

1-1-2006

## Sierra Club v. Army Corp of Engineers, 399 F.Supp. 2d 1335 (Fla. Dist. Ct. 2005)

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Michelle Young, Court Report, Sierra Club v. Army Corp of Engineers, 399 F.Supp. 2d 1335 (Fla. Dist. Ct. 2005), 9 U. Denv. Water L. Rev. 639 (2006).

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tive effect of the project as a whole. The Corps' behavior was contrary to the underlying policy and intent of NEPA.

The Corps argued that Phase I of the project, the research facility, had independent utility from the rest of the project, and was thus a separate project. The court agreed with Florida Wildlife's argument that the Corps determination was arbitrary and capricious. It determined that the Corps' finding of "independent utility" was a rationalization employed to secure the permit as soon as possible. The court held that this behavior by the Corps undermined the purposes of NEPA.

The court also agreed with Florida Wildlife on the third issue regarding the Corps' insufficient consideration of the impacts of the project under NEPA. Even if the Corps did not unlawfully segment the project and its finding of independent utility was supported, the law still requires the Corps to address the "direct, indirect and cumulative impacts on all Federal interests within the purview of the NEPA statute." The court found that the Corps did not sufficiently address these impacts because it limited the project analysis to the impacts of the research facility without considering the impacts of the future and foreseeable development that would most likely occur if the plan for the facility was approved.

In light of its findings, the court ruled for Florida Wildlife, and granted their motion for summary judgment. The court then ordered both parties to submit memoranda addressing the issue of remedies.

*Charles Sweet*

**Sierra Club v. U.S. Army Corps of Engineers, 399 F.Supp. 2d 1335 (Fla. Dist. Ct. 2005)** (granting a preliminary injunction to enjoin any further authorizations under a general development permit that allowed certain wetland dredging and filling for the purposes of "suburban development" without meeting particular statutory requirements of the Clean Water Act).

In the District Court for the Middle District of Florida, the Sierra Club and the Natural Resources Defense Council ("Sierra Club") submitted motions in June 2004 to enjoin a regional general development permit issued in Northwest Florida by the United States Army Corps of Engineers ("Corps"). The regional permit in question ("SAJ-86") allowed for 48,150 acres of development including thousands of homes and other residential, commercial, recreational, and institutional projects. Much of the anticipated construction required the discharge of dredged materials into the wetlands. Sierra Club's complaint alleged that the Corps issued SAJ-86 in violation of the Clean Water Act ("CWA") and the National Environmental Policy Act. In assessing the need for a preliminary injunction, the district court found that the Sierra Club established that: (1) there is a substantial likelihood of Si-

erra Club's success on the merits; (2) authorizations under the permit would result in irreparable harm; (3) the balance of harms weighed in favor of the injunction; and (4) the injunction would not be adverse to the public interest.

CWA provisions authorize a general permit where the "activities [covered by the general permit] are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment." First, the Corps argued that SAJ-86 covered "similar in nature" activities in that they were all components of "suburban development." However, even applying *Chevron* deference, the district court found that the plain language meaning could not support such a broad definition of "similar in nature" that would encompass "activities ranging from horse stables to public works buildings, from light industrial facilities to multiple unit residential developments."

Second, the Corps argued that SAJ-86 did not violate the CWA's provision regarding "minimal cumulative adverse effect on the environment." The Corps pointed to several of the general permit's specific requirements, namely a 20% limit on the amount of wetlands that may be destroyed in the permit area, and the complex mitigation scheme involving a post-permit pre-authorization stage. However, the district court noted that the Corps did not establish that the environmental effects would be both separately and cumulatively minimal. The district court relied on *Ohio Valley Environmental Coalition v. Bulen* in holding that the CWA prohibits the Corps from conducting post-permit reviews of whether the development meets the minimum effects requirements or if it requires mitigation. Therefore, the Corps needed to have determined minimal environmental impact before rather than after the issuance of the general permit. Further, because the CWA requires assessment of all cumulative impacts of the development, SAJ-86's 20% limit on wetland destruction did not sufficiently address the issue.

Next, the district court turned to the question of irreparable harm, the balancing of harms and the public interest. Sierra Club based its request for preliminary injunction on its concerns surrounding the authorization of the WaterSound North development that would ultimately eliminate seventy acres of wetlands and have severe negative impacts on nearby Lake Powell. The Corps protested that the permit already included conservation and compensatory mitigation plans to protect the wetlands as well as stringent stormwater management systems and buffer zones to protect Lake Powell. However, the district court also took note of the Sierra Club's two experts who opined that the stormwater management system was scientifically flawed and that the setbacks were inadequate. Although the district court did not adopt one set of expert opinions over the other, it did find that the Sierra Club sufficiently demonstrated that irreparable harm would re-

sult absent the issuance of a preliminary injunction. The dredging and filling of the wetlands alongside the threatened contamination of Lake Powell cannot be undone or compensated through money damages.

Finally, the district court briefly addressed the remaining elements of acquiring a preliminary injunction and concluded that the balance of possible harms and public interest considerations weighed in the Sierra Club's favor. The Corps did not enumerate any specific harm that it would suffer because of the injunction, and although third parties may suffer losses in terms of missed development opportunities, there was a strong public interest in ensuring that the Corps act within its statutory boundaries. Further, the district court made special note of the fact that nothing in its order precluded a party from seeking an individual permit within the area specified by SAJ-86.

Therefore, the district court granted the Sierra Club's Motion for Preliminary Injunction, enjoined the Corps from issuing any new authorizations under SAJ-86, and enjoined any further development on the WaterSound North project until further order of the court or until the developers were able to obtain an individual permit.

*Michelle Young*

**City of Guymon v. Cal Farley's Boys Ranch Found., CIV 04-457-BA, 2005 U.S. Dist LEXIS 38506 (W.D. Okla. Dec. 30, 2005)** (holding that a city's proposed taking of a privately-owned water supply did not violate the federal or state constitutions' public purpose requirements when the city engineer's report documented an increase in population and a corresponding decrease in the city's available water supply).

The City of Guymon, Oklahoma ("City") passed a resolution seeking to exercise eminent domain over surface and water rights owned by Cal Farley's Boys Ranch Foundation ("Ranch"). A number of specific Oklahoma statutes authorize a municipality to exercise its eminent domain power for expansion of its water supply. However, both the United States Constitution and Oklahoma's state constitution require that the proposed taking involve a public use or purpose. The Ranch filed three exceptions to the City's proposed taking and moved for summary judgment on the third exception in the United States District Court for the Western District of Oklahoma, which claimed the taking did not serve a public purpose. The district court found the City's action did not violate either the federal or the state constitutions.

First, the court analyzed the City's action under the state constitution. For purposes of the state constitution, the City had the burden of proof to establish that the taking served a public purpose. The district court accepted the City Engineer's report indicating that the City's increase in population and decrease in available water supply constituted a *prima facie* showing that the taking served a public purpose. In addition, the court found the Ranch had not shown the City acted in