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US Army Corp of Engineers Operation of Mississippi River Spillway/Fifth Amendment Taking: US Federal Appellate Court Addresses Oyster Farmers Claim

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The United States Court of Appeals, Federal Circuit (“Federal Circuit”) addressed in a May 21 Opinion an issue arising out of the operation of the Bonnet Carre Spillway (“Spillway”). See *Robert L. Campo, et al v. United States*, 2026 WL 142579.

The question addressed was whether oyster farmers adversely affected by the operation of the Spillway could allege a cognizable property interest for Fifth Amendment purposes.

The Spillway is stated to have been open for a total of 123 days in 2019 to prevent the Mississippi River from flooding New Orleans. This action resulted in the destruction of existing oyster stock, oyster beds, and reefs.

Oyster farmers affected by the 2019 Spillway events sued the United States in the US Court of Federal Claims. They alleged that the government took their real and personal property which included oyster stocks, oyster beds, and reefs in violation of the takings clause of the Fifth Amendment.

The Court of Federal Claims dismissed their Complaint holding that they failed to allege a cognizable property interest under the Fifth Amendment. The oyster farmers appealed to the Federal Circuit.

The Federal Circuit noted that water bottoms in Louisiana are largely owned by the State of Louisiana. Further, it states that:

...And “all oysters and other shellfish and parts thereof grown thereon, either naturally or cultivated, and all oysters in their shells after they are caught or taken therefrom, are and remain the property of the state (Louisiana), therefore, the state has a statutory scheme for oyster farming which includes requiring oyster leases to be issued to lease the state-owned water bottoms.

The oyster farmers allege they own oyster leases issued by the Louisiana wildlife and fisheries.

The Federal Circuit states that the main issue on appeal is whether there was a permanent taking of the oyster farmers’ property interest in violation of the Fifth Amendment. The resolution of this issue is deemed to be a determination of whether the operation of the Spillway in 2019 was for “coastal protection, conservation or restoration” as defined under a 2006 version of the Louisiana revised statute

§ 56:423. It concludes that is the case therefore the oyster farmers are held to have failed to allege the cognizable property interest for purposes of the Fifth Amendment.

This holding is based upon an analysis of the 2006 Louisiana statutes and how they define the scope of the alleged property rights associated with the oyster leases. The Louisiana statutory schemes are noted to limit the property rights of oyster leases and prevent them from raising certain claims against the United States.

Specifically, the 2006 version of the statute states that property rights enjoyed by oyster lessees are subordinate to the rights or responsibilities of the State, any political subdivision of the State, United States or any agency or agent thereof to take any action in furtherance of coastal protection, conservation or restoration. It also limits the types of actions an oyster lessee could raise and stated that the United States is free and harmless from any claims arising under any oyster lease for any purposes from diversions of freshwater sediment or any other actions taken for the purpose of coastal protection, conservation, restoration.

The Spillway was noted to be opened in 2029 because river levels were predicted to rise to minor flood stage in New Orleans. These events were deemed coastal protection, conservation or restoration. Therefore, the oyster farmers' leases were stated to prevent them from maintaining any action against the United States for any project, plan, activity, or act in relation to coastal protection, conservation, restoration.

In addition, the Spillway is a freshwater diversion structure. The statute states that the United States shall be held free and harmless from any claims as previously described. The oyster farmers were held to have failed to state a claim under the 2006 Louisiana statutory amendments which subordinate oyster farmers' leases to the United States Army Corp of Engineers' operation of the Spillway and placed limits on claims against the United States.

A copy the Opinion can be found [here](#).