

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **EMINENT DOMAIN - FEDERAL**

### **Angelly v. United States**

**United States Court of Federal Claims - May 11, 2023 - Fed.Cl. - 2023 WL 3398155**

Owners of land and other property along two rivers filed suit against United States, seeking just compensation for alleged physical taking of flowage easements by Army Corps of Engineers' construction of river training structures designed to deepen and provide better alignment for rivers' navigational channels thereby causing atypical and unseasonal flooding on their land. Government moved to dismiss for lack of subject matter jurisdiction and for failure to state claim.

Holdings:

- Takings claims were not time barred, and
- Landowners' complaint sufficiently stated takings claims.

Landowners' allegations of atypical and unseasonal flooding of their property, which would not have occurred absent Corps of Engineers' construction of river training structures for navigational channels, would be accepted as true on government's motion to dismiss takings claims for lack of subject matter jurisdiction, so Court of Federal Claims would presume owners rarely experienced flooding outside of typical flooding season until specified years; government failed to controvert owners' allegations and instead provided evidentiary support for assertion that flooding occurred regularly for many years, but nowhere in its motion or attached exhibits presented evidence calling jurisdictional facts into question contrary to owners' allegations of new atypical flooding during growing season.

When the government decides to forego the opportunity to define precisely when a Fifth Amendment taking occurs, and instead leaves the taking to physical events, it is thereby putting on the owner the onus of determining the decisive moment when the fact of the taking could no longer be in controversy; these circumstances would allow the government to place an unfair burden on the property owner, so strict application of accrual principles is discouraged in cases where the taking is the result of a gradual process.

Under the "stabilization doctrine," the statute of limitations does not bar an action under the Tucker Act for a Fifth Amendment taking by flooding when it is uncertain at what stage in the flooding operation the land has become appropriated for public use; rather, stabilization occurs when it becomes clear that the gradual process set into motion by the government has effected a permanent taking, not when the process has ceased or when the entire extent of the damage is determined.

During the time when it is uncertain whether the gradual process will result in a permanent taking, under the Fifth Amendment, the plaintiff need not sue the government; however, once it is clear that the process has resulted in a permanent taking and the extent of the damage is reasonably foreseeable, the claim accrues and the statute of limitations begins to run.

Under stabilization doctrine, landowners' claims seeking just compensation under Tucker Act, for atypical and unseasonal flooding of their property due to Army Corps of Engineers' construction of

river training structures for navigational channels, accrued under six-year statute of limitations for takings claims, on date that flooding stabilized when it became clearly apparent by passage of time that such atypical and unseasonable intermittent flooding was of permanent nature.

Landowners claiming that Army Corps of Engineers effected taking of their property, by atypical and unseasonal flooding due to construction of river training structures for navigational channels, were not required to pinpoint precise action constituting conduct that government could not engage in without paying just compensation, in order to state Fifth Amendment takings claim, since pinpointing requirement for regulatory taking claim did not apply to landowners' physical takings case, and even if pinpointing requirement applied, owners sufficiently alleged their claims with enough specificity to pinpoint what government actions allegedly led to taking of their properties.

Landowners claiming that Army Corps of Engineers effected taking of their property, by atypical and unseasonal flooding due to construction of river training structures for navigational channels, were not required to affirmatively and literally plead that alleged flooding fell outside of United States' navigational servitude, in order to state Fifth Amendment takings claim, since owners' properties did not sit in riverbed, and it was not location of river training other structures that was relevant, but rather, location and permanence of effect of government action causing flooding.

Court of Federal Claims conducts a two-part test to distinguish torts from takings: (1) a property loss compensable as a taking only results when the government intends to invade a protected property interest or the asserted invasion is the direct, natural, or probable result of an authorized activity and not the incidental or consequential injury inflicted by the action, and (2) the nature and magnitude of the government action must be considered.

Landowners seeking just compensation for atypical and unseasonal flooding of their properties due to Army Corps of Engineers' construction of river training structures for navigational channels stated claim for Fifth Amendment taking, not claim sounding in tort, since owners alleged they could establish their takings claims by proving that flooding allegedly invading their properties was direct, natural, and probable result of Corps' actions to maintain navigable river channel.

In analyzing whether the invasion of owners' property was the direct, natural, or probable result of the government action, as required to state a Fifth Amendment takings claim, Court of Federal Claims must look at whether the result was predictable; in other words, the injury must be the foreseeable result of the action.