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Save Our Sonoran v. Flowers, 381 F.3d 905 (9th Cir. 2004)

Sean R. Biddle

the plant according to the Order issued, the court found that there must be a good-faith allegation of continuous or intermittent violation for the suit to be proper. The burden is on the City to show that the alleged violations were not likely to recur. The court found that the City satisfied their burden, because the minor violations occurred before the replacement of the outdated plant.

Lynch and Ailor also argued that the district court erred in dismissing their RCRA claim. The court upheld the district court's ruling that the case was moot. The court reasoned that the City's actions after the filing of the lawsuit remedied the injuries alleged in the complaint with no showing of a reasonable likelihood of recurrence. Additionally, the court upheld the district court's dismissal of Lynch and Ailor's RCRA claim based on the fact that the relief available under RCRA is no different than the relief available under the CWA.

Conversely, the dissent argued the City did not satisfy its burden to show that alleged violations would not recur. Since the plant's last violation was only six months before the district court granted summary judgment, the dissent asserted that this was not enough time to show a reasonable likelihood that the discharges and overflows would not recur, especially with the possibility of higher flows in winter and spring. The dissent also stated the state's determination that the City substantially complied with its obligations should not shield the City from citizen suits seeking to enforce the CWA.

For the reasons above, the court affirmed the district court's holding that Lynch and Ailor's suit was moot and that relief is not available under RCRA or the CWA when the previous actions already remedied the alleged injuries.

Kathleen Booth

NINTH CIRCUIT

Save Our Sonoran v. Flowers, 381 F.3d 905 (9th Cir. 2004) (holding: (1) a district court's grant of a preliminary injunction suspending construction activities is reviewed only for an abuse of discretion where the reasons for granting the injunction are firmly based in the factual record of the case; and (2) that an organization challenging an action based on National Environmental Policy Act noncompliance has standing as long as the organization's injury in fact results from the alleged noncompliance).

56th & Lone Mountain, L.L.C. ("Lone Mountain") appealed to the Ninth Circuit Court of Appeals the decision of the United States District Court for the District of Arizona granting a preliminary injunction against any construction activity on a planned housing development located on 608 acres of undisturbed land in the Sonoran Desert. The district court granted the injunction pending the outcome of a suit brought by a nonprofit organization, Save Our Sonoran ("SOS"),

against Lone Mountain and the Army Corps of Engineers ("Corps") for alleged violations of the National Environmental Policy Act ("NEPA") and the Clean Water Act ("CWA"). The alleged violations of the NEPA and the CWA arose from permits granted to Lone Mountain by the Corps to fill 7.5 acres of washes located on the proposed construction site. Both Lone Mountain and SOS appealed the amount of the $50,000 bond the district court required SOS to post. The Corps did not appeal the decision of the district court.

On appeal, Lone Mountain contended that SOS lacked standing to challenge the fill permit's compliance with the NEPA and the CWA, because the individual members lacked the necessary standing required for a suit brought by an organization on behalf of its members. The Ninth Circuit rejected this contention and upheld SOS's standing. The court found that an individual member of an organization only has to demonstrate an injury in fact by the challenged activity to establish standing under the NEPA. Degradation of both recreational and aesthetic interests in a particular place establishes the necessary injury in fact. Further, a member of the public does not need to physically access the parcel of land in question in order to demonstrate a protectable aesthetic interest. Once an affected party demonstrates an injury in fact, an alleged noncompliance with the NEPA establishes both causation and redressability under the relaxed standards of the statute. The court affirmed the district court's determination that the individual members of SOS had the necessary standing to bring the suit for the preliminary injunction, because many of the organization's members owned adjacent lands and long used the proposed construction site for wildlife viewing.

After confirming SOS's standing, the court analyzed several findings in evaluating whether the district court abused its discretion in granting the preliminary injunction. The district court found that SOS raised a significant question on the merits of the permit by challenging the Corps' compliance with the NEPA in granting the permit, required by the CWA, to fill the washes because the Corps restricted the assessment of adverse environmental impacts to only the 7.5 acres affected by direct construction activities. Since the 7.5 acres of washes are interconnected with the remaining 31.3 acres of washes braided through out the entire property, the court determined that filling the 7.5 acres of washes could significantly impact a larger percentage of the land than the Corps considered. In evaluating the relative harm to the parties, the district court determined that the irreparable nature of the environmental harm from allowing construction activities to proceed outweighed the financial burden placed on Lone Mountain by the injunction. Since the court found no clearly erroneous factual findings by the district court and the district court did not apply an incorrect legal standard, the court determined that the district court did not abuse its discretion in granting the preliminary injunction.

Both parties challenged the equity of the $50,000 bond imposed on SOS. In challenging the amount of the bond as excessive, SOS relied on past precedent where courts had either not required public interest organizations to post a bond at all or required the posting of only a nominal amount. However, SOS presented no evidence of hardship caused by the bond when given the opportunity by the district court. Lone Mountain contended that the bond must be sufficient to compensate the company for any losses incurred as a result of the injunction; therefore, the district court set the bond amount too low. The court affirmed the amount of the bond, because the district court had considerable discretion in setting the amount of the bond to secure the preliminary injunction limited only to the extent that the amount of the bond would prevent the affected party from going forward with the suit.

In conclusion, the court applied a deferential standard of review to the decisions of the district court and affirmed both the grant of the preliminary injunction and the amount of the security bond required of SOS.

Sean R. Biddle

United States v. Matley Family Trust, 354 F.3d 1154 (9th Cir. 2004) (holding that the Water Master is not required to follow Federal Rules of Evidence or Civil Procedure in water reclassification hearings and before reclassifying land, the Water Master must consider principles of beneficial use in addition to reductions in crop yield).

The land in dispute is part of the Newlands Reclamation Project ("Project"), which relies on two judicial decrees for allocating water rights from the Truckee and Carson Rivers, the Alpine Decree and the Orr Ditch Decree. These decrees classified Project land as either "bottom land" or "bench land" based on the land's soil characteristics. However, the decrees did not specify a method for applying the classifications to Project lands. In 1986, the Department of Interior ("DOI") reviewed soil surveys and adopted a classification scheme for each parcel in the Project. The Truckee Carson Irrigation District, which represented the Matleys and other owners of land within the Project, challenged the DOI scheme, based on the reduction of the Matleys allocation from 4.5 acre feet per year ("af") to 3.5 af. Under that challenge, the United States District Court for the District of Nevada ruled in favor of the Matleys. However, the United States Court of Appeals for the Ninth Circuit reversed, remanded, and limited the district court's review to determining if the DOI had acted arbitrarily and capriciously in promulgating the regulations. On remand, the district court upheld the DOI criteria and classification maps. The Matleys then appealed the reclassification on the basis that the reallocation caused a decrease in crop yield. The Water Master recommended that the DOI grant