

# 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.

Best regards,

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THE WORLD'S PREMIER GUIDE



## No Good Deed Goes Unpunished—Efforts to Settle One Case Lead to Another



The U.S. Court of Federal Claims recently found the federal government liable for breach of contract under which, in exchange for the Landowners' grant of a right-of-way, the Government would

### Testimonial

"In my work with the Marzulla firm I was impressed with the dedication of the entire staff, their attention to every detail of the trial preparation, and the total commitment to winning the best

construct a \$1.7 million paved road over private industrial land located in East Otay Mesa (Southern California) on the border with Mexico. For years, the Landowners and the U.S. Border Patrol had wrangled over whether Border Patrol agents had the right to continuously cross the parcel as they patrolled the border, and the contract had been seen as a great step forward in resolving their dispute. The concept of the contract was that the Border Patrol would stay on the paved road (rather than cutting across the property), and the Landowners would have a paved road to access and develop the valuable commercial property.

The breach of contract lawsuit was not the first dispute between the Landowners and the Border Patrol. Previously, the Landowners had sued the Border Patrol over its continuous use and occupancy of their land, without payment of any compensation for that use. That suit, also filed in the U.S. Court of Federal Claims, sought just compensation for the physical taking of an easement over their property. Last year the court found a taking and awarded the Landowners \$4 million plus costs and attorneys' fees.

In fact, it was while preparing the takings case for trial that the parties began to discuss the possibility of the Landowners granting to the Government an easement in exchange for the construction of an improved road in order to resolve one source of friction between the parties. The land in question lies between two existing public roads, and a new access road would allow Border Patrol agents safer access to a truck trail used in their patrolling activities, and could be incorporated into the Landowners' development plans. In the contract entered into by the Landowners and the Government, the Landowners agreed to transfer an existing easement that the Border Patrol was no longer using to a new, mutually agreed on location. In return, the Government agreed to construct a new road to County standards.

But as soon as the contract was signed, a disagreement arose over how the road was to be constructed and how much the Government was willing to spend constructing it. Finally, a year after the contract had been executed, the Government informed the Landowners that it would not build the road. So, the Landowners filed a second suit in the U.S. Court of Federal Claims—this time for breach of the contract to construct the road.

#### ***International Industrial Park v. United States***

In response, the Government first challenged the U.S. Court of Federal Claims jurisdiction over the claims, arguing that the Contract Disputes Act (41 U.S.C. §§ 601-613), applied to the road construction contract, and that the Landowners had not complied with the Contract Disputes Act's jurisdictional prerequisites. But the trial court rejected that argument, and denied the Government's motion to dismiss, holding that the Contract Disputes Act did not apply to the contract because it was not a procurement contract.

result for their client."

**Randy A. Tagg, MAI**  
**The Tagg Company**

### **Expert Witness**

**Randy A. Tagg**



Randy A. Tagg is a real estate appraiser from southern California who was an expert witness for Marzulla Law in the case of [\*Otay Mesa Property, LP v. United States\*](#).

Regarding the trial, Randy was generous with his praise of the Marzulla team.

"Real estate valuation and litigation support have been my professional passion for over 30-years. It has been my experience that a vast majority of disputes involving real estate valuations are settled short of a trial.

Occasionally the spread between opposing valuation opinions defies easy resolution and the two sides prepare for trial.

During the trial phase the Marzullas provided individual attention,

At trial, the Government unsuccessfully contended that the contract created no road construction obligation, and that the contract was too ambiguous to be enforceable. The Government also argued that the Landowners had rescinded the contract and waived their right to performance.

In its judgment, however, the court rejected the Government's arguments, holding that "there was a sufficient meeting of the minds" to form an enforceable contract. The court also rejected the Government's claim that the Landowners had rescinded or abandoned the contract. The court held that "to establish abandonment the evidence must... point positively and unequivocally to an intention on the part of both parties to abandon it."

The court further held that the contract was enforceable because the Federal Circuit has held that "ambiguities in a contract are to be resolved against the drafter of the contract." Here, the Government prepared every draft (including the final draft and exhibits) and could hardly claim ambiguities it created as a contract defense.

So, the court ruled again in favor of the Landowners, this time on its contract claim, finding that "the record does not support [the Government's] contentions in its efforts to avoid contractual liability." The Government was ordered to pay the Landowners \$1.7 million in damages. The Landowners' claim for attorneys' fees and costs, based on a contract provision, is still pending. The Government has not announced whether it will appeal.

keeping all members of the team informed, prepared, encouraged, and focused," Randy said.

Randy graduated from San Diego State University with a B.S. in Business Administration (emphasis in Real Estate), and has an MAI designation, which according to the Appraisal Institute "is held by appraisers who are experienced in the valuation and evaluation of commercial, industrial, residential and other types of properties, and who advise clients on real estate investment decisions."

Randy has operated an independent appraisal and consultation company since 1999, and has expertise in such areas as agricultural acreage, commercial-retail, industrial, vacant parcels & large acreage, easement valuation, and special use property, among other areas.



## Spotlight:

### U.S. Court Of Federal Claims

While most Americans are aware of the existence and role of U.S. district courts, circuit courts, and the U.S. Supreme Court, few are very aware of the U.S. Court of Federal Claims and its role in protecting the Constitutional rights of citizens and keeping government powers in check.

Simply put, in the U.S. Court of Federal Claims the



U.S. government is the defendant against claims by citizens of violations of Constitutional rights relating to property or money.

At Marzulla Law we focus on takings claims against the government, whereby a citizen or group of citizens sues the U.S. government for illegally taking private property in violation of the Fifth Amendment which states that private property cannot "be taken [by the government] for public use, without just compensation." In many cases such claims involve a breach of contract, where the government and a private landowner entered into a land-use agreement which the government ends up breaching. Such cases can result in a citizen's loss of land, money, or both. As such a citizen has the right to file a claim against the government in the Court of Federal Claims in order to seek compensation for losses.

Many takings cases involve environmental and natural resource issues, many of which Marzulla Law has handled and won favorable rulings on behalf of clients. Such cases include [Klamath Irrigation District v. United States](#), [Casitas Municipal Water District v. United States](#), and [Stockton East Water District v. United States](#), among others.



## 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-Hubbe. Nancie and Roger Marzulla have been recognized by Best Lawyers as a Top Tier law firm by *U.S. News & World Report* for environmental law, and Marzulla Law is a proud member of the International Network of Boutique Law Firms.



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