

Bond Case Briefs

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EMINENT DOMAIN - FEDERAL

Ideker Farms, Inc. v. United States

United States Court of Federal Claims - December 14, 2020 - Fed.Cl. - 2020 WL 7334407

Over 400 farmers, landowners, and business owners from six states sued United States, claiming Fifth Amendment taking of their land for which just compensation was required based on Army Corps of Engineers' implementation of Missouri River Recovery Program (MRRP) in order to comply with Endangered Species Act (ESA), thereby allegedly causing intermittent flooding of their properties.

Phase II bench trial was held on three representative properties on which Phase I trial determined that MRRP caused additional or more severe flooding in certain years.

The Court of Federal Claims held that:

- MRRP caused changed pattern of increased flooding on properties;
- Severity factor was satisfied for taking of flowage easement;
- Duration factor was satisfied for taking of flowage easement;
- Foreseeability factor was satisfied for taking of flowage easement;
- Character of land factor was satisfied for taking of flowage easement;
- Reasonable investment-backed expectations factor was satisfied for taking;
- Claims for taking of flowage easement were not time barred;
- Just compensation was awarded for diminution in property value;
- Just compensation was awarded for levee repair; and
- Award of interest was warranted.

Missouri River Recovery Program (MRRP), implemented by Army Corps of Engineers, caused new and ongoing pattern of increased flooding on three representative properties that would continue into future, in support of representative owners' claims for just compensation for taking of permanent flowage easement across properties due to additional flooding; owners' descriptions of flooding and change in flooding patterns on their properties post-MRRP were credible and reliable, and their descriptions were not undermined by government's evidence of crop insurance that could not be used to account for flooding on those bellwether properties.

Increased and repeated flooding on owners' three representative properties caused by Missouri River Recovery Program (MRRP) that was implemented by Army Corps of Engineers satisfied severity factor for Fifth Amendment taking of flowage easement, where return periods associated with flooding of bellwether properties post-MRRP were likely to occur every two years, flooding was far more frequent and damaging than owners had experienced pre-MRRP and was outside range that they could have reasonably expected to experience, and post-MRRP flooding had considerable effects on owners' crop yields.

Permanent yearly increased flooding on owners' three representative properties caused by Missouri River Recovery Program (MRRP) that was implemented by Army Corps of Engineers satisfied duration factor for Fifth Amendment taking of flowage easement, where flooding attributable to

MRRP lasted of sufficient duration each year to impact owners' farming operations by causing them to lose crops, and significant invasions of increased flooding were not temporary or isolated events, but rather, would often recur for foreseeable future.

Continued increased flooding on owners' three representative tracts was foreseeable consequence of Missouri River Recovery Program (MRRP) that was implemented by Army Corps of Engineers, thus satisfying foreseeability factor for Fifth Amendment taking of flowage easement, where Corps took combined actions to make river shallower and slower, so rising water surface elevations (WSEs) were natural, direct, and probable consequence of Corps' actions, and Corps was continuing to implement MRRP and would do so into future.

Army Corps of Engineers' actions in implementing Missouri River Recovery Program (MRRP) were sufficient to change character of owners' three representative properties, as required for Fifth Amendment taking of flowage easement, where changes implemented by Corps under MRRP caused more severe, frequent, and long-lasting flooding than owners had historically experienced.

Army Corps of Engineers' actions in implementing Missouri River Recovery Program (MRRP) interfered with reasonable investment-backed expectations of owners that flooding pattern on their three representative properties prior to implementation of MRRP would continue, and thus, Corps' actions effected Fifth Amendment taking of permanent flowage easement, where owners made substantial investments in farming their properties in reliance on government's flood protection system prior to implementation of MRRP, owners' expectation that properties would not be subject to increased flooding was reasonable, and Corps' MRRP actions interfered with owners' expectations in that increased flooding led to lower crop yields and drop in productivity and value of properties.

Under stabilization doctrine, permanent flowage easement takings claim by owners of three representative properties, arising from Army Corps of Engineers' implementation of Missouri River Recovery Program (MRRP) that caused pattern of increased flooding on properties, accrued, under six-year statute of limitations, on date that effects of MRRP were sufficiently stabilized on last day of year that MRRP construction activities relied on by owners were completed when all of the events fixing government's liability occurred at time that intermittent flooding on properties became sufficiently permanent in nature and owners knew or should have been aware of nature and extent of MRRP-caused flooding.

Owners of three representative properties were entitled to award of just compensation for taking of permanent flowage easement by Army Corps of Engineers' implementation of Missouri River Recovery Program (MRRP) that caused pattern of increased flooding on properties, in amount of \$1,530,268 for one owner, \$3,698,887 for second owner, and \$1,868,928 for third owner, as reasonable approximation of diminution in fair market value of their properties.

Owners of three representative properties alleged damages above and beyond value of flowage easement that was taken by Army Corps of Engineers' implementation of Missouri River Recovery Program (MRRP), that caused pattern of increased flooding on properties, for which just compensation was not available, including damages for crop losses and lost profits based on reduced yields, damage to structures and equipment, flood prevention expenses, and flood reclamation expenses, since such expenses were consequential damages that were indirect result of taking, and it was improper to both claim compensation for diminution in value and compensation for consequential damages.

Owners of one representative property were entitled to award of \$1,032,338 severance damages for repair of levee, in addition to award of just compensation for diminution in value of property for taking of permanent flowage easement by Army Corps of Engineers' implementation of Missouri

River Recovery Program (MRRP) that caused pattern of increased flooding on properties, since destruction of levee was entirely attributable to government's actions, repair of levee was severance damage assumed to protect remainder of property, and compensation for such damage could be measured by mitigation cost of rebuilding levee.

Under prudent investor rule, Moody's rate was appropriate measure of interest compounded annually, for just compensation award to owners of three representative properties for taking of permanent flowage easement by Army Corps of Engineers' implementation of Missouri River Recovery Program (MRRP) that caused pattern of increased flooding on properties.