

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,

Nancie and Roger Marzulla
Marzulla Law, LLC
Tel.: 202.822.6760
www.marzulla.com

Follow us on 

A Proud Member of
INBLF | International Network
of Boutique Law Firms

MARZULLA LAW LLC LISTED IN
Best Lawyers®
THE WORLD'S PREMIER GUIDE



Federal Government Admits To Liability In Land Takings: *The Otay And Bassett Cases*



Testimonial

"The Marzullas are an exceptional team with a firm grasp of the law and an infectious passion for the constitutional rights of landowners. Their clients are fortunate to have such dedicated advocates representing their interests."

Cynthia Eldred
President
The Law Office of
Cynthia L. Eldred, APC

Sometimes the evidence of a taking is so overwhelming that even the federal government has to concede liability. Two such cases are *Otay Mesa* and *Bassett*.

Otay Mesa Property, LP v. United States

In 2006, three commercial real estate partners in southern California filed a lawsuit (*Otay Mesa Property, LP v. United States*) against the federal government in an effort to obtain just compensation under the [Fifth Amendment](#) of the U.S.

Constitution for the physical taking of approximately 1,050 acres of their land in San Diego County, California. The land, which is located in the path of development anticipated by a third border crossing, comprised of 11 parcels of private property which border Mexico, had been regularly entered upon for years by U.S. Border Patrol agents who were engaged in the pursuit and apprehension of Mexican nationals entering the United States illegally. In a December 29, 2007 L.A. Times article, one of the real estate partners, David Wick, stated that "if they need to use our property to do their jobs, that's fine. But compensate us for it." Of particular concern to Wick and his partners was that the presence and activity of U.S. Border Patrol agents on their land—which included 24-hour patrolling, installing underground motion detectors, and even constructing new roads and a permanent tent station without permission—was preventing them from developing it.

During the course of the case, the federal government admitted to liability for the physical taking of the landowners' property. In an August 28, 2008 filing in the U.S. Court of Federal Claims, the government stipulated that "by virtue of its placement of [14 seismic motion sensors] on the listed parcels of land, it has taken a property interest in the nature of an easement over the parcel of land on which the sensors have been placed."

The trial judge held the federal government liable ([opinion here: PDF](#)) for the physical taking of the portions of land where motion sensors were placed, and awarded damages to the landowners as a result. The federal government appealed, and the landowners cross appealed. The federal government appealed the damages award and that appeal was heard on July 7, 2011. A decision is expected by the end of the year.

Bassett New Mexico, LLC v. United States

In 1997, the Environmental Protection Agency (EPA) sought to collect and dispose of more than 300,000 tons of mining waste at the Stephenson-Bennett Superfund Site near Las Cruces, New Mexico. As a solution, the EPA deposited the waste in a nearby limestone quarry owned by Bassett New Mexico, LLC, a company based out of El Paso, Texas. Although Bassett was not responsible

Expert Witness

Cindy Eldred



Cindy Eldred, a Real Estate and Land Use attorney in San Diego, California, served as an expert witness in *Otay Mesa Property, LP v. United States*. Her testimony was crucial in helping the court evaluate the impact of the stipulated easement on the future use of the property. Specializing in land use and environmental law, public financings, and real estate and business transactions, Ms. Eldred possesses a breadth of experience in representing a variety of developers, builders, businesses, and individuals in all phases of preacquisition planning; real estate, land use and environmental due diligence; acquisition negotiations and document preparation; and post-acquisition development and use of real property.

Ms. Eldred has also focused on statutory and case law affecting the ability of local, state, and federal agencies to impose exaction and dedication requirements of private

for any of the waste that had been generated over several decades, the EPA designated the quarry as part of the Superfund site and sought to have Bassett pay over \$6 million for the cost of the Superfund cleanup.

Bassett eventually filed a lawsuit (*Bassett New Mexico, LLC v. United States*) against the EPA for the physical taking of their property and sought just compensation on Fifth Amendment grounds. In 1999, the government eventually stipulated to a physical taking of "at least the quarry area" of the property owned by Bassett, and in December 2002 Judge Loren A. Smith of the U.S. Court of Federal Claims in Washington, D.C. [ruled for Bassett](#) (PDF) and awarded the company fair market value of its property, plus interest and attorney's fees. On January 30, 2004, Bassett New Mexico, LLC received a U.S. Treasury check stemming from a negotiated settlement with the EPA.

"This case shows that companies can sometimes turn the tables on the EPA when it unfairly targets people for waste they did not generate," said Roger J. Marzulla, one of the attorneys who represented Bassett New Mexico, LLC. "It's refreshing to see the Government step up to the plate on some occasions, although two cases hardly demonstrate a trend."

Staff Spotlight

Brittany Zale

As Marzulla Law's eminently capable office manager, Brittany Zale is key to keeping things running smoothly at our firm. A graduate of George Washington University with a Bachelor's in International Affairs, Brittany joined Marzulla in 2009 and served as the firm's receptionist. In May 2009 she became a full-time paralegal, and in August 2010 moved on to become our beloved office manager.

During college Brittany was a student volunteer at the White House where she



property owners. She practices in unincorporated San Diego, Riverside, San Bernardino, Imperial, and Kern Counties in the State of California and in the incorporated cities within those counties.

"I was pleased to testify as an expert witness in the *Otay Mesa* takings case," says Ms. Eldred. "The Marzullas are an exceptional team with a firm grasp of the law and an infectious passion for the constitutional rights of landowners. Their clients are fortunate to have such dedicated advocates representing their interests."

Ms. Eldred has extensive experience in negotiating with the United States Army Corps of Engineers, the San Diego Regional Water Quality Control Board, the United States Fish and Wildlife Service and the California State Department of Fish and Game regarding environmental permits, mitigation for development impacts on sensitive resources, and the issuance of mitigation credits for acquisition of sensitive habitat.

Ms. Eldred graduated from the University of San Diego Law School, and was admitted to the State Bar of California in 1990. She has been a solo practitioner since 2001, where a significant portion of her practice has and is

gained a unique perspective of public opinion and national politics answering the White House comment line and documenting the opinions of callers. During her time at GWU she also had the pleasure of working at the National Foundation of Women Legislators, the Woodrow Wilson Center, and the law firm of Hodgson Russ in Buffalo, NY.

But her experience at Marzulla has proven to be among the most rewarding in her professional life to date.

"Since joining Marzulla Law in my final year of college, I've been given wonderful opportunities and learned more than I ever imagined," says Brittany. "Nancie and Roger Marzulla have given me priceless guidance in my transition from receptionist, to paralegal, and to the office manager position."

Nancie Marzulla is quick to return the praise. "Brittany is one of the most dedicated people I have had the pleasure of working with. She never stops until the job is done right, which is one of the things I most admire about her."

Among Brittany's myriad interests and hobbies are: trail running, farmers' markets and local foods, watching hockey and taking weekend trips. She is a member of PATC (Potomac Appalachian Trail Club) and the Virginia Happy Trail Running Club, where she was 2010's "Rookie of the Year."

spent on the land use entitlement process, including compliance with the California Environmental Quality Act.

Ms. Eldred was recently appointed by the Board of Supervisors of County of San Diego to the Board's Red Tape Reduction Task Force. She expects to use that appointment to streamline the County's land use entitlement processes.



About Marzulla Law

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

