Press Release

Washington Legal Foundation
Advocate for Freedom and Justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302 wlf.org

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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Asks Supreme Court to Review Decision Diluting Fifth Amendment Protection for Water Rights

(*United Water Conservation District v. United States*)

"The Fifth Amendment has no shoreline or riverbank. If the government takes your water, it has to pay you for it."

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the United States Supreme Court to review, and ultimately to reverse, a lower court's decision that the federal government's forced reallocation of water does not constitute a physical taking under the Fifth Amendment.

The case arises from an effort by the United States to take, without paying for it, 49,800 acre-feet of Santa Clara River water owned by the United Water Conservation District. The Fifth Amendment requires the federal government to pay "just compensation" whenever it takes another's property for "public use." But the Federal Circuit held that the United States's redirection of the Conservation District's water was a "regulatory" taking—which means, in practice, that the federal government will get the water for free.

WLF's brief explains why that's wrong. Had the federal government tried this gambit with land, or even the "enveloping atmosphere" over real estate, it would have been considered a physical taking, and the United States would have had to pay. There's no legitimate reason to treat water as a second-class property right. As the brief says, "Since the 'Constitution protects rather than creates property interests,' deprivations of water shouldn't be treated any differently than deprivations of land.

Celebrating its 48th year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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