

# **Bond Case Briefs**

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## **EMINENT DOMAIN - ILLINOIS**

### **Hampton v. Metropolitan Water Reclamation Dist. of Greater Chicago**

**Supreme Court of Illinois - July 8, 2016 - N.E.3d - 2016 IL 119861 - 2016 WL 3653963**

Landowners filed complaints against water reclamation district, alleging damage to property from flooding and asserting a taking without compensation.

Following consolidation of complaints, the Circuit Court granted district's motion to dismiss with respect to claim for damages under the Metropolitan Water Reclamation District Act, but denied the motion as to takings claim and certified question for appeal. The Appellate Court determined that a temporary flooding could be a compensable taking. District petitioned for leave to appeal, which was allowed.

The Supreme Court of Illinois held that:

- What constituted a taking was same under both federal and state constitutions;
- Temporary flooding could be compensable as a taking under state constitution; overruling *Luperini v. County of Du Page*, 265 Ill.App.3d at 89, 202 Ill.Dec. 528, 637 N.E.2d 1264; but
- Flooding at issue was not compensable.

Though the takings clause of the state constitution provided greater protection for property owners than its counterpart in the federal constitution, as it provided a remedy for property that was damaged, in addition to property that was taken, what constituted a taking was the same under both clauses.

Temporary flooding could constitute a compensable taking under both the federal and state constitutions, and courts were required to look to the facts of each case to determine whether the property owner's use and enjoyment of the property has been diminished or destroyed; overruling *Luperini v. County of Du Page*, 265 Ill.App.3d at 89, 202 Ill.Dec. 528, 637 N.E.2d 1264.

Temporary flooding of residential properties was not compensable taking under state constitution, where property owners only alleged one instance of flooding, flooding was not alleged to be recurring, water did not remain on properties for a prolonged period of time, damage caused by flooding was able to be repaired, and there was no allegation that flooding was intentional or that water reclamation district knew of should have known that flooding would occur.