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Taylor v. United States

United States Court of Appeals, Federal Circuit - May 15, 2020 - F.3d - 2020 WL 2503275

Owners of land near Air Force base filed suit against United States, claiming that Air Force effected regulatory taking of owners' property interest in their contract giving wind energy company exclusive option for easement for wind energy development when Air Force personnel allegedly caused company to terminate contract by suggesting that Federal Aviation Administration (FAA) would not issue "No Hazard" designation for airspace above owners' land, and that Air Force's flyovers of their land effected physical taking of their property interest in land and associated air space.

The Court of Federal Claims granted government's motion to dismiss for lack of subject matter jurisdiction and for failure to state claim. Landowners appealed.

The Court of Appeals held that:

- Regulatory taking claim was within subject matter jurisdiction;
- Air Force did not effect regulatory taking;
- Air Force did not effect physical taking; and
- Dismissal of complaint was not abuse of discretion.

Penn Central factor concerning character of government action weighed strongly against finding that regulatory taking was effected by Air Force causing wind energy company to terminate contract with owners of land near Air Force base due to Air Force suggesting to company that Federal Aviation Administration (FAA) would not issue "No Hazard" designation for airspace above owners' land; Air Force's suggestion to company did not have legal effect, did not impose direct legal obligation on any party, and was not form of coercive government action, but rather, was at most form of persuasion, convincing company of something assertedly relevant to its prospects for having air clearance for contemplated wind towers.

Air Force's flyovers of owner's land near Air Force base did not effect physical taking of their property interest in land and associated air space; although planes flew directly over owners' land, balance of remaining factors weighed against finding physical taking, including that owners only alleged that military aircraft regularly flew training routes at altitudes below 500 feet above ground level over their property, without alleging how often flights occurred, and owners failed to allege how flights directly, immediately, and substantially interfered with their quiet enjoyment and use of their land.

Landowners' regulatory taking claim arising out of Air Force allegedly causing wind energy company to terminate contract with owners whose land was near Air Force base, by Air Force personnel suggesting that Federal Aviation Administration (FAA) would not issue "No Hazard" designation for airspace above owners' land, was within Tucker Act jurisdiction of Court of Federal Claims, although Air Force's action also constituted tortious interference with contract, since landowners chose to challenge Air Force's action as taking of their property interest in contract, and Air Force's tortious

conduct did not remove taking claim from Tucker Act jurisdiction.

Court of Federal Claims did not abuse its discretion in dismissing landowners' complaint, upon determining they failed to state physical takings claim based on Air Force's flyovers of their land near Air Force base, rather than granting owners leave to amend their complaint, since owners did not request leave to amend, not on their own, not with government's permission, and not with court's permission, even after dismissal.