

**IN THE DISTRICT COURT OF OTTAWA COUNTY
STATE OF OKLAHOMA**

CITY OF MIAMI, OKLAHOMA, a municipal)
corporation; et al.,)

Plaintiffs,)

vs.)

Case No. CJ-2008-619

GRAND RIVER DAM AUTHORITY,)

Defendant.)

**GRAND RIVER DAM AUTHORITY'S PARTIAL ANSWER TO CLAIMS
MADE PURSUANT TO THE OKLAHOMA CONSTITUTION**

Defendant, Grand River Dam Authority ("GRDA"), hereby answers the claim in the Petition brought pursuant to Article II, Section 24 of the Constitution of the State of Oklahoma. The GRDA incorporates by reference its motion to dismiss the City of Miami's claim brought pursuant to Article II, Section 24 of the Constitution of the State of Oklahoma. The GRDA also incorporates by reference its motion to dismiss all remaining claims asserted against it, including tort claims for trespass and strict liability. Furthermore, the GRDA hereby answers the Plaintiffs' Petition relating to the claim brought pursuant to the Oklahoma Constitution by denying all matters not specifically admitted herein, and further answers as follows:

I. PARTIES

1. GRDA is without sufficient knowledge as to the allegations contained in paragraph 1.
2. Admitted in part and denied in part. U.S. Army Corps of Engineers directs and controls the operation of the Pensacola Dam in flooding events.
3. Denied.

II. JURISDICTION AND VENUE

4. Admitted.
5. Denied.
6. Denied.
7. Denied.

III. NATURE OF THE CASE

8. Denied.

IV. GENERAL STATEMENT OF FACTS

A. Location of the Water

9. GRDA admits that Neosho ("Grand") River flows south from Kansas into Oklahoma where it is dammed by the Pensacola Dam and forms Grand Lake and denies the remainder of paragraph 9.

10. Denied.

11. GRDA denies the allegations contained in paragraph 11, including subsections a-i.

B. Creation of Pensacola Dam and Reservoir

12. GRDA admits construction of the Pensacola project, including the Pensacola Dam began in 1938, and that public funds were used on the construction. GRDA denies the remaining allegations of paragraph 12.

C. GRDA Reserves Insufficient Storage Capacity for Flood Control

13. GRDA denies the statement made in letter "C" on page 11 of the Petition. Furthermore, GRDA denies the allegations of paragraph 13.

14. Denied, except to the extent that GRDA obtained licenses from FERC. The terms

and conditions of the licenses speak for themselves.

15. Denied.

D. Insufficient Flowage Easements Were Acquired Upstream

16. GRDA denies the statement made in letter "D" contained on page 12 of Plaintiffs' Petition. Furthermore, GRDA denies paragraph 16.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. GRDA denies the allegations in paragraph 22, including subsections (a)-(b).

23. Denied.

24. GRDA denies the allegations in paragraph 24, including subsections (a)-(b).

25. GRDA denies the allegations in paragraph 25, including subsections (a)-(d).

26. Denied.

27. Denied.

V. CLASS ALLEGATIONS

28. Denied.

29. Denied.

30. GRDA denies the allegations in paragraph 30, including subsections (a)-(d).

31. Denied.

32. Denied.

33. Denied.

34. Denied.

VI. PREVIOUS FINDINGS

35. GRDA denies the statement made in "VI" on page 16. Furthermore, GRDA denies the allegations in paragraph 35.

36. Denied.

37. Denied.

VII. CLAIMS FOR RELIEF

First Claim for Relief

(Inverse Condemnation-Taking a Flowage Easements)

38. GRDA's answers set forth in paragraphs 1 through 37 are incorporated herein by reference.

39. Admitted.

40. Denied.

41. Denied.

42. Denied.

Second Claim for Relief

(Inverse Condemnation-Excessive Use of Existing Flowage Easements)

43. GRDA's responses set forth in paragraphs 1 through 42 are incorporated herein by reference.

44. GRDA has no knowledge of the allegations of paragraph 44 and therefore denies the same.

45. Denied.

46. Denied.

- 47. Denied.
- 48. Denied.
- 49. Denied.
- 50. Denied.
- 51. Denied.

Third Claim for Relief

(Constitutional damage to private property for public use)

52. GRDA's responses set forth in paragraphs 1 through 51 are incorporated herein by reference.

53. Denied.

Fourth Claim for Relief

(Strict Liability)

54. GRDA's responses set forth in paragraphs 1 through 53 are incorporated herein by reference.

55-57. GRDA incorporates its Motion to Dismiss and Brief in Support as though fully set forth herein.

Fifth Claim for Relief

(Trespass)

58-61. GRDA incorporates its Motion to Dismiss and Brief in Support as though fully set forth herein.

VIII. GENERAL DESCRIPTION OF PLAINTIFFS' DAMAGES

62. GRDA denies the allegations of paragraph 62, including subsections (a)-(g). Furthermore, GRDA incorporates its motion to dismiss as though fully set forth herein.

IX. PRAYER FOR RELIEF

GRDA specifically denies the WHEREFORE provision contained on page 21 of the Petition, including subsections (a) – (g). Furthermore, GRDA incorporates its motion to dismiss as though fully set forth herein.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim for which relief may be granted.
2. Plaintiffs' claims are barred by the statute of limitations.
3. Plaintiffs failed to comply with the requirements of the Government Tort Claims Act.
4. The GRDA is immune from liability for the Plaintiffs' claims against it.
5. Service of process and process are insufficient.
6. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, laches, and license.
7. The GRDA was, at all relevant times, acting under the direction of an officer of the United States acting under color of his office.
8. The flooding of which Plaintiffs complain was an Act of God.
9. The flooding of which Plaintiffs complain was an unavoidable casualty or misfortune.
10. Plaintiffs failed to mitigate their damages.
11. Plaintiffs assumed the risk of flooding by purchasing property subject to flooding.
12. Plaintiffs have failed to join parties necessary for resolution of their claims.
13. The GRDA pleads the general issue, and states that it is not guilty of any of the claims asserted by Plaintiffs and is not guilty of any conduct proximately resulting in any injury or damage to plaintiffs.
14. Plaintiffs lack standing or capacity to assert their claims, in whole or in part.

15. Plaintiffs' claimed injuries and damages, if any, are the proximate result of the acts or omissions of others, for whom the GRDA owes no legal responsibility.

16. Plaintiffs' claims are barred, in whole or in part, by res judicata, collateral estoppel, merger, contributory negligence, accord and satisfaction, and release.

17. The GRDA contests the nature and amounts of Plaintiffs' claimed damages, and denies that Plaintiffs are entitled to any attorney's fees or costs herein.

18. The GRDA pleads that Plaintiffs have not satisfied necessary prerequisites to maintenance of their cause.

19. The GRDA avers that this action may not properly be brought or maintained under applicable rules governing class actions.

20. The GRDA avers that Plaintiffs cannot satisfy the 12 O.S. § 2023 requirements of commonality, typicality or adequacy of representation.

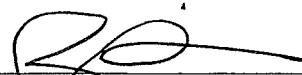
21. The GRDA avers that a class action would not be manageable nor a superior method for resolving this dispute.

22. The GRDA avers that common questions of law and fact do not predominate over individual questions.

23. The GRDA avers that interclass conflicts exist among the members of the putative class or any putative subclass, rendering impermissible the maintenance of this action as a class action.

WHEREFORE, GRDA prays that the Plaintiffs take nothing by way of their Petition; that the Court grant an award of reasonable attorney fees and the costs of this action; and for such other and further equitable and legal relief as the Court deems appropriate.

FELDMAN, FRANDEN, WOODARD & FARRIS

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ATTORNEYS FOR GRAND RIVER DAM AUTHORITY

CERTIFICATE OF SERVICE

This is to certify that on the 8th day of January, 2009, a full, true and correct copy of the above and foregoing was served by U.S. Mail with proper postage prepaid thereon to:

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