

Forest Fire Does Not Absolve the Government of Takings Liability

The U.S. Court of Appeals for the Federal Circuit recently held that the Government cannot avoid liability for burning commercially valuable timber because it burned the timber to stop a forest fire. The U.S. Court of Federal Claims recently dismissed the case of *TrinCo Investment Co. v. United States* based on the “doctrine of necessity,” which the Supreme Court has described as justifying “the destruction of real and personal property, in cases of actual necessity, to prevent the spreading of fire or to forestall other grave threats to the lives and property of others.”

In *TrinCo*, the plaintiffs owned over 2,300 timbered acres surrounded by the Shasta-Trinity National Forest in Northern California. In June 2008, a series of wildfires, known as the Iron Complex fire, were burning through Shasta-Trinity. As part of its efforts to contain the Iron Complex fire, the U.S. Forest Service intentionally burned the trees on almost 1,800 acres of TrinCo and the other plaintiffs’ property to reduce the amount of timber that could fuel the fire. TrinCo and the other plaintiffs sued for just compensation. The CFC dismissed, holding that the doctrine of necessity absolved the Government of any duty to pay for the timber.

But the Federal Circuit reversed, holding that TrinCo and the other plaintiffs had alleged a compensable taking, stating: “The Supreme Court has consistently held that the doctrine of necessity may be applied only where there is an imminent danger and an actual emergency giving rise to actual necessity.” Because there were “legitimate questions” as to whether or not TrinCo’s property had to be destroyed, the Federal Circuit held that the case should not have been dismissed.

The opinion can be read [here](#).

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