

Bond Case Briefs

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EMINENT DOMAIN - CALIFORNIA

United Water Conservation District v. United States

United States Court of Appeals, Federal Circuit - April 2, 2025 - F.4th - 2025 WL 984454

California water conservation district filed suit against United States, claiming that National Marine Fisheries Service (NMFS) effected Fifth Amendment physical taking of district's water rights by increasing bypass flow requirements to protect endangered steelhead trout, under Endangered Species Act (ESA).

The Court of Federal Claims granted government's motion to dismiss for lack of subject matter jurisdiction. District appealed.

The Court of Appeals held that:

- Alleged taking was regulatory in nature rather than physical, and
- Regulatory taking claim was not ripe for adjudication.

National Marine Fisheries Service's (NMFS) reasonable and prudent alternatives (RPAs) in biological opinion (BiOp), requiring California water district to increase bypass flow, so that more river water either remained in river or flowed through fish ladder located in river, in order to protect endangered southern California steelhead trout at dam owned and operated by district, represented regulatory restrictions on district's use of water, rather than physical taking, since BiOp RPAs represented nonpossessory government activity merely requiring that more river water, whether flown through fish ladder or not, had to remain in river, rather than completely cutting off district's access to water or causing district to return any volume of water that it had diverted to its possession in canal.

California water district's regulatory takings claim, arising from National Marine Fisheries Service's (NMFS) requirement that district increase bypass flow so more river water either remained in river or flowed through fish ladder located in river in order to protect endangered southern California steelhead trout, was not ripe for adjudication, since district had not yet obtained final agency action denying incidental-take permit under ESA.