IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ST. BERNARD PARISH AND OTHER OWNERS OF REAL PROPERTY IN ST. BERNARD PARISH OR THE LOWER NINTH WARD OF THE CITY OF NEW ORELANS, Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	)	No. 05-1119L Hon. Susan G. Braden

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

For the reasons discussed in the accompanying memorandum, Plaintiffs respectfully move this Court to certify a class, pursuant to Rule 23 of the Rules of the Court of Federal Claims, consisting of property owners residing in, owning property in, and/or engaging in commercial enterprises in St. Bernard Parish, Louisiana, or the Lower Ninth Ward of the City of New Orleans, whose property in those jurisdictions was taken by the United States through the flooding resulting from the gradual physical process set in motion by the creation, operation, maintenance, and dredging of the Mississippi River Gulf Outlet.

Dated: June 22, 2010

Respectfully submitted,

s/ F. Gerald Maples

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PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

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Plaintiffs respectfully submit this brief in support of their motion requesting this Court to certify a class, pursuant to Rule 23 of the Rules of the Court of Federal Claims, consisting of property owners residing in, owning property in, and/or engaging in commercial enterprises in St. Bernard Parish, Louisiana, or the Lower Ninth Ward of the City of New Orleans, whose property in those jurisdictions was taken by the United States through the flooding resulting from the gradual physical process set in motion by the creation, operation, maintenance, and dredging of the Mississippi River Gulf Outlet ("MRGO"). The putative class satisfies the requirements of Rule 23: the class is so numerous that joinder of all members as party-plaintiffs would be impracticable; the class members' claims share predominant legal and factual questions in common, and the United States has acted on grounds generally applicable to the entire class; the representative Plaintiffs' claims are typical of the class claims; the representatives will fairly and adequately represent the interests of the class; and a class-action suit is the superior and most efficient vehicle for resolving the takings claims that have arisen from the MRGO project.[1]

BACKGROUND

Plaintiffs are property owners residing in, owning property in, and/or engaging in commercial enterprises in St. Bernard Parish or the Lower Ninth Ward. The United States (hereinafter, "the Government") has taken the Plaintiffs' property without just compensation through the flooding resulting from the gradual physical process set in motion by the creation, operation, and maintenance of the MRGO.

[1] The Federal Circuit recently held that "when a class action complaint is filed in the Court of Federal Claims and class certification is sought prior to expiration of the … limitations period [specified in 28 U.S.C. § 2501], the limitations period is tolled." *Bright v. United States*, 603 F.3d 1273, 1274 (Fed. Cir. 2010). The Court, however, reserved "for another day the question of whether tolling would be allowed where class certification was sought after expiration of the limitations period." *Id.* at 1290 n.9. Accordingly, Plaintiffs, in an abundance of caution, bring this motion at this juncture to ensure that the limitations period for all potential class members' claims will be tolled.

The MRGO is a 76-mile long man-made channel between the Gulf of Mexico and the City of New Orleans. *See St. Bernard Parish v. United States*, 88 Fed. Cl. 528, 532 (2009) ("*St. Bernard Parish III*").[2] The Government, through the Army Corps of Engineers, created MRGO as a navigational project. Congress authorized MRGO to have a depth of 36 to 38 feet (depending on the section) and a bottom width of 400 to 450 feet. *Id*. at 535. The MRGO bisected the land, forest, and marshes of St. Bernard Parish, cutting through existing natural barriers that guarded against hurricane winds, storm surge, saltwater intrusion, and the unnatural consumption of both wetlands and previously dry land owned by Plaintiffs. *See id.* at 532-35. The dredging, operation, maintenance, and expansion of the MRGO have led to a channel far in excess of its authorized boundaries. *See id.* at 535. As Plaintiffs will be prepared to establish in this action, the creation, operation, maintenance, and dredging of the MRGO have created a direct line of access for weather-related storm surge, saltwater intrusion, and wind-driven water (even during times of clear skies), to now reach all of St. Bernard Parish and the Lower Ninth Ward, leading to frequent, recurring, and inevitable flooding. Plaintiffs contend, among other things, that the Government has thereby taken a flowage easement on their property, for which they are entitled to just compensation under the Fifth Amendment.

Plaintiffs filed a class action complaint in this Court on October 17, 2005, and a First Amended Class Action Complaint on January 13, 2006. *See* Docs. 1, 10. On July 18, 2006, the Court issued a Scheduling Order requiring any dispositive motions to be filed on or before September 18, 2006. *See* Doc. 17. Pursuant to an order granting an enlargement of time, the Government filed a motion to dismiss on October 4, 2006. *See* Doc. 27. In its opinion of March 29,

[2] Except as otherwise noted, references herein to the Court's prior opinions in this matter are intended to provide pertinent background to Plaintiffs' claims, and are not intended to suggest that the Court has already made factual findings on the merits of Plaintiffs' takings claims.

2007, the Court, *inter alia*, (i) determined it has jurisdiction to adjudicate Plaintiffs' claims; (ii) dismissed, without prejudice, Count II of the complaint (alleging a temporary taking), holding that the count was not yet ripe for adjudication; and (iii) ordered Plaintiffs to show cause as to why the statute of limitations did not bar this suit. *Tommaseo v. United States*, 75 Fed. Cl. 799, 802-05 (2007) ("*St. Bernard Parish I*"). On November 30, 2007, Plaintiffs filed a motion for leave to file a Second Amended Class Complaint. In its opinion of January 31, 2008, the Court granted that motion. *See Tommaseo v. United States*, 80 Fed. Cl. 366, 371-76 (2008) ("*St. Bernard Parish II*"). Plaintiffs filed their Second Amended Complaint on January 31, 2008. *See* Doc. 55 (as corrected on April 28, 2008, Doc. 62).

On November 7, 2008, the Government filed a motion for summary judgment in which it separately sought summary judgment on statute-of-limitations grounds and dismissal for failure to state a claim upon which relief could be granted. *See* Docs. 67, 70. On August 3, 2009, the Court issued an opinion and order addressing the Government's motion as well as several other issues. *See St. Bernard Parish III*, 88 Fed. Cl. 528. The Court held that the Second Amended Complaint alleged sufficient facts to establish standing. *Id.* at 548. The Court also held that the Government was not entitled to summary judgment on statute-of-limitation grounds. *Id.* at 555. Finally, the Court denied the Government's motion to dismiss, finding that the Second Amended Complaint and the record developed to date have alleged sufficient facts to establish the plausibility of Plaintiffs' allegations that the Government's actions relating to the MRGO have resulted in a taking of Plaintiffs' property. *Id.* at 555-58.

Plaintiffs seek to represent a class of similarly situated property owners in St. Bernard Parish and the Lower Ninth Ward. Like Plaintiffs, these property owners have not been justly compensated for the taking of their property as a result of the gradual physical processes set in

motion by the creation, operation, maintenance, and dredging of the MRGO. As discussed below, there are likely at least 30,000 such property owners.

ARGUMENT

In this Court, class certification may be granted: "only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims of the representative parties are typical of the claims of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." RCFC 23(a). In addition, the Court may certify a class only when: "(1) the United States has acted or refused to act on grounds generally applicable to the class; and (2) the [C]ourt finds that the questions of law or fact common to members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." RCFC 23(b).

This Court analyzes these requirements by looking at "'five categories: (i) **numerosity**—a class so large that joinder is impracticable; (ii) **commonality**—in terms of the presence of common questions of law or fact, the predominance of those questions, and the treatment received by the class members at the hands of the United States, (iii) **typicality**—that the named parties' claims are typical of the class; (iv) **adequacy**—relating to fair representation; and (v) **superiority**—that a class action is the fairest and most efficient way to resolve a given set of controversies.'" *Land Grantors in Henderson, Union and Webster Counties v. United States*, 71 Fed. Cl. 614, 621-22 (2006) (quoting *Barnes v. United States*, 68 Fed. Cl. 492, 494 (2005)) (emphasis in original). "In determining whether the requirements of RCFC 23 are met … the [C]ourt should not consider whether the … plaintiffs have stated a cause of action or will prevail on the merits." *Id.* at 622 (quotation marks omitted).

The putative class in this case satisfies each of these requirements.

A. Numerosity

Satisfaction of the numerosity requirement turns on whether joinder is impracticable. *Id.* This Court examines several factors in conducting this analysis, including, but not limited to: "the number of class members, the location of the members of the proposed class, the ability to identify members' names and addresses, the size of the claims, and the type of action." *Fauvergue v. United States*, 86 Fed. Cl. 82, 96 (2009), *rev'd on other grounds, Bright v. United States*, 603 F.3d 1273 (Fed. Cir. 2010). "The number of potential class members . . . is a major consideration," *id.*, and, "[g]enerally, if there are more than forty potential class members, this prong has been met," *King v. United States*, 84 Fed. Cl. 120, 124 (2008).[3]

Here, the size of the class—in excess of 30,000 land owners[4]—easily satisfies the numerosity requirement. Indeed, in takings cases, this Court has routinely certified classes consisting of many fewer land owners. *See Land Grantors*, 71 Fed. Cl. at 622, 626 (certifying class of over 1,000 former land owners); *Haggart*, 89 Fed. Cl. at 531, 536 (certifying class of at least 750 land

[3] *See also Haggart v. United States*, 89 Fed. Cl. 523, 530 (2009); *Land Grantors*, 71 Fed. Cl. at 622 (the fact that a putative class is greater than 1,000 "alone supports the numerosity requirement"); *Ashburn Bywaters v. United States*, 196 F.R.D. 458, 465 (E.D. Tex. 2000) ("The Fifth Circuit has held that though the number of class members alone is not determinative of whether joinder is impracticable, a class consisting of 100 to 150 members is within the 'range that generally satisfies the numerosity requirement.'") (quoting *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999)); *Lowers v. United States*, No. 99-90039, 2001 U.S. Dist. LEXIS 23899 at * 11 (D. Iowa May 4, 2001) ("'In light of prevailing precedent, the difficulty inherent in joining as few as 40 class members should raise a presumption that joinder is impracticable, and the plaintiffs whose class is that large or larger should meet the test … on that fact alone.'") (quoting NEWBERG ON CLASS ACTIONS § 3.05 at 3-25).

[4] *See* Declaration of Errol G. Williams, Assessor for the Third Municipal District of the Orleans Parish Board of Assessors (stating that at the last assessment prior to Hurricane Katrina there were 7,667 assessed parcels of land in the Lower Ninth Ward) (attached as Ex. A); Declaration of Marlene Vinsanau, Assessor for St. Bernard Parish (stating that at the last assessment prior to Hurricane Katrina there were 27,146 assessed parcels of immovable property in St. Bernard Parish) (attached as Ex. B).

owners); *Moore v. United States*, 41 Fed. Cl. 394, 396, 401 (1998) (certifying opt-in class of over 2,000 property owners); *Fauvergue*, 86 Fed. Cl. at 97, 101 (holding, in the alternative to dismissing the suit, that a class of approximately 150 landowners would be certified); *Bywaters*, 196 F.R.D. at 466 (certifying class "somewhere in the 300 to 500 member range"); *Lowers*, 2001 U.S. Dist. LEXIS 23899 at *10-11 (finding class of "one hundred or more" land owners "more than sufficient to justify class certification"). If "a substantial portion" (or, here, even a small portion) "of the potential class members seek joinder, the procedure would be inefficient, costly, and time consuming." *Hash v. United States*, No. 99-324, 2000 U.S. Dist. LEXIS 20061 (D. Idaho July 7, 2000) (certifying class of approximately 200 land owners).

Moreover, because the potential size of the class is so large, its geographic proximity does not undermine satisfaction of the numerosity requirement. *See Haggart*, 89 Fed. Cl. at 531 (certifying class of land owners located along a single, 25-mile railroad corridor in a single county); *Fauvergue*, 86 Fed. Cl. at 98 (finding numerosity satisfied where class consisted of approximately 150 landowners along a 28.25 mile-long stretch of rail bed); *Hash*, 2000 U.S. Dist. LEXIS 20061 at *16-17 (certifying class of approximately 200 land owners living along "an 83 mile stretch … in a two county area in Idaho").[5]

B. Commonality

"The 'commonality requirement' entails three inquires: whether there are 'questions of law or fact common to the class;' whether those common questions 'predominate over any questions affecting only individual members;' and whether the 'United States acted or refused to act on grounds generally applicable to the class.'" *Land Grantors*, 71 Fed. Cl. at 623 (quoting

[5] As in other multi-parcel takings cases, "the financial difficulties in trying each case individually lends support to a finding that the numerosity prong is satisfied." *Lowers*, 2001 U.S. Dist. LEXIS at *11.

RCFC 23(a)(2), (b)(1), (b)(2)).

1. *The Class Members Share Questions of Law and Fact in Common.*

"The threshold of commonality under RCFC 23(a)(2) … is not high," and is satisfied "when there is a least 'one core common legal question that is likely to have one common defense,' the resolution of which will affect all or a significant number of the putative class members." *Land Grantors*, 71 Fed. Cl. at 623. *See also Hash*, 2000 U.S. Dist. LEXIS 20061 at *20 ("the rule is easily satisfied where it is demonstrated that the 'named plaintiffs share at least one question of fact or law with the grievances of the prospective class.'") (quoting *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)). "A finding of commonality does not require that the claims be identical; rather, to meet RCFC(a)(2), the questions underlying the claims of the class merely must share essential characteristics, so that their resolution will advance the overall case." *Haggart*, 89 Fed. Cl. at 532. *See also Fauvergue*, 86 Fed. Cl. at 99 ("Commonality does not mean without difference.").

Here, this low threshold of commonality is easily cleared. Each member of the putative class alleges that the Government—through the flooding that resulted, and will continue to result, from the gradual physical process set in motion by the creation, operation, maintenance, and dredging of the MRGO—took the class member's property without just compensation. In numerous cases, both this Court and other courts have found that where multiple property owners allege that a single course of government conduct has effectuated a taking, the owners have common legal interests.[6] In other words, "the course of conduct at issue, the application of [gov-

[6] *See Haggart*, 89 Fed. Cl. at 533 ("[T]he determinative question applicable to all putative class members is whether the government's issuance of the NITUs . . . constituted a taking of plaintiffs' property in violation of their Fifth Amendment rights"); *Fauvergue*, 86 Fed. Cl. at 99 ("All plaintiffs, moreover, share one core common legal question: did a Fifth Amendment taking occur when the NITU issued . . . thereby blocking the landowners' reversionary interests

ernment action] to the land claimed to be owned by the putative class members in this action, affects each and every member of the class." *Lowers*, 2001 U.S. Dist. LEXIS 23899 at *13. Indeed, this Court's holding with regard to the statute-of-limitations question has already demonstrated the commonality of legal issues among the class. *Compare St. Bernard Parish III*, 88 Fed. Cl. at 555 (holding that "the stabilization doctrine applies in this case"), *with Land Grantors*, 71 Fed. Cl. at 624 (finding, in a takings case, that the legal questions of "whether the doctrine of equitable tolling should be invoked" and "whether the doctrine of laches is applicable" were common to a class of land owners).[7]

The factual inquiries that are subsumed within this legal question are also common to the class. As the Court explained in its most recent opinion in this case, "the *merits*" here may turn on "'specific factual proof that identifie[s] the wetland[s] that provide flood protection for [Plaintiffs'] properties, that [the] MR-GO caused the loss of those wetlands, and that the loss of those wetlands in fact will cause recurring flooding.'" *St. Bernard Parish III*, 88 Fed. Cl. at 557. These are, of course, questions that are common to the entire class.

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in their land?"); *Moore*, 41 Fed. Cl. at 399 (finding common legal claim in takings case to be "whether [government action] prevented the extinction of the railroad-rights-of-way, and thereby the reversion to the fee owner of the exclusive possession of the burdened parcel of land, causing a taking under the Fifth Amendment"); *Hash*, 2000 U.S. Dist. LEXIS 20061 at *40 ("Each member of the proposed class claims a taking of their property along the rail corridor. . . . Thus, each class member has virtually the same claims against the Defendant and must litigate and resolve similar issues."). *See also Neumont v. Florida*, 198 F.R.D. 554 (S.D. Fla. 2000) (certifying class of real property owners in a Florida county in takings challenge to ordinance restricting rental usage); *Bywaters*, 196 F.R.D. at 467 (crediting argument that "the commonality requirement is met because all proposed class members are Texas land owners, affected in the same manner by the uniform application of a single federal statute to a single rail line in the state of Texas"); *Schneider v. United States*, 197 F.R.D. 397, 401 (D. Neb. 2000) ("a determination of the conditions under which liability for a taking would attach is similar in every case").

[7] The fact that the Court has already decided this common legal question is of no moment to the commonality inquiry. *See Curry v. United States*, 81 Fed. Cl. 328, 334 (2008) ("it does not matter whether the common questions have already been summarily adjudicated"); *Land Grantors*, 71 Fed. Cl. at 620, 623-24 (deciding commonality question after trial had already taken place and Court had issued an opinion with respect to issues raised at trial).

The Court also held that the factual issue of Government "intent to invade a protected property interest," which can be established by proof that the Government actually foresaw or should have foreseen the effects that MRGO would have on properties in the area, is at issue in this case. *Id.* That question, too, is common to the class, as is shown by the public documents the Court has already taken notice of. *See, e.g., id.* (citing 2004 Army Corps Study warning of "significant risk of losing the integrity of bayou banks [threatening] a potential major breach of the navigational channel … [that will result] in rapid wetlands loss as strong waves from the [L]ake and ship wakes from the channel [MR-GO] impact sensitive interior wetlands"). Just as in *Haggart*, where "facts arising from the [government's] issuance of [a notice extinguishing reversionary rights of land owners] [we]re common to the class," 89 Fed. Cl. at 533, here the facts arising from the Government's creation, operation, maintenance, and dredging of the MRGO are common to the class. *Cf. King v. United States*, 84 Fed. Cl. 120, 126 (2008) ("'commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members'") (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)). Indeed, the recent factual findings of the Eastern District of Louisiana in the *In re Katrina Canal Breaches Consolidated Litigation* amply demonstrate (albeit in the context of a claim limited to the flooding associated with Hurricane Katrina) that the MRGO project created *region-wide* consequences that led to *region-wide* flooding.[8]

[8] *See, e.g.*, 647 F. Supp. 2d 644, 653 (E.D. La. 2009) ("It was clear from its inception that because of its location, degradation of *the area* would result unless proper, prophylactic measures were taken.") (emphasis added); *id.* ("a seminal issue with respect to Reach 2 of the MRGO and the construction of the Reach 2 Levee abutting the waterway was the need for foreshore protection to protect the banks of the MRGO from wave wash."); *id.* at 655 ("[T]here is ample evidence to find that the dominant cause of erosion on the MRGO shore was ship waves produced by large oceangoing vessels."); *id.* at 659 ("It is not surprising that when commenting on the poor relations with St. Bernard Parish and the landowners adjacent to the MRGO in 1999," the Corps stated "[t]he foreshore protection, which protected vital hurricane levees, was not main-

2. *The Common Questions of Law or Fact Predominate Over Questions Affecting Individual Members.*

Under RCFC 23(b)(2), "questions of law or fact common to the members of the class [must] predominate over any questions affecting only individual members." As discussed above, the central, predominant questions in this litigation relate to whether the Government's creation, operation, maintenance, and dredging of the MRGO caused actual and/or likely recurrent flooding in the Lower Ninth Ward and St. Bernard Parish and thereby effectuated a taking, through such mechanisms as the appropriation of a flowage easement, of the properties subject to such flooding. Whatever individualized questions might arise in this suit, they are quite subsidiary to the factual questions and legal theories that must be resolved by this Court in determining whether the MRGO project effectuated takings in St. Bernard Parish and Lower Ninth Ward.

For instance, while "issues of the precise damages owed individual members of the proposed class may arise," this Court has repeatedly taken "a pragmatic perspective" and held that such subsidiary questions do not negate a finding of predominance. *Land Grantors*, 71 Fed. Cl. at 624. Indeed, "[i]f the need for individual damages calculations was determinative, 'there

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tained properly and timely."); *id.* at 662 ("Even with the knowledge that the erosion problem was potentially cataclysmic for the *lives and property of those who lived in St. Bernard Parish*, no move was made to use the Chief's discretionary power to supplement the GDM to provide foreshore protection.") (emphasis added); *id.* at 670 ("[B]etween 1965 and 2001, the land cut more than doubled in size from its original footprint."); *id.* (citing to exhibit and finding that "[t]he most effective method to truly understand the overwhelming changes in the channel and to understand the encroachment that was allowed on both sides of the MRGO along Reach 2 is pictorial in nature"); *id.* at 671 ("Thus as overwhelmingly demonstrated at trial, this subsequent erosion resulting in the width of the channel increasing by more than 3 times its authorized width was caused by the Corps' failure to armor the banks of the MRGO to prevent 1) boat wakes causing erosion of the banks; 2) excavation and maintenance dredging causing bank slumping; 3) saltwater intrusion killing vegetation and promoting organic decay."); *id.* at 680, 698 (crediting testimony of Plaintiffs' expert that "[e]xcept for a limited contribution from rainfall, all flooding of the St. Bernard polder was caused by water that passed through or across the MRGO," and finding that "the Corps' failure to provide timely foreshore protection doomed the channel to grow to two to three times its design width and destroyed the banks which would have helped to protect the Reach 2 levee from front-side wave attack as well as loss of height").

scarcely would be a case that would qualify for class status in this [C]ourt.'" *Id.* (quoting *Taylor v. United States*, 41 Fed. Cl. 440, 444 (1998)). In fact, "'[l]ater, if necessary, the court can use a formula to determine damages for individual class members.'" *Id.* In any event, "'[i]f the determination of damages becomes too speculative or encumbered by individual factual issues, the court can decertify the class for the determination of money damages.'" *Id.*[9]

Likewise, individual questions of causation do not render this case inappropriate for class certification. First, as a factual matter, this Court may take notice of the findings of the U.S. District Court for the Eastern District of Louisiana in *In re Katrina Canal Breaches Consolidated Litigation*, 647 F. Supp. 2d 644 (E.D. La. 2009). *See St. Bernard Parish III*, 88 Fed. Cl. at 559 (staying case "pending adjudication" of *In re Katrina*). These findings show that the Government's creation, operation, maintenance, and dredging of the MRGO caused flooding of the entire region in which the land owned by the putative class members is found. *See, e.g.*, *supra* note 8. Similarly, the causation analysis as it relates to the MRGO's role in causing actual or threatened frequent and recurring flooding is governed much more significantly by facts that are common to the entire region (such as large-scale hydrologic, geologic, and environmental phenomena and processes) than by facts that are unique to individual properties (such as slight differences in elevation). *See* Declaration of Dr. Paul G. Kemp at ¶ 3 (attached as Ex. C). The pre-

[9] *See also Haggart*, 89 Fed. Cl. at 533-34 ("[D]ifferences in the amount of potential damages among putative class members will not alone prevent class certification. Thus, the question of whether the government's actions constituted a taking predominates over any questions specific to individual landowners."); *Hash*, 2000 U.S. Dist. LEXIS 20061 at *40-41; *Bywaters*, 196 F.R.D. at 469; *Filosa*, 70 Fed. Cl. at 618 (where "cause of action challenges a system-wide failure," predominance prong is satisfied even if there may be "differences in final individual damage determinations"); *King*, 84 Fed. Cl. at 126 (holding that the "fact that the eventual award will ultimately require individualized fact determinations" does not undermine predominance where "outcome determinative question" is whether government action with respect to entire class constitutes a taking); *Barnes*, 68 Fed. Cl. at 499 ("it is noteworthy that this court has employed damage estimations in other cases, and conceivably could employ similar principles here").

dominance of common over individual questions relating to causation is confirmed by the close-to-uniform topography of the Lower Ninth Ward and St. Bernard Parish. *See id.*

Thus, as this Court has already held in allowing additional Plaintiffs to be added to the Second Amended Complaint: "Although the circumstances and extent of each Plaintiff's injury may vary, each relies on a common set of facts and the same legal theory." Accordingly, "[r]equiring the proposed Plaintiffs to file separate suits would be inefficient and burden the parties." *St. Bernard Parish II*, 80 Fed. Cl. at 374 (citing *Barnes*, 68 Fed. Cl. at 498).

Second, as a legal matter, the question whether an individual landowner's parcel falls within the large region affected by the MRGO "goes to the merits, not class certification." *Filosa*, 70 Fed. Cl. at 621. In *Filosa*, this Court certified a class of nurse case managers employed by the Department of Veterans Affairs for purposes of litigating takings claims seeking compensation for after-hours nurse coverage. *See id.* at 611-13. The Government argued that the class representatives were "not typical of the proposed class, because they [were] not all entitled to on-call pay." *Id.* at 621.[10] Acknowledging that "differences between the policies and procedures at various VA Medical Centers regarding after-hours calls may exclude Plaintiffs from the class," the Court nonetheless held that "[t]hat possibility . . . [did] not prevent certification" because "[i]n the event that the factual distinctions . . . are determinative as to whether nurses at a particular VA Medical Center were officially scheduled to be on call . . . the court [could] address that issue by altering or amending the class definition prior to entry of final judgment." *Id.*

Similarly, in *Hash*, a Rails-to-Trails takings case, the Government argued that certification of a class was improper because the court would need to determine "a number of fact-

[10] As explained further below, "[t]he analysis of commonality and typicality tends to merge." *Fauvergue*, 86 Fed. Cl. at 100 (quotation marks omitted). Thus, this Court's reasoning regarding typicality in *Filosa* applies equally to questions arising under the commonality prong.

specific questions with respect to each parcel of property allegedly taken," including the factual background of the conveyance of each individual class member's parcel of land. *Hash*, 2000 U.S. Dist. LEXIS 20061 at *38-39. *See also id.* at *23-24, 26. The Court was "unpersuaded by [this] argument," because these individualized factual determinations "need not occur until after class certification." *Id.* at *26. *See also id.* at *41 ("While individual inquiries may be necessary to determine individual issues, these claims do not need to be resolved before the prevalent common issues.").

So too, here. If the Court later finds that particular parcels of land, or groups of parcels of land, fall outside of the area of flooding caused by the MRGO, it can alter or amend the class at a later date to address that issue. But the common legal and factual questions that precede such determinations predominate over these subsidiary questions. In short, these subsidiary "factual variation[s] among class grievances [are] acceptable" because this case turns on "a common nucleus of operative facts" surrounding the MRGO. *Curry*, 81 Fed. Cl. at 334.

3. *The United States Has Acted on Grounds Generally Applicable to the Proposed Class*.

Under RCFC 23(b)(1), a class action can be maintained only if "the United States has acted . . . on grounds generally applicable to the class." Here, the Government's creation, operation, maintenance, and dredging of the MRGO generally affected all of the putative class members' properties in the Lower Ninth Ward and St. Bernard Parish. *See supra* note 8. These region-wide actions are akin to the region-wide government action taken in the Rails-to-Trails cases, *see, e.g.*, *Fauvergue*, 86 Fed. Cl. at 99, and to the "system wide practice" of underpayment in *Filosa*, 70 Fed. Cl. at 620.

C. <u>Typicality</u>

Under RCFC 23(a)(3), the claims of the representative parties must be "typical of the

claims of the class." As with the commonality requirement, "[t]he threshold requirement for 'typicality' is also not high." *Land Grantors*, 71 Fed. Cl. at 625. Indeed, "[t]he analysis of commonality and typicality tends to merge," and both of these requirements are satisfied "[e]ven if some factual differences exist between the claims of the named representatives" and the class at large so long as "the named class representatives' claims share the same essential characteristics as the claims of the class at large." *Fauvergue*, 86 Fed. Cl. at 100 (quotation marks omitted). "Courts have found typicality if the claims or defenses of the representatives and the members of the class stem from a single event or unitary course of conduct, or if they are based on the same legal or remedial theory." *Haggart*, 89 Fed. Cl. at 534 (quotation marks omitted). *See also King*, 84 Fed. Cl. at 126 (same); *Barnes*, 68 Fed. Cl. at 498 ("A necessary consequence of the typicality requirement … is that the representatives' interests will be aligned with those of the represented group, and in pursuing his own claims, the named plaintiff will also advance the interests of the class members.") (quotation marks omitted). In this Court, "[t]ypicality has been found where the named plaintiffs are similarly situated to the rest of the proposed class by virtue of … land ownership." *Curry*, 81 Fed. Cl. at 335.

Here, as demonstrated above, the essential elements of the class representatives' claims are the same as that of the claims of the class at large: the creation, operation, maintenance, and dredging of the MRGO has resulted, and will continue to result, in flooding of property within the regions of the Lower Ninth Ward and St. Bernard Parish and thereby effectuated a taking without just compensation. *See id.* (typicality requirement satisfied "because all named plaintiffs and putative class members own land affected" by government action at issue and because "all plaintiffs seek a remedy from this court arising from the same governmental action . . . and premised upon a common theory of recovery"); *Lowers*, 2001 U.S. Dist. LEXIS 23899 at *16 (typi-

cality satisfied where "the grievance ar[o]se[] from the application of the Rails-to-Trails Act by the ICC to the railway corridor along which the putative class members claim they have an interest"). The class representatives own property throughout the region in which the proposed class resides, including in the Lower Ninth Ward and St. Bernard Parish. Indeed, St. Bernard Parish itself is a representative Plaintiff and owns 91 parcels of land throughout the Parish. *See* Doc. 62 (Second Amended Complaint) at 13-23. The properties owned include a mix of improved and unimproved parcels in both residential and business zones. These diverse properties are fairly representative of the mix of properties owned by the proposed class of land owners in St. Bernard Parish and the Lower Ninth Ward.

Finally, as with the commonality requirement, the possibility of individualized damage or causation determinations does not undermine satisfaction of the typicality requirement. *See Barnes*, 68 Fed. Cl. at 498 ("the fact that, of necessity, there will be individualized damage determinations here does not preclude granting plaintiffs' motion"); *Hash*, 2000 U.S. Dist. LEXIS 20061 at *26-27 (typicality satisfied where "some individual inquiry may be necessary with respect to the takings issues"); *Filosa*, 70 Fed. Cl. at 621 (typicality satisfied where individual inquiry into factual background of each class members' employment status might be necessary); *Lowers*, 2001 U.S. Dist. LEXIS 23899 at *15-16 ("'[F]actual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory.'") (quoting NEWBERG ON CLASS ACTIONS § 3.15 (3d ed. 1992)).

D. Adequacy

Under RCFC 23(a)(4), the representative parties must be able to "fairly and adequately protect the interests of the class." The Court examines two issues in determining whether this

requirement is satisfied: (i) whether class counsel is "qualified, experienced and generally able to conduct the litigation," and (ii) "whether Plaintiffs and the proposed class members are free from conflicting interests." *Land Grantors*, 71 Fed. Cl. at 625-26.

First, Plaintiffs are represented by four law firms, which cumulatively possess a significant range of experience in class action and complex federal litigation. For example, the firm of F. Gerald Maples, P.A.—which is located in New Orleans—has significant experience in class action and mass tort litigation. *See* Declaration on Behalf of F. Gerald Maples, P.A. at ¶¶ 1-2 (attached as Ex. D). Likewise, the law firm of Cooper & Kirk, PLLC, has represented parties in numerous class actions and regularly litigates complex actions, including takings cases, in the Court of Federal Claims. *See* Declaration of Vincent Colatriano at ¶¶ 5-7 (attached as Ex. E). Both firms regularly litigate major trials and are prepared to devote the resources necessary to a trial in this matter. *See, e.g.*, Maples Decl. at ¶ 3; Colatriano Decl. at ¶ 8. Accordingly, there can be no question that the class here would be represented by experienced and qualified attorneys who are ready and able to litigate this case. *See, e.g.*, *Filosa*, 70 Fed. Cl. at 621 (counsel with prior class action experience adequate to represent class); *Land Grantors*, 71 Fed. Cl. at 625 (crediting declaration that putative class counsel "has substantial expertise in representing plaintiffs in class actions and litigating complex litigation in both the United States Court of Federal Claims and the United States Court of Appeals for the Federal Circuit").

Second, there are no conflicts between the class representatives and the putative class members. As the attached representative declarations attest, Plaintiffs here are committed to vigorously prosecuting this case and representing the proposed class. They possess no known conflicts. *See* Sworn Declaration of Brad Robin (attached as Ex. F); Sworn Declaration of Gwendolyn Adams (attached as Ex. G); Sworn Declaration of Craig P. Taffaro, Jr. (attached as Ex.

H).[11] Instead, like the putative class members, they are uncompensated owners of parcels of land that have been taken by the Government through the creation, operation, maintenance, and dredging of the MRGO. *See Fauvergue*, 86 Fed. Cl. at 101 (adequacy prong met where "plaintiffs have the same legal and factual claims").

E. Superiority

Under RCFC 23(b)(2), a class action must be "superior to other available methods for the fair and efficient adjudication of the controversy." This requirement "is met when 'a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *Land Grantors*, 71 Fed. Cl. at 626 (quoting *Barnes*, 68 Fed. Cl. at 499). As explained above, the putative class members here present many common questions of law and fact, the consolidated adjudication of which would result in economies of time, effort, and expense. *See Fauvergue*, 86 Fed. Cl. at 101. Accordingly, a class action suit here "is a superior method of litigation because it allows the [C]ourt in potentially one action to resolve the issue of whether [the creation, operation, maintenance, and dredging of the MRGO] constituted a taking in contravention of the Fifth Amendment." *Haggart*, 89 Fed. Cl. at 535. Compared to the joinder of, or separate suits by, potentially tens of thousands of litigants, a class action would obviously achieve the economies that RCFC 23 was designed to achieve.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court certify a class consisting of property owners residing in, owning property in, and/or engaging in commercial

[11] The three plaintiff declarations we have submitted represent owners of approximately 100 affected properties in St. Bernard Parish and the Lower Ninth Ward, and are intended to be representative of all of the plaintiffs named in the Second Amended Complaint. If the Court so desires, we can endeavor to supply similar declarations from the remaining named plaintiffs.

enterprises in St. Bernard Parish, Louisiana, or the Lower Ninth Ward of the City of New Orleans, whose property in these jurisdictions was taken by the United States through the flooding resulting from the gradual physical process set in motion by the creation, operation, maintenance, and dredging of the MRGO.

Dated: June 22, 2010

Respectfully submitted,

s/ F. Gerald Maples

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Counsel of Record

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Counsel for Plaintiffs

Exhibit A

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ST. BERNARD PARISH GOVERNMENT, *et al.*	
Plaintiffs	
V.	**1:05-cv-1119 SGB** **Hon. Susan G. Braden**
THE UNITED STATES	
Defendant	

DECLARATION OF ERROLL G. WILLIAMS

I, Erroll G. Williams, hereby declare under penalty of perjury:

1. I am the Assessor for the Third Municipal District of the Orleans Parish Board of Assessors, which encompasses the Seventh, Eighth and Ninth Wards of the City of New Orleans, Louisiana.
2. The last assessment of property prior to Hurricane Katrina took place in 2004 at which time there were 7667 assessed parcels of immovable property in the Lower Ninth Ward.

I declare under penalty of perjury that these statements are true.

Executed on: _____

ERROLL G. WILLIAMS

SWORN TO AND SUBSCRIBED BEFORE ME, THIS 7th DAY OF ~~MARCH~~ APRIL, 2010.

NOTARY PUBLIC

Joyce Gerdes Joseph

(Print Name of Notary and Bar No.)

#16936

My Commission Expires at Death.

Exhibit B

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ST. BERNARD PARISH GOVERNMENT, *et al.*	
Plaintiffs	
V.	**1:05-cv-1119 SGB** **Hon. Susan G. Braden**
THE UNITED STATES	
Defendant	

DECLARATION OF MARLENE VINSANAU

I, Marlene M. Vinsanau, hereby declare under penalty of perjury:

1. I am the Assessor for St. Bernard Parish, Louisiana.
2. The last assessment of property prior to Hurricane Katrina took place in 2004 at which time there were 27,146 assessed parcels of immovable property in St. Bernard Parish.

I declare under penalty of perjury that these statements are true.

Marlene M. Vinsanau Executed on: 3-17-10
MARLENE M. VINSANAU

SWORN TO AND SUBSCRIBED BEFORE ME, THIS ____ DAY OF MARCH, 2010.

NOTARY PUBLIC
April M. Coupel #65833
(Print Name of Notary and Bar No.)

My Commission Expires at Death.

Exhibit C

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ST. BERNARD PARISH GOVERNMENT, ET AL.	)	
Plaintiffs	)	
	)	**1:05-cv-1119 SGB**
V.	)	**Hon. Susan G. Braden**
THE UNITED STATES	)	
Defendant	)	

SWORN DECLARATION OF DR. G. PAUL KEMP

G. Paul Kemp, under penalty of perjury pursuant to 28 U.S.C. § 1746, states as follows:

1. I am a Vice-President of the National Audubon Society and Director of the Louisiana Gulf Coast Initiative, with an office in Baton Rouge, Louisiana. For the previous 14 years, I studied and taught coastal geology and oceanography as Associate Research Professor, School of the Coast and Environment & Hurricane Center, Louisiana State University. One of my last duties as a faculty member was to participate in the State forensics analysis of the Katrina Levee failures (Team Louisiana). My *Curriculum Vitae* is attached as Exhibit "A."

2. I have prepared expert reports and given both deposition and live trial testimony in the matter of *Robinson, et al. v. United States*, Civil Action No. 06-2268, United States District Court, Eastern District of Louisiana.

3. In addition to the opinions I have expressed in my testimony in *Robinson*, I have the following opinions with respect to certain issues potentially relevant to the question of class certification in the instant matter:

   a. As St. Bernard Parish and the Lower Ninth Ward of the City of New Orleans are adjoining areas with a similar topography within the same polder, they are coterminous and share a common flood protection and drainage system. The Mississippi River-Gulf Outlet ("MR-GO") surrounds them both.

   b. That the landscape of St. Bernard Parish and the Lower Ninth Ward were both created at about the same time geologically by the same delta building processes so that they share similar topographical features, and were both once protected from flooding by the same natural vegetated buffer zone comprising upland forests, swamp forests, marshes and reedbeds. Both St. Bernard Parish and the Lower Ninth Ward are similarly susceptible to flooding events stemming from the design, creation, operation, maintenance and dredging of the MR-GO.

   c. For these reasons, the MR-GO's role in causing flooding in St. Bernard Parish and the Lower Ninth Ward and in contributing to the risk of frequent and recurrent flooding events in those areas in the future is governed predominantly by large-scale hydrologic, geologic, and environmental phenomena and processes, as well as by the regional flood protection works that have been constructed in phases over the years following a plan that is common to the entire region, rather than by particular facts unique to individual properties in the region (such as slight differences in topography, elevation, and the like).

d. The design, creation, operation, maintenance and dredging of the MR-GO, through natural processes including erosion and the intrusion of saltwater, destroyed the natural vegetative protective barrier of upland forests, swamp forests, marshes and reedbeds that once buffered the populated areas of St. Bernard Parish and the Lower Ninth Ward of New Orleans from the effects of wind-driven water, both during storm events and during periods of fair weather with persistent onshore winds. This degradation affected the entire region therefore the MR-GO's impact on the natural buffer to wind-driven water are also common to all properties in the area.

e. The MR-GO also sliced through natural ridges, such as the one at Bayou La Loutre, which helped serve as a barrier to storm surge and protected the fresh and intermediate marsh and swamps from saltwater infiltration. Again, this large-scale, regional impact on the natural environmental and geological barriers to floodwater is common to all properties in the area.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

4/1/10

_____ Executed on: _____

G. Paul Kemp

Exhibit D

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ST. BERNARD PARISH GOVERNMENT, *ET AL.* Plaintiffs v. THE UNITED STATES, Defendant	CASE NO. 05-1119-SGB

DECLARATION ON BEHALF OF F. GERALD MAPLES, P.A.

NOW COME, F. Gerald Maples and Carlos A. Zelaya, II of F. Gerald Maples, P.A. who submit the following Declaration relating their respective experience in mass tort and class action litigation in support of Plaintiffs' Motion for Class Certification herein.

1. F. Gerald Maples has over thirty years litigation experience including representing thousands of workers who were exposed to asbestos in the work place. His experience includes successfully prosecuting mass tort cases in state and federal courts. Mr. Maples is licensed to practice law in the States of Louisiana, Mississippi, Alabama and Florida. He is also admitted to practice in the United States District Courts of Mississippi, Alabama, Florida and Louisiana, the United States Court of Federal Claims, United States Court of Appeals for the Fifth Circuit and the Supreme Court of the United States.

2. Carlos A. Zelaya, II is admitted to practice in the State of Louisiana and the Commonwealth of Virginia. Mr. Zelaya has experience in representing individuals in

accumulated actions for recovery of asbestos–related injuries and noise induced hearing loss claims. In addition, Mr. Zelaya has experience in class action litigation including serving on the Discovery and Pleadings Committees in the *In Re Murphy Oil Explosion* litigation and serving on the Pleadings, Law, and Discovery Committees in the *Consolidated Katrina* litigation matters in the Eastern District of Louisiana.

3. F. Gerald Maples, P.A. has the litigation resources, experience, and financial resources necessary to prosecute this class action case to conclusion. The firm stands ready to commit the necessary time and financial resources as may be required to represent the class members and prosecute this case on their behalf.

Respectfully Submitted,

F. GERALD MAPLES, P.A.

F. Gerald Maples

Carlos A. Zelaya, II

SWORN TO AND SUBSCRIBED BEFORE ME, THIS 3rd DAY OF JUNE, 2010.

NOTARY PUBLIC

My Commission Expires at Death.

CARL D. CAMPBELL, III
Notary Public, LA Bar No. 31084
State of Louisiana
My Commission is issued for Life

Exhibit E

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ST. BERNARD PARISH AND OTHER OWNERS OF REAL PROPERTY IN ST. BERNARD PARISH OR THE LOWER NINTH WARD OF THE CITY OF NEW ORELANS,	)	
Plaintiffs,	)	
v.	)	**No. 05-1119L** **Hon. Susan G. Braden**
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

DECLARATION OF VINCENT J. COLATRIANO

I, Vincent J. Colatriano, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am an attorney licensed to practice law in the State of Maryland and the District of Columbia. I am a partner at Cooper & Kirk, PLLC, counsel to Plaintiffs in this case. I make this declaration in support of Plaintiffs' Motion for Class Certification. I have personal knowledge of the facts stated herein and could and would testify competently thereto if called upon to do so.

2. I earned my *juris doctor* degree, with highest honors, from The George Washington University National Law Center in 1990.

3. Other than myself, the following attorneys associated with Cooper & Kirk have been, and are expected to continue, representing Plaintiffs in this action:

a. Charles J. Cooper, the chairman of Cooper & Kirk, who earned his *juris doctor* degree from the University of Alabama, where he graduated first in his class in 1977.

b. Michael W. Kirk, a partner at Cooper & Kirk, who earned his *juris doctor* degree, *cum laude*, from Northwestern University in 1988.

c. Jesse Panuccio, an associate at Cooper & Kirk, who earned his *juris doctor* degree, *magna cum laude*, from Harvard Law School in 2006.

4. Also working with Cooper & Kirk and with our co-counsel in this matter is Brian Koukoutchos, who earned his *juris doctor* degree, *magna cum laude*, from Harvard Law School in 1983.

5. Cooper & Kirk has extensive civil litigation experience in a variety of complex cases at both the trial and appellate levels, and has particular expertise and experience in litigating cases raising complex and difficult legal and factual issues. The firm also often litigates cases involving claims for substantial damages and other monetary relief. In addition, the firm regularly litigates against the United States and federal agencies and has successfully litigated suits concerning the constitutionality of numerous statutes, regulations, and other government actions.

6. Cooper & Kirk has extensive experience litigating complex cases in the Court of Federal Claims and the United States Court of Appeals for the Federal Circuit. For example, the firm has handled more *Winstar* cases than any other law firm, including the original *Winstar* case and the still pending case of *AmBase v. United States*, No. 91-531 (Fed. Cl.). Many of those cases featured extensive litigation on Takings issues. The firm has also litigated other cases in various courts raising Fifth Amendment Takings issues.

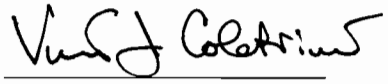
7. The firm also has experience in both prosecuting and defending class actions. For example, in *In re: Refined Petroleum Products Antitrust Litigation*, No. 07-01886 (S.D. Tex.), and *In re: Refined Petroleum Products Antitrust Litigation* & No. 09-20084 (5th Cir.), the firm represents plaintiffs in a putative class action alleging antitrust violations by a member of the global cartel that dominates crude oil markets. And in *Clark v. United States*, No. 00-644 (Fed. Cl. 2001), the firm served as co-counsel representing a putative class of National Guardsmen

who have been improperly denied compensation for correspondence courses they were required to complete.[1] And in four currently pending cases—*Grier v. Goetz*, 79-3107 (M.D. Tenn.); *John B. v. Goetz*, No. 98-0168 (M.D. Tenn.), *Brown v. Department of Finance and Administration*, No. 00-0665 (M.D. Tenn.), and *United States v. Tennessee*, No. 92-2062 (W.D. Tenn.)—the firm represents the State of Tennessee in class actions filed against the State by classes of beneficiaries of Tennessee's Medicaid program.

8. Cooper & Kirk, along with co-counsel, possesses and stands ready to commit both the expertise and the resources necessary to adequately and vigorously represent the class of claimants in this case.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed this 21st day of June, 2010, in Washington, D.C.



Vincent J. Colatriano

[1] It should be noted that classes have not yet been certified in either the *Refined Petroleum Products* or the *Clark* actions, and in view of the procedural posture of those matters, it is not clear that the courts involved will have occasion to rule on class certification.

Exhibit F

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ST. BERNARD PARISH GOVERNMENT, ET AL.	
Plaintiffs	
V.	**1:05-cv-1119 SGB** **Hon. Susan G. Braden**
THE UNITED STATES	
Defendant	

SWORN DECLARATION OF BRAD ROBIN

Brad Robin, under penalty of perjury pursuant to 28 U.S.C. § 1746, states as follows:

1. I am a plaintiff in the case of *St. Bernard Parish Government et al. v. United States*.
2. I know of no conflicts that would prevent me from functioning as a representative class action client.
3. I understand my obligations as a class representative and have no objections to functioning as a class representative through the course of this litigation.
4. I am committed to vigorously prosecuting this case and representing the proposed class.

I declare under penalty of perjury that these statements are true.

Brad Robin

Brad Robin

SWORN TO AND SUBSCRIBED BEFORE ME, THIS 7th DAY OF MAY, 2010.

Carlos A. Zelaya III

La. Bar No. 22900
My Commission Expires at Death.

Exhibit G

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ST. BERNARD PARISH GOVERNMENT, ET AL.	
Plaintiffs	
V.	**1:05-cv-1119 SGB** **Hon. Susan G. Braden**
THE UNITED STATES	
Defendant	

SWORN DECLARATION OF GWENDOLYN ADAMS

Gwendolyn Adams, under penalty of perjury pursuant to 28 U.S.C. § 1746, states as follows:

1. I am a plaintiff in the case of *St. Bernard Parish Government et al. v. United States*.
2. I know of no conflicts that would prevent me from functioning as a representative class action client.
3. I understand my obligations as a class representative and have no objections to functioning as a class representative through the course of this litigation.
4. I am committed to vigorously prosecuting this case and representing the proposed class.

I declare under penalty of perjury that these statements are true.

Gwendolyn Adams

Gwendolyn Adams

SWORN TO AND SUBSCRIBED BEFORE ME, THIS 22 DAY OF JUNE, 2010.

La. Bar No.
My Commission Expires at Death.

CARL D. CAMPBELL, III
Notary Public, LA Bar No. 31084
State of Louisiana
My Commission is issued for Life

Exhibit H

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ST. BERNARD PARISH GOVERNMENT, ET AL.	
Plaintiffs	
V.	**1:05-cv-1119 SGB** **Hon. Susan G. Braden**
THE UNITED STATES	
Defendant	

SWORN DECLARATION OF CRAIG P. TAFFARO, JR.

Craig P. Taffaro, Jr., under penalty of perjury pursuant to 28 U.S.C. § 1746, states as follows:

1. I am the President of St. Bernard Parish, Louisiana.
2. The St. Bernard Parish Government is a plaintiff in the case of *St. Bernard Parish Government et al. v. United States* currently pending in this Court.
3. I know of no conflicts that would prevent the St. Bernard Parish Government from functioning as a representative class action client.
4. I understand the obligations as a class representative and have no objections to functioning as a class representative through the course of this litigation.
5. The St. Bernard Parish Government is committed to vigorously prosecuting this case and representing the proposed class.

I declare under penalty of perjury that these statements are true.

Craig P. Taffaro, Jr.
President, St. Bernard Parish, Louisiana

SWORN TO AND SUBSCRIBED
BEFORE ME, THIS 15th DAY OF
JUNE, 2010.

Notary Public
CARLOS A. ZELAYA (#22900)

My Commission Expires at death.