

CAUSE NO. \_\_\_\_\_

**VAL ANTHONY ALDRED, HAGAN  
HAMILTON HEILIGBRODT,  
WILLIAM LANGE KRELL, JR.,  
BEVERLY FECEL KRELL, AND  
SHAWN S. WELLING**

**Plaintiffs,**

**V.**

**HARRIS COUNTY FLOOD CONTROL  
DISTRICT AND THE CITY OF  
HOUSTON,**

**Defendants**

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**JUDICIAL DISTRICT**

**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Val Anthony Aldred, Hagan Hamilton Heiligbrodt, William Lange Krell, Jr., Beverly FeceL Krell, and Shawn S. Welling (collectively referred to as "Plaintiffs"), and file this Original Petition against Defendants Harris County Flood Control District and The City of Houston, and would respectfully show as follows:

**I. PARTIES**

1. Plaintiff, Val Anthony Aldred is an individual who resides in and/or owns property in Harris County, Texas.
2. Plaintiff Hagan Hamilton Heiligbrodt, is an individual who resides in and/or owns property in Harris County, Texas.
3. William Lange Krell Jr. and Beverly FeceL Krell, are individuals who reside in and own property in Harris County, Texas.
4. Plaintiff, Shawn S. Welling, is an individual who resides in and/or owns property in Harris County, Texas.

5. Defendant Harris County Flood Control District is a unit of Harris County and may be served with process by delivering a copy of this Original Petition to its Executive Director, Russell A. Poppe, at 9900 Northwest Freeway, Houston, Texas 77092.

6. Defendant City of Houston is a municipality in the State of Texas and may be served with process by delivering a copy of this Original Petition to Ms. Anna Russell, City Secretary, City of Houston, at 901 Bagby, Houston, Texas 77002.

## **II. DISCOVERY LEVEL**

7. This is a level 3 cases pursuant to Rule 190 of the Texas Rules of Civil Procedure. This lawsuit will necessitate an individualized scheduling order including addressing class certification and class claims.

## **III. JURISDICTION & VENUE**

8. This Court has jurisdiction of this matter as the damages suffered by Plaintiffs and the Class exceed \$1,000,000.

9. Venue is proper as all or a substantial part of the events giving rise to this lawsuit occurred in Harris County, Texas.

## **IV. FACTS**

### **A. INDIVIDUAL CLAIMS**

10. Hurricane Harvey struck the Texas coast on Friday, August 25, 2017, as a strong Category 4 Hurricane. It moved up the Texas coast slowly and eventually dropped more than 50 inches of rain on Harris County.

11. While much of Harris County was flooding, Plaintiffs and members of the Classes had property that was not flooding as of Sunday, August 27, 2017. However, Sunday night and early Monday morning, the Harris County Flood Control District and Harris County, in

conjunction with the Corps of Engineers, made the decision to release water from the Barker and Addicks Reservoirs, flooding not only the homes and businesses around the reservoirs but many homes and businesses downstream along Buffalo Bayou.

12. Plaintiff Aldred resides at 835 Thornvine Lane, Houston, Texas 77079 in the Thornwood neighborhood and did not receive flooding until after the release of water from the Barker and Addicks Reservoirs.

13. Plaintiff Heiligbrodt resides at 423 Bayou Knoll, Houston, Texas 77079 in the Nottingham Forest VIII neighborhood and did not receive flooding until after the release of water from the Barker and Addicks Reservoirs.

14. Plaintiffs Krell reside at 111115 Tupperlake Drive, Houston, Texas 77042 in the Lakeside Forest neighborhood and did not receive flooding until after the release of water from the Barker and Addicks Reservoirs

15. Plaintiff Welling owns a commercial building located at 5731 Logan Lane, Houston, Texas 77007 in Harris County that upon information and belief did not receive flooding until after the release of water from the Barker and Addicks Reservoirs

16. At the time the releases were made, neither Harris County Flood Control District nor the City of Houston knew how many properties would be affected by the release of water, but they intentionally released the water knowing additional homes and businesses would be flooded or they were substantially certain that would be the result.

17. Harris County Flood Control District and City of Houston have failed to adequately prepare each reservoir for the possibility of flooding and have permitted unmitigated development around the reservoir such that they knew homes and businesses would flood in a heavy water event.

18. Further, Harris County Flood Control District and the City of Houston failed to take measures to prevent the reservoirs from becoming risks to those homes near the reservoir but not located in either's spillway. But each had known for years the condition of the reservoirs could lead to massive flooding to the surrounding homes and down streams. A Corp of Engineers report rated both Houston reservoirs' dams and spillways as extremely high risk.

19. Defendants' actions were done with intent and they knew of the substantial risk of flooding damage to homes and businesses around the Reservoirs and downstream along Buffalo Bayou.

20. Plaintiffs never provided authority for the flooding of their property and have never been compensated by Defendants for the flooding damage.

21. When the releases occurred to each reservoir, Plaintiffs' property was flooded with over three feet of water, destroying most of the property and its contents.

#### **B. CLASS CLAIMS**

22. Plaintiffs' experience is not unique but was the same experience of thousands of residents of Harris County whose properties were not flooding until the release of water from the Reservoirs. Each property owner experienced the same or similar harm by the actions of Harris County Flood Control District and the City of Houston.

23. Each Defendant engaged in the same or similar conduct relating to the Reservoirs and spillways. Pursuant to Rule 42(b) of the Texas Rules of Civil Procedure, Plaintiffs, individually, and on behalf of a class of persons similarly situated seek class certification and class relief. As alleged herein, Defendants' conduct is unlawful, violating the rights of Plaintiffs and other members of the proposed class(es). Plaintiffs bring this class action to secure redress for the Defendants' uniform and common practice as to all class members.

24. Plaintiffs seek certification of the following classes under Texas Rule of Civil Procedure 42(b):

- a. All Texas residential property owners who experienced flood waters at their property on or after Monday, August 28, 2017, in the area immediately north and west of Addicks Reservoir, west and south of the Barker Reservoir, and any residence downstream affected by the rising waters of the Buffalo Bayou as a result of Defendants' decision to release water from the Addicks and Barker Reservoirs.
  - b. All Texas commercial property owners who experienced flood waters at their property on or after Monday, August 28, 2017, in the area immediately north and west of Addicks Reservoir, west and south of the Barker Reservoir, and any property downstream affected by the rising waters of the Buffalo Bayou Addicks and Barker Reservoirs.
25. At least one or more of the Defendants is a Defendant: (1) from whom significant relief is sought by members of the Class; (2) whose alleged conduct forms a significant basis for the claims asserted by the proposed Class; and (3) who is a citizen or domiciled in Texas where this action is filed.

26. Further, the principal injuries resulting from the conduct or any related conduct of each Defendant were incurred in Texas, which is where this action was originally filed; upon information and belief, during the three year period preceding the filing of this class action, no other class action has been filed and certified asserting the same or similar factual allegations against any of the Defendants on behalf of the same or other persons; and/or two-thirds or more members of all proposed Classes in the aggregate and the primary Defendants, are citizens of Texas, which is where this action was originally filed.

27. Membership in the Class or Classes is so numerous as to make it impractical to bring all Class members before the Court. The exact number of Class members is unknown, but can be determined from the records maintained by the Defendants.

28. Numerous and substantial questions of law and fact common to all of the members of the Classes make certification appropriate including:

- a. Whether the uniform and systematic conduct of Defendants constitutes a taking of property in violation of the Section 17, Article 1 of the Constitution of the State of Texas?
- b. Whether the consequences of the release of the reservoirs was intentional by the Defendants or whether each was substantially certain of the harm that the release would cause?

## V. CAUSES OF ACTION

### A. Constitutional Taking

29. Plaintiffs would show that Defendants HCFCD and the City of Houston have by virtue of the above-described intentional conduct, and in the exercise of their lawful authority, caused an invasion and/or interference with Plaintiffs' property and these acts constitute a damaging and/or destroying of Plaintiffs' property for the application to public use without adequate compensation in violation of Section 17 of Article I of the Constitution of the State of Texas, which provides that "no person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by consent of such person." No Plaintiffs have permitted or consented to the flooding of their properties, nor have they been compensated for such.

30. Sovereign immunity does not shield the government from liability for compensation under the takings clause. *Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 598 (Tex. 2001).

### B. Nuisance

31. Additionally and/or alternatively, Plaintiffs would show that Defendants HCFCD and the City of Houston have by virtue of the above-described conduct, and in the exercise of their lawful authority, caused a substantial interference with the use, enjoyment and/or occupancy of Plaintiffs' properties or property interests. This interference has been non-negligent and unreasonable, and has resulted in nuisance damages for which Plaintiffs hereby sue.

32. Sovereign immunity does not shield the government from liability for nuisance.

## VI. DAMAGES

33. By virtue of the foregoing conduct, Plaintiffs have suffered damages herein. These damages consist of one or more of the following:

- a. Cost of repairs to real property, and cost of replacement or fair market value of personal property lost, damaged, or destroyed during the flood in question,
- b. Diminution in market value of Plaintiffs' properties,
- c. Mental anguish and/or emotional distress,
- d. Loss of income and business income,
- e. Consequential costs incurred, such as alternative accommodations or lost time at work,
- f. Pre- and post-judgment interest and costs of court,

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendants be cited to appear and answer herein, and that upon a final trial hereof, Plaintiffs have and recover of and from Defendants, jointly and severally, actual damages as set forth herein, pre-judgment interest, post-judgment interest, costs of court, and for other and further relief to which Plaintiffs may show themselves entitled.

Respectfully Submitted,

**THE POTTS LAW FIRM, LLP**

By: /s/ Derek H. Potts

Derek H. Potts  
Texas Bar No. 24073727  
Andrew A. Woellner  
Texas Bar No. 24060850  
3737 Buffalo Speedway, Suite 1900  
Houston, Texas 77098  
(713) 963-8881 Phone  
(713) 583-5388 Fax

[dpotts@potts-law.com](mailto:dpotts@potts-law.com)  
[awoellner@potts-law.com](mailto:awoellner@potts-law.com)

Unofficial Copy Office of Chris Daniel District Clerk