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Editors' Note: Interviews, Photos and Complaint Available

**Lawsuit Against U.S. Army Corps of Engineers for
Missouri River Flooding Grows to Six States**

Amended complaint includes North Dakota and 230 new plaintiffs – among them, two Native American tribes seek compensation for lost land and way of life

(KANSAS CITY, Mo. - October 16, 2014) – More than 200 farmers, small businesses, other property owners and two Native American tribes in Nebraska have joined a lawsuit in federal court challenging actions of the United States Army Corps of Engineers and to recover losses caused by devastating, recurrent flooding along the Missouri River. The amended complaint filed today brings to 436 the total number of plaintiffs in six states, including the latest, North Dakota.

Originally filed in March 2014, the lawsuit charges that increased flooding along the Missouri River resulted from changes in Corps policies and procedures. Flooding along the river has dramatically increased in frequency and severity since 2006, including the record flood of 2011 that lasted more than 100 days and was declared the worst in the region's history. Flooding continued in 2013 and 2014.

"We are pleased the Court granted our motion to increase the number of plaintiffs in this very important lawsuit impacting people who have developed farms, businesses and communities on this land in reliance on the Corps managing the river in a way that would deter flooding," said Plaintiffs' Lead Counsel R. Dan Boulware, a partner at national law firm Polsinelli. "The timing is crucial as there has been additional flooding in 2014 impacting the fortunes and futures of families and business owners."

Late yesterday, the U.S. Court of Federal Claims granted a motion allowing an amendment to *Ideker Farms, Inc. et al v. United States of America* authorizing additional plaintiffs to join the suit. These include two Native American tribes with lands in Nebraska and Iowa – the Omaha Tribe of Nebraska and the Winnebago Tribe of Nebraska – and the Nebraska Board of Educational Lands and Funds, an agency of Nebraska; and claimants from North Dakota.

By state, the current breakdown of claimants is:

- Iowa – 127
- Missouri – 146
- Kansas – 18
- Nebraska -90
- North Dakota – 38
- South Dakota -17

Ideker Farms, Inc. et al v. United States of America was filed in the U.S. Court of Federal Claims by Polsinelli PC, based in Kansas City, Mo., and Cohen Milstein Sellers & Toll PLLC, of Washington, D.C., on behalf of farmers and other property owners in Missouri, Kansas, Iowa, Nebraska, South Dakota and North Dakota for damages sustained from one or more floods from 2007 to the present. Four floods from 2007 to 2011 received a Presidential Declaration for Disaster.

The claims are brought under the Fifth Amendment of the U.S. Constitution for the unconstitutional taking of property without compensation. According to the Plaintiffs, for at least six decades prior to 2004, the U.S. Corps of Engineers had prioritized flood control when managing operations of dams, reservoirs and other structures along the river. During that time, floods were shorter and less frequent. However, Corps policy changed beginning in 2004 to conform river operations with environmental laws and regulations, including the Endangered Species Act, The National Environmental Protection Act, the Clean Water Act, and the 2000 U.S. Fish and Wildlife Service Biological Opinions.

For named plaintiff Roger Ideker of Ideker Farms, Inc., of Corning, Mo., a third-generation farming operation, the change in Corps policy has had a significant impact. “I know I speak for many farmers and others along the Missouri River when I say that the flooding we have experienced since 2006 has been much different than that of the past. The frequency and severity make it a real and continuing hardship and threat to our way of life.”

Plaintiffs’ Co-counsel Benjamin Brown, a partner at Cohen Milstein, added: “These new plaintiffs fit seamlessly into the case because, like the initial plaintiffs, their Constitutional property rights have been violated. When the federal government determines that the broader public interest is best served by reversing policies that have been in place for generations and subjecting people’s property to recurrent flooding, it needs to pay just compensation rather than simply turning its back on those citizens, whether they are farmers, homeowners, or Native American tribes.”

The lawsuit alleges that the Corps policy changes directly led to the recurrent flooding. These include:

- Increasing the water storage levels and altering the schedule for water releases from the six large reservoirs located along the river’s upper basin upstream from Yankton, S.D.;
- Changing the structure of dikes and dams along the river to scour the banks and make the river more shallow;
- Creating secondary channels that increase the frequency and duration of floods.

In addition, the lawsuit states that after 2004, the Corps’ operating criteria for releases from the Missouri River reservoirs, as provided in the Corps’ Master Manual, no longer required that certain releases, including early releases, had to be made based upon the Corps’ forecast of the annual snowmelt and rainfall runoff. And, as a result of that deviation from the prior mandatory release criteria, which deviation was done to serve the interests of fish and wildlife, flooding has occurred from 2007 to the present that would not have occurred under the prior criteria that prioritized flood control.

“The U.S. Army Corps of Engineers knew these changes would lead to the river spreading out, causing more substantial flooding for the surrounding lands,” stated Boulware and Brown.

For additional information including a copy of the complaint visit: www.MissouriRiverFlooding.com or call 816-364-2117.

Ideker Farms, Inc., et al v. United States of America, Plaintiffs are represented by Polsinelli PC, a national law firm based in Kansas City, Mo., and Cohen Milstein Sellers & Toll, PLLC, based in Washington, DC. Attorneys handling the case for Polsinelli include R. Dan Boulware, Edwin H. Smith and Seth C. Wright. The attorneys handling the case for Cohen Milstein include Benjamin D. Brown, Laura Alexander, and Hiba Hafiz. For more information about **Polsinelli**, visit www.polsinelli.com. For more information about **Cohen Milstein**, visit www.cohenmilstein.com.

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