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EMINENT DOMAIN - FEDERAL

Ideker Farms, Inc. v. United States

United States Court of Appeals, Federal Circuit - June 16, 2023 - F.4th - 2023 WL 4035816

Farmers, landowners, and business owners brought takings action against United States, claiming their land was taken without just compensation based on actions by the Army Corps of Engineers to restore the Missouri River to a more natural state, which resulted in flooding of the plaintiffs' properties.

Following first phase of trial on liability, the Court of Federal Claims issued ruling for plaintiffs in part and for government in part. Both parties moved for reconsideration, and the motions were denied. Following a second phase of trial regarding three representative individual properties, the Court found that a taking of a permanent flowage easement had occurred and awarded damages. The Government appealed, and the plaintiffs cross-appealed.

The Court of Appeals held that:

- Stabilization doctrine applied;
- Takings claims did not accrue at time of initial flooding;
- Date which court selected as date on which takings claims accrued was not arbitrary on grounds it was not related to any physical event;
- Permanent recurring physical occupation by floodwaters constituted a per se taking;
- Baseline for determining whether changes to River caused flooding was to be measured from the time of the changes returning the river to its more natural state, rather than from earlier changes intended to reduce River flooding;
- Relative benefits doctrine did not apply; and
- Crops and other personal property destroyed by flooding were compensable.

Stabilization doctrine applied to determination of when farmers', landowners', and business owners' takings claims accrued following actions by the Army Corps of Engineers on the Missouri River which resulted in periodic flooding, as plaintiffs did not bring a tort claim for a single flood, but rather the events fixing the Government's liability were recurring floodings over several years that rose to a taking of a permanent flowage easement.

Farmers', landowners', and business owners' takings claims, following actions by the Army Corps of Engineers on the Missouri River which resulted in periodic flooding, did not stabilize, and thus statute of limitations did not begin to accrue, at time of first flooding of their properties after Corps made initial changes to River, where Corps continued to make changes for an additional seven years, and modifications to the River's water flow and its effects were ongoing, dynamic, and complex.

Farmers, landowners, and business owners did not know nor reasonably should have known from initial flooding that changes to the Missouri River by the Army Corps of Engineers resulted in a taking of a permanent flowage easement on their properties, and thus takings claim did not accrue at time of initial flooding; single flood did not indicate any pattern of new and recurring flooding that

would result in a permanent taking, the cause and effects of the recurring flooding were difficult to ascertain given the complex nature of the hydrology of the River, and some plaintiffs did not even experience the initial flooding.

Date which court selected as date on which farmers', landowners', and business owners' takings claims accrued following actions by the Army Corps of Engineers on the Missouri River which resulted in periodic flooding was not arbitrary on grounds it was not related to any physical event; plaintiffs did not learn of the full scope of the River and system changes and their effects on flooding until several years of recurring flooding, at that point plaintiffs consulted experts to confirm their suspicions about the cause of the flooding and filed suit within a few months of confirmation from those experts, and such causation and damages knowledge derived from expert opinions based on analysis of recurrent flooding during the prior seven year period.

Permanent recurring physical occupation of farmers', landowners', and business owners' land by floodwaters due to changes to the Missouri River by the Army Corps of Engineers constituted a per se taking; fact that the floodwaters might come and go during the year and were intermittent did not negate the existence of a taking, but bore only on the amount of compensation.

Baseline for determining whether changes to Missouri River by Army Corps of Engineers, in order to restore River to a more natural state, caused flooding was to be measured from the time of the changes returning the river to its more natural state, rather than from earlier changes under the Flood Control Act (FCA) which were intended to reduce River flooding; a reasonable property owner, at the time the Government took a permanent flowage easement, would have understood the later changes to not have been contemplated as part of the flood-control projects completed pursuant to the FCA, and such later changes, which increased the risk of flooding, were antithetical to the original FCA priorities of decreasing such risk.

Relative benefits doctrine did not apply in takings action by farmers, landowners, and business owners after the Army Corps of Engineers made changes to the Missouri River in order to return the river to a more natural state, which resulted in permanent recurring flooding of the plaintiffs' properties, even if original flood control projects being undone by the Corps had provided a benefit to the plaintiffs; original flood control project and later changes were different projects under different programs spread out over decades and directed to different purposes, and plaintiffs did not in any benefit from the recent changes, which were directed to mitigating environmental and wildlife degradation.

Crops and other personal property destroyed by flooding after Army Corps of Engineers made changes to the Missouri River in order to restore it to a more natural state ware not merely an indirect result of the taking of a flowage easement, but rather were compensable under the Fifth Amendment, as government-induced periodic flooding directly took a permanent flowage easement on plaintiffs' land and also destroyed their crops and personal property.

Court of Appeals would remand takings action for district court to reconsider whether heavy flooding of Missouri River in one particular year was the result of changes made by the Army Corps of Engineers to return the river to a more natural state; even if decision that year to release water was not part of the single purpose of protecting endangered species, changes made by the Corps could have impacted the severity of the flood damage, and the court also failed to consider, despite the record rainfall, whether the Corps' actions increased the severity or duration of the flooding compared to what was attributable to record rainfall.

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