

News **Litigation**

Houston Homeowners Win Federal Case Over Dam Flooding After Hurricane Harvey

A judge found the government liable, and the damages phase of the litigation will proceed on thousands of claims.

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Water coming over road in Kemah Texas During Hurricane Harvey. Credit: eric/Adone Stock

A federal judge has ruled in favor of Houston-area homeowners whose properties flooded after the government released water from the Addicks and Barker dams during Hurricane Harvey in 2017, finding the government liable for damages in a decision that could affect thousands of claims.

Senior Judge Loren Smith of the United States Court of Federal Claims delivered a 48-page opinion on Wednesday, concluding the government's decision to release water downstream led to both temporary and permanent damage to homes and businesses.

The test case involved 12 plaintiffs, most of them homeowners, and had been making its way through the courts for several years.

“This case concerns whether government-induced flooding created a compensable taking under the Fifth Amendment of the United States Constitution,” Smith wrote in the ruling.

For nine years, the litigation wound through multiple courts, including an appellate reversal that sent the case back to Smith, who ultimately ruled in the homeowners' favor.

The case now moves to a second phase, in which the court will determine the amount of damages owed to affected property owners.

Houston attorney Richard Mithoff, who represents 502 clients, said the total number of claims could eventually reach several thousand.

Attorneys Rand P. Nolen and Jack E. McGehee, who also worked on the case, represent additional clients.

The ruling hinges on government action, not an act of God, said Mithoff.

His central argument that swayed the court was that Army Corps of Engineers employees opened the Addicks and Barker reservoir gates not out of structural necessity, but because an operational manual directed them to do so at a certain water level, a level the reservoirs had not yet reached, Mithoff said.

"There was absolutely no significant threat to the structural integrity of the dam," Mithoff said. "In other words, there was no compelling reason to open the gates."

The most pivotal moment at trial came when Robert Thomas, the Corps' chief of engineering, testified there was no significant threat to the structural integrity of either dam—undermining the government's implicit defense that the releases were unavoidable, Mithoff claimed.

“Getting those admissions in the final day of trial from the chief of engineering was pretty significant,” 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,” Mithoff continued. “This is a sweeping victory on every issue we presented.”

The flooding occurred after Hurricane Harvey brought record rainfall to the Houston area.

Downstream property owners argued the U.S. Army Corps of Engineers unnecessarily released water from the dams, flooding neighborhoods and making many homes uninhabitable. The

government maintained the releases were necessary.

Smith's order emphasized that the flooding was not simply the result of the dams' construction or normal operation, but from the government's adherence to regulations requiring mandatory releases of impounded water as part of flood control efforts.

The 12 plaintiffs are test cases for potentially thousands of claims, Mithoff said.

The court selected the benchmark plaintiffs to reflect geographic variety, some closer to the dams, some farther away, to create a cross-section that can guide resolution of what could eventually be several thousand additional claims, Mithoff said. It includes 11 homeowners and one business named in the case.

The financial exposure is enormous but still undefined, Mithoff said. Damages for just the 12 test-case plaintiffs are estimated at roughly \$20 million. With potentially several thousand total claimants, the overall figure could be staggering, though Mithoff said it is too early to offer a reliable total.

Mediation may eventually resolve the bulk of claims, Mithoff said. After damages are determined in the 12 benchmark cases, Mithoff said the court may use those results as a guidepost to categorize and settle remaining claims through mediation, but only after the damage phase trial concludes successfully.

Mithoff said, "We have to get through the damages trial first, and once we are successful there, then we'll move to see if we can use that as a guidepost to settle the other cases."

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