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N. Cal. River Watch v. City of Healdsburg, 496 F.3d 993 (9th Cir. 2007)

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N. Cal. River Watch v. City of Healdsburg, 496 F.3d 993 (9th Cir. 2007) (holding that a pond, which is part of a larger wetland and located adjacent to a navigable water, is within the Clean Water Act's jurisdiction where a significant nexus exists through intermittent surface connection and an underground aquifer and because pond waters significantly affect the physical, biological, and chemical integrity of the navigable river).

In December 2001, Northern California River Watch ("River Watch") filed suit in the United States District Court for the Northern District of California alleging that the City of Healdsburg ("Healdsburg") violated the Clean Water Act ("CWA") by discharging sewage from its waste treatment plant into waters covered by the Act without first obtaining a National Pollutant Discharge Elimination System ("NPDES") permit. Healdsburg appealed the district court's finding that the Pond is subject to the CWA and claimed that the Pond is exempt because the CWA excludes waste treatments systems and active excavation operations. The United States Court of Appeals for the Ninth Circuit upheld the district court's decision.

In 1967, Basalt Rock Company ("Company") began excavating gravel and sand from land adjacent to the Russian River. After the Company completed its operation, the excavation pit filled up with water from the underlying aquifer and formed Basalt Pond ("Pond"). The Pond contains 58 acres of surface water and wetlands and a levee separated it from the Russian River ("River"), a navigable water. Water passes from the Pond to the River through an underground aquifer and by seeping through the separating levee. Healdsburg discharged enough effluent annually to nearly fill the Pond, which would overflow if the Pond did not drain into the aquifer, and ultimately into the River.

First, the court considered whether the Pond was subject to the CWA because it is a wetland that is adjacent to a water of the United States. Wetlands adjacent to navigable waters are regulable waters of the United States. The Army Corps of Engineers' ("Corps") regulations define wetlands as an area that is "inundated or saturated by surface or groundwater." The regulations further specify that "adjacent wetlands" are those that are "separated from waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like." There was no dispute as to whether the Russian River is navigable and therefore a water of the United States. Both parties agreed that the Pond and the River overlie the same aquifer and that the land separating the two is saturated below the water table. Further, the Pond's receding shoreline turned much of the area that was originally the Pond into wetland. Thus, the court determined that the Pond and surrounding area was within the CWA's jurisdiction and con-

stituted “waters of the United States” because it is an “adjacent wetland” within the Corps’ regulatory definition.

Although the court had already found that the Pond was within the CWA’s jurisdiction, the court next looked at whether the Pond qualified as a water of the United States based on whether a “significant nexus” existed between the Pond and River. A significant nexus exists if “the wetlands, alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters.” The court found that there was a significant nexus because (1) a physical connection existed through both a hydrologic and a surface connection between the River and Pond, (2) an ecological connection existed because both the River and Pond support similar populations of fish, mammals, and birds, and (3) Healdsburg’s discharge of sewage directly resulted in higher concentrations of chloride in the River downstream from the Pond, and thereby affected the chemical integrity of the River. Thus, the court affirmed the district court’s finding that the Pond’s effects on the River are “not speculative or insubstantial” and have a significant impact on the “chemical, physical, and biological integrity” of the River.

The court rejected Healdsburg’s argument that the Pond fell within the CWA’s exception for waste treatment systems and for ongoing excavation operations. The waste treatment exception is intended to exempt “either water systems that do not discharge into waters of the United States or waters that are incorporated in an NPDES permit as part of a treatment system.” Because the Pond is neither incorporated in an NPDES permit nor a closed system treatment pond, it did not fall under this exemption. The excavation operation exception applies only to bodies of water that are currently under excavation. The court determined that using the pond to discharge wastewater from the treatment plant and to deposit mining waste from other locations did not constitute an ongoing excavation operation. Therefore, the court affirmed the district court’s conclusion that the excavation operation exception did not apply because the Company abandoned its excavation activities in 1984 and there was no “ongoing excavation operation.”

In conclusion, the court held that the Pond was a water of the United States regulated by the CWA. Therefore, Healdsburg violated the CWA by discharging wastewater into the Pond.

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United States v. Moses, 496 F.3d 984 (9th Cir. 2007) (holding that the evidence sufficiently supported the determination that Teton Creek constituted a water of the United States, that Moses caused the unauthorized discharge of pollutants into the Creek, and that the district court did not abuse its discretion when it denied consecutive motions for a new trial).