



Farmers Win Flood Case

Court rules Corps of Engineers' basin management is responsible for recurring problems along the Missouri River.

BY TODD NEELEY

A federal judge has sided with farmers in ruling that management decisions made by the U.S. Army Corps of Engineers are responsible for recurring floods. These floods have destroyed farm ground along the Missouri River.

Judge Nancy B. Firestone ruled that in five of the six years in question dating back to 2007, the Corps violated the Takings Clause in the Fifth Amendment of the U.S. Constitution by not compensating farmers for flood-damaged land. She disallowed flood claims in 2011.

Firestone ruled the Corps deprioritized flood control in 2004. That year, the Corps instituted the Missouri River Recovery Program to accelerate changes to the river to enhance wildlife habitats.

Phase 1 of the case in the U.S. Court of Federal Claims, in Washington, D.C., was the trial that just concluded. Phase 2 will be to determine individual farmer losses and compensation, expected to total near \$300 million.

The case started with 44 bellwether tracts of land. The judge ruled that 14 property owners proved cause and severity. This means they move to the next phase to determine compensation. Another 14 property owners have yet to prove their losses sufficiently; the remaining 16 property owners may have their cases dismissed for lack of sufficient evidence.

FLOODING INCREASED. In her 259-page opinion, Firestone says evidence establishes the Corps' changes to the river "had the effect of raising the Missouri River's water surface elevations in periods of high flows."

Farms across the Missouri River basin will be awarded damages from repeated floods that destroyed farm ground.

PHOTO: COURTESY OF SCOTT OLSON

The court found that since 2007, flooding has been among the worst in the history of the river, and the Corps' changes in management either caused or contributed to the flooding.

Firestone says in the ruling, "recurrent flooding in the Missouri River basin will continue into the future," and farmland will continue to see blocked drainage because of expected higher river levels.

The lead plaintiff, Roger Ideker, of St. Joseph, Missouri, and others sued the U.S. government for \$250 million in the U.S. Court of Federal Claims in 2014 in Washington, D.C. They claimed they were due compensation for land unlawfully taken in the flood. Ideker is one of the producers who has fully proved his case.

He and hundreds of other basin farmers have been working to return large chunks of land buried in sand back to production while holding out for a successful court case. In a statement to DTN/*The Progressive Farmer*, Ideker says the ruling shows the federal government's management led to significant changes in the river.

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

LONG-TERM FIGHT. R. Dan Boulware, lead counsel in the case for the farmers, says the battle has been long for producers who lost many acres of good ground.

"Although we do not concur with the court's conclusions regarding the 2011 flood event," he says in a statement to DTN/*The Progressive Farmer*, "we are very pleased with the court's conclusions regarding the Corps' changes to the river causing flooding, and we are certainly pleased with an outcome that will provide substantial compensation to plaintiffs living along the river who have suffered significant flood damage and losses throughout the past decade. We hope the Corps of Engineers will now be clear that we have a changed river—one that is flood prone."

In the summer of 2016, the U.S. Government Accountability Office issued a report saying the Corps is falling short on the system in place to update water-control manuals. Corps regulations state water-control manuals should be reviewed at least every 10 years.

Comparable lawsuits in recent years have been successful. The U.S. Supreme Court in 2012 issued a ruling in the Arkansas Game and Fish Commission that temporary flooding can constitute a taking. The same federal claims court where Boulware is arguing his case issued a similar decision on a lawsuit involving Hurricane Katrina in New Orleans in 2015. ●