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**Otay Mesa, California Landowners Challenge Critical Habitat Designation
of Commercial Property in Federal Appeal**

WASHINGTON, DC – Three landowners (“Appellants”) who together own 143 acres of valuable commercial property in Otay Mesa, California--Otay Mesa Property, L.P., Rancho Vista Del Mar, and Otay International, LLC--filed their brief in the United States Court of Appeals for the District of Columbia Circuit in *Otay Mesa Property, L.P. v. U.S. Department of the Interior* (Case No. 10-5204). This appeal arises from a challenge to the designation by the U.S. Fish and Wildlife Service (“FWS”) of a critical habitat for San Diego fairy shrimp, a small aquatic crustacean commonly known as “sea monkies,” on the property. Oral arguments are scheduled for April 12, 2011.

“We are optimistic that the D.C. Circuit will conclude – as the record clearly shows – that this property is not occupied by endangered fairy shrimp,” said lead counsel and managing partner Nancie G. Marzulla. “The 143 acres at issue here are directly in the path of the planned third border crossing, which means this property is slated for high-value development.”

In 2001, four San Diego fairy shrimp were observed in a road rut on the property. That road rut has since disappeared, and despite multiple visits both before and after the single sighting, surveyors found no additional evidence of San Diego fairy shrimp on the property. Nevertheless, FWS consolidated Appellants’ property and other nearby land that is occupied by San Diego fairy shrimp, under the joint designation of critical habitat. In 2008, Plaintiffs filed suit in the United States District Court for the District of Columbia, alleging that the designation violated the Administrative Procedures Act (APA), the Endangered Species Act (ESA) and the Natural Environmental Policy Act (NEPA). In *Otay Mesa Property, L.P. v. U.S. Department of the Interior*, 714 F. Supp. 2d 73 (D.D.C. 2010), the district court granted the Government’s request for summary judgment.

The appeal claims that FWS failed to identify any endangered fairy shrimp on the subject property, to correctly analyze the economic impact of the designation, and to prepare an environmental analysis, as required by NEPA.

Nancie Marzulla and Roger Marzulla’s Washington, D.C.-based law firm represents landowners whose ability to use their property has been impaired by government regulation. Nancie Marzulla and Roger Marzulla have been selected by their peers to be included on the list of Best Lawyers of America. For more information, visit <http://www.marzullalaw.com> or call 202-822-6760. Follow Nancie Marzulla at <http://www.twitter.com/takingslawyer>