

# ML Marzulla Law Legal Report

When it's Inverse Condemnation, We Help Property Owners Get Paid

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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## **Victory For Landowners In Klamath Water Basin Takings Case**

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### **Federal Takings News**

WASHINGTON, DC - Sixty four now-defunct Chrysler dealerships filed a lawsuit today in the United States Court of Federal Claims, seeking \$130 million in compensation from the U.S. Government, for the alleged taking of



The Fifth Amendment of the U.S. Constitution proscribes the taking of private property "for public use, without just compensation." In cases where the federal government, by means of any of its various agencies, takes property in violation of the Fifth Amendment—an action known as "inverse condemnation" or "taking"—property owners have a right to seek just compensation via a takings claim filed in the U.S. Court of Federal Claims.

On February 18, 2011, a major victory was won by landowners in the Klamath Water Basin, a nearly 16,000 square-mile region comprising parts of southern Oregon and northern California which, under the oversight of the U.S. Bureau of Reclamation (Bureau), provides water to about 240,000 acres of irrigable crop lands. The long-running case, [\*Klamath Irrigation District v. United States\*](#), stems from a 2001 decision by the Bureau not to deliver any water to Klamath Basin farmers and irrigators that year. The Bureau claimed it was doing so because it was obligated under the Endangered Species Act (ESA) of 1973 to protect endangered species.

The case against the government was filed in the U.S. Court of Federal Claims by several agricultural landowners as well as a number of water, drainage, and irrigation districts on their behalf who alleged that the government violated both the Fifth Amendment and the Klamath River Basin Compact (established in 1957 between Oregon and California, and with the consent of Congress, to promote orderly management of shared basin resources) by taking their vested rights to water without just compensation. The plaintiffs alternatively sued for breach of their water delivery contracts.

In 2005, the U.S. Court of Federal Claims—relying on a 1905 Oregon statute—denied the plaintiffs' takings claims, holding that there was no equitable property right in their use of Klamath Basin water for irrigation. In 2007, the trial court disposed of the claims that the government breached the

their franchise business.

([\*Alley's of Kingsport, Inc. v. United States\*](#), No. 11-100L). The suit alleges that the Government failed to justly compensate the dealerships for the taking of their respective property rights in franchise agreements they had with Chrysler.

[Read More](#)

## Testimonials

"We chose Marzulla Law after interviewing several national firms when our partnership faced a highly complex federal claim... *and it was the best decision we could have made.*"

Alan Naul  
Love Terminal  
Partners

## Court of Federal Claims Updates and Events

Klamath River Basin Compact, and concluded that the contract claims were shielded by sovereign immunity.

However, recently the U.S. Court of Appeals for the Federal Circuit rejected the conclusions of the Federal Claims Court. Basing its decision largely on statements from the Oregon Supreme Court, which affirmed that the plaintiffs possess water rights in the Klamath Water Basin, the Federal Circuit remanded the case for further proceedings, thus reviving the plaintiffs' opportunity to potentially receive their just compensation. Moreover, in what now frustrates the government's claim to sovereign immunity, the Circuit Court's decision places a new burden on the government to prove that there were no alternatives to fulfilling its ESA obligations other than to halt the delivery of water.

Underscoring the magnitude of the victory, Nancie Marzulla, counsel for the Klamath water users, stated that "the government's decision not to deliver any water at all to the farmers in the Klamath Basin was devastating. We are extremely pleased that the Federal Circuit and Oregon Supreme Court have confirmed that these farmers have a property interest in water that they have put to beneficial use for over 100 years."



**The U.S. Court of Federal Claims' Annual Law Day Observance Luncheon** will be held on May 10, 2011 at the Willard Intercontinental Hotel in Washington, D.C. [More Details Here](#)

**Federal Circuit 2011 BENCH & BAR CONFERENCE**  
June 22nd-25th, 2011  
The Ritz-Carlton  
Key Biscayne, Florida



## Staff Spotlight

### Melissa Vedder

It is our pleasure to present Melissa Vedder, a Bachelor of Arts student from St. Thomas University in Fredericton, New Brunswick, Canada. Melissa is interning with our firm this Spring through the Washington Center's renowned internship program.

Melissa has been working primarily on helping to prepare for a trial that will commence on April 12, 2011, in the U.S. Court of Federal Claims. The case, *International Industrial Park v. United States*, is a breach of contract lawsuit against the United States. It concerns the Border Patrol's failure to honor its agreement with landowners in San Diego, California, to move an easement and build a road to San Diego County standards. The lawsuit seeks \$5 million in damages, plus attorneys' fees and costs resulting from the breach.



"Melissa has been a pleasure to have around the office," says Lucy Wiggins, supervising

attorney at Marzulla Law. "She has been a tremendous help in preparing for our upcoming trial."

Melissa has been involved in helping to prepare witness and exhibit lists for the trial, and with pulling relevant deposition testimony for pre-trial filings. She also sat in on key depositions earlier in the litigation. Finally, Melissa will assist at trial, which is expected to last for a week. Since Melissa plans to go to law school one day, this hands-on trial experience is invaluable.

"I am very fortunate to participate in The Washington Center program because the experience I am gaining will last me a lifetime," says Melissa, whose interests include reading, traveling, volleyball, and competitive jump rope. What of her future goals? "I want to visit the Galapagos Islands, scuba dive in the Great Barrier Reef, and go bungee jumping in New Zealand."

## 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-Hubbe. 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.



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