of Federal Claims ruled that

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Brace was not entitled to compensation for 35 acres of wetlands that can no longer be farmed.

That ruling relied in part on precedent that it was acceptable to take land when it represented less than 90 percent of a person's property.

In other words, Brace said in September, "The mind-set of the court was that I owned other property that I could still use. What kind of a society are we living in when our government thinks it's OK to steal a little as long as they don't steal it all?"

Devlin said Brace's appeal focuses largely on two issues. The first of those is whether the lower courts have wrongly con-

cluded that there was no taking of Brace's land. "When it benefits the government they look at it as two distinct parcels," Devlin said. "Now when we are in the taking analysis, they look at the entire 130 acres."

Devlin said he would also argue that Brace was free to pursue legal action despite the fact that he signed a consent decree.

"The court held that because there was a consent decree, it could not be a taking. They held that it was consensual in part," Devlin said. "We disagree with that. If you look at what Bob Brace did here, he fought for his property rights every step of the way."

It's anything but certain that the Supreme Court will even hear the case. The nation's highest court, after all, typically hears 200 cases a year out of the 4,500 or so normally submitted for consideration.

Despite the long odds, the 68-year-old Waterford farmer said he's optimistic and convinced this fight is worth having.

"If we don't win this, the future for your kids or my kids is pretty bleak," Brace said. "What gives our government or our society the right to steal my property or your property?"

Devlin hopes to argue those issues in person and said there's reason to hope the case will be considered.

Either way, Devlin said he applauds his client's willingness to fight.

"Bob Brace has fought the good fight," Devlin said. "It's what our forefathers envisioned, that individuals would stand up for their own rights. Bob is trying to do that right now."

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