

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

STATE OF MISSOURI, ex rel.)
Chris Koster, the)
MISSOURI STATE EMERGENCY)
MANAGEMENT AGENCY, and the)
MISSOURI DEPARTMENT)
OF NATURAL RESOURCES,)

Plaintiff,)

v.)

Civil Action No. _____

UNITED STATES ARMY CORPS)
OF ENGINEERS,)
MAJOR GENERAL MICHAEL J. WALSH,)
COLONEL VERNIE L. REICHLING JR.)

Defendants.)

Affidavit of Davis Minton

I, Davis Minton, after being duly sworn, do hereby state that the following is based upon my personal knowledge and is true and accurate to the best of my recollection:

1. My name is Davis Minton, and I am the Deputy Department Director, Operations, with the Missouri Department of Natural Resources. In that capacity, I manage the inspection and enforcement activities of the Department under the Missouri Clean Water Law, MO. REV. STAT. § 644 *et seq.*

2. I am familiar with the floodway area subject to the "Birds Point – New Madrid Floodway Operations Plan" ("Bird's Point Plan"). The United States Army Corps of Engineers issued the Birds Point Plan in 1986.

3. The floodway area encompasses most of Mississippi County, Missouri and parts of New Madrid County Missouri. In all, the floodway area covers over 130,000 acres in Missouri, an area three times the size of the city of St. Louis.

4. The Birds Point Plan calls for using explosives to demolish a portion of the Front Line Levee so that flood waters can be directed into the floodway area when certain conditions are met.

5. In constructing the floodway area, the United States Army Corps of Engineers built two levees.

6. One levee, known as the Front Line Levee, follows closely along the path of the river over approximately 40 miles starting upstream at a point across the river from Cairo, Illinois, and ending just up river of New Madrid, Missouri.

7. Between these two cities, the river forms a wide arc.

8. The second levee, known as the Setback – Mainline Levee, is fairly straight and connects the two ends of the arc, creating an open area between the two levees that is about 30 miles long and, in places, more than ten miles wide.

9. More than 200 residents live in approximately 90 homes constructed within the floodway area with their pets and livestock. In addition, the floodway area is used for cropland.

10. The floodway area also has petroleum storage tanks, farm chemical storage buildings and LP-propane gas tanks.

11. If the United States Army Corps of Engineers demolishes a portion of the Front Line Levee as planned, the inundation of flood waters will flood the homes, buildings and cropland in the floodway area.

12. The flood water will also cause the discharge of agricultural chemicals, petroleum products, and LP-propane gas into the environment and cause those chemicals and products, along with sediment and other contaminants, to enter into waters of the state of Missouri.

13. Agricultural chemicals, petroleum products, and LP-propane gas are water contaminants, within the meaning of MO. REV. STAT. § 644.016(23).

14. Sediment is a water contaminant, within the meaning of MO. REV. STAT. § 644.016(23).

15. Based on the foregoing, I believe that demolishing a portion of the Front Line Levee will cause the United States Army Corps of Engineers to unlawfully discharge water contaminants into waters of the state, and to cause pollution of waters of the state or place water contaminants in a place reasonably certain to cause pollution of waters of the state, in violation of MO. REV. STAT. § 644.051.1(1) .

FURTHER AFFIANT SAYETH NOT:



Davis Minton
Deputy Department Director, Operations

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

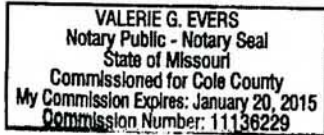
Subscribed and sworn before me on this 26 day of April, 2011.



Notary Public

Valerie G. Evers

Printed Name



My commission expires: January 20, 2015