

## CFC Declines to Reconsider Flooding Case

In May of 2011, the U.S. Army Corps of Engineers breached a levy along the Mississippi River as part of a plan to reduce flooding near Cairo, Illinois. The result was a flood that temporarily blanketed the plaintiffs' farmland. But when the farmers sued for just compensation, the U.S. Court of Federal Claims—relying heavily on the Federal Circuit's opinion in *Arkansas Game & Fish Commission v. United States*—dismissed the takings case. Although the CFC acknowledged that “[i]t is well-settled that government-induced flooding can give rise to a physical taking,” the farmers’ “allegations of two floods separated by nearly 75 years are not enough to support an inference of frequent and inevitably recurring flooding” to amount to a taking.

Seven months later the Supreme Court unanimously reversed the Federal Circuit's opinion in *Arkansas Game & Fish*, and the CFC ordered the farmers and the Government to submit briefs discussing what impact the Supreme Court's decision had on the takings claims. The farmers (and the State of Missouri in an amicus brief) argued that *Arkansas Game & Fish* required the court to revisit the takings claims, since the Government could no longer rely on precedent that “differentiates temporary takings by flooding from general takings jurisprudence.”

In a recent decision the CFC refused to reconsider its earlier opinion, stating that there was no need to revisit the farmers' takings claims because *Arkansas Game & Fish* dealt with recurring floods, not isolated floods like the farmers' claim:

*While Arkansas Game expresses the general opinion that flooding should not be set apart from other types of government intrusion on property for the purposes of the Fifth Amendment, it does not, as plaintiffs suggest, overturn all of the flooding precedents relied on by this court . . . Arkansas Game addressed simply and only whether “repeated” government-induced flooding, if temporary in nature, was exempt from the Takings Clause. The Supreme Court did not address whether a single flood can give rise to a claim for a taking as opposed to a tort. The court thus concludes that Arkansas Game has no application to plaintiffs' takings claims.*

The case is *Big Oak Farms, Inc. v. United States*, and the opinion can be read [here](#).

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