

04-100 SEIBER, ET AL. V. UNITED STATES

Decision Below: Unpublished

QUESTIONS PRESENTED

- (1) Can Petitioners state a claim for a taking under the Just Compensation Clause of the Fifth Amendment to the U.S. Constitution when state law defines standing timber as a separate and independent property interest and when the refusal of the United States Fish & Wildlife Service to issue an incidental take permit for a spotted owl nesting site denied Petitioners all economically beneficial or productive use of such timber and eviscerated their reasonable investment- backed expectations?
- (2) Can Petitioners state a claim for a physical taking of their property in violation of the Just Compensation Clause of the Fifth Amendment to the U.S. Constitution when, in order to protect a spotted owl nesting site, the United States Fish & Wildlife Service denied Petitioners the right to exclude the owls by refusing to issue an incidental take permit that would have authorized Petitioners to log their 40-acre tract of land?