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United States Pub. Interest Research Group v. Ad. Salmon of Maine, LLC, 261 F. Supp. 2d 17 (D. Me. May 9, 2003)

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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

their fish farms. In February 2002, the United States District Court for the District of Maine found that ASM and SSF had violated the CWA, required ASM and SSF to obtain a discharge permit, and scheduled a future hearing to determine damages. In February 2003, the court prohibited ASM and SSF from introducing any new class of fish into their net-pens until they obtained a permit. Nonetheless, in April 2003, ASM stocked a new class of fish in IAC's Scragg Island Salmon Farm.

On May 9, 2003, the court examined whether ASM was in contempt for violating the court's February 2003 order prohibiting ASM from stocking any new class of fish. First, the court ruled it must apply federal common law because the CWA is a federal statute requiring uniformity. Next, the court addressed whether it should pierce the corporate veil and attribute IAC's actions—stocking a new class of fish—to ASM. The court found a lack of corporate independence between ASM and IAC because ASM's management controlled IAC and all of IAC's transaction were with ASM. Further, the court found ASM acted with fraudulent intent because ASM stocked IAC's pens solely to evade the February 2003 order. Finally, the court held failure to pierce the corporate veil would result in a manifest injustice because the February 2003 order enforced the CWA, and the CWA is in the public interest. Thus, the court found ASM in violation of the February 2003 order. The court enjoined ASM from stocking any new class of fish, set deadlines for removing deposited fish, and set fines for any further failure by ASM to follow the court's orders.

On May 28, 2003, the court determined the appropriate damages for ASM and SSF's violations of the CWA. First, the court addressed whether Maine had primary jurisdiction because it was developing discharge permits under the CWA. After commenting that ideally the EPA should address the instant ecological and scientific issues, the court recognized that the EPA had delegated its permitting authority to Maine and that Maine had not taken any action. Hence, the court ruled prolonging resolution of this matter inappropriate given the agency's delay. Second, the court determined the statute of limitations for citizen suits under the CWA was not at issue because ASM and SSF's violations of the CWA were ongoing.

Next, the court applied the CWA's factors for determining civil penalties. First, the court concluded that the seriousness of ASM and SSF's violations was nominal because, with the exception of the non-North American salmon escaping and adversely affecting endangered species, the environmental degradation was not permanent. Secondly, the court's order would abate any economic benefit ASM and SSF might have accrued from violating the CWA. Third, the court could not attribute ASM and SSF's violation of the CWA solely to ASM and SSF because the EPA and the State of Maine left them in limbo regarding permitting requirements. Fourth, ASM and SSF had addressed the most negative findings and responded to the EPA. Fifth, the court concluded awarding a large penalty would severely

affect ASM and SSF because their salmon farms had been unprofitable in the two previous years. After assessing these factors, the court fined ASM and SSF fifty thousand dollars each.

Finally, the court addressed USPIRG's request for injunctive relief. The court found that ASM and SSF's salmon farms threatened immediate irreparable harm because escaping non-North American species threatened endangered species and salmon farm discharges degraded the environment. Hence, the court enjoined defendants from stocking their pens until they obtained a permit. The court also permanently enjoined defendants from stocking any non-North American salmon species.

On July 25, 2003, the court addressed ASM and SSF's motion to stay the court's May 28, 2003 order. The court concluded ASM and SSF did not have a strong likelihood of success on the merits as they had previously litigated all issues. Further, any harm to ASM and SSF derived from their own failure to comply with the CWA. Finally, the court concluded granting a stay would cause great environmental harm, which vastly outweighed ASM and SSF's assertion of economic hardship. Hence, the court denied ASM and SSF's motion for a stay of the May 28, 2003 order.

Heather Chamberlain

STATE COURTS

CALIFORNIA

Cent. & W. Basin Water Replenishment Dist. v. S. Cal. Water Co., 135 Cal. Rptr. 2d 486 (Cal. Ct. App. 2003) (holding that, along with the water resources of the State of California, available storage capacity in a ground water system must be utilized for the greatest public welfare and is subject to management by the appropriate state agency).

Appellants, including several municipal, commercial, private, and industrial interests ("Pumpers"), hold groundwater rights in the Central Valley area near Los Angeles. Respondent Water Replenishment District of Southern California ("WRD"), a state agency, was created by the California legislature to monitor the Central Valley groundwater basin. The majority of the Central Valley is located within the Los Angeles metropolitan area. The Pumpers claim to hold half of the allowable water rights in the Central Basin and to supply over 1 million residents and businesses in the Los Angeles area. The Pumpers motioned the Superior Court of Los Angeles County to qualify and allocate the storage rights for the basin left undetermined after the adjudication of their water rights. The WRD contended the storage capacity of the Central Valley groundwater basin was a public resource and was within the WRD's