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## *JUDGE-APPOINTED OF COUNSEL FOR ADDICKS BARKER CASES*

### **Summary of Upstream January 2021 Order and Opinion**

The Army Corps of Engineers is responsible for operating the Addicks and Barker Reservoirs, which they reassessed after Hurricane Harvey. Part of that reassessment was supposed to be compiled in the Buffalo Bayou & Tributaries Resiliency Study. After several inquiries by our Leadership Group about when the Study would be released - and several delays by the Government - they produced an interim report in October of 2020.

However, the interim report did not include much of the information that we knew had been completed because we had received a draft of the Study from the Harris County Flood Control District. After the Government realized that we had this information they “clawed back” those documents (meaning they took it back from us). We filed a motion to get back that information and the Government claimed that those documents fell within the “deliberative process privilege.” The deliberative process privilege, in short, allows the Government to have discussions about what their plan is going forward, without being required to turn those discussions over to us.

The Government tried to block all of the underlying information in the appendices, but the Judge didn’t allow them to claim the privilege on a large portion of the information because you can’t hide *facts* under the deliberative process privilege. That makes sense because the actual facts of what has happened aren’t what anyone is deliberating about. The facts are the facts and there is no “deliberation” about that. The Court stated:

“The proper way for the government to address concerns regarding the disclosure of these facts [about their deliberations], however, is to produce the draft documents with redactions, not to withhold them completely. To the extent that the draft documents contain facts that do not reveal the team’s rationale for its recommendation, they fall outside of the scope of the deliberative process privilege.”

By allowing us to use the underlying facts of the Study we will be able to use the latest and greatest evidence to support our claims in this case and to be as accurate as possible while we attempt to come to a final determination of what each property owner is owed by the Government. This is just one more step in the right direction as we continue to fight for your just compensation.