

## 'Takings' Snapshots Volume 66, January 8, 2004

1. Tulare Lake Basin Water Storage District v. United States, <http://www.uscfc.uscourts.gov/Opinions/Wiese/03/WIESE.Tulare.pdf> (Ct. Fed. Cls. December 31, 2003) (following up on an April 30, 2001, opinion holding the United States liable (on a problematic physical-occupation theory) for a taking based on restrictions on water deliveries to irrigators under the Endangered Species Act, on December 31, 2003, the Court of Federal Claims awarded \$14 million, plus interest, as compensation for the taking, based on a detailed analysis of the quantity of water taken as a result of federal government action pursuant to the ESA and the fair market values of different portions of the water found to be taken).
2. Palm Beach Isles Associates v. United States, 58 Fed.Cl. 657 (Ct. Fed. Cls, December 5, 2003) (the Court of Federal Claims, for the second time, rejected a regulatory takings claim based on the Army Corps of Engineers' rejection of a permit to fill approximately 51 acres of wetlands in and adjacent to Lake Worth in Florida; in 2002, in a controversial decision, the U.S. Court of Appeals for the Federal Circuit reversed the Court of Claims' first decision, ruling that, notwithstanding the parcel as a whole rule, the 51 acres did not need to be considered together with the rest of the plaintiff's original 261-acre parcel; on remand, the Court of Claims determined that there was no taking of 49 of the 51 acres because these underwater lands are subject to the navigational servitude and the Army Corps denied the application in part for bona fide navigational purposes; the Court also rejected the taking claim with respect to the remaining two acres on the ground that this small area, considered separately, had no economically viable development potential; given these grounds for rejecting the claim, the trial court declined to address the United States' alternative argument that there was no taking because the county had stated that it would not permit filling and development of the area at issue).
3. Hacienda Valley Mobile Estates v. City of Morgan Hill, 2003 WL 22961340 (9th Cir., December 17, 2003) (the U.S. Court of Appeals for the Ninth Circuit rejected as unripe plaintiff's taking claim based on a municipal mobile home vacancy decontrol statute, on the ground that the plaintiff had not pursued available state compensation remedies; the court rejected the argument that resort to state court was futile because the California courts apply a more deferential standard of review under the Takings Clause than the standard applied by the Ninth Circuit, reasoning that the California courts had not clearly established a distinctive legal standard sufficient to support the conclusion that resort to state court would be inadequate to vindicate federal constitution rights).
4. Carson Harbor Village Limited v. City of Carson, 2004 WL 19825 (9th Cir. January 2, 2004) (the U.S. Court of Appeals for the Ninth Circuit affirmed a trial court decision rejecting a taking claim based on allegedly inadequate rent adjustments under a mobile home rent control ordinance, on the ground that the claim was not ripe because the claimant had not exhausted available state remedies; the court rejected claimant's theory that the claim was ripe because the procedures in takings challenges to rent control laws in California courts are inadequate because, upon a finding of a taking, they permit

landlords to use future rent increases to recoup lost rents rather than require the government to pay financial compensation; while the court expressed some uncertainty about the constitutional sufficiency of the California procedures, it ruled that the claimant had not carried its burden of showing that the procedures were inadequate because it had never availed itself of those procedures; Judge O'Scannlain, specially concurred, agreeing that the challenge to the adequacy of the state process was premature, but expressed serious doubt about whether the just compensation requirement could be satisfied by future rent increases rather than by payments from the government, especially given that some of the future tenants who would pay increased rents would not necessarily have benefitted from the earlier lower rents).

5. *Zoltek Corp. v. United States*, 2003 WL 22937304 (Ct. Fed. Cls., December 9, 2003) (in a complicated and interesting case, the Court of Federal Claims ruled that, even though a federal statute (28 USC § 1498) bars a claim for compensation against the United States for patent infringement when the claim is one "arising in a foreign country," the Takings Clause of the Fifth Amendment, combined with the Tucker Act, provides an independent basis for seeking compensation when a patent infringement claim arises in a foreign country, on the theory that the infringement is an unconstitutional taking of private property rights).