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N. Cal. River Watch v. Redwood Landfill Inc., No. C07-05058 WHA (N.D. Cal. Dec. 21, 2007)

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tion to allocating groundwater, accounting for the transfer of rights, and anticipating well failures, the Settlement Agreement outlined various obligations for managing and preserving the health of the aquifer. As a result, the Settlement Agreement bound all parties to the litigation, prohibited new unauthorized wells, mandated registering and metering of each well, required annual reporting of well monitoring, disallowed overuse, and compelled safe operation. Lastly, the Settlement Agreement established a framework for dispute resolution by a court appointed water master.

Approximately one percent of the property owners objected to the Settlement Agreement on a number of grounds. The court considered two types of objections: disputes over the factual premises underlying the hydrogeologic analysis fundamental to the allotments in the Settlement Agreement and objections that the Settlement Agreement's daily household water allotment was too low. The evidence persuaded the court that the moving parties based their allocations of groundwater on reasonable expectations concerning probable trial court findings. Additionally, the court found the record left any claim of insufficient water allocation unproven and amounted solely to conjecture. The court determined that those objecting to the Settlement Agreement failed to establish either a water right superior or even equivalent to that of the Lummi Nation, or a water right that the Settlement Agreement materially injured.

Finally, as the Settlement Agreement significantly departed from the federal and state law systems for determining the allocations of water rights, the moving parties appealed to the court to vacate its prior orders relating to the relevant federal and state law. Under the Settlement Agreement, the United States and the Lummi Nation agreed not to assert seniority, assumed the risks connected with potential water shortages, and allocated water based on the aquifer's actual safe yield rather than the "practicably irrigable acreage combined with a domestic use allocation." Consequently, the previous orders stood at odds with the Settlement Agreement, and the court vacated the previous orders accordingly.

In conclusion, the Court established that the Settlement Agreement proposed by the moving parties satisfied the standard for judicial approval and offered a comprehensive and workable solution for all water users in the Case Area.

Kathleen Brady

N. Cal. River Watch v. Redwood Landfill Inc., No. C07-05058 WHA (N.D. Cal. Dec. 21, 2007) (holding that the court maintained subject matter jurisdiction because the notice alleging environmental violations was sufficiently specific, thereby satisfying the mandatory notice requirements of the Clean Water Act).

Redwood Landfill Inc. ("Redwood") moved to dismiss the complaint of Northern California River Watch ("River Watch") on the ground that the Federal District Court for the Northern District of California did not have subject-matter jurisdiction due to River Watch's failure to comply with the mandatory notice requirements of the Clean Water Act ("CWA"). Redwood owns and operates waste and composting facilities located on a six hundred acre lot in California that is surrounded by various bodies of water. On February 6, 2007, River Watch sent Redwood a notice of intent to file suit under the CWA. River Watch's notice alleged that Redwood (1) violated the terms of the General Industrial Storm Water Permit ("GISWP") and (2) discharged pollutants in the absence of a National Pollution Discharge Elimination System ("NPDES") permit.

Under the Environmental Protection Agency's ("EPA") regulations, notice regarding an alleged violation must include sufficient information to permit the recipient to identify the specific standard, limitation, or order alleged to have been violated; the activity alleged to constitute a violation; the location of the alleged violation; the date or dates of such violation; and the full name, address and telephone number of the person giving notice. Court's must dismiss a case for lack of subject-matter jurisdiction if a plaintiff fails to comply with these provisions. However, the Ninth Circuit Court of Appeals previously held that the regulation does not require that plaintiffs "list every specific aspect or detail of every alleged violation." Thus, the CWA's notice provisions require no more than "reasonable specificity." Redwood claimed that River Watch's notice failed to provide them with sufficient information to identify (1) the activity alleged to constitute the violation, (2) the location of the alleged violations, and (3) the date(s) of the violations.

The court determined that River Watch's notice sufficiently described and specified the two charges it leveled against Redwood. Regarding the first charge that Redwood violated the GISWP by allowing various discharges from its facilities to exceed EPA benchmarks, not fully developing or implementing a Storm Water Pollution Plan, and failing to utilize "best management practices," the court found that River Watch's description of the alleged violation and the standard applied was sufficiently specific, given River Watch's limited access to information. With regard to the second charge, River Watch's complaint specifically went into detail about the adequacy of Redwood's leachate collection and removal system and it cited specific groundwater reports that identified pollutants in the water that exceeded water-quality standards. Thus, the court also found that the notice contained enough information to identify the alleged activity that Redwood was in violation of the prohibition against discharging pollutants from a point source without a NPDES permit.

Regarding the GISWP claim, the notice already described the location of the landfill facility and its relation to surrounding waters. Further, the court found the phrase “during at least every rain event over one inch as measured by the National Oceanographic and Atmospheric Administration” sufficient to describe the time period in which Redwood engaged in illegal discharging. With regard to the NPDES claim, the court found River Watch’s use of monitoring reports sufficient in providing enough background information for Redwood to identify the location of the alleged discharges. Lastly, the court found that Redwood was sufficiently put on notice when River Watch specified a reasonable date range. The notice stated that it covered “all point source discharges occurring from February 6, 2002 through February 6, 2007.” Thus, the court determined that River Watch gave Redwood adequate notice of the dates and locations of its alleged violations.

Accordingly, the court denied Redwood’s motion to dismiss based on its determination that River Watch’s notice was sufficiently specific.

Vivian Chu

STATE COURTS

ALABAMA

Ala. Dep’t of Env’tl. Mgmt. v. Ala. Rivers Alliance, Inc., Nos. 2050974 & 2050995, 2007 WL 4555339 (Ala. Civ. App. Dec. 28, 2007) (holding that the evidence on record did not support the basis for the agency’s decision that waters were not impaired and was therefore clearly erroneous, and that the agency erred in granting a permit to a mining operation that would contribute to the further impairment of already impaired waters).

Tuscaloosa Resources, Inc, (“TRI”) applied for a National Pollutant Discharge Elimination System permit (“permit”) for mining operations in Tuscaloosa County, Alabama. In 2001, the Alabama Department of Environmental Management (“ADEM”) issued the permit. In 2002, two environmental groups, Alabama Rivers Alliance and Friends of Hurricane Creek, petitioned for an administrative hearing to contest ADEM’s decision to issue the permit to TRI. The environmental groups asserted that the law prohibited the permit because TRI’s mining operations would contribute to an existing violation of water quality standards.

In 2004, an administrative law judge (“ALJ”) agreed with the environmental groups. The ALJ held a hearing, determining that excessive iron, aluminum, and turbidity impaired Hurricane Creek and the North Fork of Hurricane Creek. Based on the waters’ impairment, the ALJ overturned the ADEM’s issuance of TRI’s permit. ADEM and TRI filed objections to the ALJ’s decision. As a result, the Alabama Environmental Management Commission (“AEMC”) held a hearing; the