

Federal judge blasts government lawyers for seeking delays in Houston dam flooding cases

By **Lise Olsen** Updated 7:49 pm, Thursday, December 21, 2017



IMAGE 1 OF 19

Water is released from Barker Reservoir as floodwaters from Hurricane Harvey continue to rise on Monday, Aug. 28, 2017, in Houston.

The chief federal judge overseeing lawsuits involving more than 1,500 Houstonians whose properties were flooded upstream and downstream of Houston's dams in the aftermath of Hurricane Harvey blasted government lawyers in a hearing this week for seeking delays that she described as unreasonable and "insulting."

Chief Judge Susan G. Braden of the U.S. Court of Federal Claims unloaded on the government lawyers, who had asked for delays in the case including a year to allow the U.S. Army Corps of Engineers to "look for documents."

"It took the Army Corps of Engineers a few minutes to make a decision to open dams that left people without homes and without property," Braden told a Houston courtroom with 20 attorneys representing both flooded-out Houstonians and the U.S. government.

DEVELOPING STORM: **For buyers within 'flood pools,' no warnings from developers, public officials**

"What has been proposed to the court, frankly, is insulting," the judge said, according to a transcript of the Wednesday hearing. "It's insulting to the people in this community; it's insulting to the president of the United States; and it is unbecoming to those representing the Attorney General. And it shows no respect for the role of the judiciary."

The judge's remarks came during what was expected to be a routine hearing to set a schedule for the cases, in which thousands of Houstonians claim that the government illegally "took" their land, property, homes and businesses to store water during Hurricane Harvey's rains — either because their property was upstream of the city's Barker and Addicks' reservoirs in areas known as "flood pools" or was flooded downstream by dam releases.

In an attempt to explain the government's side, Jeffrey H. Wood, the acting Assistant Attorney General of the Environment and Natural Resources Division, argued that the U.S. Justice Department considers the matter a "high priority" but is busy with its 7,000 other cases. He said the Corps of Engineers remains occupied with "a post-storm recovery and debris mission, not just in Houston but across other impacted areas during this year's tremendous weather events."

But Braden, whose Washington D.C. court specializes in claims against the government, appeared unconvinced. She said she believes it's likely that the documents needed to understand the Corps' role in its dams operations during Harvey might be in two filing drawers based on her experience in similar cases.

SURPRISED: **Many homeowners didn't know they lived in reservoir 'flood pools'**

Braden, a former U.S. justice department trial attorney, was appointed to the federal bench by President George W. Bush in 2003 and named chief judge by President Donald Trump in March.

She said she and other federal judicial colleagues agree that the Houston flooding matters should be resolved on a "fast track" in two years or less.

The first hurdle for the plaintiffs will be to prove that the government "took" their property, albeit temporarily during Harvey.

To that end, one attorney for the upstream plaintiffs damaged by reservoir pools told the court his side already has collected and disclosed 25 Corps of Engineers documents related to dam operations and the reservoir flood pools. Other attorneys also said promised during the hearing that the owners of properties downstream from the dam, whose claims are slightly different, will be divided into groups and will move fast to provide the information needed.

More than 9,000 properties were damaged upstream of Addicks and Barker dams inside enormous flood pools; thousands more were damaged downstream during Harvey.

A Houston Chronicle investigation found that Corps officials had repeatedly studied and documented the potential for Houston dam-related flooding for years, producing maps and charts that revealed reservoir flood pools could inundate thousands of properties worth hundreds of millions of dollars for 45-49 days. But those engineering studies were not widely distributed and the Corps never acted on its own buyout proposals.

DAM SUITS: **More than 80 Harvey-related lawsuits pile up**

People who purchased flood pool properties damaged in Harvey were generally unaware of the dangers, the Chronicle found.

James Blackburn, a Houston-based attorney and advocate who is uninvolved in the federal cases, said he thinks the judge's remarks should give flooded-out homeowners hope.

"There's a judge that's worried about getting them a just result as quickly as possible – that's not the image a lot of people have of the federal court system," he said.

" I have talked to several of the lawyers and they all say they have never seen the government reamed out like the federal judge did to the assistant attorney general in this hearing. This is the stuff lawyers talk about for years."

DEVELOPING STORM: Hurricane Harvey was the most destructive storm in Houston's history. The late-August storm dumped up to 60 inches of rain on southeast Texas, but the resulting damage was multiplied by actions taken — and not taken — during the past 50 years. **Our seven-part series** explains why the storm's damage was both a natural and man-made disaster.

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