



Martinez, Sammy May Jr., Gary Miller, Juan Serrato, Ann and Dan Strang, Mads Thiel, Richard Thompson, Keith Vandever; Venus and Gerald Verdun; and Shannon Wilkes (hereinafter collectively referred to as “Plaintiffs”), file this Original Petition and Request for Disclosure against Defendant, San Jacinto River Authority (“Defendant” or “SJRA”), and would respectfully show this Honorable Court the following:

#### **DISCOVERY CONTROL PLAN**

1. Discovery is intended to be conducted under Level 3 of the Texas Rules of Civil Procedure 190.

#### **JURISDICTION AND VENUE**

2. The claims asserted arise under the laws of Texas

3. This Court has personal jurisdiction over the SJRA. The SJRA is a state agency created by the Texas Legislature in 1937. Its stated purpose or mission “is to develop, conserve and protect the water resources of the San Jacinto River basin.” Per its website, the SJRA’s jurisdiction covers and it operates in all or part of seven counties in Southeast Texas (Montgomery, Walker, Waller, San Jacinto, Grimes, Liberty and Harris). The SJRA’s principal place of business, general offices, headquarters and “nerve center” all are located in Texas. The SJRA is “at home” in Texas for jurisdictional purposes. The claims asserted against the SJRA set forth herein also arise out of and relate to the SJRA’s operations in Texas. As such, this Court has specific and general jurisdiction over the SJRA and the claims asserted against it herein.

4. This Court also has subject-matter jurisdiction over the SJRA and the constitutional claims asserted against the SJRA herein. Because the constitutional claims asserted against the SJRA are claims for the inverse condemnation and the unconstitutional “taking” of Plaintiffs’ Property in violation of Article I, Section 17 of the Texas Constitution, the doctrine of sovereign

immunity does not apply here and does not deprive this Court of subject-matter jurisdiction over all of the constitutional claims asserted and set forth herein. *See, e.g., Harris Cty. Flood Control Dist. v. Kerr*, 499 S.W.3d 793, 799 (Tex. 2016) (“Sovereign immunity does not shield the government from liability for compensation under the takings clause.”); *Ahmed v. Metro. Transit Auth.*, 257 S.W.3d 29, 32 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (“Article I, section 17 of the Texas Constitution waives immunity from suit and liability in inverse condemnation cases and authorizes compensation for such constitutional taking.”). Thus, the SJRA has no immunity from suit or liability in connection with the constitutional claims asserted against it herein.

5. This court has jurisdiction and venue is proper because all or a substantial part of the events giving rise to the cause of action occurred in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002(A)(1). Plaintiffs’ properties were located and present in Harris County, Texas, when Defendant intentionally, knowingly, consciously, and affirmatively inundated, flooded, took and inversely condemned Plaintiffs’ property between the dates of late August 2017 and early September 2017.

6. Venue also is proper in Harris County, Texas pursuant to Section 15.011 of the Texas Civil Practice & Remedies Code because the claims and causes of action set forth herein seek, among other things, recovery of damages to real property located in Harris County, Texas. Plaintiffs’ Property was located and present in Harris County, Texas when it was intentionally, knowingly, affirmatively and consciously inundated, flooded, taken, inversely condemned and sacrificed by the SJRA between late August 2017 and early September 2017.

7. Similarly, because the alternative or additional statutory claims asserted against the SJRA are expressly authorized by Section 2007 of the Texas Government Code, the SJRA also has no immunity from suit or liability in connection with the statutory claims asserted

against it herein. *See Hidalgo Cty. v. Dyer*, 358 S.W.3d 698, 705 (Tex. App.—Corpus Christi-Edinburg 2011, no pet.) (Section 2007.004(a) of the Texas Government Code “waives sovereign immunity from suit and liability to the extent it creates liability.”).

8. The court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the court. Plaintiffs seek monetary relief over \$1,000,000.00. TEX. PRAC. & REM. CODE § 15.011.

9. Further, any assertion by SJRA that Montgomery County, Texas is the proper venue based on Section 15.0141 of the Texas Civil Practice and Remedies code is inapplicable to this case and must be rejected. The SJRA is located in seven counties—including Montgomery County and Harris County—and each have a population in excess of 100,000. As such, Section 15.0151 of the Texas Civil Practice and Remedies Code does not apply to the case at hand.

#### **PARTIES**

10. Plaintiffs Steve and Dana Adams are and at all relevant times have been citizens and residents of the State of Texas, residing in Harris County, Texas at 20811 Rio Villa, Houston, Texas 77049 and 21627 Rio Villa Dr. Houston, Texas 77049. Plaintiffs’ residence and personal property was severely damaged by Defendant’s intentional flooding.

11. Plaintiff Susan Ardoin is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 2018 Fairway Green Dr., Kingwood, Texas 77339. Plaintiff’s residence and personal property was severely damaged by Defendant’s intentional flooding.

12. Plaintiff Delmer Barkley is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 19327 Rio Villa Dr, Houston,

Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

13. Plaintiffs Gerald and Pamela Butts are and at all relevant times have been citizens and residents of the State of Texas, residing in Harris County, Texas at 19514 Rio Villa Dr., Houston, Texas 77049. Plaintiffs' residence and personal property was severely damaged by Defendant's intentional flooding.

14. Plaintiff Tommy Dyer is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 19519 Rio Villa Dr., Houston, Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

15. Plaintiffs Marisol and Jaime Florez are and at all relevant times have been citizens and residents of the State of Texas, residing in Harris County, Texas 19218 Rio Villa Dr, Houston, TX 77049 and 19423 Rio Villa Dr, Houston, TX 77049. Plaintiffs' residence and personal property were severely damaged.

16. Plaintiffs Carlos and Maria Garcia are and at all relevant times have been citizens and residents of the State of Texas, residing in Harris County, Texas at 13327 Barnesworth Dr., Houston, TX 77049. Plaintiffs' residence and personal property were severely damaged.

17. Plaintiff Michael Gilliland is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 20019 Rio Villa Dr., Houston, Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

18. Plaintiff Liliam Gonzales is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 13334 Sterlingcrest Rd.

Houston, TX, 77049. Plaintiff's resident and personal property was severely damaged by Defendant's intentional flooding.

19. Plaintiff Karl Hartman is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 19422 Rio Villa Dr., Houston, Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

20. Plaintiff Kenneth Hartman is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 19711 Rio Villa Dr., Houston, Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

21. Plaintiffs Matthew and Jane Henry are and at all relevant times have been citizens and residents of the State of Texas, residing in Harris County, Texas at 15 New Greens Crt, Kingwood, Texas 77339. Plaintiffs' residence and personal property was severely damaged by Defendant's intentional flooding.

22. Plaintiffs Dale and Debra Joly are and at all relevant times have been citizens and residents of the State of Texas, residing in Harris County, Texas at 2019 Fairway Green Dr., Kingwood, Texas 77339. Plaintiffs' residence and personal property was severely damaged by Defendant's intentional flooding.

23. Plaintiff Rush Khan is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 21707 Rio Villa Dr., Houston, Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

24. Plaintiff Mark Kirkland is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 7034 Aztec Ln., Houston, Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

25. Plaintiffs Robert and Susan Leger are and at all relevant times have been citizens and residents of the State of Texas, residing in Harris County, Texas 103 Sandy Ln., Huffman, Texas 77336. Plaintiffs' residence and personal property was severely damaged by Defendant's intentional flooding.

26. Plaintiffs George and Patricia Maier are and at all relevant times have been citizens and residents of the State of Texas, residing in Harris County, Texas at 2010 Fairway Green Dr., Kingwood, Texas 77339. Plaintiffs' residence and personal property was severely damaged by Defendant's intentional flooding.

27. Plaintiff Jesse Martinez is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 202 Fir Ridge Dr., Huffman Texas 77336. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

28. Plaintiff Sammy May Jr. is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 19407 Rio Villa Dr., Houston, Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

29. Plaintiff Gary Miller is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 21611 Rio Villa Dr., Houston, Texas

77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

30. Plaintiff Juan Serrato is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 1065 Northwood County Dr., Huffman, Texas 77336. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

31. Plaintiffs Ann Strang and Dan Strang are and at all relevant times have been citizens and residents of the State of Texas, residing in Harris County, Texas at 20519 Rio Villa Dr., Houston, Texas 77049. Plaintiffs' residence and personal property was severely damaged by Defendant's intentional flooding.

32. Plaintiff Mads Thiel is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 19331 Rio Villa Dr., Houston, Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

33. Plaintiff Richard Thompson is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 19939 Rio Villa Dr., Houston, Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

34. Plaintiff Keith Vandever is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 315 Park Dr., Channelview, Texas 77530. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.



35. Plaintiffs Gerald and Venus Verdun are and at all relevant times have been citizens and residents of the State of Texas, residing in Harris County, Texas at 12502 Enchanted Path Dr., Houston, Texas 77044. Plaintiffs' residence and personal property was severely damaged by Defendant's intentional flooding.

36. Plaintiff Shannon Wilkes is and at all relevant times has been a citizen and resident of the State of Texas, residing in Harris County, Texas at 19023 Rio Villa, Houston, Texas 77049. Plaintiff's residence and personal property was severely damaged by Defendant's intentional flooding.

37. Each Plaintiff is and has been at all relevant times an owner of the real property or properties located at the addresses following each of their names in the preceding paragraphs. Such real property and the personal property located or present on such real property when those properties were intentionally, knowingly, affirmatively and consciously inundated, flooded, taken, inversely condemned and sacrificed by Defendant between late August 2017 and early September 2017 are referred to herein collectively as "Plaintiffs' property" and/or "Plaintiffs' home."

38. Defendant San Jacinto River Authority is a governmental entity created by the Texas Legislature, which may be served with service through its administrative head, Jace A. Houston, at its corporate headquarters located at 1577 Dam Site Road, Conroe, Texas 77304 or wherever he may be found.

#### **FACTS**

39. The SJRA is a conservation and reclamation district, governmental agency and political subdivision of the State of Texas created by special act of the Texas Legislature in 1937

codified at Article 8280-121 V.T.C.S., as amended, under authority of Article XVI, Section 59, of the Texas Constitution. Article XVI, Sections 59(a) and (b) of the Texas Constitution provide:

(a) The conservation and development of all of the natural resources of this State, and development of parks and recreational facilities, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

40. Portions of Section 51 of the Texas Water Code are among the laws passed by the Texas Legislature and applicable to the SJRA. The functions of the SJRA include providing for the control, storage, preservation, distribution, conservation, and reclamation of water, including floodwater. TEX. WATER CODE § 51.121(b)(1), (3). The SJRA also may control, abate, or change any shortage or harmful excess of water. *Id.* § 51.121(b)(5). The SJRA also has the authority to acquire easements considered necessary, incident, or helpful to accomplish its purposes. *Tarrant Cty. Regional Water Dist. v. Gragg*, 151 S.W.3d 546, 550-51 (Tex. 2005) (citing TEX. WATER CODE § 51.121(c)).

41. Pursuant to and in accordance with its constitutional and statutory authority, one of the SJRA's stated purposes or missions is "is to develop, conserve, and protect the water resources of the San Jacinto River basin." Lake Conroe—a lake near Conroe, Texas—is located within the San Jacinto River basin. The SJRA owns, operates and maintains the dam, spillway structure and related infrastructure for the lake. Lake Conroe was formed in 1973 after the SJRA completed the construction of a dam across the West Fork of the San Jacinto River (the "West Fork"). The SJRA has managed, maintained and operated the lake, its dam, spillways and related infrastructure since 1973. Important facts with respect to the lake as reported by the SJRA include the following:

- The normal water or pool level for the lake is 201 feet above mean sea level ("msl");
- When the dam was completed in 1973, the SJRA acquired a flowage easement around the perimeter of the lake allowing it to raise the lake's water level by an additional six feet to 207 feet above msl during storm events. Such easement is recorded in the Montgomery County, Texas land records and "notif[ies] landowners that any structures below this elevation are subject to being flooded;"
- The lake's water level can exceed 207 feet above msl for a short time "to minimize risk to life and property on both sides of the dam" without threatening the dam's structural integrity;
- The height or top of the dam is 212 feet above msl; and
- The lake is unsafe when its pool level exceeds 203 feet above msl. At and above that water level, structures like docks, bulkheads, small islands and other structures became fully submerged and cannot be seen by boaters.

42. On or about August 25, 2017, Hurricane Harvey struck the Texas Gulf Coast near Rockport, Texas as a strong Category 4 hurricane. After making landfall, Hurricane Harvey<sup>1</sup> meandered in Southeast Texas for several days. Hurricane Harvey stalled a few miles inland, reversed course and moved slowly back to the Gulf of Mexico and then moved up the southeast

---

<sup>1</sup> Because its wind speeds diminished over time, Hurricane Harvey was downgraded to a tropical storm while meandering along the southeast Texas coast. For ease of reference, this petition will continue to refer to this weather system as "Hurricane Harvey" even after the system was downgraded to a tropical storm

Plaintiffs' Original Petition and Request for Disclosure

Texas coast before making a second landfall near the Texas-Louisiana border a few days later. Hurricane Harvey dropped more than fifty inches of rain on parts of southeast Texas. Lake Conroe was more fortunate. The SJRA reports that Lake Conroe received about 22.4 inches of rain during Hurricane Harvey. However, published data from United States Geological Survey reports that the Lake Conroe area received only about sixteen inches of rain from Hurricane Harvey.

43. The amount of rainfall that fell in the Lake Conroe watershed during Hurricane Harvey was neither unprecedented nor unexpected. In October 1994, a slow-moving storm dropped 20-30 inches of rain in the lake's watershed over a four-day period. During that storm, water was flowing into the lake at a rate of 180,000 cubic feet per second ("cfs"). When that water raised the lake's pool level to about 205.58 feet msl, the floodgates were opened. The released water was measured just below the dam as flowing at a peak rate of 33,400 cfs. That release of water flooded the West Fork downstream and parts of Kingwood and nearby Humble.

44. On October 16, 2004, the Houston Chronicle ran a story titled "Flood of 1994: History could repeat itself." That story recounted the flood in October 1994 that flooded parts of Kingwood and also mentioned two other "major floods" in 1998 and 2001. That story also reported that a representative of the SJRA confirmed that the 1994 releases from the dam caused or exacerbated all or part of the flooding in Kingwood in October 1994.

45. The October 1994 flood that was caused or exacerbated by the SJRA's releases of water from the lake was but one of several recurrent or intermittent floods that flooded all or part of Kingwood and Humble between 1994 and 2017. All or part of Kingwood and Humble also sustained flooding in 1998, 2001, 2002, 2015, 2016 and 2017 (and perhaps other years). Documentation prepared by the SJRA and other entities shows that such flooding occurred shortly after large water releases from the lake.

46. In April 2017, the SJRA contacted the Texas Commission on Environmental Quality (“TCEQ”) requesting comments regarding pre-releasing water from Lake Conroe before a predicted large rain event. The TCEQ’s written response to that request included the following:

We would not recommend pre-release based on weather forecasts. Meteorologists cannot precisely predict how much it is going to rain or exactly where it is going to rain. If prerelease from a reservoir was started based on a prediction of rain upstream of a dam and the rain actually fell downstream of the dam on top of the water that was released, the dam owner could be liable for causing any flooding and water supply would have been wasted.

In the case of large rainfalls, it would be difficult to release enough water in advance of the storm, without causing flooding, to allow storage without release during the event.

47. The operational protocol for reservoir management recommended by the TCEQ—and which the SJRA intentionally, affirmatively, consciously and with full knowledge of its consequences followed in connection with the lake and the anticipated and actual effects of Hurricane Harvey—involved

- (1) disregarding weather forecasts and rainfall amount predictions;
- (2) not pre-releasing water because that risked unnecessary downstream flooding and the waste of critical stored water supply if the storm did not bring significant rainfall; and
- (3) intentionally, knowingly, affirmatively and consciously releasing floodwaters from the lake between late August 2017 and early September 2017 to (a) protect and spare the dam and its infrastructure from flood damage, (b) protect and spare properties upstream from flood damage, and (c) achieve all other goals and desires in furtherance of the public good described throughout this petition.

48. On August 24, 2017, the SJRA issued a press release confirming that it would not pre-release water from Lake Conroe:

- During major events such as this, SJRA receives numerous calls asking whether we might pre-release water from Lake Conroe. SJRA never pre-releases water from Lake Conroe prior to a storm event for numerous reasons.
- First, in order to pre-release water at a reasonably safe rate (so that it doesn't cause flooding downstream), it would take weeks to accomplish enough drop in lake level to have any hope of buffering a major storm event.
- Second, if we did try to pre-release in advance of a storm, we would be artificially filling the river downstream and adding water to Lake Houston. If the heavy rains fell in other watersheds (which is highly likely given the relatively small size of our watershed), then we would have pre-filled the west fork of the river and Lake Houston, which could exacerbate downstream flooding problems.
- Third, if we pre-released and ended up not receiving significant rainfall in our watershed, then we would have drained critical supplies of stored water from Lake Conroe.
- Meteorologists simply cannot precisely predict how much and exactly where it is going to rain with enough notice (several weeks) to allow a safe pre-release from a reservoir.
- Dam operators strictly adhere to gate operating protocols designed by their engineers, and pre-releasing is inconsistent with those protocols for the reasons stated above.

49. The SJRA followed the TCEQ's 2017 recommended operational protocols and did not pre-release any water from the lake as Hurricane Harvey approached Texas in August 2017.

50. A chronology of several later SJRA press releases shows the following:

- **08/27/17 at 12:30 am:** The Lake Conroe watershed received about six inches of rainfall over the preceding twenty-four hours. Because the lake was about six inches below its normal pool level when the rain event started, this initial rainfall raised the lake's level to about one inch above its normal water level at 201 feet above msl. The press release noted that the SJRA would start gradual releases of water;
- **08/27/17 (after 12:30 am but not time-stamped):** The lake's watershed picked up an additional two inches of rain, and its pool level had risen to over 203 feet above msl. At that level, many docks, bulkheads, small islands and other structures

became fully submerged. This created a dangerous condition for boaters and the risk that electrical outlets and equipment may come into contact with water;

- **08/27/17 at 11:30 pm:** The lake's watershed had received an average of eighteen inches of rainfall, and its water level had risen to about 205.25 feet above msl;
- **08/28/17 at 1:30 am:** Lake Conroe's water level had risen to 205.88 feet above msl. The current release rate from Lake Conroe was 73,201 cfs. The previous release rate record was 33,360 cfs;
- **08/28/17 at 10:00 pm:** The lake's water level had crested and had started to decline by this time. The peak water level during the storm was 206.24 feet above msl. The SJRA stated that the peak inflow into the lake was about 130,000 cfs. The peak release rate from the lake was 79,100 cfs; and
- **08/29/17 at 4:00 pm:** The lake's water level had fallen to 203.7 feet above msl. This press release also noted that most docks and bulkheads would be visible once the lake dropped a little more to 203 feet above msl.

51. The SJRA's intentional, knowing, affirmative and conscious decision or decisions to conserve and then release lake water between late August 2017 and early September 2017 intentionally, knowingly, affirmatively and consciously inundated and flooded the West Fork and many properties downstream of the dam, including Plaintiffs' Property. The serious bodily injuries made the basis of this lawsuit were proximately caused by the negligence, gross negligence, and negligence *per se* of Defendant, its agents, or its employees acting in the course and scope of their employment.

**FIRST CAUSE OF ACTION:  
INVERSE CONDEMNATION AND UNCONSTITUTIONAL TAKING OF PLAINTIFFS' REAL  
AND PERSONAL PROPERTY IN VIOLATION OF ARTICLE I, SECTION 17 OF THE TEXAS  
CONSTITUTION**

52. Plaintiffs re-allege the facts set forth in the preceding paragraphs and incorporate those allegations by reference below as if fully set forth verbatim.

53. The SJRA's intentional, knowing, affirmative and conscious acts, conduct and decisions described herein constitute the inverse condemnation and unconstitutional taking

(permanent and temporary) of Plaintiffs' Property in violation of Article I, Section 17 of the Texas Constitution. Article I, Section 17 of the Texas Constitution provides that "[n]o person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person." A takings claim consists of three elements: (1) an intentional act by the government under its lawful authority, (2) resulting in a taking, damaging, or destruction of the plaintiffs' property, (3) for public use. All elements are present.

54. The SJRA had the absolute legal, constitutional and statutory authority to operate and manage the lake, the dam and the related infrastructure as it did between late August 2017 and early September 2017 and release those flood waters that caused and/or exacerbated the flooding and the flood effects that flooded, damaged and destroyed Plaintiffs' Property. For example, Article XVI, Section 59 of the Texas Constitution and Section 51 of the Texas Water Code authorize and empower the SJRA to provide for the control, storage, preservation, distribution, conservation, and reclamation of water, including flood water and also to control, abate, or change any shortage or harmful excess of water. The operation and management of the lake and dam as described herein is well within the lawful, constitutional and statutory authority granted to the SJRA by the Texas Constitution, the Texas Water Code and the relevant caselaw.

55. The SJRA made intentional, knowing, affirmative and conscious decisions and engaged in intentional, knowing, affirmative and conscious acts between late August 2017 and early September 2017 regarding the management and operation of the lake and its floodwaters with full and complete knowledge of the consequences and results of those decisions and actions. In this regard, the SJRA (1) disregarded all weather forecasts regarding predicted storm rainfall; (2) decided not to pre-release water to avoid risking unnecessary downstream flooding and potentially wasting critical stored water supply; and (3) intentionally, knowingly, affirmatively



and consciously released water from the lake between late August 2017 and early September 2017 to (a) protect and spare the lake and its infrastructure from flood damage, (b) protect and spare properties upstream from the dam from flood damage, and (c) achieve all other SJRA goals and desires in furtherance of the public good described throughout this petition.

56. The SJRA's motives for making the intentional, knowing, affirmative and conscious decisions and engaging in the intentional, knowing, affirmative and conscious acts described in the preceding paragraphs included the following:

- The SJRA decided not to pre-release water in anticipation of Hurricane Harvey because (1) the SJRA sought to conserve and avoid any unnecessary drainage or release of "critical supplies of stored water from Lake Conroe;" (2) there was the risk that a pre-release could unnecessarily cause, contribute to or exacerbate downstream flooding if the watershed did not receive significant rainfall; and (3) the SJRA has represented that it believed that lowering the lake below 201 feet above msl too quickly would reduce the water pressure against the face of the dam and potentially cause instability of the soils on the upstream slope of the dam;
- The SJRA intended and sought to protect the stability and integrity of the dam and its earthen embankment. The SJRA released water as it did between late August 2017 and early September 2017 to protect the dam;
- The SJRA intended and sought to lower the lake's level to prevent water from overflowing or "overtopping" the lake's spillway gates because those gates were not designed to withstand the force and water pressure that would exist if water overflowed those gates. The SJRA released water from the lake as it did between late August 2017 and early September 2017 to protect the gates;
- The SJRA intended and sought to lower the lake's level to protect homes and properties on the lake and elsewhere upstream of the dam from flooding. The SJRA released water from the lake as it did between late August 2017 and early September 2017 to protect those properties;
- The SJRA intended and sought to lower the lake's level below 203 feet above msl as quickly as possible because many docks, bulkheads, small islands and other structures became fully submerged when the lake level exceeded 203 feet above msl. This created a dangerous condition for boaters and the risk and hazard that electrical outlets and equipment may come into contact with water. The SJRA released water from the lake between late August 2017 and early September 2017 to remedy these dangerous conditions, risks and hazards; and

- The SJRA intended and sought to lower the lake's pool level so that the lake, adjacent parks and adjacent roads could reopen and become fully operational as quickly as possible. The SJRA released water from the lake as it did between late August 2017 and early September 2017 to achieve this goal.

57. In the wake of Hurricane Harvey and in the face of the above (and other) facts, the SJRA faced a choice. The SJRA could do nothing as the water level rose and run all the risks associated with that water level identified herein. Or, the SJRA could release floodwaters that the SJRA knew would cause "devastating flooding downstream" with "catastrophic consequences." The SJRA chose the latter option and intentionally, knowingly, affirmatively and consciously inundated, flooded, took, inversely condemned and sacrificed Plaintiffs' Property for the greater public good. The release of those floodwaters beginning in late August 2017 caused the "devastating flooding downstream" with "catastrophic consequences" that the SJRA predicted and foresaw. The timing of those releases and of the flooding of the subject homes shows that those homes did not begin to take on water until those floodwaters released from the lake had time to make their way downstream and cause the subject flooding described herein. None of the homes at issue took on any water before the rain from Hurricane Harvey had stopped falling and before the water released from the lake had time to (i) make its way downstream and reach those homes and/or (ii) displace or move water from other sources and cause the displaced or moved water to flood or exacerbate the flooding of Plaintiffs' Property.

58. The SJRA intentionally, knowingly, affirmatively and consciously flooded Plaintiffs' Property and/or intentionally, knowingly, affirmatively and consciously caused or exacerbated the flood effects that those properties sustained because the SJRA (1) knew that releasing water as it did between late August 2017 and early September 2017 would cause identifiable harm to those properties by flooding them with several feet of water and/or exacerbating the flood effects sustained by them, or (2) was substantially certain that releasing the

water as it did between late August 2017 and early September 2017 would cause identifiable harm to those properties by flooding them with several feet of water and/or exacerbating the flood effects sustained by them because:

- On July 12, 2017, the SJRA and several other state entities participated in a public hearing to discuss West Fork flooding. Those entities prepared a PowerPoint presentation for that hearing that tracked and mapped historical flooding downstream of Lake Conroe, provided a table showing peak lake levels and peak lake release rates between 1983 and 2016 and contained photographs showing downstream flooding in Kingwood and elsewhere even when peak lake release rates were much lower than the release rates in late August 2017;
- On August 24, 2017, the SJRA issued a press release stating that “in order to pre-release water at a reasonably safe rate (so that it doesn’t cause flooding downstream), it would take weeks to accomplish enough drop in lake level to have any hope of buffering a major storm event.” At that time, the lake’s pool level was about six inches below its normal pool level. Moreover, there had been little, if any, rain during the days preceding the arrival of Hurricane Harvey. The SJRA knew that it would take “weeks”—even during a dry period in which other downstream streams and tributaries feeding the West Fork were contributing little, if any, water to the West Fork—to pre-release enough water to buffer a major storm event without causing pre-storm flooding downstream;
- According to the SJRA, the lake’s water level reached its highest level of 206.24 feet above msl sometime on August 28, 2017. On August 29, 2017, the water level had dropped by almost 2.5 feet. On August 30, 2017, the water level had dropped by almost another foot. Thus, the SJRA released amounts of water from the lake during this two-day period equaling the amounts of water flowing into the lake

during this time plus enough, additional water to lower the lake’s level by 3.5 feet. The SJRA accomplished this by releasing water at rates as fast as almost 80,000 cfs. During this time, SJRA documentation shows that the SJRA released water from the dam at rates as fast as almost 80,000 cfs for more than twenty-four hours straight and released water at rates faster than the previous record release rate of 33,360 cfs in October 1994 for about forty-eight hours straight. SJRA documentation also shows that substantially less water was flowing into the lake than was being released from it during this 48-hour time period beginning on August 28, 2017. The SJRA knew or was substantially, if not absolutely, certain that releasing this much water at such high flow rates would cause or exacerbate devastating downstream flooding at many places, including at Plaintiffs’ Property, and made an intentional, knowing, affirmative and conscious decision to inundate that private property to further the public interests in the manners described herein;

- The SJRA also was aware that water releases from the lake in 1994, 1998, 2001, 2002, 2015 and 2016 (and perhaps other years) caused or exacerbated downstream flooding in parts of Kingwood and Humble. The SJRA was aware of the (1) water levels, (2) water volumes, (3) flow or release rates out of the lake, (4) flow or release rates in the West Fork below the dam and in the streams and tributaries that feed the West Fork there, and (5) elevations and topography of the lands downstream during those recurrent and intermittent floods and could use that information to make calculations and models and identify those properties—including but not limited to Plaintiffs' Property—that would be flooded or experience exacerbated flood effects caused by the SJRA's intentional, knowing, affirmative and conscious releases of water from the lake (both the amount of water released and the release rates of such water) between late August 2017 and early September 2017;
- The SJRA also was aware of those downstream properties in Kingwood and elsewhere that were flooded as a result of water releases from the lake in 1994, 1998, 2001, 2002, 2015 and 2016 (and perhaps other years) and could use that information to calculate, model and identify those properties—including but not limited to Plaintiffs' Property—that would be flooded or experience exacerbated flood effects caused by the SJRA's intentional, knowing, affirmative and conscious releases of water from the lake (both the amount of water released and the release rates of such water) between late August 2017 and early September 2017. The SJRA had extensive data available identifying the downstream areas and properties in Kingwood and elsewhere that flooded during those times and showing the extent of that flooding when the water releases from the lake during those floods were at most less than half of the peak release rates from the lake in late August 2017;
- The SJRA also was aware of and had all necessary information with respect to the (1) water levels, (2) water volumes, (3) flow or release rates in the lake, (4) flow or release rates in the West Fork downstream and in the streams and tributaries that feed the West Fork downstream, and (5) the elevations and topography of the lands downstream between late August 2017 and early September 2017 and could use that information to make calculations and models and identify those properties—including but not limited to Plaintiffs' Property—that would be flooded or experience exacerbated flood effects caused by the SJRA's intentional, knowing, affirmative and conscious releases of lake water (both the amount of water released and the water release rates) between late August 2017 and early September 2017;
- The SJRA also had access to gauges that measured and reported how much water was in or flowing into the West Fork downstream from the dam and downstream tributaries at any time. That information was available to enable the SJRA to generate hydrologic, hydraulic and river forecasting models to determine both the capacity of the West Fork to take on additional waters from the lake and the effect that releasing additional water from the lake would have upon properties—including Plaintiffs' Property—downstream. Based upon that data alone, the SJRA was at a minimum substantially certain that releasing water from the lake at a

release rate of more than double the previous maximum release rate for well over twenty-four hours would cause or exacerbate the flooding of Plaintiffs' Property;

- The SJRA's Executive Director Jace Houston discussed the releases of Hurricane Harvey rainfall from Lake Conroe and admitted in a video released by the SJRA that "we understand there will be devastating flooding downstream but we don't have the option to stop releases to avoid the catastrophic consequences;" and
- These facts set forth in the preceding bullet points, singularly and/or in any combination, establish that when the SJRA released floodwaters from the Lake Conroe dam beginning in late August 2017, the SJRA intended or was substantially certain that such releases of those floodwaters would inundate, flood, take, inversely condemn and sacrifice Plaintiffs' Property to benefit the public good.

59. Plaintiffs' Property was lost, damaged or destroyed when the subject flooding reached their property. Each Plaintiff had several feet of water in his or her house shortly after the SJRA began releasing water from the lake. Plaintiffs' Property would not have flooded absent those releases. Such flooding caused extensive damage to Plaintiffs' Property. The SJRA's intentional, knowing, affirmative and conscious actions, conduct and decisions described herein were the actual, legal, producing, proximate, foreseeable and "but for" cause of such flooding and the damages resulting therefrom for these and other reasons set forth herein:

- Plaintiffs' Property would not have flooded under natural conditions (the absence of the lake and the SJRA's obligation to operate and manage the lake, including its real or perceived obligation to release Hurricane Harvey floodwaters);
- The flooding on Plaintiffs' Property was far worse than would have occurred under natural conditions (the absence of the lake and the SJRA's obligation to operate and manage the lake, including its real or perceived obligation to release Hurricane Harvey floodwaters as it did between late August 2017 and early September 2017);
- The floodwaters from the lake arrived at Plaintiffs' Property quicker and with less warning than would have occurred under natural conditions (the absence of the lake and the SJRA's obligation to operate and manage the lake, including its real or perceived obligation to release Hurricane Harvey floodwaters as it did between late August 2017 and early September 2017);
- The floodwaters from the lake arrived at Plaintiffs' Property with more force and velocity and with higher flow rates than would have occurred under natural

conditions (the absence of the lake and the SJRA's obligation to operate and manage the lake, including its real or perceived obligation to release Hurricane Harvey floodwaters as it did between late August 2017 and early September 2017);

- The floodwaters at Plaintiffs' Property were deeper than would have occurred under natural conditions (the absence of the lake and the SJRA's obligation to operate and manage the lake, including its real or perceived obligation to release the floodwaters as it did between late August 2017 and early September 2017); and
- Plaintiffs' Property was flooded for longer periods of time than would have occurred under natural conditions (the absence of the lake and the SJRA's obligation to operate and manage the lake, including its real or perceived obligation to release water as it did between late August 2017 and early September 2017).

60. Plaintiffs have and had legally-protectable private property interests in Plaintiffs' Property. The SJRA's intentional, knowing, affirmative and conscious acts, conduct and decisions described herein were done for public use. The SJRA's management and operation of the lake, dam and related infrastructure and the SJRA's releasing of water as it did between late August 2017 and early September 2017 furthered and was done for public use because those intentional, knowing, affirmative and conscious acts, decisions and conduct (1) protected the stability and integrity of the dam, its earthen embankment and other infrastructure; (2) ensured that the lake would continue to be available for use as a reservoir for critical freshwater storage and for recreational activities and sporting uses like boating and fishing once the storm and its effects had passed; (3) protected and spared homes and other properties on the lake and upstream from flooding; (4) minimized the danger to the public by keeping docks, bulkheads, small islands and other structures unsubmerged for as long as possible; (5) minimized the danger to the public associated with electrical outlets and equipment coming into contact with water; and (6) enabled the lake, adjacent parks and adjacent roads to reopen and become fully operational as quickly as possible for the public's benefit.

61. Plaintiffs' distinct, reasonable and investment-backed expectations were that they would have the beneficial use of the land, improvements, personal property, and all other associated property rights consistent with Plaintiffs' Property's then-existing character and customary use. Plaintiffs also had distinct, reasonable, and investment-backed expectations that Plaintiffs' Property would not be subject to the intentional, knowing, affirmative and conscious flooding described herein.

62. As a direct result of the SJRA's intentional, knowing, affirmative and conscious decision to release water from the lake between late August 2017 and early September 2017, Plaintiffs' home and other property were inundated and flooded, which deprived Plaintiffs of the use, occupancy, and enjoyment of Plaintiffs' Property.

63. The SJRA's conduct described above constitutes a temporary taking of Plaintiffs' private property because starting in late August 2017 water was released from the lake that inundated and flooded Plaintiffs' Property. As a result, Plaintiffs were not and/or will not be able to return to their home and property for some time, and have been and/or will be deprived of the use, occupancy, and enjoyment of their private property.

64. The SJRA's conduct described above also constitutes a permanent taking of Plaintiffs' private property because after they are able to return to their home and property, the intentional, knowing, affirmative and conscious release of water from the lake will have caused permanent damage to their real and personal property that will cost hundreds of thousands of dollars to repair (if repairs are possible) and also will cause a permanent diminution in the value of Plaintiffs' Property as a result of the subject flooding and the stigma associated with it.

65. None of Plaintiffs' Property would have flooded but for the SJRA's intentional, knowing, affirmative and conscious decision to release water from the lake between late August

2017 and early September 2017 and thereby inundate, flood, take, inversely condemn and sacrifice Plaintiffs' Property for the greater public good. Plaintiffs did not consent to such inundation, flooding, taking, inversely condemnation or sacrifice of his or her property identified herein.

66. Plaintiffs have not been compensated for temporary or permanent taking of their home and other private property by the SJRA.

67. The inundation, flooding, destruction of, substantial damage to and/or devaluation of Plaintiffs' home and other property was the foreseeable, proximate, natural, direct and probable consequence of the SJRA's authorized actions described herein. Mr. Houston's admission that "there will be devastating flooding downstream but we don't have the option to stop releases to avoid the catastrophic consequences" is just one of the many facts supporting that allegation.

68. Article I, Section 17 of the Texas Constitution is intended to prevent the public from burdening one individual, such as Plaintiffs, with the costs of furthering public interest.

69. Additional facts considered by the Texas Supreme Court and Texas appellate courts as part of their inverse condemnation or takings analysis and which further show that the SJRA's intentional, knowing, affirmative and conscious acts, conduct and decisions described herein constitute the inverse condemnation and unconstitutional taking of Plaintiffs' Property include:

- The SJRA intentionally, knowingly, affirmatively and consciously flooded Plaintiffs' Property and/or exacerbated the flooding effects at such property by releasing floodwater from the lake between late August 2017 and early September 2017 to protect, preserve and spare other property;
- The SJRA made no effort to prevent the flooding of Plaintiffs' Property. It has defended its decision to make no effort to prevent such flooding by claiming that the lake was not designed, constructed, operated or managed to provide flood control. Moreover, during the height of the flooding, the SJRA managed the lake's level so that the water even at its highest level was more than nine inches lower than the lake's flowage easement. As described above, the SJRA also released amounts of water from the lake equaling the amounts of water flowing into the lake during this time plus enough additional water to lower the lake's level by approximately 3.5 feet in about forty-eight hours. That action dropped the lake's



level by more than four feet below the top of the SJRA's flowage easement and released billions of gallons of floodwater downstream;

- As set forth in Section VIII below, Plaintiffs allege that the SJRA intended to use—and did use—Plaintiffs' Property (and other property) as an inundation, flood, flowage or drainage easement to relieve pressure on the dam, protect its stability and integrity and further other public purposes and uses as described herein when lake levels started to exceed 201 feet above msl;
- As set forth herein, Plaintiffs have alleged that the damage to Plaintiffs' Property was caused by the SJRA's intentional, knowing, affirmative and conscious acts of releasing water from the lake between late August 2017 and early September 2017 and thereby subjecting Plaintiffs' Property to inundation so that the lake, dam, infrastructure and other property could be protected, preserved and spared;
- As set forth herein, Plaintiffs have alleged that the SJRA knew or was substantially certain that releasing the water as it did between late August 2017 and early September 2017 would flood or exacerbate the flooding of Plaintiffs' Property; and
- The SJRA's subject water releases as described herein caused and/or exacerbated the flooding and the flood effects downstream, including the flooding and effects thereof that flooded, damaged and destroyed Plaintiffs' Property.

#### **SECOND CAUSE OF ACTION:**

#### **INVERSE CONDEMNATION AND UNCONSTITUTIONAL TAKING OF AN INUNDATION, FLOOD, FLOWAGE OR DRAINAGE EASEMENT OVER PLAINTIFFS' REAL PROPERTY IN VIOLATION OF ARTICLE I, SECTION 17 OF THE TEXAS CONSTITUTION**

70. Plaintiffs re-allege the facts set forth in the preceding paragraphs and incorporate those allegations by reference below as if fully set forth verbatim. Importantly, the facts and the constitutional and statutory authorities set forth in the preceding Section VII also apply and pertain to the inverse condemnation or unconstitutional takings claims set forth in this Section VIII. In the interest of brevity, most of those facts will not be repeated in this section.

71. In addition to the SJRA's inverse condemnation and unconstitutional taking (permanent and/or temporary) of Plaintiffs' Property in violation of Article I, Section 17 of the Texas Constitution by releasing lake water and flooding Plaintiffs' Property as described above,

the SJRA through inverse condemnation and unconstitutional taking has taken an inundation, flood, flowage or drainage easement on, over and across Plaintiffs' Property without paying adequate—or any—compensation for such easement and without obtaining the consent of any Plaintiffs for such an easement. As stated above, the SJRA had and has the constitutional and statutory power and authority to acquire easements considered necessary, incidental or helpful to accomplish its purposes. Gragg, 151 S.W.3d at 549-550; TEX. WATER CODE § 51.121(c). Between late August 2017 and early September 2017, the SJRA appropriated, took and used an inundation, flood, flowage or drainage easement on, over and across Plaintiffs' Property (as well as other property) in connection with the release of lake floodwaters because, among other reasons:

- The SJRA has written in press releases and other publicly-available materials that the lake was not constructed or modified and is not operated or managed to achieve any flood control or prevent or minimize downstream flooding;
- Because the SJRA did not pre-release water prior to Hurricane Harvey, more water was stored in the lake, which increased the amount of water that had to be released after the rainfall and floodwaters started accumulating in the lake;
- The lake had limited capacity within which to store floodwaters. Although the SJRA acquired a six-foot flowage easement around the lake's perimeter, the dam and its infrastructure were not constructed or designed to store water at or near the top of that easement. For example, water must be released whenever the lake level reaches 202.5 feet above msl because there is only about eighteen inches of "freeboard" between the top of the spillway gates and the water level at the normal lake level. Water must be released so it does not flow over the top of the spillway gates because those gates were not designed to sustain that type of force;
- As evidenced by floods in 1994, 1998, 2001, 2002, 2015, 2016 and 2017 described above, the West Fork downstream had very limited capacity to store and carry floodwaters released from the lake. The SJRA's engineers, hydrologists and other experts had all size, depth, topographical and other information easily available to model, calculate and identify those downstream properties, including Plaintiffs' Property, that would be inundated, flooded and sacrificed by the SJRA's water releases from the dam between late August 2017 and early September 2017;
- The SJRA and its engineers, hydrologists and other experts had all size, depth, topographical, elevation, historical and other similar information described above and could use that information to model, make calculations and identify those

properties—including but not limited to Plaintiffs' Properties—that would be flooded or experience exacerbated flood effects depending upon when and how the SJRA released water from the lake and the amounts of such water released; and

- The SJRA had complete knowledge of the limited capacity of the West Fork to handle even limited non-flood releases from Lake Conroe. The SJRA knew that it would take “weeks”—even during a dry period in which downstream West Fork tributaries were contributing little, if any, water to the West Fork—to pre-release enough water to buffer a storm without causing pre-storm flooding downstream.

72. In the wake of Hurricane Harvey and in the face of the above (and other) facts, the SJRA faced an unenviable choice. It could do nothing as the lake levels rose and run all the risks associated with that water identified herein. Or, it could release floodwaters that it knew would cause “devastating flooding downstream” with “catastrophic consequences.” The SJRA chose the latter option and intentionally, knowingly, affirmatively and consciously inundated, flooded, took, inversely condemned and sacrificed Plaintiffs' Property for the greater public good.

73. When the above-described choice was made by the SJRA, the SJRA knew or was substantially certain that Plaintiffs' Property would be inundated, flooded, taken, inversely condemned and sacrificed for the greater public good. The SJRA and its engineers, hydrologists and other experts could use the information described herein to make the necessary calculations, hydrological and hydraulic models and analyses to identify those properties that would be inundated because of the subject water releases. Because the released water had to inundate properties downstream as the waters made their way downstream, the SJRA intended to use and did use those properties downstream as an inundation, flood, flowage or drainage easement. Plaintiffs' Property was among the property that the SJRA intended to use and did use as an inundation, flood, flowage or drainage easement. The SJRA through inverse condemnation or an unconstitutional “taking” has taken such an easement from Plaintiffs between late August 2017

and early September 2017 without compensating them. Plaintiffs are entitled to adequate compensation for the inverse condemnation or unconstitutional “taking” of such easement.

74. Plaintiffs have and had legally-protectable private property interests in Plaintiffs’ Property. The SJRA’s intentional, knowing, affirmative and conscious acts, conduct and decisions described herein were done for public use and for the greater public good. The SJRA’s taking and use of Plaintiffs’ Property between late August 2017 and early September 2017 for use as an inundation, flood, flowage or drainage easement furthered and was done for public use because those intentional, knowing, affirmative and conscious acts, decisions and conduct (1) protected the lake, dam, other infrastructure and other property; (2) ensured that the lake would continue to be available for use as a reservoir for critical freshwater storage and for recreational activities and sporting uses like boating and fishing after the storm passed; (3) protected and spared homes and other properties on the lake and upstream from flooding; (4) minimized the danger to the public by ensuring that docks, bulkheads, small islands and other structures were not submerged and thus visible to boaters; (5) minimized the danger to the public associated with electrical outlets and equipment coming into contact with water; and (6) enabled the lake, adjacent parks and adjacent roads to reopen and become fully operational as quickly as possible for the public’s benefit.

75. Plaintiffs’ distinct, reasonable and investment-backed expectations were that they would have the beneficial use of the land, improvements, personal property, and all other associated property rights consistent with Plaintiffs’ Property’s then-existing character and customary use. Plaintiffs also had distinct, reasonable, and investment-backed expectations that Plaintiffs’ Property would not be used as, subject to or contain an inundation, flood, flowage or drainage easement.

76. As a direct result of the SJRA's intentional, knowing, affirmative and conscious decision to take, appropriate and use an inundation, flood, flowage or drainage easement on, over or through Plaintiffs' Property, Plaintiffs' home and other property were inundated and flooded, which deprived Plaintiffs of the use, occupancy, and enjoyment of Plaintiffs' Property.

77. The SJRA's conduct described above constitutes a temporary taking of Plaintiffs' private property because between late August 2017 and early September 2017 the SJRA took, appropriated and used an inundation, flood, flowage or drainage easement on, over or through Plaintiffs' Property inundated and flooded Plaintiffs' Property. As a result, Plaintiffs were not and/or will not be able to return to their home and property for some time, and will be deprived of the use, occupancy, and enjoyment of their private property.

78. The SJRA's conduct described above also constitutes a permanent taking of Plaintiffs' private property because after they are able to return to their home and property, the intentional, knowing, affirmative and conscious taking, appropriation, and use of an inundation, flood, flowage or drainage easement on, over or through Plaintiffs' Property will have caused permanent damage to Plaintiffs' private property that will cost tens or hundreds of thousands of dollars to repair and also will cause a permanent diminution in the value of Plaintiffs' Property as a result of the subject flooding and the stigma associated with such flooding.

79. None of Plaintiffs' Property would have flooded but for the SJRA's intentional, knowing, affirmative and conscious decision in late August 2017 to take, appropriate and use an inundation, flood, flowage or drainage easement on, over or through Plaintiffs' Property and thereby inundate, flood, take, inversely condemn and sacrifice Plaintiffs' Property for the greater public good. Plaintiffs did not consent to any such easement or to such inundation, flooding, taking, inversely condemnation or sacrifice of any of Plaintiffs' Property.

80. Plaintiffs have not been compensated for temporary or permanent taking of their home and other private property by the SJRA.

81. The inundation, flooding, destruction of, substantial damage to and/or devaluation of Plaintiffs' home and other property was the foreseeable, proximate, natural, direct and probable consequence of the SJRA's authorized actions described herein. Mr. Houston's admission that "there will be devastating flooding downstream but we don't have the option to stop releases to avoid the catastrophic consequences" is just one of the many facts supporting this allegation.

82. Article I, Section 17 of the Texas Constitution is intended to prevent the public from burdening one individual, such as Plaintiffs, with the costs of furthering public interest.

**THIRD CAUSE OF ACTION:  
STATUTORY TAKING**

83. Plaintiffs re-allege the facts set forth in the preceding paragraphs and incorporate those allegations by reference below as if fully set forth verbatim.

84. Pleading further, and/or in the alternative, SJRA's intentional, knowing, affirmative and conscious decision to release water from the lake between late August 2017 and early September 2017 and thereby inundate, flood, take, inversely condemn, impose physical invasions of floodwaters on and sacrifice Plaintiffs' Property for the greater public good and also the SJRA's appropriation, taking and use of an inundation, flood, flowage or drainage easement on, over and across Plaintiffs' Property (as well as other property) in connection with Hurricane Harvey and its floodwaters also constitute statutory takings under Section 2007 of the Texas Government Code. Section 2007.002 of the Texas Government Code defines a "statutory taking" as follows:

(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or

(B) a governmental action that:

- (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and
- (ii) is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

85. In addition to constituting constitutional takings, the SJRA's intentional, knowing, affirmative and conscious decision to release lake water between late August 2017 and early September 2017 and thereby inundate, flood, take, inversely condemn, impose physical invasions of floodwaters on and sacrifice Plaintiffs' Property for the greater public good and also the SJRA's appropriation, taking and use of an inundation, flood, flowage or drainage easement on, over and across Plaintiffs' Property (as well as other property) in connection with Hurricane Harvey floodwaters constitute statutory takings under Section 2007.002(A) of the Texas Government Code. Those governmental actions by SJRA affected Plaintiffs' Property—including their private real property at the address set forth above—in whole or in part and temporarily and permanently in manners that require the SJRA to compensate Plaintiffs under Article I, Section 17 of the Texas Constitution. As a result of those governmental actions and the physical invasions of floodwaters and flooding associated therewith, Plaintiffs were not and/or will not be able to return to their home and property for some time, and have been and/or will be deprived of the use, occupancy, and enjoyment of their private property. Moreover, after Plaintiffs are able to return to their home and property, the SJRA's governmental actions described herein will have caused permanent damage

to their private property that will cost hundreds of thousands of dollars to repair and also will cause a permanent diminution in the value of their property as a result of the subject flooding.

86. The facts set forth in the preceding paragraph also establish the first prong of a statutory taking of Plaintiffs' Property under Section 2007.002(B)(i) of the Texas Government Code for the same reasons that they satisfy statutory takings under Section 2007.002(A) of the Texas Government Code. Moreover, the SJRA's governmental actions and the results of those actions as described throughout this pleading are the producing cause of a reduction of at least 25 percent in the market value of the affected home, determined by comparing the market value of the home before the subject releases and the market value of the home after the 2017 flooding had occurred. The affected home had several feet of floodwater in it that devastated its first floor and has required or will require hundreds of thousands of dollars to repair the home. Moreover, the affected home will suffer a diminution in its value as a result of the flood even after it is repaired because the flood stigma associated with the home and the risk that it may again be flooded by future releases from Lake Conroe by the SJRA will reduce the market value of the affected home by at least 25% of what its market value was preceding the 2017 flooding.

#### **NO SOVEREIGN IMMUNITY**

87. Plaintiffs re-allege the facts set out in the preceding paragraphs and incorporate those allegations by reference below as if fully set forth verbatim.

88. Because the constitutional claims asserted against the SJRA are claims for inverse condemnation and the unconstitutional "taking" of Plaintiffs' real and personal property in violation of Article I, Section 17 of the Texas Constitution, the doctrine of sovereign immunity does not apply here and does not deprive this Court of subject matter jurisdiction over all of the claims asserted and set forth herein. *See, e.g., Harris Cty. Flood Control Dist. v. Kerr*, 499 S.W.3d



793, 799 (Tex. 2016) (“Sovereign immunity does not shield the government from liability for compensation under the takings clause.”); *Ahmed v. Metro. Transit Auth.*, 257 S.W.3d 29, 32 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (“Article I, section 17 of the Texas Constitution waives immunity from suit and liability in inverse condemnation cases and authorizes compensation for such constitutional taking.”). Thus, the SJRA has no immunity from suit or liability in connection with the constitutional claims asserted against it herein.

89. Similarly, because the alternative or additional statutory claims asserted against the SJRA are expressly authorized by Section 2007 of the Texas Government Code, the SJRA also has no immunity from suit or liability in connection with the statutory claims asserted against it herein. *See Hidalgo Cty. v. Dyer*, 358 S.W.3d 698, 705 (Tex. App.—Corpus Christi-Edinburg 2011, no pet.) (Section 2007.004(a) of the Texas Government Code “waives sovereign immunity from suit and liability to the extent it creates liability.”).

#### **DAMAGES**

90. Plaintiffs re-allege the facts set out in the preceding paragraphs and incorporate those allegations by reference below as if fully set forth verbatim.

91. By virtue of the foregoing intentional, knowing, affirmative and conscious acts, conduct and decisions set forth herein, Plaintiffs seek recovery of adequate compensation and fair value for their property “taken” in violation of Article I, Section 17 of the Texas Constitution and in violation of those sections of Chapter 2007 of the Texas Government Code referenced above, including the following:

- Compensatory damages against Defendant;
- Actual Damages;

- Cost of replacement or fair market value for Plaintiffs' real property lost, damaged, destroyed or "taken" by the intentional, knowing, affirmative and conscious acts, conduct and decisions set forth herein;
- Cost of replacement or fair market value for Plaintiffs' personal property lost, damaged, destroyed or "taken" by the intentional, knowing, affirmative and conscious acts, conduct and decisions set forth herein;
- Cost of repair for Plaintiffs' real property lost, damaged, destroyed or "taken" by the intentional, knowing, affirmative and conscious acts, conduct and decisions set forth herein;
- Cost of repair for Plaintiffs' personal property lost, damaged, destroyed or "taken" by the intentional, knowing, affirmative and conscious acts, conduct and decisions set forth herein;
- Loss of use and enjoyment of Plaintiffs' real property lost, damaged, destroyed or "taken" by the intentional, knowing, affirmative and conscious acts, conduct and decisions set forth herein;
- Loss of use and enjoyment of Plaintiffs' personal property lost, damaged, destroyed or "taken" by the intentional, knowing, affirmative and conscious acts, conduct and decisions set forth herein;
- Diminution in value of Plaintiffs' real property lost, damaged, destroyed or "taken" by the intentional, knowing, affirmative and conscious acts, conduct and decisions set forth herein;
- Diminution in value of Plaintiffs' personal property lost, damaged, destroyed or "taken" by the intentional, knowing, affirmative and conscious acts, conduct and decisions set forth herein;
- Loss of income;
- Consequential damages, such as cost of alternative accommodations;
- Reasonable and necessary attorneys' fees and court costs pursuant to Section 2007.026(a) of the Texas Government Code;
- Pre-judgment interest;
- Post-judgment interest;
- Expert witness fees;
- Costs of court; and

- Such other and further relief as the Court may deem just and proper.

#### **CONDITIONS PRECEDENT**

92. All conditions precedent to Plaintiffs' right to recover and to the SJRA's liability have been performed, have occurred and/or have been waived by the SJRA.

#### **REQUEST AND DEMAND FOR TRIAL BY JURY**

93. Plaintiffs request and demand and right to a trial by jury under Article I, Section 15 of the Texas Constitution and have made this demand for a jury trial at least 30 days before the date this case is set for trial, in accordance with Texas Rule of Civil Procedure 216.

94. The district clerk's records reflect that the SJRA previously has tendered the \$40.00 jury fee required by Section 51.604 of the Texas Government Code.

#### **REQUEST FOR DISCLOSURE**

Pursuant to Rule 194, you are requested to disclose, within thirty (30) days of service of this request, the information or material described in Rule 194.2 (a)-(k).

#### **DOCUMENTS TO BE USED**

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiffs intend to use all documents exchanged and produced between the parties including, but not limited to, correspondence and discovery responses, during the trial of the above-entitled and numbered cause.

#### **PRAYER FOR RELIEF**

Plaintiffs respectfully request and pray that Defendant San Jacinto River Authority be cited to answer and appear herein. Plaintiffs further ask that, after full trial or other hearing on the merits, Plaintiffs have judgment against Defendant San Jacinto River Authority for the relief requested

and for adequate compensation and damages as set forth above. Plaintiffs also request and pray for all other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

By: /s/ Joseph K. Jones

JOSEPH K. JONES

State Bar No. 24076466

[jjones@sloanfirm.com](mailto:jjones@sloanfirm.com)

SLOAN FIRM

3000 Smith Street, Suite 4

Houston, Texas 77006

Phone: 713-520-8833

Fax: 713-520-9933

**ATTORNEY FOR PLAINTIFFS**