

NEWS RELEASE

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Hurricane Harvey Homeowners Win Federal Case

Next Phase is Damages for Homes Flooded by Dam Release

Houston homeowners living near the Addicks and Barker Dams won a federal case Wednesday against the Department of Justice for flooding to their homes and businesses following Hurricane Harvey in August 2017.

The test case of 12 plaintiffs had been in the courts for several years and Judge Loren Smith, senior judge of the United States Court of Federal Claims, ruled in a 48-page opinion that the government's actions to release water following the hurricane did temporary and permanent damage to the properties downstream.

"This case concerns whether government-induced flooding created a compensable taking under the Fifth Amendment of the United States Constitution," according to Smith's opinion filed Wednesday.

The case now moves to the damage phase, where plaintiffs' claims will be heard, according to Houston attorney Richard Mithoff, who represents 502 clients. Attorneys Rand P. Nolen and Jack E. McGehee worked with Mithoff on this case and have multiple additional clients of their own. The total number of claims could reach many thousands, Mithoff said.

"This is an enormous victory for the citizens of Houston who have been waiting a long time for a decision on their claims," said Mithoff. "This is a sweeping victory on every issue we presented."

Total damage amounts will be determined by the court. Eleven of the plaintiffs are homeowners; one business is listed as a plaintiff.

The flooding occurred following Hurricane Harvey, in which a record amount of rain inundated the Houston area. Property owners downstream from the dams sued the government, claiming the U.S. Army Corps of Engineers released water through the dam gates unnecessarily, flooding neighborhoods and making homes uninhabitable. The government claimed it was necessary to release the impounded water, but Robert C. Thomas, the chief of engineering and construction division for the Corps of Engineers, issued a report of performance following these events and concluded there was no significant threat to the structural integrity of the dam.

According to Smith's order, "Unique to this case, the flooding here did not occur merely from the construction or operation of a government flood control project. Rather, flooding arose from the government acting in accordance with a discrete regulation that required mandatory releases of impounded water as part of its flood control efforts."

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