Arkansas Game and Fish Commission v. United States
568 U.S. ____ (2012)

In a unanimous decision authored by Justice Ginsberg, the United States Supreme Court rejected the Federal Government’s claim of an automatic exemption from takings claims for temporary flooding. The Court, however, did not conclude that there was a taking in this case and remanded the decision to the Federal Circuit for further proceedings under the Penn Central factors for assessing regulatory takings.

Facts: In 1948, the Army Corps of Engineers (Corps) built Clearwater Dam, 115 upstream of the Dave Donaldson Black River Wildlife Management Area (Wildlife Area), 23,000 acres on both sides of the Black River. The Arkansas Game and Fish Commission (Commission) owns and manages the Wildlife Area for wildlife and hardwood tree production. For decades, the Corps operated the Dam pursuant to a “Water Control Manual,” which led to winter flooding in the Wildlife Area, but only for a short duration.

In 1993, the Corps approved a deviation from the Manual, at the urging of farmers, to reduce fall dam releases and give farmers more time to harvest. For the next 7 years, the Corps retained more water behind the dam, necessitating extended high-flow releases in the following months. This deviation led to an extended flooding period in the Wildlife Area, into the subsequent spring and summer. The prolonged flooding reduced the oxygen available to the trees and impeded root development. When a drought occurred in 1999-2000, the trees did not have a sufficient root system to survive. As a result, the Wildlife Area lost 18 million board feet of hardwood. The Commission therefore sued the Federal Government for a taking.

Proceedings Below: The Court of Federal Claims “concluded that the Corps’ deviations caused six consecutive years of substantially increased flooding, which constituted an appropriation of the Commission’s property.” The trial court calculated the reasonable compensation as the value of the lost timber and the cost of reclaiming the land. The Federal Circuit reversed, holding that Government-induced flooding gives rise to a taking claim only if the flooding is “permanent or inevitably recurring.” In essence, the Circuit accepted the Government’s claim that the law provided an exemption from takings claims for temporary flooding, largely relying on a 1924 Supreme Court decision. See, Sanguinetti v. United States, 264 U. S. 146 (1924)

No Automatic Exemption from Takings Claims for Temporary Flooding. The Supreme Court rejected the Government’s claim for an automatic exemption, but did not conclude that there was a taking, leaving that determination to the Federal Circuit on remand. The Court:

- Rejected the Government’s reliance on Sanguinetti as predating its temporary takings jurisprudence from World War II.
- Did not address whether the flooding was collateral or incidental, or whether Arkansas water rights law affected the investment-backed expectations of the State.
- Reviewed several factors that may be considered in whether flooding may be a taking, largely based on the Penn Central analysis of a regulatory taking.

In concluding, the Court explicitly limited its holding to the “automatic exemption” issue: “We rule today, simply and only, that government induced flooding temporary in duration gains no automatic exemption from Takings Clause inspection.”