

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.

Sincerely,

Nancie and Roger Marzulla
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Court Upholds Landowner's Contract-Based Mineral Rights



Testimonial

"I enjoy working on environmental issues that don't have easy answers," says Dr. Tormey. "My approach is to creatively use the results of science and engineering to help close the gap between opposing parties. Although that sometimes leads to a settlement, litigation may be required.

In my work with

In the *Elmore/Road Rock, Inc. v. Florida Power & Light* breach of contract case, Judge Robert A. Rosenberg of the Complex Litigation Unit of the 17th Circuit Court in Fort Lauderdale, Florida ruled in favor of Robert Elmore, sole owner of Road Rock, Inc., against the Florida Power & Light Company (FPL). The court awarded \$20,463,910 to Elmore for FPL's refusal to allow Elmore to remove rock and sand from a 50-acre lake that he owned and which is adjacent to the FPL power plant in Fort Lauderdale.

Background

In 1955 Robert Elmore and FPL entered into a contract whereby Elmore was given title to as well as the exclusive right to remove all rock, sand, and stabilizer from a lake owned and controlled by FPL as a cooling pond for its Fort Lauderdale generating plant. Over several decades, and in accordance with the contract, Elmore removed from the lake large quantities of rock and sand, which are of high value and in great demand in the area.

In 1984 Elmore entered into a second contract with FPL, whereby he conveyed title to FPL of the 540-acre tract of land on which the lake was located, but retained title and right to remove all the rock and sand from the lake as per the terms of the 1955 contract.

However, as was pointed out in the court's opinion, in May 2004 FPL breached its contract with Elmore "when it informed Elmore and the Broward County Department of Environmental Protection (DPEP) that it would not allow him to remove the rock, sand, and stabilizer from the lake."

Elmore/Road Rock v. Florida Power & Light

In August 2004 Elmore filed a breach of contract suit against FPL. The court ultimately found that "FPL's refusal to allow Elmore to excavate the sand and rock he owned is a material breach of contract. ... Once FPL breached the contract in 2004, Elmore had the right to sue for damages. ... Mr. Elmore was entitled to remove the rock and sand from the lakes. Thus, he is now entitled to a calculable value of royalties for the excavatable rock and sand in the lakes."

"We are extremely pleased to see that justice has been done for Robert Elmore. FP&L's refusal to allow him to excavate his materials from the lake, despite an agreement between the parties that clearly allowed the right to do so, just made no sense," said Nancie G. Marzulla, lead counsel along with her partner, Roger J. Marzulla.

Currently, FPL continues to fight the damages ruling against it, and has asked the trial court to reconsider this ruling... stay tuned.

Marzulla I found them to be of the highest integrity, fun to work with, engaged in critically important matters, and committed to winning."

Dr. Dan Tormey
Technical Director/Vice President
Cardno ENTRIX, Inc.

Expert Witness

Dr. Dan Tormey



Dr. Dan Tormey was an expert witness for Marzulla Law in the *Casitas Municipal Water District v. United States case*. His testimony reviewed and summarized the Peer Review results of Casitas' report that determined future water supply and use—a key exhibit in our case.

Dr. Dan Tormey is an expert in water and energy, conducting projects in sediment transport, hydrology, water supply, water quality, and groundwater-surfacewater interaction. He also works with the environmental aspects of all types of energy and energy development.

Dr. Tormey actively

Traps for the unwary if your contract claim is against the United States

Although the Elmore case involved a breach of contract case against a private party (or a public utility) litigated in state court, breach of contract claims can also be brought against the United States for money damages under the Tucker Act in the U.S. Court of Federal Claims. Here are some points to keep in mind when considering a breach of contract claim against the federal government:

1. If the contract breach involves a procurement contract or involves the sale of goods or services, then the dispute is likely governed by the Contract Disputes Act, 41 U.S.C. §§ 601-613 (2006) (the "CDA"). Under the CDA, contractors must submit a certified claim to the contracting officer for final decision before filing suit in the U.S. Court of Federal Claims. 41 U.S.C. §§ 605, 609.
2. If the contract breach involves a federal statute, the breach claim may be barred by the sovereign acts defense. That defense applies to contracts that are breached when the federal government is required to comply with a federal statute that has general application.
3. Under the Tucker Act, there is no interest on a damages award for a contract claim.

pursues volcanology research around the world, with a focus on interactions between geophysical variables that affect risk assessment, risk preparedness, and contingency planning.

Dr. Tormey received his Ph.D. in Geology and Geochemistry from the Massachusetts Institute of Technology.

He is currently the Technical Director and Vice President of Cardno ENTRIX, Inc., an environmental and natural resource management consultancy providing a broad suite of services in Water Resources Management, Natural Resources Management, Permitting & Compliance, and Liability Management.



Spotlight: Ian Gaunt

Ian Gaunt is a recent graduate of Georgetown University Law Center awaiting his D.C. Bar exam results. After a year of clerking with Marzulla Law, we anticipate we will soon be calling him an associate.

"My experience as a law clerk with Marzulla Law has been one of the most rewarding and instructive experiences of my legal education," says Ian. "I am very excited at the opportunity to join such a talented team and work on such important cases. Every day has come with a new challenge and a new opportunity."

Ian graduated from Kenyon College in Gambier, Ohio with a dual B.A. in Economics and Philosophy. He then attended Georgetown University Law Center where, in May 2011, he graduated *cum laude* with a J.D. In 2010 he was the recipient of the CALI Award, which recognizes excellence achievement by law students in their studies. The award is given to the student with the highest grade in the class as determined by law school faculty.



During his time at Georgetown he was an intern for Judge Henry H. Kennedy, Jr., of the U.S. District Court for the District of Columbia. He also worked as a litigation law clerk at the Washington Legal Foundation conducting legal research, reviewing trial records, and developing legal arguments with Chief Litigation Counsel for original litigation and amicus curiae briefs to the U.S. Supreme Court, Circuit Courts of Appeals, and District Courts (including work on *HLP v. Holder*, *Ashcroft c. Al-Kidd*, and *United States v. Arizona*).

Among Ian's interests are blues guitar, cooking, watching boxing, ancient Greek history, and theater. He also enjoys traveling, especially to Australia where his father is from.



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-Hubbell. 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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