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Envtl. Conservation Org. v. Bagwell, No. 4:03-CV-807-Y, 2005 US Dist. LEXIS 21669 (N.D. Tex., Sept. 28, 2005)

Kevin Kennedy

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after concluding that the proposed filling would not significantly affect the quality of the human environment. As a special condition for the permit, the developer agreed to permanently preserve a 557 acre part of the Meadowlands located in Carlstadt, the neighboring borough. Carlstadt claimed injury resulting from the loss of taxable property and the increase in expenditures projected from the traffic and emergency services Xanadu will require.

The district court held that Carlstadt's alleged injuries do not fall within the zone of interests of section 404 of the CWA. The court stated that the purpose of section 404 is to control the degradation of aquatic resources that results from any replacement of water with fill materials. The court reasoned that since Carlstadt's interests in the litigation have nothing to do with water at all, but rather are concerned with the negative financial side effects of the mega-mall on Carlstadt's budget, the CWA claim must be dismissed.

The district court stressed that Congress enacted the CWA to protect the public interest in the waters of the United States; therefore, although the CWA and its regulations indicate that economic values, safety, the needs and welfare of the people, and tax revenues are among the factors that the Corps may consider, the agency is not required to exercise such a far reaching decision process when water is not the principle concern.

The district court applied the same rational in holding that Carlstadt's alleged injuries do not fall within the zone of interests of section 10 of the RHA. The purpose of section 10 is to prohibit obstructions in navigable waters. Since Carlstadt did not argue that the permit adversely impacts navigable waters, the district court held that the claim was outside of the RHA's zone of interest.

Based on these findings, the district court dismissed Carlstadt's CWA and RHA claims with prejudice.

Roman Ginzburg

Envtl. Conservation Org. v. Bagwell, No. 4:03-CV-807-Y, 2005 US Dist. LEXIS 21669 (N.D. Tex., Sept. 28, 2005) (holding summary judgment was proper where developers violated the terms of their Clean Water Act and state permit by failing to remove accumulations of sediment from storm water discharges in a timely manner).

The Environmental Conservation Organization ("ECO") brought a citizens suit under section 505(a) of the Clean Water Act ("CWA"), seeking declaratory judgment, an injunction, and civil penalties against the developers of the Broughton residential subdivision in Colleyville, Texas. The ECO contended that the developers failed to adequately manage storm-water runoff from the commencement of construction in December 2001, through the date of the hearing in 2005. The ECO

claimed the runoff caused an accumulation of sediment in the ponds of a neighboring subdivision.

The ECO sought partial summary judgment on two issues: (1) the developers' general liability for storm-water discharges containing sediment occurring since the commencement of construction; and (2) liability for twenty-seven specific dates of such discharge.

The developers' permit, first issued by the EPA, and later by the state of Texas, required that the sediment be removed "at a frequency to minimize further negative effects, and whenever feasible, prior to the next rain event." The ECO's evidence showed that the commencement of the discharges coincided with the beginning of construction in December 2001. The ECO brought the problem to the developer's attention in mid-2002. The developers offered to remove sediment from a portion of one of the ponds approximately one year later.

The United States District Court for the Northern District of Texas, Fort Worth Division stated that the CWA's objective is to restore and maintain the chemical, physical, and biological integrity of United States waters, and that Congress established the National Pollution Discharge Elimination System ("NPDES") permit program to achieve the CWA's objectives. As such, the discharge of pollutants into waters of the United States is unlawful unless one obtains an NPDES permit and complies with its terms. Here, the developers failed to comply with the terms of their permit. The court found that as a matter of law, the developer's offer in 2003 did not constitute removing the sediment "at a frequency to minimize further negative effects" as required by the permit.

The court granted summary judgment in the ECO's favor regarding this first issue, but found that material issues of fact existed regarding the question of specific dates.

Kevin Kennedy

STATE COURTS

ARIZONA

Maricopa-Stanfield Irrigation & Drainage Dist. v. Robertson, 123 P.3d 1122 (Ariz. 2005) (holding agricultural landowners did not have vested rights to irrigation water from the Central Arizona Project because the landowners were neither parties to, nor third party beneficiaries of the water delivery contract).

The Central Arizona Water Conservation District ("CAWCD") entered into a master contract with the United States and several sub-contracts with the Maricopa-Stanfield Irrigation & Drainage District and the Central Arizona Irrigation and Drainage District ("Irrigation