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minimal effects on those resources. The court explained that EPA guidelines required the Corps to consider more than just cumulative effects on wetlands. The court concluded the Corps' "minimal effects" finding failed because the Corps relied on mitigation measures unsupported by substantial evidence and failed to evaluate the cumulative effect on non-wetland aquatic environments, in particular, downstream waters that might feel secondary effects. Therefore, the court determined the Corps' minimal adverse effect finding was arbitrary and capricious.

The Environmental Groups argued the Corps' similar impacts finding was arbitrary and capricious because GP 98-08 expressly authorized activities that caused different impacts. For example, the Environmental Groups cited the Corps' authorization of permanent as well as temporary impacts specifically that the Corps did not distinguish between impacts on different regions of Wyoming with different local ecosystems. In response, the Corps argued that permit conditions, which placed limitations on the acreage permitees could affect, made the impacts of GP 98-08 activities similar. The court explained "activities otherwise similar in nature may differ in environmental impact due to their location," but "permit conditions ... can render otherwise dissimilar impacts, similar." The court determined GP 98-08's conditions made the various activities' environmental impacts similar because no matter what type of activity the permit authorized, the conditions limited wetland fill to 0.30 acre or less. Therefore, the court determined the Corps' reliance on permit conditions make its similar impact finding was not arbitrary and capricious.

The court thus remanded the case to the Corps, ordering the Corps to justify reliance on mitigation and to consider the cumulative effect of GP 98-08 on non-wetland aquatic environments.

Elizabeth Frost

STATE COURTS

ARKANSAS

Swaim v. Stephens Prod. Co., No. 03-1395 2004 Ark. LEXIS 588 (Oct. 14, 2004) (holding landowners, as riparian owners, own additional land formed by accretion, which is subject to royalty interests).

Buel and Sharon Swaim and David Kinney, Sr. ("landowners"), successors-in-interest to Carrie Davidson and J.T. Harris, separately owned two real property tracts adjacent to the Arkansas River ("River") in Franklin County. The landowners brought an action in the Arkansas Supreme Court to appeal the Franklin County Circuit Court's order granting summary judgment for Stephens Production Company

("Stephens"). The case came before the supreme court as an issue of first impression.

In the late 1950s and 1960s, the landowners entered into oil, gas and mineral leases with Stephens, a division of Stephens Group. The State of Arkansas also entered into an oil and gas lease with Gulf Oil Corporation, later succeeded by Stephens, for a tract of land underlying the River, which abutted the eastern side of both landowners' tracts. All three leases reserved to the lessors a one-eighth royalty in the oil and gas produced; however, the landowners' leases included additional express provisions extending both leases to accreted land. In 1967 Stephens commenced natural gas development and production in all three areas. In 1990 the landowners amended their leases with Stephens to reserve a three-sixteenth royalty, but the State lease for the River remained the same. Over the course of many years, the River shifted eastward causing accretion on the landowners' land. In 2000 the landowners obtained quitclaim deeds from the State covering this accreted land. In 2001 they sued Stephens in trial court for payment under the lease terms for their share of gas produced from the accreted land.

On appeal, the supreme court addressed the issue of land formed by accretion. Arkansas law states that when a gradual and imperceptible alteration in the land forms accretion land, the ownership of the land vests in the riparian owner from whose shore or bank the water receded. As a rule, the water itself forms a natural boundary and a contiguous landowner's rights change as the natural boundary lines change. Arkansas law also gives the State Land Commissioner the power and authority to execute deeds to lands of riparian owners upon application and the filing of proof of record ownership of adjacent land.

Stephens admitted that the landowners obtained deeds from the State but argued that oil and gas leases are more than conveyances of determinable interests in the oil and gas below the lands that they cover. Stephens also contended that its lease with the State continued to run with the accreted land. The supreme court ruled that unlike a conveyance where a grantor transfers title to a grantee, ownership of the land vests automatically in the riparian owner when land accretes. Therefore, Stephens did not continue to hold mineral lease rights in land vested to the riparian owner because the accreted land did not transfer by conveyance. The court held that the State's lease did not apply to the accretion lands since the State's lease did not expressly provide that it run with the accreted land.

In conclusion, the Arkansas Supreme Court held that the landowners, as riparian owners, owned the additional land formed by accretion, which ownership encompassed both surface and mineral rights. Because the lease agreements between Stephens and the landowners contained express terms on accretion, the accreted land was

subject to the landowners' respective royalty interests. The court reversed the trial court's order of summary judgment and remanded for entry of summary judgment in favor of the landowners.

Julia Herron

CALIFORNIA

Bldg. Indus. Ass'n of San Diego County v. State Water Res. Control Bd., 22 Cal. Rptr. 3d 128 (Cal. Ct. App. 2004) (holding the State Water Board or a regional water board may impose municipal storm sewer control measures more stringent than federal Clean Water Act standards).

The Clean Water Act ("CWA") prohibits pollutant emissions from "point sources" unless the party discharging the pollutants obtains a National Pollution Discharge Elimination System ("NPDES") permit. The Environmental Protection Agency ("EPA") or a state with a federally approved water quality program may issue an NPDES permit. In 1987 Congress amended the CWA to add provisions concerning NPDES permits for storm sewer discharges. The California Regional Water Control Board, San Diego Region ("Regional Water Board"), issued a comprehensive municipal storm sewer permit governing nineteen local public entities. The Regional Water Board included in the permit prohibitions concerning municipal storm sewer discharges. The permit prohibited municipalities from discharging pollutants not reduced to the "maximum extent practicable" and from discharging pollutants which cause the receiving water body to exceed the applicable water quality standard.

The Building Industry Association of San Diego County ("Building Industry"), an organization representing the interests of construction-related businesses, filed an administrative challenge with the California Water Resources Control Board ("State Water Board"). The Building Industry argued that the permit violated federal law because it allowed the State Water Board and the Regional Water Board to impose municipal storm sewer control measures more stringent than the federal standard. The federal standard only required that municipalities reduce discharged pollutants to the maximum extent practicable. The Building Industry argued that under federal law, the "maximum extent practicable" standard is the exclusive measure that may be applied to municipal storm sewer discharges, and a regulatory agency may not require a municipality to comply with a state water quality standard if the required controls are more stringent than the "maximum extent practicable" standard.

The State Water Board rejected the Building Industry's appeal. Next, the Building Industry brought an action in the Superior Court of San Diego County against the Water Boards, challenging the Regional Water Board's issuance of the permit and the State Water Board's de-