

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

**THOMAS E. AND BETH F. ROSS**  
**Plaintiffs,**

**V.**

**SAN JACINTO RIVER AUTHORITY**  
**Defendant**

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

\_\_\_\_ **JUDICIAL DISTRICT**

**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Thomas and Beth Ross (collectively referred to as "Plaintiffs"), and file this Original Petition against Defendant San Jacinto River Authority, and would respectfully show as follows:

**I. PARTIES**

1. Plaintiffs, Thomas and Beth Ross, are and at all times were individuals residing in and/or own property in Harris County, Texas.

2. Defendant San Jacinto River Authority is a governmental unit located in Harris County and may be served with process by delivering a copy of this Original Petition to its President at 1577 Dam Site Road, Conroe, Texas 77304.

**II. DISCOVERY LEVEL**

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

**III. JURISDICTION & VENUE**

4. Subject matter jurisdiction is proper in this Court because:

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- a. The amount in controversy of all class members in the aggregate exceeds the sum or value of \$1,000,000, exclusive of interests and costs;
  - b. Plaintiffs and the class members are citizens of the State of Texas residing here and/or owning property in Harris County, Texas; and
  - c. All other factual conditions precedent necessary to empower this Court with subject matter jurisdiction and personal jurisdiction are satisfied.
5. Venue is proper as all or a substantial part of the events giving rise to this lawsuit occurred in Harris County, Texas.

#### IV. FACTS

##### A. INDIVIDUAL CLAIMS

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

7. While much of Harris County was flooding, Plaintiffs and members of the Classes had property that was not flooded as of Sunday, August 27, 2017. However, after the San Jacinto River Authority made the decision to release water from Lake Conroe, Plaintiffs home, and those similar class members' homes, began to flood.

8. Plaintiffs Ross reside at 4414 Walham Court, Kingwood, Texas 77345 in the Kings Crossing neighborhood and did not receive flooding until after the release of water from Lake Conroe. More specifically, Plaintiffs' property did not flood until Tuesday, August 29, 2017, well after the rainfall from Hurricane Harvey had ceased.

9. Defendant's action in releasing water from Lake Conroe was done with intent and it knew of the substantial risk of flooding damage to homes and businesses downstream from lake Conroe.

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

11. When the release occurred, Plaintiffs' property was flooded, destroying most of the property and its contents.

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

12. Unless otherwise specifically stated herein, this action is instituted by the Plaintiffs on behalf of themselves and a class defined as all other similarly situated persons who owned property flooded after the intentional release by Defendants of water from Lake Conroe.

13. Plaintiffs' experience is not unique but was the same experience of thousands of residents of Harris and Montgomery Counties whose properties were not flooding until the release of water from Lake Conroe. Each property owner experienced the same or similar harm by the actions of the San Jacinto River Authority. The class referenced includes all putative class members residing throughout the state of Texas and in Harris and Montgomery Counties, and includes thousands of individuals, and therefore the class is so numerous that joinder of all members of the class would be impractical.

14. The claims for relief asserted herein on behalf of the Plaintiffs and the putative class members present questions of law and fact common to the class.

15. The claims of the named representative Plaintiffs are typical of the claims of the putative class.

16. The Plaintiffs, as representative Plaintiffs for the putative class, will fairly and adequately protect the interests of the putative class because:

- a. The Plaintiffs have knowledge regarding the facts and circumstances that give rise to his claims and the claims of the putative class members;
- b. The Plaintiffs are strongly interested and highly motivated to assert and protect their own rights and the rights of the putative class in a vigorous fashion; and
- c. The Plaintiffs have retained, as class counsel, attorneys with substantial experience in class actions, eminent domain and storm litigation with the necessary and requisite resources. These attorneys will also vigorously assert and protect the interests of the putative class members.

17. The questions of law and/or fact common to the Plaintiffs and the putative class members predominate over any questions affecting only individual members of the class, and a class action as asserted herein is superior to other available methods for the fair and efficient adjudication of this controversy, in that, among other elements:

- a. The interests of the Plaintiffs and the interests of the individual class members in controlling the prosecution of separate actions are outweighed by the advantages of adjudicating the common issues of fact and law by the means of a class action;
- b. Upon information and belief, there are no pending certified class actions concerning the controversy at issue or the claims asserted in this case applicable to the Plaintiffs or the putative class members set forth herein;
- c. Concentrating litigation of these claims in this forum is desirable because it will prevent and avoid a duplication of effort and the possibility of inconsistent results, and this forum represents an appropriate forum to settle the controversy based on the location of the Plaintiffs, the putative class members, and the availability of witnesses and evidence; and
- d. Any difficulties that may be encountered in management of the class are greatly outweighed by the difficulties of handling multiple actions by individual class members. This class action is a superior method because it furthers judicial economy and efficiency and is in the best interests of the Plaintiffs and the putative class members.

18. Pursuant to Rule 42(b) of the Texas Rules of Civil Procedure, Plaintiffs, individually, and on behalf of a class of persons similarly situated seek class certification and class

relief. As alleged herein, Defendant's conduct is unlawful, violating the rights of Plaintiffs and other members of the proposed class(es). Plaintiffs bring this class action to secure redress for the Defendant's uniform and common practice as to all class members.

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

- a. All Texas residential property owners who experienced flood waters at their property on or after Monday, August 28, 2017, in the area downstream of Lake Conroe affected by the release of water from Lake Conroe.
- b. All Texas commercial property owners who experienced flood waters at their property on or after Monday, August 28, 2017, in the area downstream of Lake Conroe affected by the release of water from Lake Conroe.

20. Defendant is a Defendant: (1) from whom significant relief is sought by members of the Class; (2) whose alleged conduct forms a significant basis for the claims asserted by the proposed Class; and (3) who is a citizen or domiciled in Texas where this action is filed.

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

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

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

- a. Whether Defendant's conduct constitutes a taking of property in violation of the Section 17, Article 1 of the Constitution of the State of Texas?
- b. Whether the consequences of the release of water from Lake Conroe was intentional by the Defendant or whether each was substantially certain of the harm that the release would cause?

## V. CAUSES OF ACTION

### A. Constitutional Taking

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

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

### B. Nuisance

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

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

## VI. DAMAGES

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

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

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

Respectfully Submitted,

**THE POTTS LAW FIRM, LLP**

By: /s/ Derek H. Potts

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