

1-1-2005

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

Jared Ellis

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>

---

### Custom Citation

Jared Ellis, Court Report, Cassaboon v. Town of Somers, 359 F. Supp. 2d 320 (S.D.N.Y. 2005), 8 U. Denv. Water L. Rev. 649 (2005).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

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

resolution approving the out-of-district permit ("Resolution"). To connect their home to the water supply, the Dankos excavated a right of way adjacent to their land that appeared on the Dankos' survey as part of an unimproved street. The Cassaboons owned parcels of land on both sides of the right of way and claimed they owned the right of way under New York law because the Town abandoned it. No party disputed this claim. The Cassaboons claimed their property, if united with the right of way, would be very valuable. As a result, the Cassaboons filed suit.

The court concluded the Town did not violate the Cassaboons' federal rights because the Resolution only gave the Dankos the right to connect to the Town water supply, not to excavate the right of way. The Resolution, therefore, did not authorize the Dankos' excavation. Because the Town did not deprive the Cassaboons of a liberty or property interest, the court dismissed the takings claim and First Amendment claim. The court stated the Town's failure to give the Cassaboons notice of the meeting did not violate the Cassaboons' procedural due process rights because the meeting did not deprive the Cassaboons of property.

Since the Town did not deprive the Cassaboons of a property interest, the court also dismissed the claims for violations of federal rights against the Dankos. The Dankos did not act together with the Town to deprive the Cassaboons of their rights; furthermore, the Dankos were private actors. The court similarly dismissed the condemnation claim against the Dankos because the Town did not take the Cassaboons' property. However, the court allowed the trespass claim against the Dankos to go forward in the New York Supreme Court.

Thus, the court dismissed all of the Cassaboons' claims against the Town and all of the Cassaboons' claims against the Dankos, except for the state law trespass claim.

*Jared Ellis*

**Day v. Edwards Aquifer Auth., No. SA-03-CA-0492-FB, 2004 U.S. Dist. LEXIS 8908 (W.D. Tex. Mar. 24, 2004)** (granting Edwards Aquifer Authority's motion to dismiss because the Edwards Aquifer contained a limited amount of water, the water and its regulation was of vital importance to the citizens of Texas, and the state maintained a comprehensive regulatory system to manage the Aquifer).

On December 30, 1996, Burrell Day and Joel McDaniel (collectively "Day") filed an application with the Edwards Aquifer Authority ("Authority") requesting to withdraw 700 acre-feet of water from the Edwards Aquifer. The Authority approved Day's application in 1998. However, in 1999 Day realized that the existing well needed substantial repairs, and accordingly applied to the Authority to transfer the initial