

# **Bond Case Briefs**

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## **EMINENT DOMAIN - TEXAS**

### **San Jacinto River Authority v. Burney**

**Court of Appeals of Texas, Houston (1st Dist.) - December 4, 2018 - S.W.3d - 2018 WL 6318506**

Homeowners whose homes flooded during Hurricane Harvey brought inverse condemnation and statutory takings claims against river authority, alleging that river authority released water from lake into river during hurricane, causing or exacerbating downstream flooding of their homes.

The District Court denied river authority's motions to dismiss. River authority appealed.

The Court of Appeals held that:

- Language in rule governing dismissal of baseless causes of action prevented Court of Appeals from taking judicial notice of public record data;
- Homeowners' pleadings were sufficient to allege that river authority's release of water was intended to, or was known to be substantially certain to, result in flooding of homeowners' properties;
- Pleadings were sufficient to allege a taking; and
- Pleadings were sufficient to allege that release of water was done for public use.

Statutory exception to county civil court of law's exclusive jurisdiction over eminent domain proceedings, which gave district court concurrent jurisdiction when amount in controversy in statutory proceeding exceeded \$200,000, did not apply to inverse condemnation action brought by owners of flooded homes against river authority, where river authority did not make bona fide offer exceeding \$200,000 to homeowners.

Although county civil court at law had exclusive subject-matter jurisdiction over homeowners' inverse condemnation claims brought against river authority, district court had subject-matter jurisdiction over homeowners' takings claims, which were brought under Private Real Property Rights Preservation Act.

Language in rule governing dismissal of baseless causes of action that court "may not consider evidence in ruling on the motion" prevented the Court of Appeals from taking judicial notice of public record data concerning circumstances of hurricane in takings action brought by owners of flooded homes against river authority.

Homeowners' pleadings were sufficient to allege that river authority's release of water from lake into river was intended to, or was known to be substantially certain to, result in flooding of homeowners' properties, as necessary to establish constitutional taking and taking under Private Real Property Preservation Act in action brought against river authority; homeowners specifically alleged that authority "intentionally, knowingly, affirmatively, and consciously flooded" their particular properties, identified by street addresses, that authority was aware that previous water releases from lake caused or exacerbated downstream flooding, and that it knew which downstream properties had flooded as result of previous releases.

Homeowners' pleadings were sufficient to allege a taking, as necessary to support claims for constitutional taking and statutory taking brought under the Private Real Property Preservation Act in action against river authority after authority released lake water into river, and homeowners' homes were subsequently flooded; homeowners alleged that property was damaged when flooding reached their property, and that it would not have flooded under natural conditions, or that flooding was far worse than it would have been under natural conditions, and that authority's actions caused flooding to arrive more quickly and with less warning than otherwise would have occurred.

Homeowners' pleadings were sufficient to allege that river authority's release of water from lake into river was done for public use, as necessary to support claims for constitutional taking and statutory taking under the Private Real Property Rights Preservation Act brought by homeowners against river authority; homeowners alleged that river authority knowingly flooded their properties in order to avoid risks of rising water levels in lake, and that its water release was done to protect stability and integrity of river's infrastructure, to ensure that lake would remain available for use as reservoir of freshwater storage and for recreational uses, and to minimize danger to public by keeping docks, islands, and other structures unsubmerged for as long as possible.

Homeowners' factual allegations were sufficient to establish that river authority's actions in releasing lake water into river affected homeowners' private real property by limiting their rights to property, and that such actions were producing cause of reduction of at least 25% in market value of affected homes in action brought against river authority by homeowners whose homes were flooded by released water, as required to assert statutory takings claim under the Private Real Property Rights Preservation Act.