

Army Corps on trial over Missouri River flooding complaint

March 16 2017, by Jim Suhr

The U.S. Army Corps of Engineers is defending itself at trial against more than 300 farmers and other landowners who say the agency's management of the Missouri River has contributed to major flooding in five states, most notably 2011 flooding that caused billions of dollars in damage.

The lawsuit, filed in 2014 in the U.S. Court of Federal Claims, argues that the Corps has altered its practices regarding the river's water storage, release and flow management since the mid-2000s, de-emphasizing flood control while pushing to restore habitat for endangered species. It contends that the Corps unconstitutionally deprived plaintiffs of their land, essentially taking it without compensation.

Although the lawsuit doesn't specify the amount of damages being sought, the landowners' attorney has said it could exceed \$250 million. The plaintiffs believe case law is on their side, given a U.S. Supreme Court ruling in December 2012 that the federal government is not automatically exempt from paying for damage caused by temporary flooding from its dams.

The case, which isn't expected to be decided until this summer at the earliest, reflects longstanding debate about the Corps' management of the river as the agency tries to strike a balance among competing interests—landowners, the barge industry, water suppliers, hydropower utilities, environmentalists and recreational users of the waterway, notably on upriver reservoirs. Regulating the river's levels comes through

the Corps' management of discharges from a half-dozen large upstream reservoirs, each meant to hold snowmelt and other excess water during the spring before the Corps gradually releases it the rest of the year.

In court filings, the federal government argues that authorities never promised to stop all flooding along the 2,341-mile-long Missouri River, which flows into the Mississippi River north of St. Louis. The Corps, which has said it is required by Congress and the courts to act in the river's best interest, maintains that providing habitat for endangered species didn't exacerbate the inundation six years ago—a claim echoed by a top Midwest volunteer for the Sierra Club.

The trial started last week. The Corps typically does not comment publicly about litigation, and it didn't reply to recent messages by The Associated Press.

Outside experts who reviewed the 2011 flooding said the Corps did the best it could in dealing with record amounts of water that flowed into the river after unusually heavy spring rain in Montana and North Dakota.

That flooding lasted more than three months after the Corps began releasing massive amounts of water from swollen upstream reservoirs. It overwhelmed levees, carved gouges up to 50 feet deep, created sand dunes 15-feet-high, deposited debris in farmers' fields and devastated hundreds of thousands of acres of mostly farmland in South Dakota, Nebraska, Iowa, Kansas and Missouri.

Caroline Pufalt, the St. Louis-based chairwoman of the Sierra Club's Missouri River Network, said blaming the Corps on environmental grounds is "a red herring," and that while the Corps may make decisions in the interest of habitat, such actions are rare.

Pufalt said the Corps did the best it could six years ago, given "unusual

circumstances" involving so much water in the Missouri River system.

"These floods were kind of unavoidable," Pufalt said. "The folks who have filed this lawsuit mistakenly think there's some magic thing the Corps can do, given the current river, that will take away their flood risk, and that's not going to happen."

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