

Receipt number AUSFCC-7581658

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

PECORD FARMS, INC. AND JERRY
PECORD AS TRUSTEE OF H G
REVOCABLE LIVING TRUST;

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

21-2358 L

Case No. _____

COMPLAINT

NATURE OF THE CLAIM

1. Plaintiffs bring their claims for takings of their land within the reach of the Mississippi River by increased flooding caused by government action.

2. Plaintiffs own property in the alluvial plain of the Mississippi River (“the River”) in southwestern Alexander County, Illinois, an area that has been inhabited and successfully farmed for some 200 years.

3. The federal government has constructed levees and flood walls along the Middle Mississippi River and has expressly encouraged and incentivized farming and economic development along the River by maintaining and repairing these flood control systems for nearly a century.

4. State governments have also constructed levees to protect local farming and other land use.

5. In the aftermath of the historic 1927 flood, in southwestern Alexander County, the state of Illinois and other private parties constructed the Len Small Levee (“the Levee”). This initial Levee was designed on the basis of the historical hydrograph of the River to withstand even extreme events of the magnitude of 1927 flood and was named after the Governor of Illinois at the time, Len Small.

6. In 1943, the original Len Small Levee was damaged, and the Federal Government reconstructed and expanded the Levee to provide even greater protection.

7. Locals began calling it “the Government Levee.”

8. Plaintiffs’ land was farmed for over a century before the Levee was constructed in 1927 and expanded in 1943, albeit with periodic flooding that is expected in a flood plain. Cf. *Arkansas Game & Fish Comm’n v. United States*, 568 U.S. 23, 39 (2012).

9. Throughout the life of the Levee, the land—though afflicted by some flooding—was usable for farming and recreation.

10. From 2016 through the present, Plaintiffs’ land has been exposed to severe flooding ruining its agriculture value.

11. While Plaintiffs land has always experienced some flooding, Plaintiffs’ land has never been be exposed to comparable flooding to that experienced after 2016 either before or after the construction of the Levee.

12. The U.S. Army Corps of Engineers (“the Corps” or “Corps”) has been reshaping the Middle Mississippi River to facilitate navigation for the past

century. Specifically, the Corps has constructed river training structures (“the Structures” or “Structures”) and conducted dredging operations in the Middle Mississippi River to maintain a navigable river channel. Plaintiffs reasonably relied on the Corps’ authority and experience to responsibly manage the River and have collectively invested millions of dollars and tremendous efforts to maintain their land and other property near the Mississippi River for its intended and customary use.

13. For decades, the Government pursued a policy of building structures in the Mississippi River, while simultaneously funding the repair and reconstruction of the Len Small Levee.

14. All the while, the Government denied that its structures have any effect on the risk of flooding.

15. As a result of the Corps’ gradual but unabated addition of Structures, portions of the River affecting Plaintiffs’ property now include the greatest densities of dike structures, both in number and length, in the world, changing the River’s hydrograph.

16. As a cumulative result of the Corps’ increasingly aggressive constriction and manipulation of the River, the historical hydrograph of the River has changed and the Water Surface Elevations (WSEs) of the River have increased for a given discharge over natural levels.

17. The Middle Mississippi River reached a record stage at Cape Girardeau, Missouri, in 2016 breaching the Levee.

18. Plaintiffs' unprotected property is now inundated with flood waters with greater frequency, for longer durations, and at unusual times of year in a manner that deviates from historical flooding patterns (collectively, "increased flooding").

19. The flooding caused by the Corps' aggressive manipulation of the River has disrupted and interfered with Plaintiffs' reasonable, investment-backed expectations for the intended and customary use of their land and other property.

20. The Corps has not obtained flowage easements nor has the Corps offered Plaintiffs just compensation for the benefit that it has appropriated for public use.

21. The Corps' practices have sacrificed Plaintiffs' land and other property, without compensation, for the public purpose of providing navigation on the River.

JURISDICTION AND VENUE

22. This Complaint states causes of action for taking of property and 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).

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

PARTIES

24. Plaintiff, Pecord Farms, Inc., was deprived of the use and enjoyment of its land in Alexander County, Illinois, due to increased flooding after the 2016 breach in the Len Small Levee.

25. Plaintiff, Jerry Pecord as trustee of the H G Revocable Living Trust, was deprived of the use and enjoyment of its land in Alexander County, Illinois, due to increased flooding after the 2016 breach in the Len Small Levee.

HISTORICAL BACKGROUND

26. Until the early twentieth century, the Middle Mississippi River and its tributaries were navigable only in shallow draft vessels and often only seasonally, limiting the utility of the Mississippi River for transportation.

27. As transport and shipping needs increased, Congress determined that it was in the national interest to engineer greater navigability by placing man-made structures on and around the rivers.

28. Congress passed the Rivers and Harbors Act of 1927 (“1927 Act”), which authorized certain works, including some constriction of the Mississippi River channel to improve navigability.

29. The 1927 Act authorized establishment of a navigable channel on the Middle Mississippi River 300 feet wide and at least nine feet deep from the mouth of the Ohio River upstream to the northern boundary of St. Louis, Missouri.

30. To constrict the channel, the Corps constructed thousands of river training Structures in the Rivers, literally converting these rivers into man-made constructs. Throughout this history, the primary authorized purpose was the facilitation of navigation, and the Corps carried out that objective using an expanding toolkit of river training Structures.

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