

IN THE DISTRICT COURT IN AND FOR OTTAWA COUNTY  
STATE OF OKLAHOMA

CITY OF MIAMI, OKLAHOMA, a municipal )  
corporation; JOYCE L. ADAMS; ROLAND )  
ADCOCK and DIANE ADCOCK, husband and )  
wife; RILEY E. ANDERSON and CAROLYN S. )  
ANDERSON, husband and wife; G.D.S. )  
INVESTMENTS, INC.; ROBERT ANDERSON )  
and NAOMI ANDERSON, husband and wife; )  
ELIZABETH ANDREWS; GARRY L. )  
ARNOLD and BEVERLY L. )  
ARNOLD, husband and wife; KENNETH )  
ARNOLD SR. and PATSY ARNOLD, husband )  
and wife; ROBERT ASBELL and TERESA )  
ASBELL, husband and wife; )  
AUTOFORDABLES INC.; VIRGIL BAKER )  
JR. and PATTI BAKER, husband and wife; )  
CHRISTOPHER A. BALDWIN; LEWIS J. )  
BAMBERL JR. and ELNORA K. BAMBERL, )  
husband and wife; BENJAMIN BARNES and )  
TONYA BARNES, husband and wife; ROBERT )  
S. BARNES and TERRI A. BARNES, husband )  
and wife; RUBEN M. BARTON and SHARON )  
K. BARTON, husband and wife; TERRY PAT )  
BEAVERSON ; ROBERT D. )  
BERRY and ANDREA H. BERRY, husband )  
and wife; DON BIDDLE and ELLEN BIDDLE )  
husband and wife; MARK BIRDSELL; )  
SHANNON D. BLACKSTOCK; CODY )  
BLUNDELL and SHERRY BLUNDELL, )  
husband and wife; BOBBY L. BLUNK and )  
BECKY BLUNK, husband and wife; )  
BOAT FLOATER INDUSTRIES, L.L.C. )  
DAN W. BOYD and GAIL BOYD, husband and )  
wife; LUCINDA K. BOYD; E.C. BRANSON JR.; )  
GARY BREWER d/b/a MIAMI SKATELAND; )  
CHESTER BREWINGTON d/b/a THE )  
THUNDERBIRD MOTEL; GERALD W. )  
BRIDGEWATER and PATRICIA A. )

FILED  
DISTRICT COURT  
OTTAWA CO. OKLA.

NOV 26 2008

CATHY WILLIAMS COURT CLERK  
BY \_\_\_\_\_

Case No. CJ-08-619

BRIDGEWATER, husband and wife; )  
 CYNTHIA BROSHAR; JIMMY L. )  
 BRUNMEIER; JIM T. BUFFALOE )  
 and KAREN CONLON BUFFALOE, husband )  
 and wife; ANDREA BUNDY; CLARENCE )  
 WILLIAM BURR; RODNEY DEAN )  
 CALLAHAN and ROXILEA CALLAHAN, )  
 husband and wife; DANNY CARTWRIGHT )  
 and KIMBERLY CARTWRIGHT, husband )  
 and wife; GREGG W. CASS and LINSEY R. )  
 CASS, husband and wife; KENNETH G. CASS )  
 and KENNETH G. CASS d/b/a CASS )  
 PLUMBING; JOHN W. CASSELL and )  
 SANDRA CASSELL, husband and wife; )  
 MARVIN CHAMPLIN and JOYCE )  
 CHAMPLIN, husband and wife; CECIL )  
 CHISUM; JEFF CLAY; CRYSTAL )  
 CLAYBURG; F. LEROY )  
 COLLINS and SALLIE M. COLLINS, husband )  
 and wife; ROY T. COLLINS; DARREN )  
 CORNOG and MILLIE CORNOG, husband )  
 and wife; LUCINDA CUMMINS; NATTHEN )  
 and MICKI DAMANN, husband and wife; )  
 DANIEL CADE DAREING; TOM C. DEAN and )  
 TAMMY DEAN, husband and wife; WILLIE )  
 DARLENE DESILVA; TONJA DOKE; HANK )  
 DOWNUM and ROSEANA DOWNUM, )  
 husband and wife; DEBBIE )  
 EDWARDS; JACK ELSEY and CAROLYN )  
 ELSEY, husband and wife; E.M.R. INC. d/b/a )  
 OAKIE BURGER; JOHN ENGESSER and )  
 BARBARA ENGESSER, husband and wife; )  
 RICHARD B. ENYART; AMY J. ERWIN; )  
 DEBRA K. ERVIN; )  
 LESLIE E. FARRIS and RUTH ANN FARRIS, )  
 husband and wife; KENNETH W. FERRIS and )  
 JOYCE FITZGIBBON; E.W. FLETCHER and )  
 SONDR A FLETCHER, husband and wife; )  
 E.W. FLETCHER as trustee of the E.W. )  
 FLETCHER TRUST; AARON RON FORKUM;) )  
 DERRICK FUGATE; RYAN GARRETT d/b/a )  
 S & J QUALITY CARS and UNITEC )  
 GAMING SERVICES; LLOYD GATOBU; )

**JIM GERING and CAROLYN GERING.** )  
**husband and wife; MICHAEL J. GLASSMAN** )  
**and DEBBIE GLASSMAN, husband and wife,** )  
**d/b/a GLASSMAN BUILDERS; SCOTT B.** )  
**GLOVER and KIMBERLY GLOVER, husband** )  
**and wife; HARRY T. GRIFFIN and JANICE L.** )  
**GRIFFIN, husband and wife; BARBARA** )  
**HAILE d/b/a SMILE-A-MILE; DONALD** )  
**HALL SR. and PATRICIA HALL, husband** )  
**and wife; DAVID SHANE HALLET; THE** )  
**HARBOR OF MIAMI, INC.; ROBERT** )  
**HARDEE and PHYLLIS HARDEE, husband** )  
**and wife; RODNEY D. HARNER and OPAL** )  
**HARNER, husband and wife; BETTY** )  
**HENSON; CHERI HERNON; JAMES** )  
**HERNON and DIXIE HERNON, husband and** )  
**wife; RACHEL HERREL; DERYL V.** )  
**HERREN and JOYCE E. HERREN, husband** )  
**and wife; JAMES M. HEYBURN and CARRIE** )  
**A. HEYBURN, husband and wife; TOM D.** )  
**HICKEY and MYRA HICKEY, husband and** )  
**wife; DAWN HILDEBRAND; TERESA HILL;** )  
**RICKY DON HILL; TRAVIS HINS;** )  
**HOWARD HOOVER; CASEY HOUGH;** )  
**CHARLES E. HOUSEMAN and CAROL JEAN** )  
**HOUSEMAN, husband and wife; DONA** )  
**HOWELL; DORENA** )  
**JACKSON; TONY JAMESON and JUDITH** )  
**ARNOLD JAMESON; JEET L.L.C., d/b/a** )  
**TOWNSMAN MOTEL; GARY L. JOHNSON** )  
**and RETHA JOHNSON, husband and wife;** )  
**MERRITT W. JOHNSON; RAY L. JUDKINS** )  
**and JUDY JUDKINS, husband and wife;** )  
**BETTY J. KELLY; EMMA R. KENNEDY;** )  
**LINDA G. KERBY; DEMARIS CHILDERS** )  
**KILLION; DEBRA SUE KING; FLOYD** )  
**KINNEY and SHERRY KINNEY, husband and** )  
**wife; HOWARD KLINEFELTER and** )  
**PAULINE KLINEFELTER, husband and wife;** )  
**JIMMY KORONIS and TIFFANY KORONIS,** )  
**husband and wife; STEVE KRESYMAN and** )  
**KAREN KRESYMAN, husband and wife, d/b/a** )  
**MIAMI CAR WASH; IKE LACY and NANCY** )

LACY, husband and wife; ROGER L. LACY II )  
and TIFFANY LACY, husband and wife; )  
MYIRL JEANEENE LANDERS; JAMES G. )  
and NINA P. LARKIN, husband and wife; )  
EVERETT LASITER; JEAN LASITER and )  
MICHAEL LASITER, husband and wife; )  
PATRICIA LAUB; JEFFERY LAVINE and )  
JONIA LAVINE, husband and wife; LINDA )  
WYRICK LEE; AGNES BLAIR-LLOYD; HERB )  
LOGAN and PATRICIA LOGAN, husband and )  
wife; GREGG LOVELL; SHEILA )  
MACY; PAUL MARQUEZ and DAVA JO )  
MARQUEZ, husband and wife; DENISE )  
MARTIN; CASSIE MATTINGLY; )  
DELMAR MATTINGLY and DEANN )  
MATTINGLY, husband and wife; )  
MICHAEL MATTINGLY and DEBRA J. )  
MATTINGLY, husband and wife; )  
ROBERT E. MAXWELL; SABAN )  
MCCABE and LEONA MCCABE, )  
husband and wife; JEFFRY L. )  
MCCOOL and CAROLYN J. MCCOOL, )  
husband and wife; KENNETH M )  
MCCORD and SHERRI A. MCCORD, )  
husband and wife; DEANN )  
MCCRACKEN; VICTOR MCKIBBEN )  
and NATASHA MCKIBBEN, husband )  
and wife; MIAMI ANIMAL HOSPITAL, )  
INC.; SCOTT B. MCKINNEY and )  
SHELLEY MCKINNEY, husband and )  
wife; CLARENCE W. MCMINN and )  
MARIAN J. MCMINN, husband and )  
wife; CLINTON MILLER; DENVER )  
MILLER; NORVELL J. MILLER and )  
CORA MILLER, husband and wife; )  
JOHN MILLS and JANIS MILLS, )  
husband and wife; CHARLES W. MORE )  
and HIROMI MORE, husband and wife; )  
JACK E. MORRIS; THOMAS MUDRICK )  
and SUSAN J. MUDRICK, husband and )  
wife; SHERMAN T. MURPHREE and )  
SHARI LYNN MURPHREE, husband )  
and wife; GEORGE T. MYERS and )

ELAINE MYERS, husband and wife; )  
 MELVA NEECE; ALAN E. NEWKIRK )  
 and MARY J. NEWKIRK, husband and )  
 wife; JAMES E. NOTT and SUSAN )  
 L. NOTT, husband and wife; LLOYD OGLE )  
 and JOAN OGLE, husband and wife; )  
 TERESA M. O'HARA; DALE OWENS )  
 and CAROL L. OWENS, husband and )  
 wife; EUGENE PARSONS and SUSAN )  
 PARSONS, husband and wife; VINOD )  
 PATEL; DONALD PATTERSON and )  
 CHERYL PATTERSON, husband and )  
 wife; BETTIE PAYNE; DAVID PAYNE )  
 and ALICE L. PAYNE, husband and wife; )  
 FREDDIE L. PAYTON and RAYDENIA )  
 PAYTON, husband and wife; JOHN D. )  
 PAYTON and JOYCE PAYTON, husband )  
 and wife; DAVE PERRY and LETHA )  
 PERRY, husband and wife, d/b/a BIG )  
 DADDY'S BAR- B-Q AND DELI and )  
 LITTLE TREASURES and PERRY'S )  
 TOWING AND RECOVERY; ROBERT B. )  
 PEWITT and ANN L. PEWITT, husband )  
 and wife; TONY PICKETT; SCOTT POTTER )  
 and MELANIE POTTER, husband )  
 and wife; RICKY R. POWERS and KELLI )  
 POWERS, husband and wife, d/b/a )  
 RIVERVIEW AUTO SALES; KERRY )  
 RADOSEVICH and CINDY RADOSEVICH, )  
 husband and wife, d/b/a SERENITY INN )  
 MOTEL; GREG RATLIFF and CAROL )  
 RATLIFF, husband and wife; )  
 JAMES RAWLINS, FLOEY E. RAY; JAMES L. )  
 REDDEN and CATHY L. REDDEN, husband )  
 and wife; JAKE REED, d/b/a REED )  
 UPHOLSTERING; LEANNE E. REEVES; )  
 RANDALL RHODES and NORMA )  
 RHODES, husband and wife; )  
 BENJAMIN D. RICKETTS and JENNIFER )  
 RICKETTS, husband and wife; JOSHUA )  
 RIOJAS; RIOJAS INDUSTRIES INC.; )  
 CYNTHIA ELAINE RIOS; CARSON B. )  
 ROBERTS; ELLEN ROBERTS, d/b/a ONE )

**STOP CONVENIENCE; BILL ROBERTSON** )  
**and ETHEL JEANETTE ROBERTSON,** )  
**husband and wife; TOM ROBERTSON and** )  
**MARSHA ROBERTSON, husband and wife;** )  
**BANI G. RODRIGUEZ and SEUNA** )  
**RODRIGUEZ, husband and wife; ROGER LEE** )  
**ROLLINS and ELIZABETH ROLLINS,** )  
**husband and wife; ARCHIE ROWDEN and** )  
**ROSALIE ROWDEN, husband and wife;** )  
**NEDRA K. ROYE; CHARLES D. RUSSELL** )  
**and ANGELA R. RUSSELL, husband and wife;** )  
**ROY RUTHERFORD and PATRICIA J.** )  
**RUTHERFORD, husband and wife; TIMOTHY** )  
**RUTERFORD and AIMEE RUTHERFORD,** )  
**husband and wife; PAULA RUTLEDGE; RYAN** )  
**RUTLEDGE and NAKIA RUTLEDGE, husband** )  
**and wife; LLOYD W. SCHOENHALS and** )  
**DONNA J. SCHOENHALS, husband and wife;** )  
**PATSY SCHUBERT; DENNIS R.** )  
**SENER and LISA MAYES SENTER, husband** )  
**and wife; JIMMY LEE SHARBUTT, JR.;** )  
**PHILLIP J. SHYERS and STELLA L.** )  
**SHYERS, husband and wife; JONATHAN** )  
**SIEVERT and DONNA SIEVERT, husband** )  
**and wife; d/b/a PREMIUM PLUMBING;** )  
**ROBERT SILVERSMITH and KAREN** )  
**SILVERSMITH, husband and wife; CLAUDIA** )  
**J. SISCO; BUFF SPRINGER and VERA** )  
**SPRINGER, husband and wife; ROBIN E. STILL,** )  
**d/b/a STILL CONSTRUCTION; BRADLEY K.** )  
**STOGSDILL and LINDA STOGSDILL, husband** )  
**and wife; BETTY S. SUTTON; ROBERT E.** )  
**SWANSON and VIRGINIA SWANSON, husband** )  
**and wife; VIRGIL E. TARTER; DARRELL** )  
**L. TESTERMAN and MARY J. TESTERMAN,** )  
**husband and wife; TOMMY THULIN and KATHY** )  
**THULIN, husband and wife; BRYON W.** )  
**TRAYLOR and DEBRA L. TRAYLOR, husband** )  
**and wife; ANGELA R. TRIGG; DANNY** )  
**TRUJILLO and LINDA M. TRUJILLO, husband** )  
**and wife; BRUCE TURNER and RUTH TURNER,** )  
**husband and wife; LEE D. UTO and MARILYN A. UTO,)** )  
**husband and wife; ROY J. VANATTA and RETA** )

**A. VANATTA, husband and wife; JIMMY W. VAUGHN and CRISTIE VAUGHN, husband and wife; VONDA GAYLE WAKEFIELD; DAVID R. WALKER and MARY M. WALKER, husband and wife, d/b/a AUTOFORDABLES FINANCE CORPORATION; JOYCE BETTY WEAVER; MIKE WEBB and RUTH WEBB, husband and wife; JAMES K. WEBBER; VERDALE WEEDEN SR, and DONNA WEEDEN, husband and wife; JERI WHITE; J. D. WILHOIT, JR. and ROSE WILHOIT husband and wife; JOHN WILHOIT III; MIKE WILLARD and SALLY WILLARD, husband and wife; BRAD WILLIAMS and TIFFANY WILLIAMS, husband and wife; WARREN WILLIAMS and SHANNON WILLIAMS, husband and wife; JASON WILSON and CEAN WILSON, husband and wife, d/b/a WILSON'S PORTABLE WELDING; RICHARD A. WOOLARD and ROSEMARY WOOLARD, husband and wife; DAVID D. WRIGHT; STEVEN R. WRIGHT; ROBERT YORK and CHRISTINA YORK, husband and wife; individually, and as representatives of a class consisting of all persons and entities located upstream of Pensacola Dam who may have been injured by floods caused or increased by the Dam since.**

**Plaintiffs,**

**v.**

**GRAND RIVER DAM AUTHORITY,**

**Defendant.**

**PETITION**

For their claims against the Grand River Dam Authority, Plaintiffs allege and state as follows:

## I. PARTIES

1. Plaintiffs are individuals, partnerships, corporations and governmental entities which resided, leased, or owned property in Ottawa County, Oklahoma at times relevant to this lawsuit.

2. Grand River Dam Authority ("GRDA") is a conservation and reclamation district and agency of the State of Oklahoma created by the statutes of the State of Oklahoma, 82 Okla. Stat. § 861, *et seq.* GRDA is the owner and operator of Pensacola Dam ("the Dam") and the reservoir formed thereby known as Grand Lake O' the Cherokees ("Grand Lake" or "the Lake").

3. GRDA may be served by certified mail, return receipt requested through:

Kevin Easley, Chief Executive Officer  
Grand River Dam Authority  
26 W. Dwain Willis Avenue  
Vinita, Oklahoma 74301-4654;

Gene Lidyard, Division Administrator  
Department of Central Services  
Risk Management Division  
Will Rogers Office Building  
2401 N. Lincoln, Suite 202  
Oklahoma City, Oklahoma 73105; and

W. A. Drew Edmondson  
Oklahoma Attorney General  
313 NE 21<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105.

## II. JURISDICTION AND VENUE

4. GRDA may be sued in its corporate name pursuant to 82 Okla. Stat. § 862(1).

5. Plaintiffs are seeking alternate forms of relief including just compensation for taking or constitutional damages caused by GRDA pursuant to Article II, Section 24 of the

Constitution of the State of Oklahoma, 27 Okal. Stat. § 12, 82 Okla. Stat. § 862(s), and damages pursuant to Oklahoma common law. This court therefore has jurisdiction over the subject matter of this action.

6. Plaintiffs have substantially complied with the Oklahoma Governmental Tort Claims Act, 51 Okla. Stat. § 151, *et seq.* (the "Act"). Plaintiffs have filed notices of their claims with the GRDA more than 90 days ago, all of which have been constructively denied, and this action has been filed within 180 days the date of such denial.

7. The real and personal property involved in this action is located, and the causes of action pursuant to which Plaintiffs seek relief arose, in Ottawa County, Oklahoma. Venue is therefore proper in this county pursuant to 12 Okla. Stat. § 131 and 82 Okla. Stat. § 862(1).

### **III. NATURE OF THE CASE**

8. Plaintiffs bring this action to recover just compensation and/or damages, together with their litigation costs, attorney and expert fees, and interest, resulting from floods upstream of, and caused or exacerbated by, Pensacola Dam. The floods for which recovery is sought began May, 2007, have occurred repeatedly since then, and will inevitably occur in the future.

### **IV. GENERAL STATEMENT OF FACTS**

#### **A. Location of the Water**

9. This action involves primarily flooding along the Neosho (Grand) River which flows south from Kansas into Oklahoma where it is dammed by the Pensacola Dam and forms Grand Lake.

10. The elevation of the top of Pensacola Dam is 757 feet pensacola datum("p.d.")(which is 1.07 feet below mean sea level). The upper portion of the reservoir, 745