



Marzulla Law, LLC is the nation's leading law firm for takings claims against the federal government. ML represents landowners, developers, water districts, Indian tribes, business, and corporate interests in litigation of property rights and contract claims. ML also represents clients in environmental enforcement actions,



and litigation involving natural resources and permitting issues, in federal district courts and courts of appeal.

We hope that this Newsletter will serve as a resource for you and help you get to know us better.

Sincerely,

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Federal Circuit Upholds Reclamation Contract Rights Against Government Demands To Reallocate Water

Testimonials

"Marzulla Law is first rate and has a deep understanding of all the issues and the law."

Jean Baldrige
Vice President of Water Resources



On March 18, 2011, the U.S. Court of Appeals for the Federal Circuit issued a decision with far-reaching implications for water rights involving federal reclamation policy and the federal Endangered Species Act—Stockton East Water District, Central San Joaquin Water Conservation District, and the California Water Service Company v. United States. In this case, the Federal Circuit ruled squarely in favor of protecting the federal reclamation contract rights of the water districts against federal demands to reallocate the district's water for fish protection purposes. The Federal Circuit held that by refusing to deliver the water to the water districts as required by the terms of their contracts, the federal government had breached the water delivery contracts and are thus liable for contract damages.

Background: The Central Valley Project

The *Stockton East* decision, like many other water rights cases, arises in the arid San Joaquin Valley in California, which the Court recognized is home to many water disputes:

In the history of the western United States, the fight for water rights is a central theme. California, because a goodly part of the state shares the desert-like conditions that lie at the root of the fight, since before its founding has been one of the locales for this battle. This case is another chapter in that state's long-running history of water disputes.

The Central Valley Project in California is the largest federal water management project in the United States. The New Melones Unit of the Central Valley Project was completed in 1979. In order to fill the reservoir created by the construction of the New Melones Dam, the California State Water Resources Control Board required the federal government to obtain contractual "firm commitments" for the beneficial use of that water. Enter the water districts in the Stockton East

Cardno ENTRIX, Inc

Expert Witness: Jean Baldrige



It was in her capacity as an expert witness for [Casitas Municipal Water District v. United States](#) that Marzulla Law first became acquainted with Jean Baldrige. And one thing we quickly discovered is that she knows something fishy when she sees it. She was the perfect expert to tell the Court about the steelhead trout in the Ventura River.

She has studied the southern California steelhead for over 20 years and has participated in the development of plans to provide for the restoration of steelhead trout and their habitats. Jean's testimony in Casitas provided context about the historic presence of steelhead in the Ventura River and

litigation.

The California legislature had authorized the creation of the Central San Joaquin Water Conservation District and the Stockton East Water District in order to stop the relentless draw-down of aquifers by farmers and municipalities in San Joaquin County (south of Sacramento). In 1983, the Stockton East and Central water districts entered into nearly identical contracts with the Bureau of Reclamation that entitled them to up to 155,000 acre-feet of water a year from the New Melones reservoir. Most of Stockton East's water went to the City of Stockton and surrounding towns, while Central's supply was directed to San Joaquin farmers.

What Led To *Stockton East v. United States*

As required by their contracts, together the two water districts spent almost \$60 million to build infrastructure and facilities, including a three-mile-long tunnel drilled through solid mountain granite, to transport the water from this Sierra foothills reservoir to their customers in the Central Valley. But then in 1992, just as the tunnel was being completed and the districts readied to receive their water, Congress passed the Central Valley Project Improvement Act, a statute ordering the Bureau of Reclamation to re-allocate 800,000 acre-feet of Central Valley Project water from irrigation to help stem the decline of fish populations in the Sacramento Delta. Reclamation chose to annually satisfy a large chunk of this reallocation requirement with water in the New Melones Reservoir earmarked (but never delivered to) Central and Stockton, rather than supply it to the districts.

Because this reallocation of water to fish protection left little or no water to satisfy their contracts, the Districts sued the United States asserting breach of their contracts and taking of their water rights. Following an eight-day trial, the trial court ruled for the Government. The districts appealed. On September 30, 2009, the Federal Circuit reversed the trial court's decision and remanded the case for a determination of damages. But the Government asked the appeals court to rehear its decision. Finally, on March 18, 2011, the Federal Circuit denied that request, and again remanded the case back to the trial court for a damages determination, "which to the extent feasible should be expedited."

Fifth Amendment Rights Affirmed and Upheld

In addition to ruling in the water districts' favor on their

their biological requirements for survival.

"I enjoy working on water allocation between people and the environment," says Jean. "Sometimes we reach resolution through creative settlement, sometimes litigation is required. Marzulla Law is first rate and has a deep understanding of all the issues and the law. I enjoyed being part of a stellar litigation team."

As the Vice President of Water Resources for Cardno ENTRIX, Inc., a natural resource consulting company, Jean specializes in fish biology, in-stream flow analysis, and endangered species consultations throughout California and the Pacific Northwest.

Accordingly, Jean recently testified in the U.S. Court of Federal Claims concerning the National Marine Fisheries Service's requirement that Casitas Municipal Water District release its scarce water resources for the benefit of endangered steelhead at the expense of the residents of Ventura County, California.

contract claims, the Federal Circuit reversed the trial court's dismissal of the water districts' Fifth Amendment takings claims for the two years in which they could not recover on their contract claims. Rejecting the trial court's holding that the existence of a government contract automatically precludes a taking claim based on the same facts, the court relied on standard rules of alternative pleading:

It cannot be understood as precluding a party from alleging in the same complaint two alternative theories for recovery against the Government, for example, one for breach of contract and one for a taking under the Fifth Amendment to the Constitution. That is expressly permitted by the Federal Rules, and the fact that the theories may be inconsistent is of no moment.

"The federal government was required to obtain firm commitments in order to get authorization from the State of California to fill the New Melones Reservoir with water. It is only fair that the Government be required to live up to its agreements," said Nancie G. Marzulla, counsel for the water districts. "We look forward to the damages proceeding."



Court of Federal Claims Updates and Events



Federal Circuit
[2011 BENCH & BAR CONFERENCE](#)

June 22nd-25th, 2011

The Ritz-Carlton
Key Biscayne, Florida

Staff Spotlight

Lucy Wiggins

Lucy Wiggins joined Marzulla Law in 2007 as an associate attorney. During the summer of 2009 she took a leave of absence from Marzulla Law to serve as a law clerk with the Honorable Judge Block in the U.S. Court of Federal Claims. Before joining Marzulla Law, Lucy worked as a law clerk in the Environmental Enforcement Section of the Department of Justice in Washington, D.C. She also served as a law clerk with Oceana, an international ocean environmental advocacy group, where she extensively analyzed the conditions of NEPA (National Environmental Policy Act), and researched legal issues related to global climate change and civil procedure.



From 2005 to 2006, Lucy worked as a research associate for Public International Law & Policy Group in Washington D.C. She also worked as a summer intern to the Honorable Mary Ellen Barbera at the Maryland Court of Special Appeals in Rockville, Maryland.

From 1999 to 2004, Lucy developed websites and helped establish company policies with Zactus, Inc., Major League Baseball, Advanced Media, Grey Interactive, and Merkley & Partners, Interactive.

Prior to 1999, Lucy worked in film and television production where she supervised the production process for various television shows and films, including Law & Order.

Lucy is a member of the Washington, D.C. and New York Bar Associations, as well as the American Bar Association, Student Lawyer Division. She earned her J.D. from American University, Washington College of Law, and earned her Bachelor of Fine Arts degree in Film and Drama from Syracuse University School of Visual and Performing Arts.

"Lucy has worked with our firm for four years and has made herself a valuable member of our legal team, handling increasingly more challenging assignments," says Nancie Marzulla. "Most recently, she took the lead on preparing comments on a proposed Environmental Assessment under NEPA, involving a decision to remove privately owned cabins on Lake Roosevelt in Washington State. Lucy also loves mentoring our interns and law clerks, and they really enjoy working with her as well."

About Our Law Firm

Marzulla Law, LLC is a Washington D.C.-based law firm. Nancie G. Marzulla and Roger J. Marzulla help property owners get paid just compensation when the Government takes their property through inverse condemnation.

ML lawyers practice in the federal courts, especially the U.S. Court of Federal Claims, the Federal Circuit Court of Appeals, and the U.S. District Court for District of Columbia, as well as other federal district courts, appellate courts, and the U.S. Supreme Court. ML also represents clients in administrative agencies, such as the District of Columbia Office of Administrative Hearings or the Interior Board of Indian Appeals.

Chambers has recognized Marzulla Law as one of the top ten water rights litigation firms in the country. Nancie Marzulla and Roger Marzulla have been selected by their peers to be included on the list of Best Lawyers in America, and their firm has the highest AV-rating from Martindale-Hubble. Nancie and Roger Marzulla are listed in Best Lawyers for environmental law, and Marzulla Law is a member of the International Network of Boutique Law Firms.



Disclaimer: The information you obtain in this newsletter is not, nor is it intended to be, legal advice. Results are not guaranteed. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established



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