

1-1-2005

United States District Courts: Am. Rivers, Inc. v. United States Army Corps of Eng'rs, Civ. No. 04-3188, 2004 U.S. Dist. LEXIS 25410 (D. Minn. Dec. 10, 2004)

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Kathryn Garner, Court Report, United States District Courts: Am. Rivers, Inc. v. United States Army Corps of Eng'rs, Civ. No. 04-3188, 2004 U.S. Dist. LEXIS 25410 (D. Minn. Dec. 10, 2004) , 8 U. Denv. Water L. Rev. 648 (2005).

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interest in the outcome, the case was moot. The court concluded the instant action was not moot because the District of Columbia district court only conditionally approved the settlement, and that condition was an event not certain to occur. The settlement agreement was only tentative, so the underlying action was not moot. The court would not consider the approval of the settlement agreement as a final disposition until the Alabama district court lifted its preliminary injunction.

The court determined it lacked jurisdiction in this case because the District of Columbia district court's approval of the settlement did not constitute a final position. The court remanded the case because Article III of the United States Constitution prohibited federal courts from issuing advisory opinions.

Kevin Kennedy

UNITED STATES DISTRICT COURTS

Am. Rivers, Inc. v. United States Army Corps of Eng'rs, Civ. No. 04-3188, 2004 U.S. Dist. LEXIS 25410 (D. Minn. Dec. 10, 2004) (holding a claim seeking an injunction to lower water flow levels becomes moot when water flow levels are voluntarily lowered back to original amounts sought).

In July 2004, American Rivers, Inc., sought a preliminary injunction from the District Court for the District of Minnesota ordering the United States Army Corps of Engineers ("Corps") to reduce releases from a dam on the Missouri River. Both sides moved for summary judgment.

The dispute related to a United States Fish and Wildlife Service ("FWS") biological opinion ("BiOp") that FWS issued in 2003. FWS issued the BiOp after consulting with the Corps about increasing water flow from a dam on the Missouri River. After consultation, FWS determined an increase in water flow would jeopardize three endangered species. Pursuant to the Endangered Species Act ("ESA"), FWS set forth reasonable and prudent alternatives in the 2003 BiOp. One alternative allowed modification of water flow only after the Corps constructed 1200 acres of shallow water habitat. Once the Corps constructed the artificial habitat, FWS allowed the Corps to increase flows above the current threshold. In 2004, FWS determined the Corps successfully constructed the 1200 acres of shallow water habitat and authorized increased water flow.

American Rivers filed suit against both the Corps and FWS. First, American Rivers claimed the Corps violated the ESA by increasing water flow. Second, American Rivers claimed FWS acted arbitrarily and capriciously in determining that the Corps successfully constructed the habitat.

The court dismissed the suit against the Corps because American Rivers failed to provide proper notification under the ESA. American Rivers' notice of intent letter and complaint alleged different claims and failed to provide adequate notice. Thus, the court found it had no jurisdiction over the claim.

The court also dismissed American Rivers' claim that FWS failed to properly implement the 2003 BiOp. Although the Corps initially increased flow levels, the Corps subsequently reduced water flow to previous levels because of heavy rains. Thus, the court concluded the case was moot because American Rivers had no injury at the time of litigation.

The also court found it lacked jurisdiction to decide the ESA claim against the Corps, due to American Rivers' faulty notice letter. Additionally, the court held the claim against FWS regarding implementation of the alternative was moot. Thus, the court granted summary judgment for FWS and the Corps and dismissed American Rivers' complaint without prejudice.

Kathryn Garner

Cassaboon v. Town of Somers, 359 F. Supp. 2d 320 (S.D.N.Y. 2005)

(holding a town's issuance of a permit allowing individuals to connect their home to a local water district did not authorize excavation of a right of way and, therefore, did not violate procedural or substantive due process, affect a taking or condemnation, or violate first amendment rights).

John and Barbara Ann Cassaboon ("the Cassaboons") filed suit in the United States District Court for the Southern District of New York against the Town of Somers ("Town") and Stephen and Marie Danko ("the Dankos") alleging violations of multiple federal rights. Specifically, the Cassaboons contended the Town denied them procedural and substantive due process, took a right of way they owned, and violated their First Amendment rights by retaliating against them for prior claims against the Town. The Cassaboons claimed the Dankos were also liable because the Dankos collaborated with the Town to deprive the Cassaboons of federal rights. Finally, the Cassaboons' complaint asserted a trespass claim and a de facto condemnation claim under New York state law. The court granted the Town's summary judgment motion, dismissed all claims against the Town, and partially granted the Dankos summary judgment motion dismissing all claims except for the trespass claim.

This case developed after the Dankos moved into a new home and discovered the well supplying their home with water was dry. The Dankos lived outside of the water district that supplied the Town, and to solve their water problem, they petitioned for an out-of-district permit. On January 17, 2002, the Town board met and voted in favor of a