

1 John Kevin Crowley (SBN 88189)  
2 **ATTORNEY AT LAW**  
3 125 S. Market Street, Suite 1200  
4 San Jose, CA 95113  
5 408-288-8100 Telephone  
6 408-288-9409 Facsimile

7 Attorney for Plaintiffs  
8 **JEAN-MARIE WHITE**  
9 **AND BRYAN N. RODRIGUEZ**

**FILED**

JAN 09 2018

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY R. Jimenez DEPUTY

10  
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF SANTA CLARA**  
13 **UNLIMITED JURISDICTION**

14 JEAN-MARIE WHITE AND BRYAN N.  
15 RODRIGUEZ

16 Plaintiffs,

17 vs.

18 SANTA CLARA VALLEY WATER  
19 DISTRICT; COUNTY OF SANTA  
20 CLARA; CITY OF SAN JOSE, and  
21 DOES 1-100,

22 Defendants.

CASE NO. **18CV321600**

**COMPLAINT FOR DAMAGES**

1. Dangerous Condition of Public Property;
2. Inverse Condemnation;
3. Nuisance;
4. Negligence;
5. Violation of Mandatory Duty;

23 Plaintiffs allege as follows:

**GENERAL ALLEGATIONS**

24 1. At all times relevant hereto, Plaintiffs, CHARLES LEWIS POWELL AND  
25 JOLENE POWELL were individuals residing at 380 S. 20<sup>th</sup> Street, San Jose, California  
26 who suffered damages as a result of the Anderson Dam and Coyote Creek flood incident  
27 occurring in or around February 2017.

28 2. At all times relevant hereto, defendant SANTA CLARA VALLEY WATER

1 DISTRICT (hereinafter "DISTRICT") is a public agency that was created and is governed  
2 by the Santa Clara Valley Water District Act (Cal. Water Code App., § 60-1 *et seq.*). It  
3 operates as a special district with jurisdiction throughout Santa Clara County and is  
4 charged with water management for all beneficial uses and protection from flooding within  
5 Santa Clara County.  
6

7 3. At all times relevant hereto, defendant Santa Clara County is a political  
8 subdivision of the State of California.

9 4. At all times relevant hereto, defendant CITY OF SAN JOSE is a municipal  
10 cooperation existing in this state and county.

11 5. The true names and capacities, whether individual, corporate or otherwise, of  
12 defendants DOES I through 100, inclusive, are unknown to plaintiffs at this time. Plaintiffs  
13 are informed and believe and thereon allege that each of the defendants designated as  
14 a DOE is responsible in some manner for the events and happenings herein referred to,  
15 and caused injury and damage proximately thereby to plaintiffs as herein alleged.  
16

17 6. At all times mentioned herein, each of the defendants was the agent and  
18 employee of each of the remaining defendants, and at all times acted within the purpose  
19 and scope of their agency and employment, and each defendant has ratified and  
20 approved the acts of his agent.

21 7. The Anderson Dam (hereinafter "Dam") was built in or about 1950 at the site of  
22 a deep natural earthen gorge in Santa Clara County.  
23

24 8. At the time of the flood incident, the Dam had one spillway and one manual  
25 outlet pipe with a maximum outlet flow of about 425 cubic feet per second.

26 9. Prior to February 2017, applicable state and federal regulations limited water  
27 storage capacity of the dam to 45 feet below the dam crest. Although, in January 2017  
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27 storage capacity of the dam to 45 feet below the dam crest. Although, in January 2017  
28

1 the DISTRICT lowered the water storage capacity of the Dam to 55 feet below the dam  
2 crest, reducing the allowed storage capacity to 52,553 acre-feet.

3 10. The above stated DISTRICT policy to further reduce storage capacity was due  
4 to concerns regarding the Dam's structural integrity and its ability to withstand  
5 extraordinary natural phenomena.

6 11. In February 2017, the Dam lacked adequate structural, drainage, and other  
7 safety features to maintain the required and recommended water capacity levels, thereby  
8 resulting in a large water spill over the Dam and into Coyote Watershed and Coyote Creek  
9 ("Creek"), which in turn flooded the Creek and caused damage to nearby properties.

10 12. The Plaintiff is informed and believes, and based thereon alleges that there  
11 have been multiple prior flooding incidents occurring at the Dam.

12 13. The Plaintiffs were exposed in their home to floodwater as a result of the  
13 Anderson Dam and Coyote Creek flood incident and suffered damages including:  
14 personal and real property damage, cost of repair and cost of replacement, diminution to  
15 property value, physical illness and damage, medical bills and expenses, emotional  
16 distress, lost earnings, and nuisance.

17 14. Notice of said damages has been duly provided according to all applicable  
18 claim statutes.

19  
20  
21 **FIRST CAUSE OF ACTION**  
22 **Dangerous Condition of Public Property**  
23 **(Against All Defendants)**

24 15. Plaintiffs refer to and incorporate herein each and every allegation of the  
25 foregoing paragraphs as though stated in full.

26 16. Plaintiffs are informed and believe and thereon allege, that on and prior to  
27 February 2017, Defendants, who owned, maintained, operated, supervised, managed,  
28

1 constructed, designed and controlled the Dam and its related structures, had knowledge  
2 or notice that said structures existed in a dangerous condition, specifically including but  
3 not limited to: existing outlet pipe with inadequate capacity and reliability caused dam to  
4 rise to unsafe levels and in violation of applicable regulations and policies; insufficient  
5 size of spillway; lack of additional outlets, pumps, or other methods to more quickly  
6 drawdown reservoir and to enable adequate drainage; inadequate size and structural  
7 integrity of Dam; Insufficient buttressing, sloping, and embankments around Dam; and  
8 inadequate supervision and maintenance of the structures.  
9

10 17. Plaintiffs are informed and believe and thereon allege, that on and prior to  
11 February 2017, Defendants, who owned, maintained, operated, supervised, managed,  
12 constructed, designed and controlled Coyote Watershed and Coyote Creek and  
13 surrounding flood area, had knowledge or notice that said properties existed in a  
14 dangerous condition, specifically including but not limited to: allowing said Creek to  
15 accumulate with debris, thereby dangerously restricting water flow through the creek;  
16 inadequate supervision and maintenance; and inadequate flood prevention measures  
17 such as setbacks, diversions, or bypass channels.  
18

19 18. Each Defendant failed within a reasonable time to remedy said dangerous  
20 conditions or otherwise take steps necessary to protect the public.  
21

22 19. In addition to the foregoing, and despite having knowledge or notice, each  
23 Defendant and their employees and agents acting within the scope of employment, failed  
24 to take steps necessary to protect the public including, but not limited to: failure to  
25 undertake adequate inspections of the property subject to said dangerous conditions;  
26 failing to disclose accurate and timely information regarding the dangerous conditions,  
27 most specifically the dangerous volume of water within the reservoir and lack of adequate  
28

1 drawdown ability; failing to provide warnings to the public regarding the imminent flood  
2 danger; and failure to develop and implement adequate flood action plans to reasonably  
3 protect persons and property.

4 20. The Defendants' above stated failures constitute the legal and proximate  
5 cause of the damages herein alleged.  
6

7 21. By reason of the foregoing, Plaintiffs have suffered injury and damage as  
8 hereinbefore alleged in this complaint, and Defendants are liable for damages as  
9 hereinbefore alleged pursuant to Government Code § 835 *et seq.*  
10

11 **SECOND CAUSE OF ACTION**  
12 **Inverse Condemnation**  
13 **(Against Santa Clara Valley Water District and Santa Clara County)**

14 22. Plaintiffs refer to and incorporate herein each and every allegation of the  
15 foregoing paragraphs as though stated in full.

16 23. At all times relevant hereto, Plaintiffs were the owners of certain real  
17 property situated in the City of San Jose, County of Santa Clara, State of California, which  
18 is described as follows: 380 S. 20<sup>th</sup> Street, San Jose, California.

19 24. The Dam and its related structures owned, operated, and maintained by the  
20 Defendants are public projects designed for the purpose of channeling, stewarding and  
21 utilizing a fresh water source.  
22

23 25. The Coyote Watershed and Coyote Creek are also owned, operated, and  
24 maintained by the Defendants and are public projects designed for the purpose of  
25 channeling, stewarding and utilizing a fresh water source.

26 26. The design, construction, and maintenance of said public improvements  
27 posed an unreasonable risk of harm to the Plaintiffs' property, as demonstrated by the  
28

1 flooding incident into the Plaintiff's property that occurred because said public projects  
2 failed to function as intended.

3 27. Said flooding at the Plaintiff's property caused substantial damage to the  
4 home and rendered the property unusable for an extended period of time, without just  
5 compensation and in violation of California Constitution, Article I, § 19.

6 28. Said flooding at Plaintiff's property causing damage justifies compensation  
7 to Plaintiffs including but not limited to the rights, interests and values set forth in CCP  
8 §1263.110 through CCP §1263.530, *et seq.*

9  
10 **THIRD CAUSE OF ACTION**  
11 **Nuisance**  
12 **(Against all defendants)**

13 29. Plaintiffs refer to and incorporate herein each and every allegation of the  
14 foregoing paragraphs as though stated in full.

15 30. Plaintiffs were and are the owners of the real property specifically described  
16 above.

17 31. As more particularly described above, Defendants maintained the Dam and  
18 Creek areas with inadequate structural integrity, safety precautions, and emergency  
19 planning, and said negligent actions and omissions caused the Dam to overflow and  
20 cause extensive flood damage to the Plaintiffs real property neighboring the Creek. Said  
21 nuisance conditions continue to exist and could cause recurrent flooding in the event of  
22 future heavy rainfall or seismic activity.

23 32. Defendants' use and maintenance of the property, as described above,  
24 constitutes a nuisance under Civ. Code § 3479. It is injurious to Plaintiffs' health and  
25 offensive to Plaintiffs' senses, so as to obstruct the free use of Plaintiffs' property, and  
26 interferes with Plaintiffs' comfortable enjoyment of life.  
27  
28



33. As a proximate result of the nuisance created and maintained by Defendants, as described above, Plaintiffs have been damaged in the amount of property damage, diminution of property value, emotional distress, and lost earnings.

**FOURTH CAUSE OF ACTION**  
**Negligence**  
**(Against all defendants)**

34. Plaintiffs refer to and incorporate herein each and every allegation of the foregoing paragraphs as though stated in full.

35. Plaintiffs are informed and believe and thereon allege, that at said date and place, the defendants, and their employees breached their legal duty by negligently maintaining, supervising, and controlling the Dam and Creek structures and properties in such a way so as to cause a dangerous condition for Plaintiffs and to cause their substantial injuries as set forth hereinabove.

36. Plaintiffs are informed and believe and thereon allege, that the Defendants breached their legal duty by negligently failing to instruct, control and supervise their employees, agents and representatives to properly repair, maintain, improve, control, make safe, and to warn, to prevent and to warn of flooding into the Plaintiffs' property which posed unreasonable risks and occurrence of property damage and injury to the Plaintiffs.

37. Plaintiffs are further informed and believe and thereon allege that the persons responsible for the dangerous condition at the time of the incident described herein were all defendants including DOES 1 through 100. The names of other public employees and DOES 1 through 100 causing Plaintiffs' injuries under these circumstances, or allowing the dangerous condition, or who otherwise acted negligently as alleged herein, are presently unknown and Plaintiffs will seek to amend this complaint



1 when the same are known to them.

2 38. As a direct and proximate result of Defendants' foregoing conduct, Plaintiffs  
3 incurred property damage, diminution of property value, emotional distress and loss of  
4 earnings. All of the damages claimed by the Plaintiffs are in amounts within the  
5 jurisdiction of this court, and pursuant to this cause of action are claimed against all  
6 Defendants.  
7

8 **FIFTH CAUSE OF ACTION**  
9 **Violation of Mandatory Duty**  
10 **(Against all defendants)**

11 39. Plaintiffs refer to and incorporate herein each and every allegation of the  
12 foregoing paragraphs as though stated in full.

13 40. Plaintiffs damages as herein alleged were caused by the Defendants violation  
14 of applicable state and federal regulations and local ordinances regarding maximum  
15 water storage capacity and related safety protocols pertaining to the Reservoir, Dam,  
16 Watershed, and Creek.

17 41. Plaintiffs damages as herein alleged were further caused by the Defendants  
18 violations of applicable laws regarding emergency planning and public notices pertaining  
19 to natural emergencies such as the subject flood incident.  
20

21 42. The Defendants unreasonable failure to perform mandatory duties under  
22 applicable law and regulations was a substantial factor in causing the flood incident and  
23 the extent of the Plaintiffs' harm in the subject action.

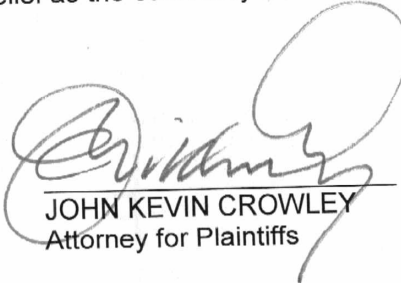
24 **WHEREFORE**, Plaintiffs pray judgment against the defendants, and each of them,  
25 jointly and severally for:  
26

27 1. General and special damages according to proof;

28 2. All past and future medical and incidental expense according to proof;

- 1 3. All loss of earnings and loss of earning ability, according to proof;
- 2 4. Loss of property and diminution of property value, according to proof;
- 3 5. Cost of replacement, repair and improvement, according to proof;
- 4 6. For prejudgment interest on all damages awarded to the plaintiff;
- 5 7. All attorney fees and costs of suit; and
- 6 8. For such other and further relief as the court may deem proper.
- 7
- 8
- 9

10 Dated: January 3, 2018

  
JOHN KEVIN CROWLEY  
Attorney for Plaintiffs