

# **Bond Case Briefs**

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## **EMINENT DOMAIN - FEDERAL**

### **Russellville Legends, LLC v. United States**

**United States Court of Federal Claims - July 24, 2024 - Fed.Cl. - 2024 WL 3516861**

Property owner filed Fifth Amendment takings claim against government based on Army Corps of Engineers' denial of owner's application for permit to add fill and construct housing on property over which Corps had previously purchased flowage easement and then later executed consent agreement with previous owner, permitting him to add up to 7,000 cubic yards of fill to property in easement area.

Government moved to dismiss for failure to state claim.

The Court of Federal Claims held that:

- Owner lacked property interest in executing proposed housing project;
- Corps did not release flowage easement when executing consent agreement;
- Owner had no rights under consent agreement; and
- Owner failed to state claim for regulatory taking.

Property owner lacked cognizable property interest in freely constructing housing on its property, as would be required for owner to state takings claim seeking just compensation based on Army Corps of Engineers' denial of owner's application for permit to add fill and construct housing on property over which Corps had purchased flowage easement from previous owner, since Corps asserted pre-existing limitation on owner's title in that flowage easement over property was in effect when owner purchased property and gave government perpetual right to overflow, flood, and submerge land within easement, prohibited structures for human habitation in easement, and required Corps' approval for construction of any other structures and/or appurtenances, due to flooding risks.

Under Arkansas law, Army Corps of Engineers did not release its rights to flowage easement over current owner's property by executing consent agreement, stating that government "gives consent" to predecessor owner for placement of fill material onto easement, and thus, current owner lacked cognizable property interest in constructing housing on property that owner alleged passed to it upon purchasing property from predecessor, as would be required for owner to state takings claim based on Corps' denial of owner's application for permit to add fill and construct housing on property, since agreement did not contain words of transfer, as term "gives" only referred to consent, not to easement rights, and parties did not intend for government to release its rights under easement.

Under Arkansas law, owner of property had no rights under consent agreement, stating that government "gives consent" to predecessor owner for placement of fill material onto Army Corps of Engineers' flowage easement over property, and thus, current owner lacked cognizable property interest in constructing housing on property that owner alleged passed to it upon purchasing property from predecessor, as would be required for owner to state takings claim based on Corps' denial of owner's application for permit to add fill and construct housing on property, since agreement did not run with land because Corps granted consent to predecessor owner personally.

*Penn Central* factor considering economic impact of the alleged regulatory taking weighed against finding regulatory taking based on Army Corps of Engineers' denial of property owner's application for permit to add fill and construct housing on property over which Corps held flowage easement and had executed consent agreement with previous owner, permitting him to add up to 7,000 cubic yards of fill to property in easement area, since owner alleged that denial of permit caused property to decrease 55% in value, but that was on low end of spectrum of loss in value for which just compensation was required, and damage to owner's intended business of constructing housing on property was not compensable under Takings Clause.