

LATTIMORE MATERIALS §
CORPORATION, LGI LAND, LLC, LGI §
LAND I, LLC, LONE STAR SAND & §
GRAVEL, LP, MIDTEX OIL, LP, MTX §
MATERIALS GP, LLC, MTX §
MATERIALS, LP, MULTISOURCE SAND §
AND GRAVEL CO., LTD., PORTER §
STABILIZED MATERIALS, RASMUSSEN §
FINANCIAL GROUP, LLC, RIVER §
AGGREGATES, LLC, ARGOS READY §
MIX (SOUTH CENTRAL CONCRETE) §
CORP., f/k/a SOUTHERN STAR §
CONCRETE, INC., SPRINT SAND AND §
CLAY, LLC, SUNRISE MATERIALS, LP, §
THREE L, INC., VOLCAN SAND & §
CLAY, LLP, WM TRUCKING & §
EXCAVATING, INC.,

Defendants.

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff John Earl Ellisor (“Plaintiff” or “Ellisor”) hereby files this Original Petition against Defendants Hanson Aggregates, LLC, Liberty Materials, Inc, Megasand Enterprises, Inc., Triple P.G. Sand Development, LLC, RC Materials LLC, RGI Materials, Inc., San Jacinto River Materials, Inc., Stacy Kropik Trucking, Inc., Traylor Bros., Inc., Zachry Construction Corporation, Odebrecht Construction, Inc., Williams Brothers Construction Co., Inc., Eagle Sorters, LLC, Texas Sterling Construction Co., Texas Concrete Sand and Gravel Inc., Southern Crushed Concrete, LLC, Pioneer Concrete of Texas, Inc., A & B Crushed Concrete, LLC, Alleyton Resource Company, LLC, A.N.T. Enterprises, LLC, Apcon Services, LLC, Argos USA, LLC, Artesian Materials, Inc., Artesian Materials and Aggregates, Inc., B&B Aggregates, Inc., Bullock Construction, LLC, Campbell Concrete & Materials, LLC, Century Asphalt Materials, LLC, Century Asphalt, Ltd., Cleveland Sand & Gravel, LLC, Eagle Sand & Gravel, LLC, Express Materials Venture, LP, Frontier Aggregates, LLC, Great Southern Stabilized, LLC, Gulf Coast

Stabilized Materials, LLC, Houston-Pasadena Apache Oil Company, LP, Kingsley Constructors, Inc., Lattimore Materials Corporation, LGI Land, LLC, LGI Land I, LLC, Lone Star Sand & Gravel, LP, Midtex Oil, LP, MTX Materials GP, LLC, MTX Materials, LP, Multisource Sand and Gravel Co., Ltd., Porter Stabilized Materials, Rasmussen Financial Group, LLC, River Aggregates, LLC, Argos Ready Mix (South Central Concrete) Corp., f/k/a Southern Star Concrete, Inc., Sprint Sand and Clay, LLC, Sunrise Materials, LP, Three L, Inc., Volcan Sand & Clay, LLP, and WM Trucking & Excavating, Inc. (“Defendants”), as follows:

LEVEL DESIGNATION

1. Plaintiff intends to conduct discovery in accordance with Rule 190.4 of the Texas Rules of Civil Procedure, also known as "Level 3" Discovery Control Plan, and as such, request a discovery control plan be entered herein. Plaintiff affirmatively pleads that this suit is not governed by the expedited-actions process in Rule 169 of the Texas Rules of Civil Procedure.
2. Plaintiff would show that the Rules of Civil Procedure require Plaintiff to set forth such demand or claim but that Plaintiff represent that the Jury and/or Trier of Fact are charged with such final determination and Plaintiff does not seek to represent or assert that the Rules of Civil Procedure Plaintiff is required to honor in any way take away from or impugn the obligations, duties and/or considerations of the Jury or Trier of Fact.

VENUE AND JURISDICTION

3. This Court has personal jurisdiction over Defendants because they conduct a substantial amount of business in Texas, have continuous and systematic ties with Texas, and consequently are “at home” in Texas. Further, Defendants are incorporated and/or have their principal place of business in Texas. All or a substantial portion of the events giving rise to this action occurred in Harris County, Texas. Accordingly, Defendants are subject to both specific and/or general

jurisdiction in this Court.

4. The Court has subject matter jurisdiction as the amount in controversy is within the jurisdictional limits of the Court, and no other court has exclusive jurisdiction.

5. Venue is proper in this Court for three reasons: (1) This civil action seeks “recovery of damages to real property” and the damaged property is in Harris County, Texas, making venue proper under the mandatory venue provision of TEX. CIV. PRAC. & REM. CODE § 15.011; (2) All or a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in Harris County, Texas, making venue proper under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1); and (3) At least one or more of the Defendants are based and maintain a principal office in Harris County, Texas, making venue proper under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(3).

6. This lawsuit is not subject to removal based on the existence of a federal question. Plaintiff asserts common law and statutory claims under the laws of Texas. These claims do not implicitly or explicitly arise under the Constitution, laws, or treaties of the United States. Any attempt to remove this lawsuit on this basis would be utterly and objectively baseless and would likely subject Defendants to an award of sanctions, attorneys’ fees, and costs. 28 U.S.C. § 1447(c).

7. Defendants also cannot remove this lawsuit based on diversity of citizenship. Plaintiff and Defendants are both residents and citizens of Texas. Accordingly, the parties are not completely diverse and removal is inappropriate. 28 U.S.C. § 1332(a)(1). Further, Plaintiff has properly asserted multiple claims against Defendants, who are and remain Texas citizens. The parties are therefore precluded from removing this civil action. 28 U.S.C. § 1441(b)(2).

8. Any attempt by Defendants to remove to federal district court can only be regarded as a meritless attempt to drive up the costs of litigation and delay the legitimate resolution of Plaintiff’s claims. If Defendants choose to remove this lawsuit, Plaintiff requests an expedited oral hearing

on a motion to remand.

PARTIES

9. Plaintiff John Earl Ellisor is a resident of Harris County, Texas and/or owns real property in Harris County, Texas.

10. Defendant Hanson Aggregates, LLC is a limited liability company doing business in the state of Texas. The registered agent for service of process for Hanson Aggregates, LLC, who may be served with process, is:

**Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company
211 E. 7th Street, Suite 620
Austin, Texas 78701-3218**

11. Defendant Liberty Materials, Inc., is a corporation doing business in the State of Texas. The registered agent for service of process for Liberty Materials, Inc., who may be served with process, is:

**James E. Welch
3609 N. Main
Liberty, Texas 77575**

12. Defendant Megasand Enterprises, Inc. is a corporation doing business in the state of Texas. registered agent for service of process for Megasand Enterprises, Inc., who may be served with process, is:

**Greg L. Angel
5210 West Road
Baytown, Texas 77521**

13. Defendant Triple P.G. Sand Development, LLC is a limited liability company doing business in the state of Texas. The registered agent for service of process for Triple P.G. Sand Development, LLC, who may be served with process, is:

Prabhakar Guniganti
50 Waterford Circle
Nacogdoches, Texas 75965

14. Defendant RC Materials LLC is a limited liability company doing business in the state of Texas. The registered agent for service of process for RC Materials LLC, who may be served with process, is:

Roberto Cuevas
19509 Mersey Drive
Porter, Texas 77365

15. Defendant RGI Materials, Inc. is a corporation doing business in the state of Texas. The registered agent for service of process for RGI Materials, Inc., who may be served with process, is:

Richard L. Rose
9 Greenway Plaza, Suite 1100
Houston, Texas 77046

16. Defendant San Jacinto River Materials, Inc. is a corporation doing business in the state of Texas. The registered agent for service of process for San Jacinto River Materials, Inc., who may be served with process, is:

Joanne Yancey
14170 F.M. 2854
Conroe, Texas 77304

17. Defendant Stacy Kropik Trucking, Inc. is a limited liability company doing business in the state of Texas. The registered agent for service of process for Stacy Kropik Trucking, Inc., who may be served with process, is:

Stacy Kropik
1922 North Houston Avenue
Humble, Texas 77338-2537

18. Defendant Traylor Bros., Inc. is a foreign corporation doing business in the State of Texas.

Traylor Bros., Inc. owns property in the State of Texas. The registered agent for service of process for Traylor Bros., Inc., who may be served with process, is:

**National Registered Agents, Inc.
1999 Bryan St., Suite 900,
Dallas, Texas 75201-3136**

19. Defendant Zachry-Odebrecht Parkway Builders is a joint venture between Zachry Construction Corporation and Odebrecht Construction, Inc. The registered agent for service of process for Zachry Construction Corporation, who may be served with process, is:

**CT Corporation System
1999 Bryan Street, Suite 900
Dallas, Texas 75201**

20. The registered agent for service of process for Odebrecht Construction, Inc., who may be served with process, is:

**Registered Agent Solutions, Inc.
1701 Directors Blvd., Suite 300
Austin, Texas 78744**

21. Defendant Williams Brothers Construction Co., Inc., individually and d/b/a Market Street Precast Yard, is a Texas corporation doing business in the State of Texas. The registered agent for service of process for Williams Brothers Construction Co., Inc., individually and d/b/a Market Street Precast Yard, who may be served with process, is:

**James D. Pitcock, Jr.
3800 Milam
Houston, Texas 77006**

22. Defendant Eagle Sorters, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Eagle Sorters, LLC, who may be served with process, is:

**Michael Gary Orlando
Orlando & Braun, LLP**

**3401 Allen Parkway, Suite 101
Houston, Texas 77019**

23. Defendant Texas Sterling Construction Co. is a corporation doing business in the State of Texas. The registered agent for service of process for Texas Sterling Construction Co., who may be served with process, is:

**CT Corporation System
1999 Bryan St., Suite 900
Dallas, Texas 75201-3136**

24. Defendant Texas Concrete Sand and Gravel Inc. is a Texas corporation doing business in the State of Texas. The registered agent for service of process for Texas Concrete Sand and Gravel Inc., who may be served with process, is:

**Somaiah Kurre
1017 Wakefield Drive
Houston, Texas 77018**

25. Defendant Southern Crushed Concrete, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Southern Crushed Concrete, LLC, who may be served with process, is:

**Mario M. Menendez
1725 Hughes Landing Boulevard, Suite 1200
The Woodlands, Texas 77380**

26. Defendant Pioneer Concrete of Texas, Inc., was a Texas corporation doing business in the State of Texas and has, through a series of mergers, merged into Hanson Aggregates, Inc. Pioneer Concrete of Texas, Inc. is now the prior name of Hanson Aggregates, Inc. The registered agent for service of process for Pioneer Concrete of Texas, Inc., who may be served with process, is:

**CT Corporation System
350 N. St. Paul Street
Dallas, Texas 75201**

27. Defendant A & B Crushed Concrete, LLC is a Texas limited liability company doing

business in the State of Texas. The registered agent for service of process for A & B Crushed Concrete, LLC, who may be served with process, is:

**Corporation Service Company
211 E. 7th Street, Suite 620
Austin, Texas 78701**

28. Defendant Alleyton Resource Company, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Alleyton Resource Company, LLC, who may be served with process, is:

**Corporation Service Company
211 E. 7th Street, Suite 620
Austin, Texas 78701**

29. Defendant A.N.T. Enterprises, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for A.N.T. Enterprises, LLC, who may be served with process, is:

**Mike Tatari,
3201 Lester Drive
Richardson, Texas 75082**

30. Defendant Apcon Services, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Apcon Services, LLC, who may be served with process, is:

**Mary McKaughan
25100 Pitkin Road, Suite 84B
Spring, Texas 77386**

31. Defendant Argos USA, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Argos USA, LLC, who may be served with process, is:

**Corporation Service Company
211 E. 7th Street, Suite 620**

Austin, Texas 78701

32. Defendant Artesian Materials, Inc. is a Texas corporation doing business in the State of Texas. The registered agent for service of process for Artesian Materials, Inc., who may be served with process, is:

Pablo Rojas
5505 Gaston #50
Houston, Texas 77093

33. Defendant Artesian Materials and Aggregates, Inc. is a Texas corporation doing business in the State of Texas. The registered agent for service of process for Artesian Materials and Aggregates, Inc., who may be served with process, is:

Robert C. Vilt
5177 Richmond Ave., Suite 1250
Houston, Texas 77056

34. Defendant B&B Aggregates, Inc. is a Texas corporation doing business in the State of Texas. The registered agent for service of process for B&B Aggregates, Inc., who may be served with process, is:

Paul Brockner
Route 5, Box 254F
Cleveland, Texas 77327

35. Defendant Bullock Construction, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Bullock Construction, LLC, who may be served with process, is:

Cindy Bullock
16780 Old Danville
Willis, Texas 77318

36. Defendant Campbell Concrete & Materials, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Campbell Concrete

& Materials, LLC, who may be served with process, is:

Corporation Service Company
211 E. 7th Street, Suite 620
Austin, Texas 78701

37. Defendant Century Asphalt Materials, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Century Asphalt Materials, LLC, who may be served with process, is:

Greg Angel
5210 West Road
Baytown, Texas 77522

38. Defendant Century Asphalt, LTD is a Texas Limited Partnership doing business in the State of Texas. The registered agent for service of process for Century Asphalt, LTD, who may be served with process, is:

Greg Angel
5210 West Road
Baytown, Texas 77522

39. Defendant Cleveland Sand & Gravel, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Cleveland Sand & Gravel, LLC, who may be served with process, is:

Michael G. Orlando
3401 Allen Parkway, Suite 101
Houston, Texas 77019

40. Defendant Eagle Sand & Gravel, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Eagle Sand & Gravel, LLC, who may be served with process, is:

Adrian Lizalde
5431 Woodmancote Drive
Humble, Texas 77346

41. Defendant Express Materials Venture, LP is a Texas limited partnership doing business in the State of Texas. The registered agent for service of process for Express Materials Venture, LP, who may be served with process, is:

Melvin B. Chapi
8515 Highway 242 A6
Conroe, Texas 77385

42. Defendant Frontier Aggregates, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Frontier Aggregates, LLC, who may be served with process, is:

Jeffrey L. Beck
24900 Pitkin Road, Suite 120
Spring, Texas 77386

43. Defendant Great Southern Stabilized, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Great Southern Stabilized, LLC, who may be served with process, is:

Corporation Service Company
211 E. 7th Street, Suite 620
Austin, Texas 78701

44. Defendant Gulf Coast Stabilized Materials, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for Gulf Coast Stabilized Materials, LLC, who may be served with process, is:

Corporation Service Company
211 E. 7th Street, Suite 620
Austin, Texas 78701

45. Defendant Houston-Pasadena Apache Oil Company, LP is a Texas limited partnership doing business in the State of Texas. The registered agent for service of process for Houston-Pasadena Apache Oil Company, LP, who may be served with process, is:

**Johnny Lee Isbell
5136 Spencer Highway
Pasadena, Texas 77505**

46. Defendant Kingsley Constructors, Inc. is a Texas corporation doing business in the State of Texas. The registered agent for service of process for Kingsley Constructors, Inc., who may be served with process, is:

**Michael O'Donnell
450 Gears, Suite 800
Houston, Texas 77067**

47. Defendant Lattimore Materials Corporation is a Texas corporation doing business in the State of Texas. The registered agent for service of process for Lattimore Materials Corporation, who may be served with process, is:

**CT Corporation System
1999 Bryan Street, Suite 900
Dallas, Texas 75201**

48. Defendant LGI Land, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for LGI Land, LLC, who may be served with process, is:

**Thomas E. Lipar
3440 Riley Fuzzel Road, Suite 150
Spring, Texas 77386**

49. Defendant LGI Land I, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for LGI Land I, LLC, who may be served with process, is:

**Thomas E. Lipar
3440 Riley Fuzzel Road, Suite 150
Spring, Texas 77386**

50. Defendant Lone Star Sand & Gravel, LP is a Texas limited partnership doing business in

the State of Texas. The registered agent for service of process for Lone Star Sand & Gravel, LP, who may be served with process, is:

Rob Van Til
109 King Ranch Road
Southlake, Texas 76092

51. Defendant Midtex Oil, LP is a Texas limited partnership doing business in the State of Texas. The registered agent for service of process for Midtex Oil, LP, who may be served with process, is:

Maurice D. Fischer
3455 IH 35 South
New Braunfels, Texas 78132

52. Defendant MTX Materials GP, LLC is a Texas limited liability company doing business in the State of Texas. The registered agent for service of process for MTX Materials GP, LLC, who may be served with process, is:

Richard C. Rolland
7720 Westview Drive
Houston, Texas 77055

53. Defendant MTX Materials, LP is a Texas Limited Partnership doing business in the State of Texas. The registered agent for service of process for MTX Materials, LP, who may be served with process, is:

Richard C. Rolland
7720 Westview Drive
Houston, Texas 77055

54. Defendant Multisource Sand and Gravel Co., Ltd. is a Texas corporation doing business in the State of Texas. The registered agent for service of process for Multisource Sand and Gravel Co., Ltd., who may be served with process, is:

Daniel McCarthy

**126 E. Turbo Drive
San Antonio, Texas 78279**

55. Defendant Porter Stabilized Materials is a Texas corporation doing business in Texas. The registered agent for service of process for Porter Stabilized Materials, who may be served with process, is:

**Rob Van Til
109 King Ranch Road
Southlake, Texas 76092**

56. Defendant Rasmussen Financial Group, LLC is a Texas corporation doing business in Texas. The registered agent for service of process for Rasmussen Financial Group, LLC, who may be served with process, is:

**Scott Rasmussen
1304 Paluxy Drive
Benbrook, Texas 76126**

57. Defendant River Aggregates, LLC is a Texas limited liability company doing business in Texas. The registered agent for service of process for River Aggregates, LLC, who may be served with process, is:

**Rob Van Til
109 King Ranch Road
Southlake, Texas 76092**

58. Defendant Argos Ready Mix (South Central Concrete) Corp., f/k/a Southern Star Concrete, Inc. is a Texas corporation doing business in Texas. The registered agent for service of process for Argos Ready Mix (South Central Concrete) Corp., f/k/a Southern Star Concrete, Inc., who may be served with process, is:

**Corporation Service Company
211 E. 7th Street, Suite 620
Austin, Texas 78701**

59. Defendant Sprint Sand and Clay, LLC is a Texas limited liability company doing business

in Texas. The registered agent for service of process for Sprint Sand and Clay, LLC, who may be served with process, is:

**Joseph B. Swinbank
1041 Conrad Sauer
Houston, Texas 77043**

60. Defendant Sunrise Materials, LP is a Texas limited partnership doing business in Texas. The registered agent for service of process for Sunrise Materials, LP, who may be served with process, is:

**Rob Van Til
109 King Ranch Road
Southlake, Texas 76092**

61. Defendant Three L, Inc. is a Texas corporation doing business in Texas. The registered agent for service of process for Three L, Inc., who may be served with process, is:

**LL Leach
707 W. Cavalcade
Houston, Texas 77249**

62. Defendant Volcan Sand & Clay, LLP is a limited liability partnership doing business in Texas. The registered agent for service of process for Volcan Sand & Clay, LLP, who may be served with process, is:

**Corporation Service Company
211 E. 7th Street, Suite 620
Austin, Texas 78701**

63. Defendant WM Trucking & Excavating, Inc. is a Texas corporation doing business in Texas. The registered agent for service of process for Wm Trucking & Excavating, Inc., who may be served with process, is:

**William Minero
6909 JW Peavy
Houston, Texas 77011**

BACKGROUND/FACTUAL ALLEGATIONS

64. For those on the Gulf Coast, the time period of June 1 until November 30 is fraught with worry, regular “Tropical Storm” Updates, and stocking up on bottled water, canned foods, and batteries. The summer of 2017 was no different. But what transpired along the Texas Gulf Coast and specifically, in southern Montgomery County and Harris County, was unlike anything ever seen.

Hurricane Harvey Develops and Sets its Sights on Texas

65. In mid-August, 2017, all eyes turned to a series of tropical disturbances making their way across the Atlantic basin—one in particular, what would become known as Hurricane Harvey, developed, then dissipated over several days from August 17-19—a pattern it would unfortunately show again, after it made landfall in Southern Texas, days later. When it first developed, Harvey did very little to raise the fears and worries it would later wreak on the Texas Gulf Coast. But that soon changed.

66. By Wednesday, August 23, 2017, the storm had further developed into a Category 2 hurricane, just 220 miles from Port O’Connor. The very next day, the storm was upgraded to a Category 3 “major hurricane.” Meteorologists warned of torrential rains and flooding of 30-40 inches in the greater Houston area alone, as Harvey moved inland then outward, with anticipated travel up the Texas coast toward Houston. That forecast anticipated widespread flooding throughout the Texas Gulf Coast.

67. The storm made landfall on Friday, August 25, 2017 with little fanfare for those in Harris County—the storm came ashore between Port Aransas and Port O’Connor. Sitting on the “dirty” side of the storm, Harris County residents sat in their homes, watching the devastation in the Corpus Christi and Rockport areas as we all questioned the forecasters who had predicted three

and four feet of water inundating our areas. Those questions were soon cast away as Harvey, who had already moved inland, and ultimately stationed itself over Harris County—dumped catastrophic rain throughout the county—just as the forecasters had predicted.

Texas's Lake and River Basins Have a Multi-Purpose Use

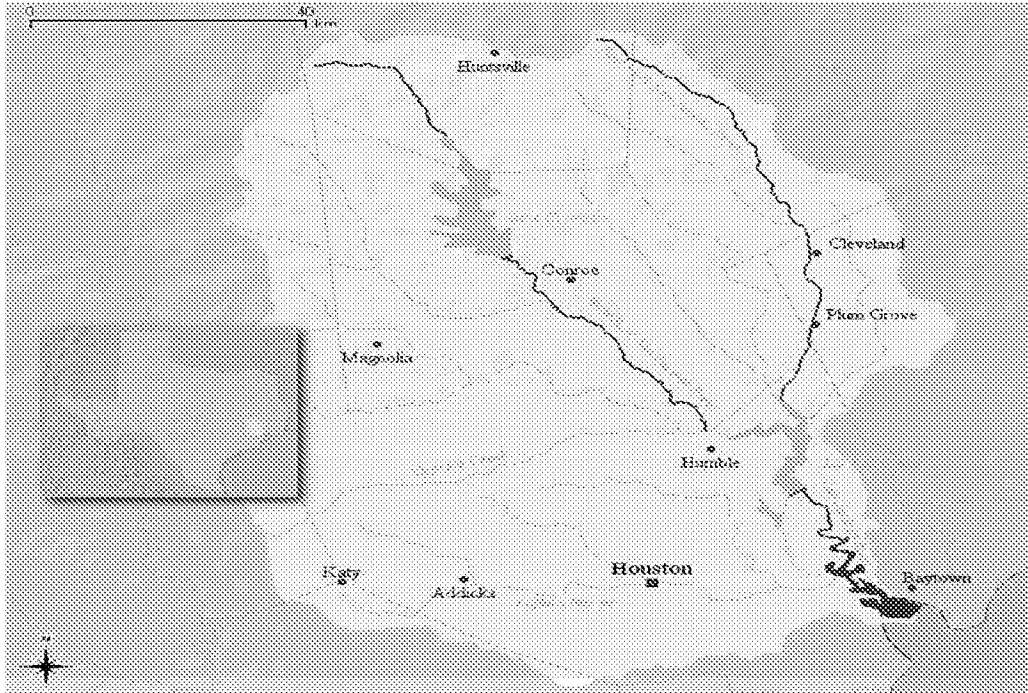
68. Texas's reservoirs, including both Lake Conroe and Lake Houston, are important for providing water supplies. Reservoirs are able to capture and store flood-waters for use during times of drought when the rivers are low or dry. Importantly, many of the state's major reservoirs were constructed principally for flood control, with water supply as a secondary benefit.

See <http://www.twdb.texas.gov/surfacewater/rivers/reservoirs/index.asp>.

69. Lake Conroe is a 21,000-acre (85 km²) lake in Montgomery County, Texas. The lake lies on the West Fork of the San Jacinto River, just west of Interstate 45 off State Highway 105 in Montgomery and Walker counties.

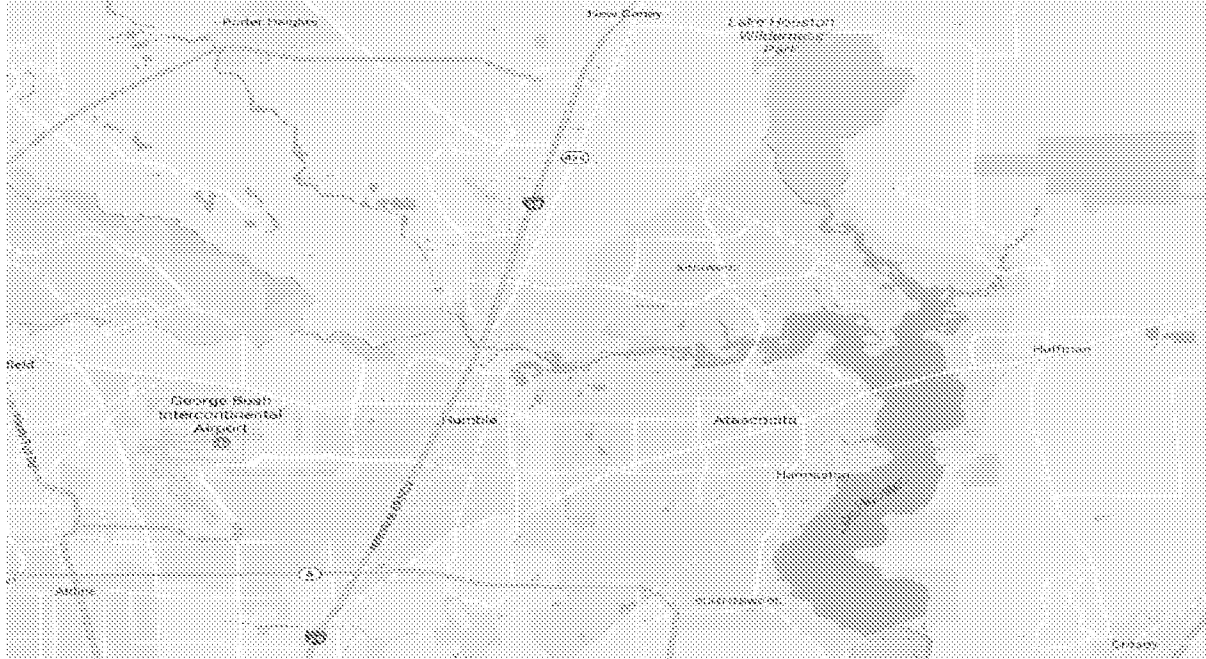
70. According to the Texas Water Board, the San Jacinto River Basin is one of the smallest river basins in Texas. From headwaters in Walker County, the San Jacinto River flows southeast through both Lake Conroe and Lake Houston, into Galveston Bay, which drains to the Gulf of Mexico.

71. As can be seen in the picture below, north of Lake Conroe, the West Fork of the San Jacinto River flows into the lake, with the Lake Conroe dam regulating flow southward, as the West Fork of the San Jacinto flows south through Montgomery County and ultimately combines with the East Fork of the San Jacinto River in northeast Harris County to form Lake Houston.



72. Thus, Lake Houston, as a reservoir on the San Jacinto River, receives flow from both the East and West forks of the River. There are other, much smaller, tributaries that connect with the San Jacinto River south of Lake Conroe, including Spring Creek.

73. Lake Houston is situated between the communities of Kingwood, Atascocita and Humble on the west bank, Sheldon on the south, and Crosby and Huffman on the east.



74. Lake Houston was created in 1953 when the City of Houston built the dam to impound a reservoir to replace Sheldon Lake, which had been the primary source of water for the city.

Plaintiff Was Harmed By The Defendants' Actions In Decreasing The Overall Capacity Of The San Jacinto River Basin And Lake Houston

75. Over the past few decades, there have been volumetric and sedimentation surveys done of Lake Houston and the San Jacinto River. The latest survey, in 2011, published in 2013, revealed astonishing results. First, while Lake Houston was originally designed to encompass 158,553 acres-feet when first built in 1954, it has sustained a steady decline in capacity. In 1994, a volumetric and sedimentation survey revealed that Lake Houston had lost 22,172 acre-feet of capacity. The 2011 study revealed that Lake Houston's capacity had shrunk to an estimated 136,381 acre-feet.

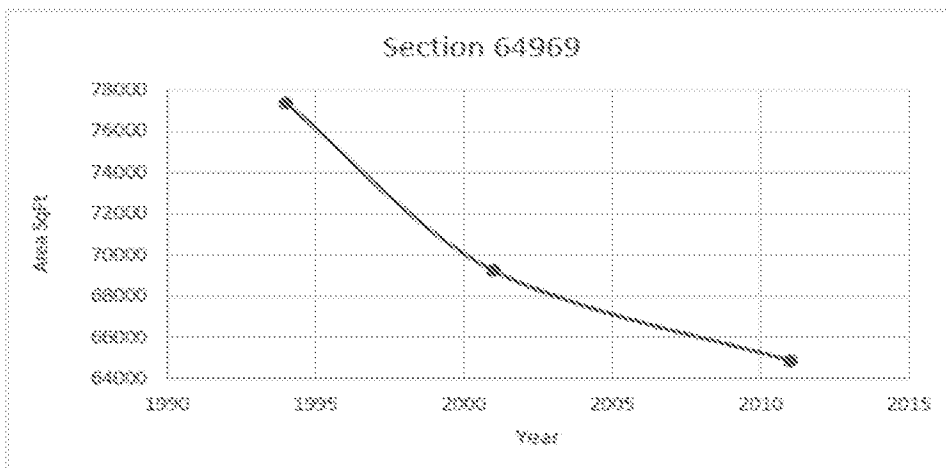
76. Thus, since its initial development, the Lake Houston Reservoir has steadily lost its reserve capacity at a rapid rate. The following chart illustrates the decrease in capacity:

Year	Reservoir Capacity (Acre-Feet)
1954	158,553
1965	146,769
1994	136,381
2011	124,661

77. The 2011 study further showed that since 1954, there has been a 21.4% decrease in the reservoir capacity. The study further explains that this loss in capacity is caused by the increased sedimentation being placed in Lake Houston. **The survey notes that Lake Houston loses an estimated 344 to 689 acre-feet of capacity each year due to sediment accumulation.**

78. The same surveys done over the past few decades show that this reduced capacity is also occurring in the West Fork of the San Jacinto River south of the Lake Conroe Dam. The following chart illustrates the reduced capacity at just one of the points on the West Fork near Kingwood over the course of the past twenty years:

Section	64969		
Survey Yr	1994	2001	2011
A_total	61.9	55.4	51.9
Scale	1250	1250	1250
A_scaled	77375	69250	64875



The Defendants Have Exhibited a History of Wrongfully Discharging and Negligently Allowing the Release of Materials into the San Jacinto River Basin and Spring Creek, Dramatically Reducing the Capacity and Depth of the Texas Waterways

79. Many of the Defendants have been cited by the Texas Commission on Environmental Quality (“TCEQ”) for numerous issues, including excessive discharge which contained runoff dust, sand, construction materials and other products produced and/or used by Defendants at locations adjacent to Spring Creek, the West Fork of the San Jacinto River, and the East Fork of the San Jacinto River. The TCEQ violations were widespread, including, but not limited to:

- Unauthorized discharge of silt, in violation of Texas Water Code §26.039;
- Failure to obtain a permit to discharge storm water associated with industrial activities, in violation of Texas Administrative Code § 281.25;
- Failure to prevent an unauthorized discharge, in violation of Texas Water Code §26.121(a)(12);
- Failure to minimize generation of dust and off-site tracking, in violation of Texas Administrative Code §281.25(a)(4); and

80. On many occasions, water from sand pits was being discharged into or near parts of Lake Houston, Spring Creek, the West Fork of the San Jacinto River, and the East Fork of the San Jacinto River. On others, mud and industrial waste was pumped directly into the San Jacinto River. Some defendants were cited because they were operating above their allowed permit limits. While on the other hand, other defendants were operating without any permits at all.

81. The Defendants herein that own and/or operate mining facilities, have done so immediately adjacent to the various waterways and in the flood plain. They construct these facilities by clear cutting all the vegetation, and digging pits within feet of the river banks. They create no real barriers between their mines and the rivers, and often breaches occur where the pits open up and empty into the river (sometimes for years without repair). These Defendants have no plans in place for protection and preservation of the pits and loose sand during a flood event, which is more than

foreseeable and predictable, as they lie within the flood plain, and floods have occurred on numerous occasions. During Harvey, the mines (old and active) along the West Fork of the San Jacinto River, the East Fork of the San Jacinto River, and Spring Creek, were inundated and overcome with flood waters, and thousands of acres of sand washed downstream, clogging the rivers and lakes, resulting in flood waters moving outside the banks and outside the flood plain, causing hundreds of millions of dollars in damages.



82. Altogether, with waste water, silt, and sand being discharged and/or washed into the bodies of water surrounding Defendants' properties and/or job sites, the San Jacinto River and Lake Houston continued to lose capacity.

COUNT 1
NEGLIGENCE AND NEGLIGENCE *PER SE*

83. Plaintiff adopts by reference each and every paragraph of this Original Petition as if fully

set forth herein.

84. Through the Defendants' acts, omissions, and failures, in discharging processed water, silt, sand, sediment, and waste products, into Spring Creek and the East and West Forks of the San Jacinto River, the overall capacity of Spring Creek, the West Fork of the San Jacinto River, the East Fork of the San Jacinto River, and Lake Houston has been dramatically decreased. This sediment, silt, sand and other waste limited the overall capacity of these waterways such that when the water came, the rivers and the lake simply could not hold the volume. The subsequent backflow from a full Lake Houston flooded Plaintiff's property and as a proximate result, Plaintiff suffered substantial damages.

85. Plaintiff would show that these injuries and damages were proximately caused by the negligence and in some instances, negligence *per se*, of the Defendants acting by or through their agents and/or employees, jointly, severally, singularly, and together in any combination.

86. Defendants' conduct described herein constitutes an unexcused breach of duty imposed by the laws of the State of Texas, including but not limited to the Texas Water Code. Plaintiff is a member of the class that the Texas Water Code was designed to protect. Defendants' unexcused breaches of the duties imposed by the Texas Water Code proximately caused Plaintiff's injuries described herein.

87. Defendants also owed a duty to Plaintiff to implement procedures to reduce the discharge of sediment, silt, sand and other waste in the West Fork of the San Jacinto River, the East Fork of the San Jacinto River, Spring Creek, and Lake Houston. It was foreseeable that these discharges would have resulted in the West Fork of the San Jacinto River, the East Fork of the San Jacinto River, Spring Creek and Lake Houston losing capacity and causing flooding and damage to Plaintiff's properties. Defendants breached their duty, in part, to Plaintiff by:

- a. Failing to locate sand mines outside of floodways;
- b. Failing to increase the width of dikes;
- c. Failing to decrease the slope of dikes;
- d. Failing to control erosion with vegetation;
- e. Failing to replant areas not actively being mined;
- f. Failing to avoid clearing areas that will not soon be mined;
- g. Failing to protect stockpiles from flooding; and
- h. Failing to mine only above the deepest part of the river.

88. Each of these acts and omissions were a proximate cause of Plaintiff's injuries and damages. There is nothing that Plaintiff did to cause his damages.

COUNT 2

VIOLATIONS OF THE TEXAS WATER CODE – STRICT LIABILITY

89. Plaintiff adopts by reference each and every paragraph of this Original Petition as if fully set forth herein.

90. Section 11.086 of the Texas Water Code states that "No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded." Tex. Water Code Ann. § 11.086 (West). Defendants' conduct as described herein created a diversion and/or impoundment of the natural flow of surface water. This diversion and/or impoundment proximately caused the flooding of Plaintiff's property. Defendants are subject to strict liability pursuant to the Texas Water Code and common law.

91. Further, Defendants violated Texas Water Code § 26.121, which prohibits the discharge of waste into or adjacent to any water in the state except as authorized by the Texas Commission on Environmental Quality ("TCEQ"). Texas Water Code §26.121(a). Defendants' conduct, as

described herein, constitutes a clear violation of the Texas Water Code, which conduct caused Plaintiff to suffer significant damages.

COUNT 3
NUISANCE

92. Plaintiff adopts by reference each and every paragraph of this Original Petition as if fully set forth herein.

93. When Defendants unlawfully diverted and/or impounded water it also resulted in a private nuisance to Plaintiff's properties. Defendants' negligent conduct resulted in an interference and invasion of Plaintiff's private property, substantially interfering with Plaintiff's use and enjoyment of their land, and resulting in Plaintiff suffering substantial damages.

DAMAGES

94. Plaintiff adopts by reference each and every paragraph of this Original Petition as if fully set forth herein.

95. As a direct and proximate result of Defendants' conduct as described herein, whether acting by or through their agents or employees, jointly, severally, singularly, and/or together in any combination, Plaintiff has been caused to suffer or experience damages in the past and, in all reasonable probability, are expected to experience damages for a long time into the future.

96. Plaintiff's damages consist of one or more of the following:

- a. Cost of repairs to real property;
- b. Cost of replacement or fair market value of personal property lost, damaged, or destroyed during such event;
- c. Loss of use of real and personal property;
- d. Diminution of market value of Plaintiff's property;
- e. Loss of income and business income;
- f. Consequential costs incurred, inclusive of but not limited to alternative

- living conditions or accommodations, lost time from work;
- g. Mental anguish and/or emotional distress;
- h. Prejudgment interest;
- i. Post judgment interest; and,
- j. Costs of Court.

97. In accord with Texas Rule of Civil Procedure 47, Plaintiff alleges that this is a claim for monetary relief in a sum over \$1,000,000.00, and a demand for judgment for all other relief to which Plaintiff may show himself to be entitled, including but not limited to damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys' fees.

98. By reason of the above and foregoing, Plaintiff would show that he has been damaged in a sum within the jurisdictional limits of the Court.

GROSS NEGLIGENCE AND EXEMPLARY DAMAGES

99. Plaintiff adopts by reference each and every paragraph of this Original Petition as if fully set forth herein.

100. The conduct of Defendants acting by or through their agents or employees, was not only negligence but gross negligence as those terms are defined by Texas law. The Defendants' acts or omissions described above, when viewed from the standpoint of the Defendants at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff and others. Defendants had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others. Based on the facts stated herein, Plaintiff requests exemplary damages be awarded to Plaintiff from Defendants, jointly and severally.

PRE- AND POST-JUDGMENT INTEREST

101. Plaintiff asserts a claim for pre-judgment and post-judgment interest on all applicable elements of damages.

CONDITIONS PRECEDENT

102. All conditions precedent to Plaintiff's right to recover herein and to Defendants' liability have been performed or have occurred.

REQUEST FOR DISCLOSURE

103. Pursuant to Rule 194, Plaintiff hereby requests Defendants to disclose, within fifty days (50) of service of this request, the information or material described in Rule 194.2.

REQUEST FOR ENTRY UPON PROPERTY

104. Pursuant to Rule 196.7, Plaintiff hereby requests Defendants allow Plaintiff and his designated representatives entry upon Defendants' property to inspect, measure, survey, photograph, test and sample the property.

JURY DEMAND

105. Plaintiff hereby demands a trial by jury and have paid the appropriate fee.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff John Earl Ellisor respectfully requests that each Defendant each be cited to appear and answer, and that on final trial, Plaintiff have and recover from the Defendants, jointly, severally, singularly and/or together in any combination, the following:

- a. judgment against Defendants for actual damages in an amount within the jurisdictional limits of the Court;
- b. judgment against Defendants for exemplary damages in an amount within the jurisdictional limits of the Court;
- c. pre-judgment interest as provided by law;

- d. post judgment interest as provided by law;
- e. costs of suit; and,
- f. such other and further relief to which Plaintiff may show himself to be justly entitled.

Respectfully submitted,

SPURLOCK & ASSOCIATES, P.C.

By: /s/ Kimberley M. Spurlock

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