

Hurricane Harvey class actions moving ahead after judge denies DOJ delay request (/stories/511307575-hurricane-harvey-class-actions-moving-ahead-after-judge-denies-doj-delay-request)

by Karen Kidd (/author/karen-kidd) | Jan. 8, 2018, 2:46pm



HOUSTON – A pair of class action lawsuits against the federal government over Hurricane Harvey flood damage and a U.S. Army Corps of Engineers' decision to release water from the Addicks and Barker reservoirs are moving forward following a federal judge's decision earlier in December.

Following a hearing in Houston on Dec. 20, U.S. Court of Federal Claims Chief Judge Susan G. Braden denied a Department of Justice request for a year of delay, saying the request was "insulting."

"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," Braden said in a widely reported transcript of the hearing. "And it shows no respect for the role of the court."

Previously, in a memorandum opinion and order (https://jnswire.s3.amazonaws.com/jns-media/0f/74/752761/20171208_OrderOnVacateMotion.pdf) issued Dec. 8, Braden denied a government motion to vacate an earlier court order that directed all parties to identify whether their cases concern upstream or downstream claims.

The day following the hearing, Braden signed case management order No. 4 (https://jnswire.s3.amazonaws.com/jns-media/b8/f5/752759/20171221_Order.pdf) to "promote the efficient administration of justice" and move the class actions ahead.

Braden, a then-President George W. Bush appointee on the Federal Claims Court since July 2003, was appointed chief judge by President Donald Trump this past March (<http://www.usfc.uscourts.gov/node/2908>).

Those two class actions Baden moved ahead are only part of a flood of litigation following Hurricane Harvey and water release from the reservoirs in August. Gov. Greg Abbott estimated damage from Hurricane Harvey to be between \$150 billion and \$180 billion (<https://www.reuters.com/article/us-storm-harvey/funding-battle-looms-as-texas-sees-harvey-damage-at-up-to-180-billion-idUSKCN1BE0TL>) and issued a state disaster declaration in 60 counties (<https://gov.texas.gov/news/post/governor-greg-abbott-extends-disaster-declaration-for-texas-counties-impact>). The Insurance Council of Texas has estimated insured losses from Hurricane Harvey at about \$19 billion (<https://setexasrecord.com/stories/511217955-ict-estimates-hurricane-harvey-insured-losses-at-19b>) while the Texas Windstorm Insurance Association expects to pay out \$1.13 billion in Hurricane Harvey claims (<https://setexasrecord.com/stories/511278264-twia-anticipates-paying-1-13-billion-in-hurricane-harvey-claims>).

Publicly, the U.S. Army Corp of Engineers has been "leaning forward (<http://www.usace.army.mil/Hurricane-Harvey-Response/>)" in its Hurricane Harvey response, in partnership with local, state, and federal officials, putting more than 353 personnel to work with county, state, and FEMA partners.

"Our number one priority continues to be life, health, safety of all personnel affected by Hurricane Harvey," the Corp says on its Hurricane Harvey response webpage. "USACE is focused on flood mitigation and reservoir operations, temporary emergency power, debris technical assistance, navigation restoration, temporary housing, infrastructure assessments, and commodities technical assistance."

As much action is happening in court as attorneys and high-powered law firms dipped into the Houston area for as many as approximately 20,000 claims (<https://setexasrecord.com/stories/511278279-court-of-federal-claims-could-see-20-000-harvey-inverse-condemnation-cases-lead-counsel-appointed-to-steer-load>) following Hurricane Harvey.

A government response (https://jnswire.s3.amazonaws.com/jns-media/6e/d3/752760/20171218_Response.pdf) filed by the DOJ Dec. 18 called Hurricane Harvey "an unprecedented, catastrophic storm" with rainfall in Greater Houston that "did not merely shatter local records – the storm set a new rainfall record for the continental United States. This rainfall exceeded the capacity of the Addicks and Barker flood control reservoirs and releases of water ensued."

Now the government faces more than 150 cases, including 12 class actions, and more than 1,000 individual claims that allege timing and the amount of water released by the Army Corps of Engineers amounted to a "Fifth Amendment taking of property without just compensation," the government's response said.

Another year or so is needed for the government to prepare its case and finds relevant documents, according to the government's response that formally requested the delay.

"In addition, the proposed schedule would tax already thinly stretched Corps resource," the government's response said.

"Currently, the Corps is still engaged in its vital mission of post-storm recovery and debris removal for Hurricanes Harvey, Irma and Maria, with approximately 20 Galveston-District personnel working emergency response duties, as opposed to their regular duties."

Baden apparently was not impressed by the government's request for delay, saying during the hearing that it took the Corps "a few minutes to make a decision to open the dams that left people without homes and property," according to the hearing transcript.