

Takings Snapshots, Volume 63, October 1, 2003

1. *Maritrans, Inc. v. United States*, 2003 WL 22076611 (Fed. Cir., September 9, 2003) (the Federal Circuit affirmed a Court of Claims decision rejecting a takings claim based on a congressional requirement that ships transporting oil in U.S. waters be retrofitted with double hulls after the expiration of a statutory grace period; the court rejected the government's defense that the claimants lacked a private property interest in their ships for the purpose of the Takings Clause; however, the court rejected the Lucas claim, on the ground that the owners could use the ships in U.S. waters during the grace period and there were other possible uses for the ships after the ban on single hulls went into effect; the court also rejected the Penn Central claim, ruling that the expectations factor supported the claim, but that the economic impact factor (a 13% diminution in value) and the character factor (a permissible government purpose, the generality of the regulation, a regulatory focus on companies which were the source of potential oil spills) supported rejection of the claim; finally, the court ruled the trial court had erred in dismissing the claim as unripe with respect to certain of the ships, on the ground that the consequences of the law were clear upon enactment and it was unnecessary for the claimants to wait until the law became effective to bring their takings claims).

2. *Coast Range Conifers v. State of Oregon*, 2003 WL 22207861 (Or. Ct. App., September 24, 2003) (the Oregon Court of Appeals, ostensibly following a 1997 Oregon Supreme Court precedent, ruled that it was required to disregard the parcel as a whole rule in evaluating a taking claim under the Oregon Constitution based on logging restrictions designed to protect nesting bald eagles; the Court of Appeals recognized that the Oregon Supreme Court had never provided a justification for disregarding the traditional parcel as a whole rule; the court also discussed at some length the lack of an historical foundation for the regulatory takings doctrine as a whole).

3. *Hotel & Motel Association v. City of Oakland*, 2003 WL 22137026 (9<sup>th</sup> Cir. September 17, 2003) (the Ninth Circuit rejected regulatory takings

challenges to a city ordinance establishing maintenance and habitability standards for motels and hotels, designed to combat crime associated with run-down motels and hotels; first, the court ruled that the denial of all economically viable use claim was not ripe because the claimants had not exhausted available state compensation procedures, but ruled that the substantially advance claim was ripe because the claim was based on the theory that the government “never had constitutional authority to adopt the ordinance, regardless of any compensation that might be due;” second, the court rejected the blanket argument that a substantially advance claim can never be disposed of based on a motion to dismiss, as it was in this case; third, on the merits, the court ruled that the ordinance substantially advanced legitimate public purposes identified in the ordinances, defining the substantially advance test as requiring only a “reasonable relationship, a standard which apparently is indistinguishable from the rational basis test under the Equal Protection Clause).

4. *Carpinteria Valley Farms, Inc. v. County of Santa Barbara*, 2003 WL 22176120 (9<sup>th</sup> Cir. September 23, 2003) (the Ninth Circuit, reversing the district court, ruled that plaintiffs’ first amendment, equal protection, and procedural due process challenges to county’s administration of its land use regulation were not subject to dismissal on ripeness grounds; the court rejected the district court’s theory that the plaintiffs’ claims should be recharacterized as as applied takings claims and dismissed pursuant to *Williamson County*, reasoning that the plaintiffs had asserted “separate claims grounded in allegations of discrete constitutional violations”).

5. *Dickgeiser v. State of Washington*, 2003 WL 22133432 (Wash. Ct. App., September 16, 2003) (Washington Court of Appeals rejected taking claim based on damage to claimants’ property due to flooding caused by state’s conduct of logging operations on state-owned land upstream from claimant’s property; court ruled that state’s logging activity did not amount a government action “for a public use” within the meaning of the Washington Takings Clause).

6. *Bair v. Pacific Northwest Sugar Co.*, 2003 WL

22139781 (9<sup>th</sup> Cir. September 16, 2003) (unpublished opinion) (Ninth Circuit affirmed district court dismissal of suit by beet growers seeking declaration that liens they held in sugar products were superior to liens held by the Commodity Credit Corporation, rejecting the argument that recognizing the superiority of the CCC's liens would affect a taking of claimants' property interest in their liens under either Lucas or Penn Central).