

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Stephen C. Milne; Brenda S. Milne; Stephen C. Milne Farms, Inc.; Luke Andrew; Bryce Andrew; Richard Andrew; Bernal J. (B.J.) Bailey; Bert Bailey; David Banks; David Banks; Michael W. Bean; Deborah J. Bean; Rex Behrens; Roxie Agena; Roy G. Behrens Trust; Bob Chatt Farms, Inc.; Anne L. Bollin and William Edward Grape, Trustees for The Edward and Pauline Grape Trust; John J. Bollin III and Cathi O'Malley, Trustees for the John J. Bollin Jr. Family Trust; Tom Bullock; Central Agency Farm, LLC; Sherrill Dashner; Christine Dashner; Sherrill Dashner Trust; Eric Dawson; T&S Farms, Inc.; Doll Limited Partnership; Jeff Doll; Scott Doll; Jay Doll; Mark Doll; Tammy Doll; Gertrude Ettleman; Howard Ettleman Trust; G-J Land, Inc.; George Stratbucker; Stratbucker Family Foundation; Todd Gammon; Craig Gammon; Tracy Blankenship; Meg Schroeder; Jeffrey Gaskill; River Farms Company, Inc.; I.E.G. Corporation; C.J. Griffith III Trust; C.B. Griffith Trust; Jerry P. Johnson; Jane A. Johnson; Dennis Lincoln; Dean Lincoln; Estate of Margaret Lincoln d/b/a Lincoln Family Farms Ltd.; Low Farms, LLC; Jimmie B. Low, LLC; Annette Low Kaplan, LLC; Virginia Low; Rebecca Low; Tom Mackland; Melard Farms Co.; Brian Miller; Max Peeler; Corky Peeler; Jeremy Peeler; Marion Lee Peters; Nancy Anne Peters Family Revocable Trust; ML Peters Farm, LLC; Ken Root; Cynde Root; Hawkeye Farming Inc., Riverbend Farms, Inc.; Eva Root; Scott Roth; David Sonnenmoser; Stepanek Farms Limited Partnership; Tony Stepanek; Mary Stepanek; Nicholas R. Stepanak; Sarah R. Stepanek Trust; John Stouder; Mary Stouder; Wayne Stouder; Linda Stouder; and Tom Ferguson L.L.C., on behalf of themselves and all others similarly situated

Plaintiffs,

Case No.: 20-cv-_____

v.

UNITED STATES OF AMERICA,

Defendant.

CLASS ACTION COMPLAINT

1. The named Plaintiffs (“Plaintiffs”) bring this action against the Defendant, the United States of America (“the Government”), on behalf of themselves and a class that includes all persons and entities who have property interests in the Missouri River Basin (“Basin”) located along both sides of the reach of the Missouri River (“River”) from the geographic area of Burt County, Nebraska, to Leavenworth County, Kansas, who experienced flooding in one or more years from 2007 to 2014 (the “Class”).

BACKGROUND AND NATURE OF THE CLAIM

2. The Plaintiffs bring their claims for a taking of their property interests, both real and personal, without just compensation, as a result of deliberate and substantial deviations by the United States Army Corps of Engineers (“Corps”) from its decades-old policies and practices in managing the River. Specifically, the takings were accomplished by means of the Corps’ deviations or changes in its operation of the Missouri River Mainstem Reservoir System (“System Changes”) and its operation and maintenance of the Missouri River Bank Stabilization and Navigation Project river-control structures (“BSNP River Changes”).

3. In order to restore a portion of the Basin ecosystem destroyed by the Corps’ decades of flood control, including the habitat of certain native species in the Basin, and to comply with the Endangered Species Act (“ESA”), the Corps authorized and began implementing the MRRP in 2004. The Corps knew that the MRRP System and BSNP River Changes represented a paradigmatic shift in the Corps longstanding policies and practices in managing the River,

including the deprioritization of flood control. It also knew or should have known that as a direct, natural, probable and foreseeable result of those deviations there would be an increase in the frequency, severity, and duration of flooding and injuries and losses to the Plaintiffs' property interests in question.

4. The combined and cumulative effects of the Corps' MRRP System and BSNP River Changes altered the existing flooding patterns of the River, subjecting Plaintiffs' property interests to an increase in the frequency, severity, and duration of flooding that began in 2007. This pattern of added and atypical flooding persists and will continue as long as the MRRP is operational. The Corps has stated that there are no plans to terminate the MRRP.

5. The MRRP alteration of the River's flooding patterns has resulted in the appropriation by the Government of property interests of the Plaintiffs, including the appropriation of flowage easements over land owned by the Plaintiffs, to further the government-authorized public purpose of the MRRP.

6. This class action lawsuit follows the U.S. Court of Federal Claims issuing a trial opinion in *Ideker Farms, Inc. v United States*, Case Number 1:14-cv-00183L-NBF, Dkt. 691, on December 14, 2020 ("*Ideker III*"). The opinion in *Ideker III* was the final of three opinions that resulted from a two-phase trial of bellwether or representative plaintiffs' claims, with the preceding two opinions reported at *Ideker Farms, Inc. v. United States*, 136 Fed. Cl. 654 (2018) ("*Ideker I*") and *Ideker Farms, Inc. v. United States*, 142 Fed. Cl. 222 (2019) ("*Ideker II*"). In *Ideker III*, the Court concluded that the three Phase II Representative Plaintiffs that were agreed upon by the Parties had, in fact, established that the Government had taken permanent flowage easements over their representative tracts without just compensation in violation of the 5th Amendment. Although requested by the Plaintiffs, the Court did not award just compensation for any injuries or losses

caused by the MRRP flooding that occurred *before* the taking date of the flowage easements, which the Court concluded occurred on December 31, 2014 (the accrual date of Plaintiffs' takings claims).

7. In *Ideker III*, the Court concluded, for the purpose of awarding just compensation for the taking of flowage easements, that they were *permanent* flowage easements because the MRRP was ongoing.

8. In *Ideker III*, to determine the value of the flowage easements taken, for the purpose of awarding just compensation, the Court determined the diminution of the fair market values ("FMVs") of the Phase II tracts over which the easements were taken by comparing the FMVs of the tracts *before* (without) and *after* (with) the flowage easements were taken. The Court found that the FMVs of the Representative Phase II tracts had diminished by between 26.9 and 30 percent. The evidence and the Court's reasoning in *Ideker III* not only support the Court's conclusion that the Representative Phase II tracts had suffered a diminution in FMVs as a result of the flowage easements taken by the implementation of the MRRP, but that the FMVs of all the Basin land located in the MRRP affected-area of the Basin had been diminished as well.

9. In *Ideker III*, the Court also concluded that the Phase II Plaintiffs' claims for just compensation for the taking of flowage easements had accrued on December 31, 2014 (also the dates of "taking" and "valuation" of the MRRP permanent flowage easements). Thus, under the reasoning of the Court's opinion in *Ideker III*, this complaint is timely filed as being within the six-year statute of limitations for Fifth Amendment Takings claims under the Tucker Act, 28 U.S.C. §1491, for asserting claims by the named Class representatives and all the Class members as defined herein.

10. This class action reflects the most fair and efficient method to adjudicate not only the Plaintiffs' claims, but the claims of the members of the Class they seek to represent. This class action represents a superior means to adjudicate these claims as compared to a chaotic, haphazard, and unjust process by which individuals with affected property interests would otherwise have to rapidly find out about the implications of *Ideker III* and rush to retain individual counsel and get complaints filed, leaving most injured property owners out of time and out of luck.

JURISDICTION AND VENUE

11. This Complaint states claims for the taking of property interests, both real and personal, including the taking of flowage easements, without just compensation in violation of the Fifth Amendment to the United States Constitution. The Court has jurisdiction over this action under 28 U.S.C. § 1491(a).

12. Venue is proper in the United States Court of Federal Claims pursuant to 28 U.S.C. § 1491(a).

PARTIES

Plaintiffs

13. The named Plaintiffs are all persons and entities who have property interests in the Missouri River Basin located along both sides of the reach of the River from the geographic area of Burt County, Nebraska, to Leavenworth County, Kansas, who experienced flooding in one or more years from 2007 to 2014.

14. Plaintiffs Stephen C. Milne and Brenda S. Milne and the Stephen C. Milne Farms, Inc., were deprived of the use and enjoyment of their property interests in land owned by them in Holt County, Missouri due to taking by flooding in one or more years from 2007 to the present.

15. Plaintiffs Luke Andrew and Bryce Andrew were deprived of the use and enjoyment of their property interests in land owned by them in Nemaha County, Nebraska due to taking by flooding in one or more years from 2007 to the present.

16. Plaintiff Richard Andrew was deprived of the use and enjoyment of his property interests in land owned by him in Atchison County, Missouri due to taking by flooding in one or more years from 2007 to the present.

17. Plaintiffs Bernal J. (B.J.) Bailey, Bert Bailey and David Banks were deprived of the use and enjoyment of their property interests in land owned by them in Holt County, Missouri due to taking by flooding in one or more years from 2007 to the present.

18. Plaintiffs Michael W. Bean and Deborah J. Bean were deprived of the use and enjoyment of their property interests in land owned by them in Otoe County, Nebraska due to taking by flooding in one or more years from 2007 to the present.

19. Plaintiffs Rex Behrens, Roxie Agena, and the Roy G. Behrens Trust were deprived of the use and enjoyment of their property interests in land owned by them in Atchison County, Missouri due to taking by flooding in one or more years from 2007 to the present.

20. Plaintiff Bob Chatt Farms, Inc., a Nebraska corporation, was deprived of the use and enjoyment of its property interests in land owned by it in Burt County, Nebraska due to taking by flooding in one or more years from 2007 to the present.

21. Plaintiffs Anne L. Bollin and William Edward Grape, Trustees for The Edward and Pauline Grape Trust, John J. Bollin III and Cathi O'Malley, Trustees for the John J. Bollin Jr. Family Trust, and Rose Bollin were deprived of the use and enjoyment of their property interests in land owned by them in Atchison County, Kansas due to taking by flooding in one or more years from 2007 to the present.

22. Plaintiff Tom Bullock was deprived of the use and enjoyment of his property interests in land owned by him in Holt County, Missouri due to taking by flooding in one or more years from 2007 to the present.

23. Plaintiff Central Agency Farms, LLC, a Nebraska limited liability company, was deprived of the use and enjoyment of its property interests in land owned by in Holt County, Missouri due to taking by flooding in one or more years from 2007 to the present.

24. Plaintiffs Sherrill Dashner, Christine Dashner, and the Sherrill Dashner Trust were deprived of the use and enjoyment of the property interests in land owned by them in Mills County, Iowa due to taking by flooding in one or more years from 2007 to the present.

25. Plaintiffs Eric Dawson and T&S Farms, Inc. an Iowa corporation, were deprived of the use and enjoyment of their property interests in land owned by them in Pottawattamie and Mills Counties in Iowa due to taking by flooding in one or more years from 2007 to the present.

26. Plaintiffs Doll Limited Partnership, an Iowa corporation, Jeff Doll, Scott Doll, Jay Doll, Mark Doll and Tammy Doll, were deprived of the use and enjoyment of their property interests in land owned by them in Atchison County, Missouri due to taking by flooding in one or more years from 2007 to the present.

27. Plaintiffs Gertrude Ettleman and the Howard Ettleman Trust were deprived of the use and enjoyment of their property interests in land owned by them in Fremont County, Iowa due to taking by flooding in one or more years from 2007 to the present.

28. Plaintiffs G-J Land, Inc., an Iowa corporation, George Stratbucker, and the Stratbucker Family Foundation were deprived of the use and enjoyment of their property interests in land owned by them in Pottawattamie, Mills, and Fremont Counties in Iowa due to taking by flooding in one or more years from 2007 to the present.

29. Plaintiffs Todd Gammon, Craig Gammon, Tracy Blankenship, and Meg Schroeder were deprived of the use and enjoyment of the property interests in land owned by them in Fremont County, Iowa due to taking by flooding in one or more years from 2007 to the present.

30. Plaintiffs Jeffrey Gaskill, River Farms Company, Inc., a Missouri corporation, and I.E.G. Corporation, a Missouri corporation, were deprived of the use and enjoyment of their property interests in land owned by them in Buchanan County, Missouri due to taking by flooding in one or more years from 2007 to the present.

31. Plaintiffs the C.J. Griffith III Trust and the C.B. Griffith Trust were deprived of the use and enjoyment of their property interests in land owned by them in Buchanan County, Missouri due to taking by flooding in one or more years from 2007 to the present.

32. Plaintiffs Jerry P. Johnson and Jane A. Johnson were deprived of the use and enjoyment of their property interests in land owned by them in Atchison County, Kansas due to taking by flooding in one or more years from 2007 to the present.

33. Plaintiff Dennis Lincoln was deprived of the use and enjoyment of the property interests in land owned by him in Mills County, Iowa due to taking by flooding in one or more years from 2007 to the present.

34. Plaintiffs Dean Lincoln and the estate of Margaret Lincoln d/b/a Lincoln Family Farms Ltd. were deprived of the use and enjoyment of the property interests in land owned by them in Mills County, Iowa due to taking by flooding in one or more years from 2007 to the present.

35. Plaintiffs Low Farms, LLC, a Missouri limited liability company, Jimmie B. Low, LLC, a Missouri limited liability company, Annette Low Kaplan, LLC, a Missouri limited liability company, Virginia Low and Rebecca Low were deprived of the use and enjoyment of the property

interests in land owned by them in Atchison County, Missouri due to taking by flooding in one or more years from 2007 to the present.

36. Plaintiff Tom Mackland was deprived of the use and enjoyment of the property interests in land owned by him in Pottawattamie County, Iowa due to taking by flooding in one or more years from 2007 to the present.

37. Plaintiff Melard Farms Co., an Iowa corporation, was deprived of the use and enjoyment of the property interests in land owned by it in Mills County, Iowa due to taking by flooding in one or more years from 2007 to the present.

38. Plaintiff Brian Miller was deprived of the use and enjoyment of the property interests in land owned by him in Buchanan County, Missouri due to taking by flooding in one or more years from 2007 to the present.

39. Plaintiffs Max Peeler and Corky Peeler were deprived of the use and enjoyment of the property interests in land owned by them in Atchison County, Missouri due to taking by flooding in one or more years from 2007 to the present.

40. Plaintiff Jeremy Peeler was deprived of the use and enjoyment of the property interests in land owned by him in Atchison County, Missouri due to taking by flooding in one or more years from 2007 to the present.

41. Plaintiffs Marion Lee Peters and Nancy Anne Peters Family Revocable Trust and ML Peters Farm, LLC were deprived of the use and enjoyment of the property interests in land owned by them in Holt County, Missouri due to taking by flooding in one or more years from 2007 to the present.

42. Plaintiffs Ken Root, Cynde Root, Hawkeye Farming Inc., Riverbend Farms, Inc., and Eva Root were deprived of the use and enjoyment of the property interests in land owned by

them in Mills and Pottawattamie Counties in Iowa due to taking by flooding in one or more years from 2007 to the present.

43. Plaintiff Scott Roth was deprived of the use and enjoyment of the property interests in land owned by him in Fremont County, Iowa due to taking by flooding in one or more years from 2007 to the present.

44. Plaintiff David Sonnenmoser was deprived of the use and enjoyment of the property interests in land owned by him in Buchanan and Platte Counties in Missouri due to taking by flooding in one or more years from 2007 to the present.

45. Plaintiffs Stepanek Farms Limited Partnership, Tony Stepanek, Mary Stepanek, the Nicholas R. Stepanek Trust, and the Sarah R. Stepanek Trust were deprived of the use and enjoyment of the property interests in land owned by them in Mills County, Iowa due to taking by flooding in one or more years from 2007 to the present.

46. Plaintiffs John Stouder and Mary Stouder were deprived of the use and enjoyment of the property interests in land owned by them in Fremont and Mills Counties in Iowa due to taking by flooding in one or more years from 2007 to the present.

47. Plaintiffs Wayne Stouder and Linda Stouder were deprived of the use and enjoyment of the property interests in land owned by them in Fremont and Mills Counties in Iowa due to taking by flooding in one or more years from 2007 to the present.

48. Plaintiff Tom Ferguson L.L.C., an Iowa limited liability company, was deprived of the use and enjoyment of the property interests in land owned by it in Mills County, Iowa due to taking by flooding in one or more years from 2007 to the present.

Defendant

49. The defendant is the United States of America.

BACKGROUND FACTS

50. The relevant facts are recounted in the Court's published trial opinions in *Ideker I*, *Ideker II*, and *Ideker III*, which are cited above and incorporated herein by reference.

51. As found by the Court in the referenced and incorporated *Ideker* trial opinions, the Corps, in authorizing the MRRP, foresaw that the combined and cumulative effects of the MRRP System and BSNP River Changes would result in an increase in the frequency, severity, and duration of flooding of property along the reach of the Missouri River in question and injuries and losses to private property interests, sacrificing those interests in furtherance of the public purpose of the MRRP.

52. The Court determined in *Ideker*, *inter alia*, that as a direct, natural, probable and foreseeable result of the Corps' MRRP System and BSNP River Changes, land along the reach of the River in question had been and would be subjected to added atypical and recurring flooding. As the Court found, this flooding was of unprecedented frequency, severity, and duration when compared to pre-MRRP flooding such that there has been an alteration of the pre-MRRP flooding patterns of the River.

53. The MRRP atypical flooding found by the Court in *Ideker* has substantially impacted, damaged, and injured the Plaintiffs' private property interests, interfering with and depriving them of their use and enjoyment for extended periods of time and, in some cases, permanently. The Plaintiffs' land has been subjected to added atypical and recurring flooding starting in 2007 and will continue to be subjected to such flooding due to the MRRP System and BSNP River Changes having permanently altered the flooding patterns of the River.

54. The MRRP is a multi-year plan that was authorized by the Corps to appropriate a benefit for the public; namely, to return the River to a more natural state in order to restore a portion of the Basin ecosystem destroyed by the Corps' decades of flood control and to comply

with the ESA. As admitted by the Corps in *Ideker*, the MRRP is ongoing with no plans to terminate it. Because the atypical flooding alleged is the result of the MRRP, the MRRP flooding that commenced in 2007 is considered an ongoing flood of multiple years for a single purpose.

55. The atypical flooding caused by the Corps' MRRP System and BSNP River Changes has imposed a severe and disproportional burden on the Plaintiffs in appropriating a benefit for the public good, profoundly disrupting and interfering with Plaintiffs' reasonable, investment-backed expectations as to their impacted property interests.

56. Historically, the Government had expressly encouraged and incentivized settlement and farming in and economic development of the Basin by undertaking and committing to provide flood control as a first priority of River management by constructing the System dams and reservoirs and the BSNP river-control structures. The Plaintiffs reasonably relied on the Corps' pre-MRRP decades-old policies and practices in managing the River, giving flood control first priority, and the pre-MRRP flooding patterns in collectively investing billions of dollars and tremendous efforts in establishing and maintaining their affected property interests for their intended and customary use.

57. Although the Corps knew or should have known that the MRRP System and BSNP River Changes would cause added atypical and recurring flooding resulting in injuries and losses to private property interests, it nonetheless proceeded with the implementation of the MRRP without first obtaining flowage easements, either through contract or formal condemnation. Moreover, the Corps, in violation of the Fifth Amendment, has never paid or offered to pay the Plaintiffs just compensation for the benefit that it has appropriated from them for the furtherance of the public purpose of the MRRP.

58. The Corps' MRRP System and BSNP River Changes effectively sacrificed Plaintiffs' property interests in question for the benefit of the public good, without the payment of just compensation, which is an unlawful taking by flooding by inverse condemnation actionable under the Fifth Amendment.

59. After considering all of the evidence presented in *Ideker*, the Court determined that the Phase II Plaintiffs had established that the MRRP System and BSNP River Changes had foreseeably caused and increased the frequency, severity, and duration of the flooding of their land that had appropriated certain of their property interests therein entitling them to just compensation. The claims alleged herein are essentially based on the same facts that supported the *Ideker* Court's conclusions as to causation, foreseeability, appropriation, and reasonable-investment backed expectations that constitute a taking of private property requiring an award of just compensation under the Fifth Amendment.

60. The Court's Phase I opinion in *Ideker* finding, *inter alia*, that the Plaintiffs had established causation and foreseeability, relied primarily on the testimony of the Plaintiffs' experts: Dr. Ronald Christensen (regarding raised water surface elevations ("WSEs")), Dr. Theodore Hromadka II (regarding increased and more severe flooding based on raised WSEs), and Mr. Glenn Tofani (regarding the effect of WSEs on levees and levee failures).

61. The Court's Phase II opinion in *Ideker* asked the Parties to identify three of the 28 Phase I claims that had been allowed to proceed to Phase II for the purpose of determining whether the plaintiffs could establish the *Arkansas Game & Fish liability* factors that were not addressed and decided in Phase I, and, if so, to provide evidence regarding entitlement to just compensation. The Parties selected the Adkins Tract, the Ideker Farms, Inc. Tract, and the Buffalo Hollow Farms, Inc. Tract. In Phase I, the Court concluded that the three Phase II Representative Plaintiffs, as to

their claims arising from the Phase II tracts, had already “established causation, foreseeability, and severity” for the flooding of Adkins Tract in 2007, 2008, and 2010; for the Ideker Tract in 2007, 2008, 2010, 2013, and 2014; and for the Buffalo Hollow Tract in 2007, 2008, 2010, 2013. *Ideker I*, 136 Fed. Cl. at 761-62.

62. In Phase II, the *Ideker* Court concluded that the Phase II Representative Plaintiffs had established that the Government had taken permanent flowage easements over their representative tracts and determined the just compensation that was due them for the taking of those flowage easements.

63. In making its determination of just compensation to be awarded to the *Ideker* Phase II Plaintiffs, as and for the value of the flowage easements that the Court found were appropriated, it found that all the land located along the MRRP reach of the River affected by MRRP flooding had been diminished in FMV. In making this finding, the Court explicitly relied upon the expert opinions of Dr. Bruce Babcock (regarding valuing the diminution in property FMVs) and Dr. Larry Mays (regarding the increased risks and incidence of flooding attributable to the changed flooding patterns of the River due to the MRRP) who were found credible and persuasive. Dr. Babcock’s analysis, which relied in part on the analysis of Dr. Larry Mays, showed that the diminution in the FMV of Missouri River Basin bottomland averaged 26.9 percent.

CLASS ACTION ALLEGATIONS

64. The Plaintiffs bring this action pursuant to the provisions of Rules 23(a), 23(b)(2), and 23(b)(3) of the Rules of the Court of Federal Claims, on behalf of themselves and the following proposed class:

All persons and entities who have property interests in the Missouri River Basin located along both sides of the reach of the River from the geographic area of Burt County, Nebraska, to Leavenworth County, Kansas, who experienced flooding in one or more years from 2007 to 2014.

65. The following persons and entities are excluded from the Class: the plaintiffs identified in the Ideker, et al. v. United States litigation; federal, state, and local governmental entities; and the judge, judicial officers, and associated Court staff assigned to this case and their immediate family members.

66. The Class is so numerous that joinder of all members in this action is impracticable. Plaintiffs are informed and believe, and on that basis allege, that the Class contains hundreds of members that are geographically dispersed along the River Basin. The Class is readily identifiable and is one for which records should exist.

67. Each Plaintiff's claims are typical of those of the Class they seek to represent. Each Plaintiff's claims arise from the same common course of Government conduct giving rise to the claims of the Class, and the relief sought is common to the Class that the Plaintiffs seek to represent. The Plaintiffs are claiming just compensation for any and all injuries and losses that were caused by the MRRP-induced flooding, including injuries and losses to both real and personal property interests.

68. The Plaintiffs and members of the Class were injured by the same Government conduct that violates the Fifth Amendment – the MRRP System and BSNP River Changes that resulted in each of them suffering compensable injuries and losses for which they have not been compensated by the Government.

69. The Plaintiffs will fairly and adequately protect and represent the interests of all the members of the Class. Their interests are aligned with and not antagonistic to the Class.

70. There are questions of law and fact common to the Plaintiffs and all members of the Class which predominate over questions, if any, that may affect only individual Plaintiffs and members of the Class because the Government has acted and refused to act on grounds generally

applicable to the members of the Class, including legal and factual issues related to both liability and compensation.

71. Questions of law and fact common applicable to the Plaintiffs and the Class include, but are not limited to:

- a. Whether the Government's actions in implementing the MRRP Changes caused an increase in the frequency, severity, and duration of flooding of Plaintiffs' property interests in question with flood waters from the Missouri River;
- b. Whether the Government intended or foresaw that its actions in implementing the MRRP Changes would result in the increase in the frequency, severity, and duration of flooding of Plaintiffs' property interests with flood waters from the Missouri River;
- c. Whether the Government's actions in implementing the MRRP Changes caused an increase in in the frequency, severity, and duration of flooding of Plaintiffs' property interests, resulting in injuries and losses to those interests , amounting to an appropriation of those interests;
- d. Whether the Government's actions in implementing the MRRP Changes appropriated a benefit for the public good or severely interfered with the Plaintiffs' use and enjoyment of their MRRP-impacted private property interests;
- e. Whether Plaintiffs had reasonable investment-backed expectations that their property interests in question would be free from the increased frequency, severity, and duration of flooding caused by the Corps' MRRP Changes;
- f. Whether any flowage easements taken by the MRRP are permanent or temporary flowage easements for the purpose of determining just compensation;

- g. The extent to which the taking of flowage easements over Plaintiffs' properties diminished the FMVs of properties throughout the area of the Basin of the reach of the River in question;
- h. The extent of just compensation due Plaintiffs for compensable injuries and losses to the property interests of the Plaintiffs other than just compensation for the value of the flowage easements appropriated;
- i. The interest rate to be applied in determining just compensation.

72. The Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action litigation such as this.

73. Class action treatment is a superior method for the fair and efficient adjudication of the controversy in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, more efficiently, and without the unnecessary duplication of effort and expense that prosecution of numerous individual actions would likely engender. Further, individual joinder of all damaged members of the Class is impractical and inefficient compared to prosecution of a class action. Accordingly, the benefits of proceeding through the class mechanism, including providing hundreds of injured persons and entities with an efficient method of obtaining redress for claims, substantially outweigh any difficulties that may arise in management of this class action.

74. The Government has acted on grounds generally applicable to all the members of the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

CAUSE OF ACTION

Cause 1: The Corps Took Plaintiffs' Land and Property without Just Compensation in Violation of the Fifth Amendment of the United States Constitution

75. The Plaintiffs incorporate by reference and reallege as though fully set forth herein, each and every allegation as set forth in the preceding paragraphs of this Complaint and all facts and findings from *Ideker I*, *Ideker II*, and *Ideker III*.

76. The Plaintiffs have legally-recognized property interests in their land and other property in question here, and the economic benefits associated with that land and property, located in the MRRP impacted geographical area of the Basin.

77. Before the Corps' MRRP System and BSNP River Changes, which the Corps authorized and began implementing in 2004, the Plaintiffs had distinct, reasonable, investment-backed expectations that their property would only be subject to flooding consistent with historical flooding patterns of the River established by the Corps' pre-MRRP River management.

78. Since 2006, the atypical flooding associated with the MRRP flooding patterns of the River has significantly interfered with Plaintiffs' enjoyment and use of their property interests in question and their reasonable, investment-backed expectations as to the same, which will continue as long as the MRRP is operational.

79. The added atypical and recurring flooding associated with the MRRP flooding patterns was a direct and foreseeable result of the Corps' MRRP System and BSNP River Changes when they began in 2004.

80. The Corps implemented the MRRP System and BSNP River Changes for the purpose of achieving a public good; namely, restoring a portion of the Basin ecosystem and to comply with the ESA.

81. Since 2006, Plaintiffs' property interests in question have been subjected to added atypical and recurring flooding that would not have otherwise occurred but for the Corps' MRRP System and BSNP River Changes.

82. This additional atypical and recurring flooding caused by the Corps' paradigmatic change in River management is ongoing and will continue for as long as the MRRP remains operational in managing the River, severely interfering with Plaintiffs' use and enjoyment of their property interests and their reasonable, investment-backed expectations concerning their use and enjoyment of those interests.

83. The Corps knew or should have known that its MRRP System and BSNP River Changes at the time of their implementation would result in an increase in the frequency, severity, and duration of flooding of Plaintiffs' property.

84. This atypical MRRP flooding of Plaintiffs' property was the direct, natural, probable, and foreseeable result of the Corps' MRRP System and BSNP River Changes.

85. The additional atypical and recurring MRRP flooding has interfered with Plaintiffs' property interests for a substantial period of time and, in some instances, permanently, depriving Plaintiffs of the use and enjoyment of their property.

86. The government-induced MRRP flooding of Plaintiffs' property resulted in injuries and losses prior to the taking of the flowage easements on December 31, 2014, entitling them to just compensation for the same under the Fifth Amendment for which they have not been paid just compensation.

87. In addition to other injuries and losses, the ongoing MRRP-induced atypical flooding of Plaintiffs' land and property has effectively taken flowage easements over Plaintiffs' lands for which that have not been paid just compensation.

PRAYER FOR RELIEF

WHEREFORE, the named Plaintiffs, on behalf of themselves and all the members of the Class, pray that this Court enter judgment on their behalf and against the Government, adjudging and decreeing that:

- A. This action is a proper class action pursuant to Rule 23 of the Rules of the Court of Federal Claims on behalf of the Class defined herein, appoint plaintiffs as Class Representatives and their counsel of record as Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Rules of the Court of Federal Claims, be given to the Class, once certified;
- B. Government took Plaintiffs' property interests in question without just compensation in violation of the Fifth Amendment of the United States Constitution;
- C. The named Plaintiffs and the other Class members be paid just compensation for the property interests taken from them, together with the costs of suit, including reasonable attorney's fees;
- D. The named Plaintiffs and the other Class members be awarded pre- and post-judgment interest as allowed by law and that such interest be compounded and awarded at the highest legal rate from and after the date of service of this Complaint
- E. The named Plaintiffs and the other Class members be awarded just compensation for all of their injuries, and losses;
- F. The named Plaintiffs and the other Class members have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

Dated: December 30, 2020

Respectfully submitted,

/s/ R. Dan Boulware

R. Dan Boulware

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