

1-1-2004

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Owen Walker, Court Report, Am. Rivers v. United States Army Corps of Eng'rs, 274 F. Supp. 2d 62 (D.D.C. 2003), 7 U. Denv. Water L. Rev. 475 (2004).

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Am. Rivers v. United States Army Corps of Eng'rs, 274 F. Supp. 2d 62 (D.D.C. 2003)

Am. Rivers v. United States Army Corps of Eng'rs, 274 F. Supp. 2d 62 (D.D.C. 2003) (ordering the Army Corps of Engineers to comply with a previous court order, or show cause why the court should not hold it in contempt for failure to do so).

American Rivers filed a motion in the United States District Court for the District of Columbia for an order requiring the United States Army Corps of Engineers ("Corps") to show cause why the court should not hold it in contempt and sanction it for disobeying a prior court order. The court previously enjoined the Corps from implementing its Annual Operating Plan ("AOP") for the Main Stem System of reservoirs on the Missouri River in a manner that would adversely impact three species protected by the Endangered Species Act ("ESA"). The court's injunction contradicted an earlier injunction the Federal District Court for Nebraska ("Nebraska court") issued preventing the Corps from releasing flows below a certain level for navigation purposes. The Corps asserted, in defense, that the earlier injunction rendered adherence to the later injunction impossible. The court granted American Rivers' motion, finding that the earlier injunction must be specific to the AOP effective at that time, and that, in any case, the Corps could not claim that it was impossible to obey one order where it merely chose, instead, to obey the other.

The Corps operated the Main Stem System of reservoirs on the Missouri River. In May 2002, the Nebraska court ordered the Corps to maintain minimum flows of 26,000 cubic feet of water per second ("cfs") on the river to support navigation. In June 2003, the Eighth Circuit Court of Appeals upheld the order. On July 12, 2003, the court granted American Rivers' motion for a contrary injunction, ordering the Corps to maintain maximum flows of 25,000 cfs for the latter half of August. The Corps issued a press release stating that it would maintain flows at the minimum of 26,000 cfs, and continued to do so. American Rivers filed a motion for an order to show cause why the court should not hold the Corps in contempt and levy sanctions against it for disobeying its July 12 order.

In defense, the Corps argued that the Nebraska court's order of 2002 rendered adherence to the court's July 12 order impossible, since the two orders were contradictory. In rejecting the Corps' argument, the court found that the Nebraska court could not have intended that its 2002 order apply to AOPs other than the one in effect at the time, since such an order would preclude future operations not in compliance with it. The court therefore found that the two orders referred to different AOPs and were not in conflict. The court further found that the Corps had chosen to obey the earlier order over the later, and that the possibility presented by such a choice contradicted the defense of impossibility.

Alternatively, the Corps argued that it was not subject to civil fines, since it had not waived its sovereign immunity. The court held, however, that the defense of sovereign immunity was inapplicable to

coercive, rather than compensatory fines. Since American Rivers sought coercive fines, the Corps was not immune.

The court entered an order for the Corps to show cause why it should not find it in contempt and impose sanctions for the Corps' refusal to obey the July 12 order. It also made a finding of civil contempt conditional on continued refusal to comply with the July 12 order. It ordered further that continued refusal, past the deadline of July 25, 2003, would result in a fine of \$500,000 per day of non-compliance.

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Chesapeake Ranch Water Co. v. Bd. of Comm'rs of Calvert County, 301 F. Supp. 2d 424 (S.D. Md. 2004) (dismissing water cooperative's federal claims that it had a right to provide water to new development on summary judgment, and holding new development was not within water company's franchise area).

Chesapeake Ranch Water Company ("Chesapeake") sued the Calvert County Board of Commissioners ("Board"), seeking a permanent injunction and Writ of Mandamus that it had rights to supply water to a developing commercial park. Chesapeake sought to provide water to a new commercial development across the street from the water company. Chesapeake alleged the Board's denial of Chesapeake's right to provide water to the new commercial development violated the Rural Development Act ("RDA") and several Maryland statutes, and that Chesapeake had rights to provide water to the new development because the development was within the water company's franchise area.

The United States District Court for the Southern District of Maryland initially addressed Chesapeake's federal claims under the RDA. First, because the area in controversy was outside Chesapeake's service territory and within the County's borders, the court held Chesapeake failed to show the Board's action was a municipal incursion on Chesapeake's franchise area under the RDA. Second, the court held Chesapeake failed to satisfy the requirement under the RDA that it show it previously made service available in the disputed area. Specifically, the court rejected Chesapeake's argument that its location across the street from the new development constituted sufficient evidence that it could provide water to the development. The court reasoned that Chesapeake must also prove it could provide water under its permit, and that the permit limited authority to specific subdivisions. Thus, the court dismissed Chesapeake's federal claims as a matter of law.

The court then dismissed Chesapeake's remaining state law claim under the Maryland statutes without prejudice. Specifically, the court declined to exercise supplemental jurisdiction over "needless questions of state law" in light of the court's disposition of the federal