

9-1-2003

United States v. Rueth Dev. Co., 335 F.3d 598 (7th Cir. 2003)

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Gerritt James Koser, Court Report, United States v. Rueth Dev. Co., 335 F.3d 598 (7th Cir. 2003), 7 U. Denv. Water L. Rev. 144 (2003).

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(affirming district court ruling rejecting a motion to void a consent decree based on a later Supreme Court decision).

In January 1999, the Environmental Protection Agency (“EPA”), Rueth Development Company and Harold Rueth (collectively “Rueth”) entered into a consent decree after the EPA issued an administrative compliance order finding that Rueth had illegally discharged fill material into wetlands adjacent to water flowing into navigable waters of the United States. Rueth agreed to restore the wetlands under the Clean Water Act (“CWA”), paid a civil penalty, and agreed to additional civil penalties if he failed to perform milestone tasks within prescribed deadlines. Although Rueth eventually completed the wetland restoration, he failed to meet deadlines for performing several of the milestone tasks. The government then sought enforcement of the stipulated-penalties provision of the decree in the United States District Court for the Northern District of Indiana.

Prior to the district court’s ruling, Rueth moved for modification of the consent decree based on *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* (“SWANCC”). In *SWANCC*, the Supreme Court held CWA jurisdiction did not “extend to isolated intrastate waters solely because they are used as habitats by migratory birds.” However, since the EPA did not use the “Migratory Bird Rule” as its basis for jurisdiction in the present case, the district court found the consent decree valid and granted the government’s motion to enforce the consent decree with penalties.

Rueth then moved to alter the judgment claiming there was no evidence the wetlands were adjacent to a navigable waterway. The district court consented that the issue of adjacency remained open to dispute and thereby vacated that portion of the prior order.

Rueth additionally argued the consent decree did not allow separate penalties for each uncompleted or delayed milestone. The district court upheld its award of these penalties and held the government’s regulatory jurisdiction remained because Rueth, in voluntarily entering into the consent decree, waived the right to contest. Rueth appealed to the Seventh Circuit Court of Appeals.

On appeal, the court affirmed the district court’s dismissal of Rueth’s *SWANCC* argument. Rueth then argued there was a lack of adjacency jurisdiction because the government had not provided evidence the wetlands were adjacent to navigable waters, the district court order assumed the wetlands were isolated rather than adjacent, and the wetlands’ link to the navigable waters was too attenuated to establish adjacency. The court rejected these arguments stating that because both parties agreed upon the consent decree, the need to provide such information was not necessary for unanticipated future litigation. The court also held that Rueth previously waived his right to litigate this issue by signing the consent decree.

Rueth then argued it would be unfair for the court to hold him to the terms of the consent decree because at the time of the original settlement, unlike the time of the appeal, the government still had the ability to enforce jurisdiction over isolated waters. The court rejected this argument stating that at the time of the consent decree, Rueth weighed his options, calculated the chances of success, and voluntarily settled the case. The court referred to *United States v. Krilich* as the basis for rejecting this argument. In *Krilich*, the court rejected Krilich's motion to vacate a consent decree based on SWANCC because the court believed that to vacate the decree would discourage the negotiation of settlements and would undermine the finality of such agreements.

Next, Rueth argued the consent decree's language imposed cumulative stipulated penalties not for each uncompleted milestone, but rather for each day of noncompliance, regardless of the number of violations. The court rejected this argument, stating that the clear intent of the consent decree was to mandate a restoration in a short period of time and that if the court were to accept Rueth's proposition, there would have been no incentive to complete unfinished milestones if already in violation of others.

The court also rejected Rueth's final arguments that: (1) the penalties violated due process, (2) the district court erred by failing to examine whether the EPA consented to the delays, and (3) the district court should have considered the CWA's statutory criteria for determining penalties because Rueth voluntarily signed the consent decree. Thus, the court affirmed the district court's judgment.

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NINTH CIRCUIT

County of Okanogan v. Nat'l Marine Fisheries Serv., No. 02-35512, 2003 U.S. App. LEXIS 16748 (9th Cir. Aug. 14, 2003) (holding Forest Service had authority to restrict the use of rights of way to protect endangered fish under Federal Land Policy and Management Act, National Forest Management Act, Organic Administration Act, and Multiple Use Sustained Yield Act of 1960).

The United States Forest Service ("Forest Service") restricted the use of the Early Winters Ditch and the Skyline Irrigation Ditch to maintain instream flow levels for the protection of fish under the Endangered Species Act ("ESA"). The United States District Court for the Eastern District of Washington held that the Forest Service had the authority to place restrictions on rights-of-way permits.

On appeal to the United States Court of Appeals for the Ninth Circuit, Okanogan County, a company, a partnership and three individuals (collectively "Okanogan") sought review of the district