

Bond Case Briefs

Municipal Finance Law Since 1971

EMINENT DOMAIN - TEXAS

In re Downstream Addicks and Barker (Texas) Flood-Control Reservoirs

United States Court of Federal Claims - April 22, 2026 - Fed.Cl. - 2026 WL 1110733

Owners of property downstream from flood control reservoirs filed suit against United States, claiming flooding resulting from United States Army Corps of Engineers intentionally opening reservoir gates to release water during hurricane was Fifth Amendment taking.

The Court of Federal Claims granted government's motion to dismiss and for summary judgment, owners appealed, and United States Court of Appeals for the Federal Circuit reversed and remanded. Parties filed cross-motions for summary judgment, and Court held a limited trial.

On remand, the Court of Federal Claims held that:

- Factor considering time and duration of flooding weighed in favor of finding flooding was temporary taking;
- Government intended and foresaw flooding as shown by flowage maps, supporting finding flooding was temporary taking;
- Factor considering severity of government's actions weighed in favor of finding flooding impact constituted taking;
- Character of land, and owners' reasonable investment-backed expectations, weighed in favor of finding flooding was taking;
- Provision in manual requiring induced surcharges under certain conditions acted as regulation that amounted to per se taking;
- Recurring flooding under manual provision was permanent physical taking;
- Reasonable property owner could not have foreseen induced surcharge regulation at time government committed to building and maintaining dams;
- Evidence supported conclusion properties experienced greater flooding due to releases as required to show causation;
- Government failed to show actual emergency or imminent danger, as required to show necessity doctrine was applicable a defense to taking claim;
- Releases were intended to invade properties and invasion was direct result of authorized activity, supporting conclusion flooding was taking rather than tort; and
- Police powers defense did not absolve government of liability for takings through government-induced flooding.