Water Law Review

Volume 7 | Issue 1 Article 36

9-1-2003

United States v. Michigan, 261 F. Supp. 2d 906 (E.D. Mich. 2003)

Karen L. Golan

United States v. Michigan, 261 F. Supp. 2d 906 (E.D. Mich. 2003)

interests among the entities in question made the requisite level of certainty impossible. The court granted summary judgment against NMFS. Since the NMFS could cure the deficiency before it would have any impact, however, the court held it unnecessary to set the entire opinion aside and remanded it to the agency for amendment.

PCFFA also asserted the incidental take statement was deficient because it failed to specify the amount or extent of the take. NMFS claimed that no meaningful estimate was possible on the available scientific and commercial data. The ESA, however, requires an incidental take statement to quantify the potential take as precisely as is scientifically practicable. It does not forego quantification because it is imprecise. The point of quantifying the potential take is to impose a threshold of liability on the acting agency. The court found that the incidental take statement, lacking such a threshold entirely, was arbitrary and capricious. It remanded the statement for amendment.

The Tribes moved the court to declare the Bureau in breach of its fiduciary duty toward them. As trustee to Indian Tribes, the United States has a fiduciary duty to protect the Tribes' rights and resources. The Bureau was bound to preserve Tribal resources within the Project area, including the coho salmon. The Tribes contended that the Bureau breached its duty to protect their resources by failing to release flows adequate to support fish populations. They alleged the low flow rates directly contributed to large fish kills in 2002. However, the court held that a jury could find for the Bureau based on the evidence. The court denied the Tribes' motions for summary judgment.

Owen Walker

United States v. Michigan, 261 F. Supp. 2d 906 (E.D. Mich. 2003) (ordering creation of the Southeast Michigan Consortium for Water Quality to assist the court in solving regional water quality problems).

In 1977 and 1987 the Environmental Protection Agency ("EPA") brought two cases against both the Detroit Water and Sewerage Department and the communities it served, and the Wyandotte Wastewater Treatment Plant and the communities it served. These two cases both resulted in consent judgments, which the United States District Court for the Eastern District of Michigan approved and oversaw, addressing a range of problems affecting water quality in southeast Michigan. A related complex water quality case concerned the Rouge River Watershed. The court noted that while the communities involved in the Rouge River Watershed case had utilized several innovations to reduce their adverse impact on water quality, more needed to be done by all of the impacted Southeast Michigan communities to improve the region's water quality.

To assist in this task, the court invited forty governmental leaders to join the Southeast Michigan Consortium for Water Quality ("Consortium") help solve regional water problems. The court

asserted jurisdiction over the Detroit Water and Sewage Department under the Federal Supplemental Jurisdiction Statute, 28 U.S.C. § 1367, and had oversight over the Wyandotte Wastewater Treatment Plant based on the previously ordered consent judgments. Finally, the court noted the goal of the Consortium would be to address problems of water quality on a regional basis in Southeast Michigan.

Karen L. Golan

United States Pub. Interest Research Group v. Atl. Salmon of Maine, LLC, 261 F. Supp. 2d 17 (D. Me. May 9, 2003) (holding that federal common law is the choice of law under the Clean Water Act and piercing the corporate veil is appropriate where (1) a parent controls a subsidiary, (2) a parent uses that control to evade a court order, and (3) declining to pierce the corporate veil would result in failure to enforce the Clean Water Act); **United States Pub. Interest Research Group v. Atl. Salmon of Maine, LLC, 257 F. Supp. 2d 407 (D. Me. May 28, 2003)** (awarding damages for violations of the Clean Water Act, enjoining defendants from running a salmon farm until they obtain a permit, and permanently prohibiting stocking non-native species where environmental degradation was not permanent, defendants would not gain monetarily from violations, violations were, in part, due to lack of agency guidance, defendants did not act in bad faith, and defendants had successive non-profitable years); **United States Pub. Interest Research Group v. Atl. Salmon of Maine, LLC, 273 F. Supp. 2d 126 (D. Me. July 25, 2003)** (denying motion for partial stay of damages for violating the Clean Water Act because success on the merits was not likely as defendants had litigated all issues and allowing further operations risked irreparable environmental harm).

Defendants Atlantic Salmon of Maine ("ASM") and Stolt Sea Farm ("SSF") own several salmon farms in Maine's Machias, Cobscook, and Pleasant bays. Additionally, ASM wholly owns its subsidiary, Island Aquaculture Company ("IAC"). IAC also owns three salmon farms. Since 1990, ASM and SSF treated their nets and feed with chemicals that the ocean current washed out of the pens. ASM and SSF also stocked their pens with non-North American salmon that periodically escaped. During this time, the Environmental Protection Agency ("EPA") undertook little enforcement action of salmon farms' discharges under the Clean Water Act ("CWA"). In 2001, the EPA delegated permitting authority under the CWA to the State of Maine; however, at the time of these decisions, Maine had yet to institute a permitting system for salmon farms.

The United States Public Interest Research Group ("USPIRG") sued ASM and SSF under the citizen-suit provision of the CWA, claiming ASM and SSF violated the CWA by releasing pollutants from