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Southeastern Fed. Power Customers v. Harvey, 400 F.3d 1 (D.C. Cir. 2005)

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In conclusion, the court determined that the EPA exceeded its power by enacting the regulation. The court granted Northwest's motion for summary judgment and ordered the EPA to repeal the regulation.

Brian Stewart

Southeastern Fed. Power Customers v. Harvey, 400 F.3d 1 (D.C. Cir. 2005) (holding that the execution of a settlement agreement for contracts allotting water storage space was conditioned on vacatur of a preliminary injunction).

In 1946, Congress authorized the United States Army Corps of Engineers ("Corps") to design and construct the Buford Dam project on the Chattahoochee River. The Corps finished the dam in 1956, forming a reservoir called Lake Sidney Lanier. During the 1970s and 1980s, the Corps entered into renewable five-year contracts with various Georgia municipal and county water authorities ("Water Supply Providers"), which allowed the Water Supply Providers to withdraw water from the Chattahoochee or Lake Lanier for a fee. The last of these contracts expired in 1990; however, the Corps permitted the Water Supply Providers to continue withdrawing water under the terms of the expired contracts in increasing amounts. In October 1989, the Corps released a draft proposal to significantly increase the amount of the daily water withdrawal. In response, Alabama filed suit against the Corps in the United States District Court for the Northern District of Alabama in June 1990, alleging that the Corps violated the National Environmental Policy Act by failing to consider the potential effects of the increased withdrawals. Upon motion of the parties, the Alabama district court issued a stay order on September 19, 1990, which incorporated the parties' stipulation that they would not execute contracts or agreements that were the subject of the complaint in the action.

On December 12, 2000, Southeastern Federal Power Customers, Inc. ("Southeastern"), a non-profit association that represents rural electric cooperatives and municipal electric systems utilities that purchase hydropower from federal projects, filed this action in the United States District Court for the District of Columbia. Southeastern sought to enjoin the Corps from permitting the increased water withdrawals, which Southeastern claimed impaired the hydropower capacity of the Buford dam project to their financial detriment. Georgia and the Water Supply Providers moved to intervene in February 2001. On January 9, 2003, the parties concluded a settlement agreement which allowed for renewable interim ten-year contracts allocating water storage space in Lake Lanier to the Water Supply Providers, who were to pay higher fees for the storage to compensate Southeastern for lost hydropower. On January 16, 2003, the parties filed the settlement agreement with

the D.C. district court. In February 2003, Florida and Alabama moved to intervene in this action, and the D.C. district court granted the motion in October 2003. In February 2003, the states also moved to abate or transfer the action in the Northern District of Alabama, where, in January 2003, they had filed a motion in the Alabama action to enjoin and declare void the settlement agreement, claiming that it violated the 1990 stay of that action.

On October 15, 2003, the Alabama district court issued a preliminary injunction prohibiting the Corps and Georgia from filing or implementing settlement agreements or entering into any contracts affecting the Chattahoochee basin without approval of the court. On November 7, 2003, the D.C. district court denied the motion to dismiss, transfer, or abate this action. On November 24, 2003, the Alabama district court issued a stay on all activity in that action until the D.C. district court issued an order deciding the validity of the settlement agreement. On February 10, 2004, the D.C. district court rejected Florida's and Alabama's challenge and directed the settlement agreement was valid and may be executed provided that the Alabama district court vacate the preliminary injunction. Then, the D.C. district court issued an order dismissing the action as moot since it approved the settlement agreement. Florida and Alabama filed an appeal challenging the D.C. district court's approval of the agreement with the United States Court of Appeals for the District of Columbia Circuit.

The court dismissed the appeals for lack of jurisdiction. However, the court determined that the February 10 decision did not render all claims moot, since the D.C. district court approved the settlement agreement conditionally, if the Alabama district court vacated the preliminary injunction. Therefore, the court vacated the D.C. district court's dismissal order, dismissed the appeals of the orders for lack of jurisdiction, and remanded the case to the district court.

Stacy Hochman

Nat'l Wildlife Fed'n v. Brownlee, No. 03-1392, 2005 U.S. Dist. LEXIS 5688 (D.D.C. April 6, 2005) (holding the Army Corps of Engineers violated the Endangered Species Act by failing to consult with the U.S. Fish and Wildlife Service before issuing nationwide permits to dredge and fill wetlands as allowed by the Clean Water Act).

National Wildlife Federation ("NWF") filed suit against the Army Corps of Engineers ("Corps") in the United States District Court for the District of Columbia, challenging four nationwide permits ("NWP") that the Corps issued. NWF alleged that the Corps violated the Clean Water Act ("CWA"), National Environmental Policy Act ("NEPA"), Endangered Species Act ("ESA"), and Administrative Procedure Act ("APA") by failing to consult with the U.S. Fish and Wildlife