

# Judge Says Corps of Engineers is Responsible for Damaging Floods Along Missouri River

BY: Matt Campbell, The Kansas City Star | March 15, 2018

(TNS) - A long-standing dispute over flood control versus wildlife protection along the Missouri River hit a milestone with a court ruling that says the U.S. Army Corps of Engineers caused flood losses for property owners.

In a ruling unsealed Tuesday, a Federal Claims Court judge agreed with plaintiffs who sued the federal government, claiming that the Corps' policies favored wildlife protection over their economic interests.

A second phase of the case will look at whether the property owners are entitled to any compensation from the government. Still, they considered the first step a major victory.

"Today is the day the plaintiffs have patiently waited for and have fought for during the past four years," attorney R. Dan Boulware of the Kansas City-based law firm Polsinelli said in a statement.

The lead plaintiff among 372 farmers, landowners and business owners over six states is Roger Ideker of Ideker Farms in St. Joseph.

"As a farmer and landowner who has experienced substantial losses from these floods, I'm extremely pleased with this outcome," Ideker said in a statement. "It rightfully recognizes the government's responsibility for changing the river and subjecting us to more flooding than ever before."

The public affairs office of the Corps of Engineers headquarters in Washington did not immediately return a call.

A volunteer for the Missouri Chapter of the Sierra Club, who has followed the arguments in the lawsuit, said the plaintiffs wrongly think their interests in flood protection supersede all other considerations in river management.

"Now they are asking for taxpayers to pay for their damages and forgo any other use of the river," said Caroline Pufalt of St. Louis. "(They say) recreation doesn't matter. Fish and wildlife don't matter. You need to do everything to protect us from flooding."

The Sierra Club was not a party to the lawsuit.

The plaintiffs estimate their flood losses at more than \$300 million going back to 2007. The court ruled that the Corps changed its flood management after 2004, in response to wildlife protection pressures, and made flooding worse.

But the court ruling was not a complete victory for the property owners. It did not find the government responsible for severe 2011 flooding. The Corps said flooding that year was unavoidable.

The basis of the lawsuit is the Fifth Amendment prohibition against the government taking private property without compensation.

The 259-page ruling, by Senior Judge Nancy B. Firestone in Washington, follows a complex trial that began in Kansas City before moving to Washington and included testimony from more than 95 witnesses and more than 3,250 exhibits. More than 20 million documents were produced in the first phase.

Her ruling said recurrent flooding in the Missouri River Basin will continue under current management systems as drainage of land along the river is impeded by higher water.

The river is 2,341 miles long from Three Forks, Mont., through Kansas City and on to St. Louis, covering over 530,000 square miles.

The river was naturally wide and shallow, meandering across the floodplain and providing a variety of habitat for wildlife. Flooding was fed by rainfall in the Plains and mountain snow melt.

In the early 20th century the federal government determined the river should be controlled to aid human settlement and economic development. That was achieved and regulated with a series of dams and reservoirs.

The Missouri River Basin is now controlled by six main dams with a storage capacity of 73.1 million acre-feet. It became fully operational in 1967 and is the largest reservoir storage system in the United States.

Under federal law the river is to be managed by the U.S. Army Corps of Engineers, which is to capture and release water by balancing flood control, navigation, water supply, irrigation, power, recreation, water quality and wildlife preservation.

The plaintiffs argued that the Corps changed management policies, reducing the emphasis on flood control in favor of returning the river to a more natural state to provide additional spawning and breeding areas for threatened species.

The Corps has been under pressure for decades to better protect troubled species, such as the pallid sturgeon, but it denied changing the rules enough to cause unanticipated flooding.

Based on expert testimony, the court found those changes after 2004 did cause water levels "to rise higher than they would have risen without these changes and that this rise ... has led to more flooding or more severe or longer flooding than would have occurred had these changes not been made by the Corps."

U.S. Sen. Roy Blunt, Republican of Missouri, issued a statement saying steps need to be taken in the wake of the court ruling.

"I hope this decision is the first step in a new direction for the Corps," he said. "I look forward to working with my colleagues to ensure the river is managed in a way that prioritizes flood control, while balancing other interests."

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