

# In the United States Court of Federal Claims

Filed: June 6, 2018

IN RE DOWNSTREAM ADDICKS  
AND BARKER (TEXAS) FLOOD-  
CONTROL RESERVOIRS

Sub-Master Docket No. 17-9002L

Rule of the United States Court of  
Federal Claims 12(i);  
Rule of the United States Supreme Court  
13.

THIS DOCUMENT APPLIES TO:

ALL DOWNSTREAM CASES

## MEMORANDUM OPINION AND ORDER

On April 19, 2018, the court issued a Memorandum Opinion And Scheduling Order that deferred a ruling on the Government's February 20, 2018 Motion To Dismiss, pursuant to Rule of the United States Court of Federal Claims ("RCFC") 12(i), that authorizes the court to defer making a decision on "any defense listed in RCFC 12(b)(1)-(7) . . . until trial." ECF No. 92 at 2.

On May 17, 2018, the Government filed a Motion For Reconsideration. ECF No. 95 at 4. The basis for the May 17, 2018 Motion is the Government's view that the United States Court of Appeals for the Federal Circuit's decision in *St. Bernard Parish Government v. United States*, Nos. 2016-2301 & 2016-2373, 2018 WL 1882913 (Fed. Cir. Apr. 20, 2018) "addresses the same issue raised in the pending motion to dismiss and provides additional support for adjudication of the pending motion to dismiss now." ECF No. 95 at 2.

Rule 13 of the Rules of the United States Supreme Court provides that a petition for a writ of certiorari to review judgment in a case "is timely[,] when it is filed with the Clerk of [the Supreme Court] within 90 days after entry of the judgment." The deadline for the parties to file a petition for a writ of certiorari is July 19, 2018.

In light of the fact that the deadline for the parties to file a petition for a writ of certiorari with the Clerk of the United States Supreme Court has not passed, it is premature for the court to rule on the Government's May 17, 2018 Motion. Accordingly, that motion is denied. The Government may move for reconsideration of the court's April 19, 2018 Order after July 19, 2018.

**IT IS SO ORDERED.**

s/ Susan G. Braden

**Susan G. Braden**

**Chief Judge**