

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**In re UPSTREAM ADDICKS AND BARKER  
(TEXAS) FLOOD-CONTROL RESERVOIRS**

**Sub-Master Docket No. 17-9001L  
Charles F. Lettow  
Judge**

**THIS DOCUMENT APPLIES TO:**

**ALL UPSTREAM CASES**

**AMENDED INDIVIDUAL UPSTREAM MASTER COMPLAINT**

Plaintiffs Todd and Christina Banker, Agriesti and Sue Cox, Wayne and Karen Davey, Louis Gilbert and Caroline Legault, William Ishee and Jennifer Ishee, Sandra Jacobson, Charles and Adrienne Lyons, Trish Nguyen and David Ngo, Dr. Randeep Suneja, Christopher Tedder, Robert Thoma, Sharon Waite, Annie Wang and Peter Lin, and West Houston Airport Corp., each appearing only in their individual capacities, (collectively “Plaintiffs”), respectfully submit this Amended Individual Upstream Master Complaint against the United States of America (“United States” or “Government”) and allege as follows:

**INTRODUCTION**

1. This lawsuit for just compensation centers on the flooding of private property within the Addicks and Barker Reservoirs caused by the Government during Tropical Storm Harvey. Between August 25 and 29, 2017, Harvey drenched the Houston area with near-constant rainfall. Much of Harris County and Fort Bend County received more than 30 inches of rain over this five-day period. Over 131,000 homes and businesses flooded in Harris County alone. In the case of over 10,000 flooded private properties that were built within the “Maximum Design Pool” of the Addicks and Barker Reservoirs, which comprise part of a large federal flood control project in west Houston, this was just as the Government always intended.

2. Indeed, the Government designed the Addicks and Barker Dams and Reservoirs to accommodate a specific Maximum Design Pool. The Maximum Design Pool of each reservoir encompasses the area of land located behind and upstream of each dam that the Government designed to be inundated during the maximum design storm. The Maximum Design Pool elevation is the elevation at which the reservoirs are considered to be at full storage capacity. For Addicks, the Maximum Design Pool elevation is ~115 feet (NAVD 1988, 2001 adj.). For Barker, it is ~108 feet.

3. Yet despite intending to inundate the land that forms the Maximum Design Pool for each reservoir, the Government owns only a portion of that land. The remaining land within the Maximum Design Pool is private property.

4. During and after Harvey, the Government impounded and intentionally stored more than 380,000 acre-feet of Tropical Storm Harvey's storm waters inside the two reservoirs. The Government stored this water for over 10 days on private property located within the two reservoirs. As a result, and consistent with the reservoirs' design, the Government flooded Plaintiffs' real property (*i.e.*, their land and immovable property, including their homes, other buildings, in-ground structures, landscaping, and other fixtures erected on or affixed to the land), improvements to Plaintiffs' real property, and Plaintiffs' personal property as well. As a result of this flooding, many Plaintiffs had no ability to access or use their properties for a significant time period following Harvey, and many remain displaced from their homes as of the time of this filing.

5. The Government intentionally stored the storm waters in the Addicks and Barker Reservoirs for the purpose of protecting the properties downstream along Buffalo Bayou and in downtown Houston. At no point did the Government compensate Plaintiffs, or their predecessors-in-interest, for any right to flood their private property.

6. The invasion of private property here was part and parcel of standard operations and use of the Addicks and Barker Dams/Reservoirs, as they were designed and constructed. The

Government purposefully constructed, designed, and operated these Dams/Reservoirs to impound stormwater, thereby submerging private property. The private land at issue here is part of the Government's flood control project; the covering of this private property is an integral feature of that project; and in that context the Government's actions constitute a taking under the Fifth Amendment of the U.S. Constitution.

7. These actions constitute a taking under the Fifth Amendment of the U.S. Constitution. Plaintiffs seek just compensation for the taking of their property by the Government.

### **STATEMENT OF JURISDICTION**

8. Plaintiffs seek just compensation in excess of \$10,000 from the United States based on claims founded on the Constitution. Jurisdiction and venue in this Court therefore are proper under 28 U.S.C. § 1491.

### **PARTIES**

#### **A. Plaintiffs**

9. All of the below-named Plaintiffs' respective properties and property interests are located within the Maximum Design Pool, and flooded during Harvey. As alleged herein, all of the below-named Plaintiffs seek Just Compensation pursuant to the Fifth Amendment's Taking Clause.

10. Todd and Christina Banker own real property at 4614 Kelliwood Manor Lane, Katy, Texas 77450. The property description is Kelliwood Park, Block 1, Lot 36, in Fort Bend County, Texas. The county parcel identification number for this real property is R356720. The Bankers have owned this property since 2007, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. The Bankers purchased this property reasonably expecting that they would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Barker Reservoir up to ~101.5 feet during Harvey, the Banker's private property was flooded, just as the United States

intended and designed it to do. Their real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Barker Reservoir in August/September 2017. The Bankers suffered significant damage to the house structure, the contents of their home, and to their property value. The Bankers are still displaced from their home, and have lost the right to use and occupy their private property as intended during and after the time the Government used their property to store Harvey stormwater.

11. Agriesti and Sue Cox own real property at 15506 Pine Mountain Drive, Houston, Texas 77084. The property description is Bear Creek Village Section 6, Block 10, Lot 27, in Harris County, Texas. The county parcel identification number for this real property is 109458000027. The Coxes have owned this property since 1991, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. The Coxes purchased this property reasonably expecting that they would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Addicks Reservoir up to 109.1 feet of elevation during Harvey, the Coxes private property was flooded, just as the United States intended and designed it to do. Their real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Addicks Reservoir in August/September 2017. The Coxes suffered significant damage to the house structure, the contents of their home, and to their property value. The Coxes have subsequently sold the real property described herein.

12. Wayne and Karen Davey own real property at 21302 Lochmere Lane, Katy, Texas 77450. The property description is Kelliwood Greens Section 1, Block 6, Lot 12, in Fort Bend County, Texas. The county parcel identification number for this real property is R144966. The Daveys have owned this property since 1993, and owned it at the time of the flood. Upon

information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. The Daveys purchased this property reasonably expecting that they would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Barker Reservoir up to ~101.5 feet during Harvey, the Daveys private property was flooded, just as the United States intended and designed it to do. Their real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Barker Reservoir in August/September 2017. The Daveys suffered significant damage to the house structure, the contents of their home, and to their property value. The Daveys were displaced from their home for months, and their real property and property interests remain damaged after making partial repairs.

13. Louis Gilbert and Caroline Legault own real property 13427 Sweet Surrender Ct., Houston TX 77041. The property description is Twin Lakes Section 1, Lot 20, Block 7 in Harris County, Texas. The county parcel identification number for this real property is 1169640070020. Mr. Gilbert and Ms. Legault have owned this property since 2009, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. Mr. Gilbert and Ms. Legault purchased this property reasonably expecting that they would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Addicks Reservoir up to ~101.5 feet during Harvey, Mr. Gilbert and Ms. Legault's private property was flooded, just as the United States intended and designed it to do. Their real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Addicks Reservoir in August/September 2017. Mr. Gilbert and Ms. Legault suffered significant damage to

the house structure, the contents of their home, and to their property value. Mr. Gilbert and Ms. Legault are still displaced from their home, and have lost the right to use and occupy their private property as intended during and after the time the Government used their property to store Harvey storm water.

14. William Ishee and Jennifer Ishee own real property at 20707 Medallion Pointe Drive, Katy, Texas 77450. The property description is Cinco Ranch Southpark, Section 3, Block 4, Lot 10 in Fort Bend County, Texas. The county parcel identification number for this real property is R202875. The Ishees have owned this property since 1998, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. The Ishees purchased this property reasonably expecting that they would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Barker Reservoir up to ~101.5 feet during Harvey, the Ishees private property was flooded, just as the United States intended and designed it to do. Their real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Barker Reservoir in August/September 2017. The Ishees suffered significant damage to the house structure, the contents of their home, and to their property value. The Ishees were displaced from their home for months, and their real property and property interests remain damaged after making partial repairs.

15. Sandra Jacobson owned real property at 20403 Cajon Canyon Court, Katy, Texas 77450. The property description is Canyon Gate Cinco Ranch, Section 6, Block 1, Lot 28, in Fort Bend County, Texas. The county parcel identification number for this real property is R241157. Ms. Jacobson has owned this property since 2007, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and

was not in the 100-year floodplain. Ms. Jacobson purchased this property reasonably expecting that she would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Barker Reservoir up to ~101.5 feet during Harvey, Ms. Jacobson's private property was flooded, just as the United States intended and designed it to do. Her real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Barker Reservoir in August/September 2017. Ms. Jacobson suffered significant damage to the house structure, the contents of the home, and to her property value. Ms. Jacobson has subsequently sold the real property described herein.

16. Charles and Adrienne Lyons own real property located at 112618 Waterside Way, Houston, Texas 77041. The property description is Lakes on Eldridge, Section 6, Lot 28, Block 3 in Harris County, Texas. The county parcel identification number for this real property is 1182820030028. The Lyons have owned this property since 2008, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. The Lyons purchased this property reasonably expecting that they would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Addicks Reservoir up to ~101.5 feet during Harvey, the Lyons private property was flooded, just as the United States intended and designed it to do. Their real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Addicks Reservoir in August/September 2017. The Lyons suffered significant damage to the house structure, the contents of their home, and to their property value. The Lyons were displaced from their home for months, and their real property and property interests remain damaged after making partial repairs.

17. Trish Nguyen and David Ngo own real property at 5906 Angel Falls Lane, Houston, Texas 77084. The property description is Concord Bridge Section 4, Block 3, Lot 20, in Harris County, Texas. The county parcel identification number for this real property is 1157630030020. Ms. Nguyen and Mr. Ngo have owned this property since 2013, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. Ms. Nguyen and Mr. Ngo purchased this property reasonably expecting that they would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Addicks Reservoir up to 109.1 feet of elevation during Harvey, Ms. Nguyen and David Ngo's private property was flooded, just as the United States intended and designed it to do. Their real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Addicks Reservoir in August/September 2017. They also suffered significant damage to the house structure, the property fair market value, and also lost rental income, because they used this house as rental property. They have lost the right to use their private property as intended during and after the time the Government used that property to store Harvey stormwater. They also lost the benefits and profits attendant to the continued operation of their commercial venture, as they have been unable to rent this house since it flooded.

18. Dr. Randeep Suneja owns real property at 2606 Sara Ridge Lane, Katy, Texas. The property description is Lake Forest of Kelliwood, Section 2, Lot 5, Block 1 in Harris County, Texas. The county parcel identification number for this real property is 1193830010005. Dr. Suneja has owned this property since 2003, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. Dr. Suneja purchased this property reasonably expecting that he would have the



exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Barker Reservoir up to ~101.5 feet during Harvey, Dr. Suneja's private property was flooded, just as the United States intended and designed it to do. Dr. Suneja's real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Barker Reservoir in August/September 2017. Dr. Suneja suffered significant damage to the house structure, the contents of the home, and to the property value. Suneja Randeep is still displaced from his home, and has lost the right to use and occupy the private property as intended during and after the time the Government used his property to store Harvey stormwater.

19. Christopher Tedder owns real property located at 6614 Everhill Circle, Katy, Texas. The property description is Cinco Ranch Southpark, Section 1, Block 4, Lot 29 in Fort Bend County, Texas. The county parcel identification number for this real property is R183118. Mr. Tedder has owned this property since 2014, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. Mr. Tedder purchased this property reasonably expecting that he would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Barker Reservoir up to ~101.5 feet during Harvey, Mr. Tedder's private property was flooded, just as the United States intended and designed it to do. His real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Barker Reservoir in August/September 2017. Mr. Tedder suffered significant damage to the house structure, the contents of his home, and to his property

value. Mr. Tedder suffered significant damage to the house structure, the contents of the home, and to his property value. Mr. Tedder has subsequently sold the real property described herein.

20. Robert Thoma owns real property at 17135 South Ivy Circle, Houston, Texas 77084. The property description is Bear Creek Estates, Lot 12 in Harris County, Texas. The county parcel identification number for this real property is 1131940000012. Mr. Thoma has owned this property since 2011, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. Mr. Thoma purchased this property reasonably expecting that he would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. When the United States intentionally impounded water in Barker Reservoir up to ~101.5 feet during Harvey, Mr. Thoma's private property was flooded, just as the United States intended and designed it to do. His real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Barker Reservoir in August/September 2017. Mr. Thoma suffered significant damage to the house structure, the contents of his home, and to his property value. Mr. Thoma is still displaced from his home, and has lost the right to use and occupy his private property as intended during and after the time the Government used his property to store Harvey stormwater.

21. Sharon Waite leases a townhome in the Aldeia West complex located at 18325 Kingsland Blvd, Unit 410, Houston, Texas 77094. The property description is Flagstone Estates, Block 1 in Harris County, Texas. The county parcel identification number for the Aldeia West complex is 1346520010001. Ms. Waite's lease commenced in April 2017, and was in effect at the time of the flood. Upon information and belief, as of August 27, 2017, Ms. Waite's rental property had never flooded, and was not in the 100-year floodplain. Ms. Waite leased this property reasonably expecting she would have the exclusive right to use and enjoy it consistent with its

characteristics: a developed, gated, residential apartment community. When the United States intentionally impounded water in Barker Reservoir up to ~101.5 feet during Harvey, Ms. Waite's private property was flooded, just as the United States intended and designed it to do. Her personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Barker Reservoir in August/September 2017. Ms. Waite's unit suffered significant damage, as did her personal contents. Ms. Waite has lost the right to use and occupy this private property as intended during and after the time the Government used her property to store Harvey stormwater.

22. Annie Wang and Peter Lin own real property located at 20218 Black Canyon Drive, Katy, Texas 77450. The property description is Canyon Gate, Cinco Ranch, Section 1, Block 4, Lot 5. The county parcel identification number for this real property is R217032. Ms. Wang and Mr. Lin have owned this property since 2013, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. Ms. Wang and Mr. Lin purchased this property reasonably expecting that they would have the exclusive right to use and enjoy it consistent with its characteristics: a developed, deed-restricted residential community. Ms. Wang and Mr. Lin purchased several homes in Canyon Gate, and were leasing 20218 Black Canyon Drive at the time of the government-induced flooding made subject of this Complaint. When the United States intentionally impounded water in Barker Reservoir up to 109.1 feet of elevation during Harvey, Ms. Wang and Mr. Lin's private property was flooded, just as the United States intended and designed it to do. Their real and personal property was inundated, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Barker Reservoir in August/September 2017. They also suffered significant damage to the house structure, the property fair market value, and also lost rental income, because they used this house as rental property. They have lost the right to

use their private property as intended during and after the time the Government used that property to store Harvey stormwater. They also lost the benefits and profits attendant to the continued operation of their commercial venture, as they have been unable to rent this house since it flooded.

23. West Houston Airport Corporation own various real property located at 18000 Groschke Road, Houston, Texas 77084. The county parcel identification number for this real property is 0421320000001. West Houston Airport Corporation have owned this property since 1993, and owned it at the time of the flood. Upon information and belief, as of August 27, 2017, the above-described property had never flooded, and was not in the 100-year floodplain. West Houston Airport Corporation purchased this property reasonably expecting that it would have the exclusive right to use and enjoy it consistent with its characteristics: one of Houston's exclusive general aviation airports with convenient access to downtown, the Galleria, Memorial City, and the Energy Corridor. When the United States intentionally impounded water in Addicks Reservoir up to 109.1 feet of elevation during Harvey, West Houston Airport Corporation's private property was flooded, just as the United States intended and designed it to do. Its real and personal property was inundated, eroded, destroyed, substantially damaged, and/or devalued as a direct result of the Government's intentional storage of water in the Addicks Reservoir in August/September 2017. It also suffered significant damage to the commercial property, the property fair market value, and lost income associated with its operations. West Houston Airport Corporation has lost the right to use and occupy its private property as intended during and after the time the Government used that property to store Harvey stormwater. West Houston Airport Corporation is still evaluating the scope of damage resulting from the inundation of stormwaters during and after Harvey, and has also lost the benefits and profits attendant to the continued and uninterrupted operation of its commercial venture.

**B. Defendant**

24. Defendant is the United States of America, a sovereign entity and body politic. Defendant answers for one or more of its agencies, including but not limited to the U.S. Army Corps of Engineers (“Corps of Engineers” or “Corps”). Counsel for the United States has appeared in this case.

**FACTUAL BACKGROUND**

25. As alleged herein, this case seeks just compensation under the Fifth Amendment for Plaintiffs, whose real and/or personal property were taken as a result of the Government’s design, use, and operation of the federal flood control project known as Addicks and Barker Dams/Reservoirs.

26. As further described below, thousands of homes, businesses, and other improvements lie on non-federal, private property that falls within the two Government reservoirs. During and after Tropical Storm Harvey, just as the Government internally predicted and intended for years, stormwaters accumulated inside the Government’s reservoirs, were stored behind their dams, and inundated Plaintiffs’ private property.

**A. To Protect Downtown Houston, Congress Authorizes Construction of the Addicks and Barker Dams/Reservoirs in the 1940s.**

27. Heavy rains in 1929 produced floodwaters that rushed down Buffalo Bayou and its tributaries into the City of Houston, devastating the downtown area. In 1935, even heavier rains fell and produced even greater flooding in the city and port of Houston.

28. In response to these major floods, the United States Congress approved the Rivers and Harbors Act on June 30, 1938, authorizing the design and construction of the Addicks and Barker Dams/Reservoirs for the purposes of flood control as part of the Buffalo Bayou and

Tributaries Project (“BBTP”). The BBTP was later modified by the Flood Control Acts of August 11, 1939, and September 3, 1954.

29. The BBTP was intended to provide for flood control improvements to Buffalo Bayou and its principal tributaries, White Oak Bayou and Brays Bayou. The purpose of the BBTP was to provide flood protection to properties, including residences and businesses extending to downtown Houston, that are located in the downstream floodplains of Buffalo Bayou and its principal tributaries.

30. As originally contemplated, the BBTP was to include a single large dam/reservoir across Buffalo Bayou. However, due to various factors associated with a single dam/reservoir bisected by Interstate Highway 10, two smaller dams/reservoirs were proposed instead—Addicks to the north of I-10 and Barker to the south of I-10.

31. The flood control plan authorized by the Government through the BBTP eventually contemplated three detention reservoirs: Addicks, Barker, and a third, called White Oak Reservoir. A canal system was to convey releases from White Oak Reservoir to the north of Houston into the San Jacinto River, while another canal system would convey releases from Addicks and Barker Dams/Reservoirs to the south of Houston into Galveston Bay. Further, a levee was to be constructed along the Cypress Creek watershed divide to prevent overflow from the Cypress Creek watershed into the Addicks watershed.

32. However, the proposed White Oak Reservoir, the Cypress Creek levee, and the two north and south canals were never built. Instead, the Government only constructed the Addicks and Barker Dams/Reservoirs, along with some limited channel improvements immediately downstream of these two dams.

33. As ultimately built, Addicks and Barker Dams/Reservoirs are strategically located 17 miles west of downtown Houston above the confluence of Buffalo Bayou and South Mayde Creek.

Below this confluence, Buffalo Bayou continues east to downtown Houston where it joins with White Oak Bayou. The combined waterway continues further east to eventually include the Houston Ship Channel, and ultimately flows into San Jacinto Bay. The Government built these two dams/reservoirs to prevent catastrophic flooding and damage to downstream properties along Buffalo Bayou during and after large storm events.

34. The Government began acquiring land for the Addicks and Barker Dams/Reservoirs in the early 1940s. Acquisition of land was completed in or around 1948 for Addicks, and in or around 1951 for Barker.

35. Barker Dam/Reservoir was built in both Harris County and Fort Bend County, on the south side of present-day Interstate Highway 10, west of Texas State Highway 6. The construction of Barker Dam began in February 1942 and was completed in February 1945.

36. As constructed, Barker Dam consists of an earthen embankment that measures 71,900 feet long. The Barker Dam runs along the south, east, and north sides of the reservoir. There is no levee, dam or embankment on the west side of Barker Dam/Reservoir because the ground elevation is higher on that side; that is where stormwaters from upstream portions of the watershed enter the reservoir area and are intentionally impounded and stored behind the dam.

37. The Government constructed five outlets at the bottom of the dam to allow for the slow release of stored waters into the downstream Buffalo Bayou. Originally designed to be uncontrolled, these outlets have now been provided with gates to control the release of stored waters.

38. Addicks Dam/Reservoir was built entirely within Harris County on the north side of present-day Interstate Highway 10. Texas State Highway 6 bisects the reservoir north to south.

39. The construction of Addicks Dam began in May 1946 and was completed in December 1948. As constructed, Addicks Dam consists of an earthen embankment that measures

61,166 feet long. The Addicks Dam runs along the south and east sides of the reservoir. There is no levee, dam, or embankment on the west or north sides of Addicks Reservoir because the ground elevation is higher on those sides, which is where stormwaters from upstream portions of the watershed enter the reservoir area and are intentionally captured and stored behind the dam. Additionally, five outlets at the bottom of the dam were constructed to allow for the slow release of these stored waters downstream into Buffalo Bayou. These outlets were originally designed to be uncontrolled, but have since been provided with gates to control the release of stored waters.

40. According to Corps documents, the Government designed the two dams/reservoirs in the 1940s to capture and store floodwaters associated with an anticipated “Design Storm.” The Design Storm was calculated based on the probable maximum rain that could be expected to occur in the area. For Addicks and Barker Dams/Reservoirs, the 1899 storm that dumped over 30 inches of rain in 72 hours over Hearne, Texas was selected as the probable maximum rain for calculating the Design Storm volumes. For each Design Storm, the Government assumed that 90% of the rain would become runoff and enter each reservoir area.

41. The Government calculated that releases from the combined Addicks and Barker Dams/Reservoirs into Buffalo Bayou could reach approximately 15,000 cubic feet per second without damaging private property. The Government used the Design Storm runoff to determine how much water would need to be stored behind the dams and within the reservoirs while non-damaging releases of approximately 15,000 cubic feet per second occurred. The Government also used this Design Storm information to determine how high the dams needed to be built to be safe and not fail during such a storm.

42. The Government likewise calculated the resulting Design Storm pool level for each reservoir. For Addicks, the Government calculated this number to be 108.3 feet above mean sea level (NGVD 1929); for Barker, 101.7 feet above mean sea level. The top of the two dams were set



several feet higher than the design pool levels to ensure their safety and prevent them from being overtopped.

**B. The Government Redesigns the Addicks and Barker Dams/Reservoirs, Establishing a New Maximum Design Pool for Each Reservoir.**

43. In the 1980s, the Corps undertook a reevaluation of the Addicks and Barker Dams/Reservoirs. This reevaluation resulted in the Government's establishing the Maximum Design Pool elevations relevant to this lawsuit. Since the original construction of the dams, the Corps had developed new dam safety design criteria which took into account updated design rainfall information for the area. The Corps then reevaluated how Addicks and Barker Dams/Reservoirs would function under the new criteria and ultimately decided that the Addicks and Barker Dams/Reservoirs needed to be redesigned and reconstructed to satisfy the new criteria.

44. As part of the redesign and reconstruction, the top of both Addicks and Barker Dams were raised several feet. Additionally, at both ends of each of the two dams, the Corps added emergency spillways that were concrete-lined to provide erosion protection against floodwaters flowing over them.

45. According to a 2013 Corps document, the height of the Addicks Dam varies from 117.4 feet to 121 feet (NAVD 1988, 2001 adj.) along the length of the main dam embankment. This is approximately 48 feet above the streambed up to the highest point. In addition, the Addicks Dam has a spillway on either end of the dam that is armored with a concrete apron. The spillway's crest elevation at the northern end of the dam is reported to be 112.5 feet, and, at the southern end of the dam, the other spillway's crest elevation is reported as 115.5 feet. The elevation of the natural ground at the end of each spillway is reported as 108 feet at the northern end and 111 feet at the southern end.

46. According to a 2013 Corps document, the height of the Barker Dam varies from 110 feet to 113.1 feet (NAVD 1988, 2001 adj.) along the entire length of the main dam

embankment. This is approximately 36 feet above the stream bed up to its highest point. In addition, Barker Dam also has a spillway on either end that is armored with a concrete apron. The spillway's crest elevation at the northern end of the dam is reported to be 105.5 feet, and, at the southern end of the dam, the other spillway's crest elevation is 106.7 feet. The elevation of the natural ground at the ends of both spillways is reported to be 104 feet.

47. The Government based its new design for Addicks and Barker Dams on a new Design Storm calculation, known as the Spillway Design Storm. The Spillway Design Storm incorporated an updated probable maximum rain event, known as the Probable Maximum Precipitation. The Probable Maximum Precipitation is an updated maximum rain event and amounts to ~40 inches in 72 hours, an increase over the ~30 inches in 72 hours contemplated by the Reservoirs/Dams' original design. Given storms occurring after the construction of the Reservoirs/Dams that exceeded the original design rainfall amount (such as Tropical Storm Claudette which in 1979 dumped 43 inches of rain over just 24 hours in Alvin, Texas), the Government decided to update its design storm rainfall and account for the Spillway Design Storm in its Dams/Reservoirs' redesign.

48. Using this Spillway Design Storm, the Corps assumed approximately 40 inches of runoff would be generated within each of the Addicks and Barker watersheds, along with additional runoff entering Addicks due to overflows from Cypress Creek because the Cypress Creek levee project was never constructed. Based on this Spillway Design Storm, and in accordance with standard design criteria, the Corps computed a new Maximum Design Pool level for Addicks with an elevation of 118.14 feet (NGVD 1929 with '73 adj., or about 115 feet NAVD 1988, 2001 adj.) and with a Maximum Storage Capacity in the reservoir of 330,000 acre-feet. For Barker, the Corps computed the Maximum Design Pool elevation at 110.26 feet (or about 108 feet NAVD 1988, 2001 adj.) with a Maximum Storage Capacity of 280,000 acre-feet.

49. The Maximum Design Pool elevation of Addicks and Barker Dams/Reservoirs is a few feet higher than the lowest level of these dams' spillways. Uncontrolled releases over the spillways are within the design operation of the Addicks and Barker Dams/Reservoirs to ensure dam safety; however, the maximum pool levels that occurred in Addicks and Barker during Harvey did not reach the levels of all of the spillways of either dam.

50. The Corps' use of these terms—Design Storm, Probable Maximum Precipitation, Maximum Design Pool—and the calculations contained in the Corps' own studies and documentation demonstrate that an event like Harvey, in terms of the amount of rain and stormwater that the Reservoir/Dams would have to sustain, was not only foreseeable, but actually foreseen, and that the Reservoir/Dams were in fact designed and intended to impound this quantity of stormwater.

**C. The Government Acquires Far Less Land Than Needed for the “Maximum Design Pools” it Designed for Each of the Addicks and Barker Reservoirs/Dams.**

51. When acquiring title to land to store water behind the dams, the Government acquired fee simple title to approximately 12,460 acres for Addicks Dam/Reservoir, associated with lands having an approximate elevation of up to only 103.1 feet (NAVD 1988, 2001 adj.). The Government acquired 12,060 acres for Barker Dam/Reservoir, up to an approximate elevation of only 95 feet.

52. Crucially, the amount of land acquired for each of the two reservoirs represented far less than the total expanse of property certain to be inundated within the Maximum Design Pool associated with the Spillway Design Storm of over 40 inches of rain in 72 hours.

53. Rather than acquire the entire property to be flooded within the Maximum Design Pool, the Government obtained title to land inside Addicks and Barker Reservoirs sufficient to hold about only half the amount of rain associated with the Spillway Design Storm. Stated another way,

the Government obtained title to land at an elevation similar to the 100-year flood pool, that is, property expected to have a 1% chance of being flooded during any given year.

54. Within Addicks Reservoir, the elevation of the 100-year flood pool is reported to be 100.5 feet (NAVD 1988, 2001 adj.). The Government acquired land in Addicks up to approximately 103.1 feet of elevation (NAVD 1988, 2001 adj.). This is many feet of elevation short of the Maximum Design Pool of approximately 115 feet, meaning the Government does not own, or have any legal right to utilize for any public purpose without compensation, the land between 103.1 feet to approximately 115 feet elevation.

55. Within Barker Reservoir, the elevation of the 100-year flood pool is reported to be 97 feet (NAVD 1988, 2001 adj.). The Government acquired land in Barker up to approximately 95 feet of elevation. Again, this is many feet of elevation short of the Maximum Design Pool of approximately 108 feet. The Government thus does not own land from 95 feet to approximately 108 feet elevation.

56. Even in its 1962 Reservoir Regulation Manual, the Corps data showed inadequate land acquisition for these two reservoirs. For Addicks Reservoir, the Corps lists the area of government-owned land as 12,795 acres and the land area associated with the Design Storm as 17,080 acres. The Manual shows that the Government knew that the Maximum Design Pool would inundate up to 4,285 acres of private land within the Addicks Reservoir. For Barker Reservoir, the Corps lists the area of government-owned land as 12,110 acres and the land area associated with the Design Storm as 16,705 acres. The Manual shows that the Government knew that the Maximum Design Pool would inundate up to 4,595 acres of private land within the Barker Reservoir.

57. Yet the Corps did not acquire, and never has acquired, the full acreage necessary to contain the impounded waters on Government-owned land for a storm event that it *knew* would fill the two reservoirs to their Maximum Design Pool; nor did the Corps acquire flowage, drainage, or

flood easements for this remaining private land within the Maximum Design Pool. According to the Corps, the Government only acquired land within the pool level similar to the 100-year flood pool level. Because, according to the Government's own computations, the Spillway Design Storm would produce a pool level greatly exceeding the 100-year flood event, flooding of private property outside the federally acquired land was inevitable and intended.

**D. Not Only the Design, but the Planned Operation of the Federal Reservoirs Has Always Been Intended by the Government to Flood Private Property Behind the Dams.**

58. In the Corps' 1986 Master Plan Update (Design Memorandum No. 3), the Government made clear statements that recognized the impact on the private property located within the Addicks and Barker reservoirs from anticipated use of those reservoirs. For example, the Corps stated: "Addicks and Barker Reservoirs were constructed for the single purpose of flood control. All lands within the project boundaries are required for impoundment of water to maximum design water surface elevations. Any development or facilities located within the project boundaries are subject to inundation." 1986 Master Plan Update, at 16.

59. Critically, the Corps has conceded that its Maximum Design Pool extends beyond federal property and that this design feature of its dams/reservoirs would eventually result in lawsuits against the Government. In a section entitled 'Special problems: Flooding of Non-Federal Lands,' the Corps admitted:

The maximum pool elevation for both reservoirs extends beyond each project boundary. As the surrounding areas are developed, this may mean that homes in adjacent subdivisions may be flooded. This could result in lawsuits against the Corps of Engineers for flooding private lands.

1986 Master Plan Update, at 116.

60. Further, in clear awareness of the problem at hand, the Corps identified two possible solutions to avoid the planned flooding of Plaintiffs' private property:

One solution to this problem would be to acquire all lands to the maximum pool elevation at each project. Other solutions would be to acquire flowage easements and to work with local governments to establish zoning laws which would limit development in these areas.

1986 Master Plan Update, at 116–17.

61. But the Government did nothing. Instead, private land within the Corps' Maximum Design Pools remained open to development, and thousands of homes and businesses have been built in these two reservoirs.

62. In 1995, the Government again recognized the problem, proposed solutions, and again did nothing. Specifically, in the Corps' Reconnaissance Report, Section 216 Study Addicks and Barker Reservoirs, Houston, Texas (October 1995), the Government recognized that it had only acquired land up to "5.9 feet below the maximum flood control pool elevation at Addicks Reservoir and 8.7 feet below the maximum pool at Barker Reservoir." Section 216 Study, at 5. The Corps then presented and evaluated ten potentially feasible alternatives to address this problem. Three alternatives would have increased reservoir storage capacities, one alternative would have reduced reservoir inflows, four alternatives would have increased reservoir flood releases, and one alternative was to "[a]dopt a flood warning system and evacuation plan." *Id.* at 7–8. The Corps did not adopt or implement any of these nine alternatives. The tenth alternative was to "[a]ccept existing conditions and risk through No Action." *Id.* at 8. On October 16, 1995, the Corps' District Engineer, Col. Robert B. Gatlin, signed the Section 216 Study, adopted the tenth "No Action" alternative. *Id.* at 19.

63. Nor was this the last time the Government ignored the coming flood disaster caused by its design and operation of the Addicks and Barker Dams/Reservoirs. In a 2009 "Master Plan," the Corps identified that the elevation of government-owned land would be exceeded by the "maximum possible pool before water spills around the end of the dam." 2009 Master Plan, at B-3 and B-4. The Government acknowledged that it only owned land sufficient to impound floodwaters

up to an elevation of about 103 feet in Addicks and 95.5 feet in Barker, and that when the reservoir impounds and stores floodwaters at higher elevations, the impounded water would exceed the footprint of the Government-owned land and be stored on private property:

Despite numerous major flood events in the Metropolitan Houston area since 1963 when the remaining two conduits at each dam were gated, Addicks and Barker Reservoirs have not exceeded the limits of government-owned land in any flood event . . . . However, had some of these events been centered over Addicks and Barker Reservoirs or the Upper Buffalo Bayou Watershed, the combined rainfall and runoff could have resulted in flood pools exceeding the limits of government owned land and possibly exceeding the capacity of Addicks and Barker Dams.

*Id.*

64. In its 2012 updated Water Control Manual, the Corps identified the surface area of Government-owned land as 13,016 acres for Addicks, with a storage capacity on Government-owned land being 127,591 acre-feet. *See* 2012 Water Control Manual, at A-2. The storage capacity within the Addicks Reservoir below its concrete-lined spillways is in excess of 200,000 acre-feet, much more than is available on Government-owned land. For Barker, the 2012 Water Control Manual identified the surface area of Government-owned land as 12,036 acres with a storage capacity on Government-owned land being 82,921 acre-feet. *See* 2012 Water Control Manual, at A-2. Again, the storage capacity within the Barker Reservoir below its concrete-lined spillways is in excess of 200,000 acre-feet, much more than is available on Government-owned land.

65. Once again, the 2012 Water Control Manual, the Corps predicted that rain events would flood residential developments outside the federal property:

Presently, [flood] **pool levels in excess of Government-owned land will damage residential developments adjacent to Government-owned lands.**

2012 Water Control Manual, at 7-1 (emphasis added).

66. Indeed, the 2012 Water Control Manual repeats the long-understood “primary objective” for the Addicks and Barker Reservoirs as to use them to maximize their available storage to prevent damaging flooding downstream.

67. Thus, when rain falls in the Buffalo Bayou watershed below the dams, such as during Harvey, the standard operating procedure of the Corps is to close all of the gates of Addicks and Barker to prevent any release of stored waters flowing downstream until after the rainfall event. The operational directives for the dams are designed and intended to impound all stormwater from their upstream watersheds during such events. It is also normal procedure to keep the gates closed even when the flood pool exceeds Government-owned land and floods private property. The Corps monitors pool elevations and rates of rise in pool elevations.

68. If the flood pool behind these dams reaches a certain elevation and is anticipated to continue to rise, then normal procedure is to open the gates and release water downstream, to both optimize reservoir storage capacity and to protect the integrity of the dams. This technique—known as “induced surcharge”—is common to many Corps reservoirs. The 2012 Water Control Manual for Addicks and Barker establishes the calculated “induced surcharge” release schedule for both Reservoirs. The 2012 Water Control Manual for Addicks and Barker does not include any “induced surcharge” release procedures to avoid the intended inundation of non-federal property owned by Plaintiffs.

69. During Harvey, the Corps first closed the gates according to normal procedure. The Corps later opened the gates and released water downstream because that was the normal procedure. There is no indication that the Corps opened the gates and released water downstream to protect upstream Plaintiffs during Harvey.

70. Thus, the United States not only knowingly and intentionally designed the Maximum Design Pools of Addicks and Barker Dams/Reservoirs to extend beyond federal property and to store water on private property (without obtaining and paying for the right to do so), the Government also foresaw widespread flooding and inundation of such private property from the intended operations of the reservoirs/dams. Indeed, the Government predicted that it



would be sued when a major storm (which it reasonably anticipated would occur), in fact, occurred, and inundated private property located within these reservoirs. And here we are.

**E. The Addicks and Barker Reservoirs/Dams Functioned Precisely as Intended During Tropical Storm Harvey.**

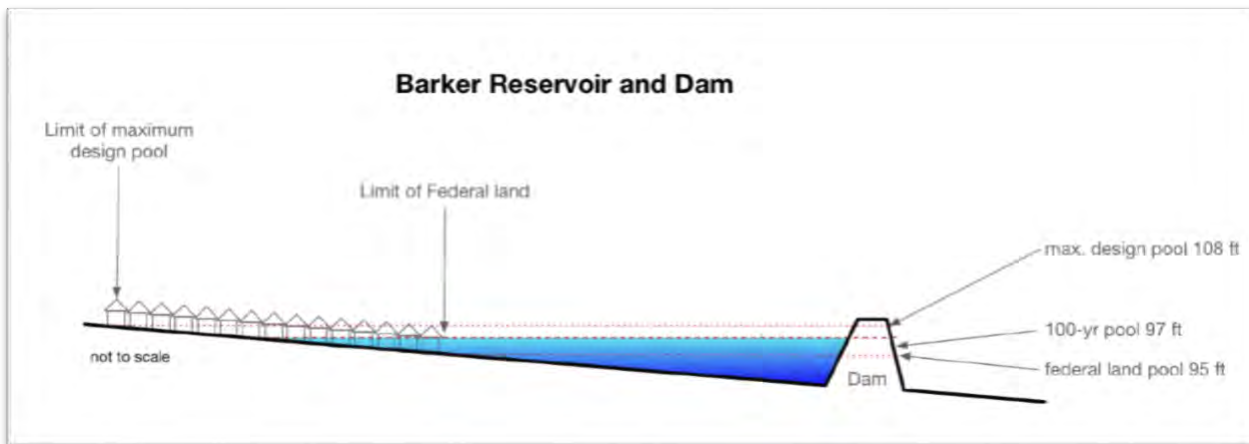
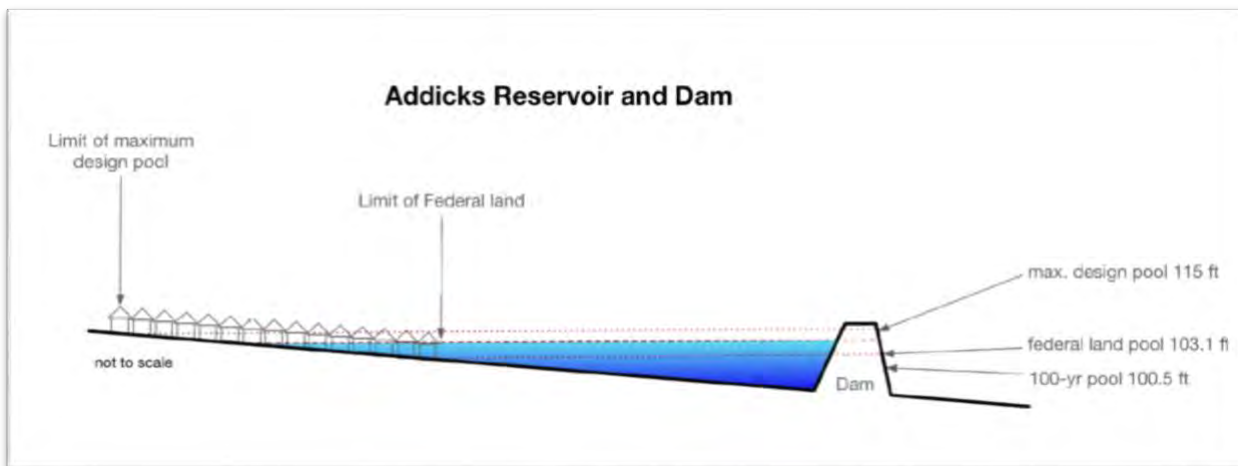
71. Three decades after the United States predicted its two dams/reservoirs would flood private properties located within their design pools, Tropical Storm Harvey brought several days of rain, which did just that. Just as the Government intended, the property within these design pools, including thousands of homes and businesses, flooded. The invasion on, and impact of Harvey floodwaters on, Plaintiffs' real and personal property was the direct, natural, or probable result of the Corps' authorized activity—namely, the design, use, and operation of Addicks and Barker Dams/Reservoirs.

72. During Tropical Storm Harvey, the water level in Addicks Reservoir reached a maximum elevation of ~109.1 feet (NAVD 1988, 2001 adj.), well above the 103.1-foot elevation associated with federally owned lands, but still less than the Government's Maximum Design Pool of 115 feet and the spillway crest elevations at Addicks—meaning the impact of the Government's intentional actions could have been even worse still. Consistent with Addicks Dam/Reservoir's design, the Government intentionally stored floodwaters on Plaintiffs' properties without having any right to do so. The floodwaters did not fully recede from many of Plaintiffs' properties for more than a week, and Plaintiffs have yet to recover the full functional use and undisrupted possession of their property.

73. During Tropical Storm Harvey, the water level in Barker Reservoir reached a maximum elevation of ~101.5 feet (NAVD 1988, 2001 adj.), well above the 95 feet elevation associated with federally owned lands, but less than the Government's Maximum Design Pool of about 108 feet. Consistent with Barker Dam/Reservoir's design, the Government intentionally stored floodwaters on Plaintiffs' properties without having any right to do so. Many of these private

properties remained flooded for more than a week, and many affected property owners, including Plaintiffs, have yet to recover the full functional use and undisrupted possession of their property.

74. The following diagrams illustrate the relevant pool level elevations for Addicks and Barker:



The Government's authorized action was its design, use, and operation of its flood control project - - Addicks and Barker Dams/Reservoirs -- in a manner that it intended, and which it knew would flood private lands located within its reservoirs' Maximum Design Pools during anticipated storm events.

75. Consistent with the Reservoir's design and using data from the Corps' 2012 Water Control Manual, the flood pool elevation in Addicks during Harvey occupied at least 16,989 acres. The amount of water impounded was at least 217,896 acre-feet. *See* 2012 Water Control Manual, at Table 7-01, page 22.

76. Consistent with the Reservoir's design and using data from the Corps' 2012 Water Control Manual, the flood pool elevation in Barker during Harvey occupied at least 15,117 acres. The amount of water impounded was at least 170,034 acre-feet. *See* 2012 Water Control Manual, at Table 7-01, page 22.

77. Thus, according to the Corps' 2012 Water Control Manual, the Government impounded at least 90,305 acre-feet of stormwater on at least 3,973 acres of private land in Addicks Dam/Reservoir during Harvey; and at least 87,113 acre-feet of stormwater on at least 3,081 acres of private land in Barker Dam/Reservoir during Harvey. 2012 Water Control Manual, at Table 7-01, page 22. In total, the Government impounded at least an additional 177,418 acre-feet of stormwater beyond Government-owned land behind and upstream of Addicks and Barker Dams and within their reservoirs, inundating and damaging at least 7,054 acres of private property.

78. The amount of rainfall during Harvey was less than the amount the Dams/Reservoirs were designed to handle. Therefore, the Harvey rain amount was anticipated and foreseeable, and cannot be defended as an 'act of God.'

**F. This Saga is Not Over: Due to the Reservoirs' Design, Harvey Will Not be the Last Flood Event for Those Behind the Addicks and Barker Dams**

79. Harvey was not a "one off" flood event for some of the upstream property owners who flooded during Harvey. For example, stormwater left government-owned land during the so-called Tax Day flood of 2016. Flooding will happen again during future heavy storm systems, just as the Corps foresaw when it designed, constructed, and mandated the procedures for use and operation of these dam/reservoir projects.

80. The flooding of the “upstream” property owners is not the product of a one-time decision by the Corps to implement an emergency procedure that it could not foresee or anticipate. Rather, it is the product of the Corps’ design, use, and operation of these projects and knowledge that during foreseeable and anticipated storm events, these dams would capture and store floodwaters within their respective reservoirs beyond Government-owned lands, and at least up to their respective Maximum Design Pool levels.

81. The Addicks and Barker Dams/Reservoirs are permanent structures that subject Plaintiffs to inevitably recurring flooding, and the increased risk thereof. Not only did the Government previously intend, it still intends to store its floodwaters on the private property that is located within the Maximum Design Pools of these two reservoirs. To this extent, future flooding of such property is equally foreseeable and likely to recur.

82. As of the date of this Complaint, the Government is continuing to use the Addicks and Barker Dams/Reservoirs in a manner that will store impounded water on private property as a result of major storm events without obtaining and paying for the right to do so. Plaintiffs reasonably expected that they would be able to occupy and use their homes and businesses consistent with their rights under Texas property law. Plaintiffs’ reasonable, investment-backed expectation was that they would have the beneficial use of the land, improvements, personal property, and all other associated property rights consistent with the property’s character and customary use. The Government’s intentional storage of Harvey stormwater on Plaintiffs’ property significantly and severely interfered with each Plaintiff’s reasonable investment-backed expectations regarding the use and occupancy of their property.

83. Some Plaintiffs have sold their homes, and real estate sales confirm significant property losses and damage. In many cases, these post-storm sales already show a significant devaluation in property values.

84. In addition to the diminution of property value, portions of Plaintiffs' homes have been destroyed—necessitating tearing out soiled walls, removing mold-prone insulation, replacing ruined floors, replacing garage doors and other exterior features, and requiring the repair of other structural issues.

85. In addition to the real property destroyed, Plaintiffs whose homes flooded suffered permanent damage, destruction, and tragic loss of personal property including appliances, furniture, air conditioning units, and numerous personal effects. For those in one-story houses, this loss of property amounts to most of their possessions.

86. Those Plaintiffs using their property for commercial purposes have been deprived of use of, and access to, their property, losing the benefits and profits attendant to the continued operation of any of their commercial ventures—all as a direct, natural, or probable consequence of these federal projects. Plaintiffs seek the full measure of damages to which they are entitled.

87. Plaintiffs had no, and/or limited ability to access or use their properties for a significant time period during and after Tropical Storm Harvey. Most Plaintiffs were displaced from their homes and had to stay in hotels or alternative accommodations for months following the storm. As of the date of this filing, Plaintiffs are still deprived of the full use of their property interests consistent with their rights under Texas property law.

88. The Government does not own any right to store floodwater on these Plaintiffs' private property. The Government has never made an offer to Plaintiffs to purchase an easement or other property interest for the storage of floodwaters. The Government has never attempted to use its power of eminent domain to acquire an easement or other property interest from Plaintiffs for the purpose of storing floodwaters. The Government has never compensated or offered to compensate Plaintiffs to use their property to store floodwaters.

89. The Government's intentional design, use, and operation of the Addicks and Barker Dams/Reservoirs for their acknowledged public purpose—namely to prevent flooding downstream along Buffalo Bayou and in downtown Houston—at the expense of flooding Plaintiffs' properties located in the reservoirs, is precisely the type of scenario that gives rise to a claim for Just Compensation under the Fifth Amendment.

90. As of the date of this Complaint, the Government is continuing to use the Addicks and Barker Dams/Reservoirs in a manner that will store impounded water on private property as a result of major storm events without obtaining and paying for the right to do so

### **CAUSES OF ACTION**

91. Plaintiffs allege the following causes of action together, and in the alternative.

#### **Count I: The Permanent Taking of a Flowage Easement Without Just Compensation in Violation of the Fifth Amendment of the United States Constitution**

92. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if they were recited verbatim herein.

93. For the public's benefit and the benefit of certain areas, including downstream properties along Buffalo Bayou and downtown Houston, the Government designed, used, and operated Addicks and Barker Dams/Reservoirs with the intent to store floodwaters up to the Maximum Design Pools of the two reservoirs during heavy rains.

94. The Addicks and Barker Dams/Reservoirs are permanent structures with indefinite and/or very long lifespans.

95. The flooding of Plaintiffs' property is inevitably recurring and is necessarily incident to and an intended consequence of the continued use of the permanent Addicks and Barker Dam/Reservoir projects as designed, used, and operated by the Government.

96. The Government's design of the Maximum Design Pools of Addicks and Barker Reservoirs at elevations that encompass significant private property demonstrates and confirms the

Government's permanent commitment to the intermittent, but inevitably recurring, flooding of Plaintiffs' real and personal property and businesses, when heavy rain events occur again.

97. Further, the Government's actions run counter to, and severely interfere with, Plaintiffs reasonable investment-backed expectations regarding the character and usage of their respective residential and/or commercial properties and property interests.

98. The Government's actions violate Plaintiffs' protectable property rights, which are recognized and protected under Texas law. Specifically, Plaintiffs own or lease real property and own personal property, and the Government, through its actions in connection with the design, use, and operation of the Addicks and Barker Dams/Reservoirs, has subjected that property to a permanent liability to flooding

99. As a direct, natural, and intended consequence of the design and construction of the Addicks and Barker Dam/Reservoir projects, Plaintiffs' properties have been subjected to both actual flooding and the continued risk of frequent and inevitably recurring flooding. The Government's action is the cause-in-fact and proximate cause of the taking.

100. By subjecting Plaintiffs' property to a permanent liability to flooding, including storing stormwaters on their property during Harvey, the Government has taken a permanent flowage and drainage easement on Plaintiffs' properties.

101. As a result of the foregoing, and in addition to, or in the alternative to, the other causes of action asserted herein, the United States has taken permanent flowage and/or drainage easements or servitudes over Plaintiffs' property, which it has permanently taken for a public purpose, without just compensation.

**Count II: The Temporary Taking of a Flowage Easement Without Just Compensation in Violation of the Fifth Amendment of the United States Constitution**

102. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if they were recited verbatim herein.

103. For the public's benefit and the benefit of certain areas, including downstream properties along Buffalo Bayou and downtown Houston, the Government designed, used, and operated Addicks and Barker Dams/Reservoirs with the intent to store floodwaters up to the Maximum Design Pools of the two reservoirs during heavy rains.

104. The Government's retention of stormwater during and after Harvey caused a temporary invasion and taking of Plaintiffs' properties and businesses by the Government, with devastating consequences to constitutionally protected property interests, without just compensation in violation of the takings clause of the Fifth Amendment to the United States Constitution. As is common in cases of government-induced flooding that unconstitutionally takes and destroys property, the Government's taking is temporary because the flooding itself does not continue permanently. But the consequences of the flooding include the permanent destruction and loss of real and personal property, including homes and businesses. By storing stormwaters on private property within the Maximum Design Pools of Addicks and Barker Reservoirs during and after Harvey, the Government violated the Takings Clause of the Fifth Amendment because it temporarily took the right to flood that property with Harvey's impounded floodwaters without paying just compensation.

105. Plaintiffs allege that the Government's taking of a temporary flowage easement during and after Harvey in particular commenced on or about August 27th, 2017, and continues until the time each of the Plaintiffs are able to fully use, enjoy, and occupy their land and property. In the alternative, and at a minimum, Plaintiffs allege that the temporary flowage easement for Harvey in particular lasted until Harvey's floodwaters fully receded from Plaintiffs' respective properties.

106. The Government's actions in connection with storing Harvey stormwaters violated Plaintiffs' protectable property rights. Specifically, Plaintiffs own or lease real property and own



personal property, and Plaintiffs' rights in that property were impaired by the Government's taking of a temporary flowage easement. Their rights in this property are recognized and protected under Texas law.

107. Further, the Government's actions run counter to, and severely interfere with, Plaintiffs reasonable investment-backed expectations regarding the character and usage of their respective residential and/or commercial properties and property interests.

108. As detailed herein, the damage done by, and interference caused by, the Government's storage of Harvey floodwaters on Plaintiffs' property is unquestionably substantial.

109. The Government's action was the cause-in-fact of the temporary taking alleged herein. The storage and invasion of floodwaters onto Plaintiffs' real and personal property was the direct, natural, or probable result of the Corps' authorized activity.

110. As a result of the foregoing, and in addition to, or in the alternative to, the other causes of action asserted herein, the Government has taken a temporary flowage and/or drainage easement over Plaintiffs' property for a public use, without payment of just compensation.

**Count III: The Temporary Taking of Other Property Interests Without Just Compensation in Violation of the Fifth Amendment**

111. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if they were recited verbatim herein.

112. Plaintiffs are entitled to the full and exclusive use and occupancy of their land, immovable property, and personal property for personal and commercial purposes.

113. As a direct, natural, and probable consequence of the Addicks and Barker Dam/Reservoir projects, including the Government's use of these projects, Plaintiffs' properties were subjected to actual flooding in connection with Harvey.

114. By storing stormwaters on private property within the Maximum Design Pools of Addicks and Barker Reservoirs during Harvey, the Government temporarily took the Plaintiffs'

interest in the use, enjoyment, and occupation of their land and immovable and other personal and commercial property without paying just compensation.

115. The Government's actions ran counter to Plaintiffs' reasonable investment-backed expectations in the residential and commercial properties that they owned or rented.

116. The damage to Plaintiffs' protected property interests is severe. Many Plaintiffs were displaced from their homes for months and otherwise cannot use, enjoy, or occupy their residential or business properties. Many Plaintiffs were forced to reside in hotels or other alternative accommodations for months after Harvey, and many continue to be displaced from their homes. The Government's action was the cause-in-fact and proximate cause of the temporary taking alleged herein. The storage and invasion of floodwaters onto Plaintiffs' real and personal property was the direct, natural, and probable result of the Corps' authorized activity.

117. Plaintiffs allege that the Government's taking of their interests in the full use, enjoyment, and occupancy of their property commenced on or about August 27th, 2017, and continues until the time each of the Plaintiffs are able to fully use, enjoy, and occupy their land and property.

118. As a result of the foregoing, and in addition to, or in the alternative to, the other causes of action asserted herein, Plaintiffs have been deprived of the full and exclusive use, occupancy, and enjoyment of their property (including the land, immovable improvements, and personal property), resulting in a temporary taking of their property for a public use, without payment of just compensation.

**Count IV: The Permanent Taking of Damaged and Destroyed Property Without Just Compensation in Violation of the Fifth Amendment**

119. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if they were recited verbatim herein.

120. By storing stormwaters on private property within the Maximum Design Pools of Addicks and Barker Reservoirs during and after Harvey, the Government violated the Takings Clause of the Fifth Amendment because it permanently took the Plaintiffs' property interests in their homes, their improvements, their personal property, and the value of their land without paying just compensation.

121. The Government's actions during Harvey violated Plaintiffs' protectable property rights. Specifically, Plaintiffs own or lease real property and own personal property which was damaged or destroyed by the Government. Their rights to this property are recognized and protected under Texas law.

122. The Government's actions ran counter to Plaintiffs' reasonable investment-backed expectations in the residential and commercial properties that they owned or rented (*i.e.*, that they would not have their homes, improvements, personal property, and the value of their land permanently damaged or destroyed as a result of the Government's actions).

123. As discussed extensively in this complaint, the Government foresaw and predicted the taking of Plaintiffs' real and personal property.

124. The Government designed, constructed, and used the Addicks and Barker Dams/Reservoirs in a manner that it knew would result in the flooding of private property located within its reservoirs' Maximum Design Pools during foreseeable and anticipated storm events. The consequences to Plaintiffs' properties were the direct, natural, and probable result of authorized activities by the Government.

125. The permanent damage to and destruction of real and personal property brought about by the Government's storage of Harvey floodwaters on Plaintiffs' property is severe. Among other losses, homes and businesses and personal items were permanently destroyed. The permanent taking occurred when the Government used, damaged, and/or destroyed the Plaintiffs' property.

126. The Government's action was the cause-in-fact and proximate cause of the taking alleged herein. The storage and invasion of floodwaters onto Plaintiffs' real and personal property was the direct, natural, or probable result of the Corps' authorized activity.

127. As a result of the foregoing, and in addition to, or in the alternative to, the other causes of action asserted herein, Plaintiffs have been permanently deprived of their interests in the property that was damaged or destroyed in connection with Harvey, resulting in a permanent taking of their property for a public use, without payment of just compensation.

### **RELIEF REQUESTED**

128. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as if they were recited verbatim herein.

129. As a direct result of the Government's authorized actions alleged herein, Plaintiffs are entitled to recover just compensation and such other appropriate relief as the Court deems just and proper in an amount to be determined by the trier of fact. All losses sustained by Plaintiffs were reasonably foreseeable by the Government. All conditions precedent to Plaintiffs' claims for relief have been performed and/or occurred.

130. Plaintiffs are also entitled to recover reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred in this proceeding pursuant to 42 U.S.C. § 4652, and Rule 54 of the Rules of the United States Court of Federal Claims.

WHEREFORE, Plaintiffs respectfully request that the Government be cited to appear and answer this lawsuit, and that, upon final trial or hearing, judgment be awarded against the Government for just compensation in an amount to be determined by the trier of fact; pre- and post-judgment interest at the highest legal rates; reasonable costs, disbursements, and expenses,

including reasonable attorney, appraisal, and engineering fees, incurred in this proceeding; costs of suit; and such other and further relief to which Plaintiffs are justly entitled.

Houston, Texas  
January 16, 2018

Respectfully submitted,

By:           /s/ Edwin Armistead Easterby            
Edwin Armistead “Armi” Easterby  
[aeasterby@williamskherkher.com](mailto:aeasterby@williamskherkher.com)  
Texas State Bar No. 00796500  
WILLIAMS KHERKHER HART BOUNDAS, LLP  
8441 Gulf Freeway, Suite 600  
Houston, Texas 77017  
Telephone: (713) 230-2200  
Facsimile: (713) 643-6226

*Co-Lead Counsel, Individual Upstream Plaintiffs*

By:           /s/ Vuk S. Vujasinovic            
Vuk S. Vujasinovic  
[vuk@vbattorneys.com](mailto:vuk@vbattorneys.com)  
VB Attorneys, PLLC  
6363 Woodway Dr., Suite 400  
Houston, Texas 77057  
Telephone: (713) 224-7800  
Facsimile: (713) 224-7801

*Of Counsel, Individual Upstream Plaintiffs*

**Certificate of Service**

The undersigned attorney hereby certifies that on January 16, 2018, he filed and served this document on all counsel of record through the Court's electronic filing system.

By:           /s/ Edwin Armistead Easterby            
Edwin Armistead "Armi" Easterby