

Outline

C. Lettow Introduction: Takings Theories.

1. Flooding cases:

D. Harrington
N. Marzulla

The causation issue after *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23 (2012).

C. Lettow

Ideker Farms, Inc. v. United States,

- 151 Fed. Cl. 560 (2020) (holding that Army Corps of Engineers' actions effected a taking of permanent flowage easement across owners' properties)
- 142 Fed. Cl. 222 (2019) (holding that Army Corps of Engineers' release of water from Missouri River dams could not establish takings' claims)
- 136 Fed. Cl. 654 (2018) (holding that landowners established Army Corp of Engineers caused flooding)

R. Holte

Banks v. United States, 741 F. 3d 1268 (Fed. Cir. 2014) (addressing gradual taking of shorefront property through erosion caused by construction and maintenance of jetties on lake).

C. Lettow
N. Marzulla

In re Downstream Addicks & Barker (Texas) Flood-Control Reservoirs; 149 Fed. Cl. 776 (2020) (holding that no taking occurred upon Army Corps of Engineers' opening of reservoir gates to release water downstream to prevent damage to dams and additional flooding upstream of dams), *appeals docketed*, Nos. 21-1134, etc. (Fed. Cir. Nov. 3, 2020).

C. Lettow

In re Upstream Addicks & Barker (Texas) Flood Control Reservoir, 146 Fed. Cl. 219 (2019) (holding post-trial that liability was established for taking of a flowage easement on private properties due to flooding at dams constructed, modified, maintained, and operated by Army Corps of Engineers).

D. Harrington
C. Lettow

2. Rails-to-Trails cases ----numerous, including *Caquelin v. United States*, 959 F. 3d 1360 (Fed. Cir. 2020) (holding that a temporary taking occurred upon issuance by the Surface Transportation Board of notice of interim trail use even though no conversion of rail line to right-of-way for a trail was consummated; the regulatory approach for determining whether a taking occurred did not apply, nor did principles applicable to government induced flooding, but there is no taking until the time as of which, had there been no NITU, the railroad would have abandoned the rail line).

R. Holte
D. Harrington
N. Marzulla

3. Property interest; police powers doctrine: *McCutcheon v. United States*, ___ F. 4th ___, 2021 WL 4485013 (Fed. Cir. Oct. 1, 2021) (majority: no property interest in bump-stock devices); (Wallach, J., concurring in result: not a compensable taking under the police power doctrine).

N. Marzulla
D. Harrington
R. Holte
C. Lettow

4. Regulatory action cases:

- *Horne v. Department of Agriculture*, 576 U.S. 350 (2015) (regulatory reserve requirement in raisin marketing orders was a physical taking).
- *Fairholme Funds, Inc. v. United States*, 147 Fed. Cl. 1 (2020) (orders of FMHA imposing net-worth sweep allowing Treasury to obtain all profits of Fannie Mae and Freddie Mac, depriving shareholders of their value; shareholders who purchased stock after amendment of stock purchase agreement lacked standing but preexisting stockholder had claim), *interlocutory appeal granted*, Nos. 2020-121 and 2020-122, 810 Fed. Appx. 907 (Fed. Cir. June 18, 2020).
- *Cedar Point Nursery v. Hassid*, ___ U.S. ___, 141 S. Ct. 2063, WL 2557070 (June 23, 2021) (California law granting access to property by union organizers constituted a *per se* physical taking).

D. Harrington
C. Lettow
N. Marzulla

5. State and Federal coordinated action cases-----*LaBruzzo v. United States*, 144 Fed. Cl. 456 (2019); *see also Knick v. Township of Scott*, ___ U.S. ___, 139 S. Ct. 2162 (2019) (exhaustion of state remedies not a prerequisite to federal suit, overruling *Williamson County Regional Planning Comm'n v. Hamilton Bank & Johnson City*, 473 U.S. 172 (1985)).