On Wednesday, October 3, the Supreme Court will hear oral arguments in the case of the *Arkansas Game & Fish Commission v. the United States* to decide whether numerous water releases by the Army Corps of Engineers can be considered a prohibited "takings" under the Fifth Amendment of the Constitution. The decision is being closely watched by property rights activists, local governments, and other states to determine whether "temporary" discharges directed by the Corps can be considered takings that require compensation like other permanent government-controlled flooding events.

At issue in the case is as series of repeated flooding events triggered by the Corps of Engineers from the Clearwater Dam that the agency operates in southeast Missouri into the Black River Wildlife Management Area located in Northeast Arkansas. The Arkansas' Game & Fish Commission, contests that the releases which took place between 1993 and 2000 have caused severe, permanent damage to large swaths of the 23,000 acre site. The Commission is asking for compensation for the value of tree losses (roughly 18 million board feet) in the Management Area which were inundated with a steady flow of flood water at the behest of agricultural interests in Missouri. The longer lasting flood waters weakened tree roots, especially during the growing season, according to Arkansas foresters, and cost the state millions in timber sales and ecological damages. The Commission has turned down a settlement offer in August, and the agency's General Counsel James Goodhart was quoted in a recent *GreenWire* story saying that pursuing this legal action will "make certain that constitutional safeguards will be followed to prevent the corps from taking similar actions in the future."

Under the Federal Flood Control Act, the federal government is generally protected from liability suits over damages caused by temporary flooding events although property owners can technically seek restitution through legal action. Most legal observers agree that taking this approach can be a very difficult task because of the federal governments' legal protections built into the statute. The Commission's case received support from private property rights groups and their legal foundations which filed a friend of the court brief siting case law stating that "A temporary invasion that causes substantial harm to the property is no different in kind than a permanent invasion; both have the effect of depriving an owner of his or her rights in the land."

The Administration has argued that the damages being sought by the Arkansas Game & Fish Commission do not constitute a "takings" because any damage caused by the increased flood water was on a temporary, ad hoc basis and that other outside forces helped contribute to the damage in the Black River Wildlife Management Area that were outside the control of the Corps.
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