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Sierra Club v. Meiburg, 296 F.3d 1021 (11th Cir. 2002)

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enjoin the operation of the S-9 pumping station until the Water District obtained an NPDES permit. The court stated that when determining whether an injunction is proper, a court should not only “balance the conveniences of the parties and possible injuries to them,” but also “pay particular regard for the public consequences” of the injunction. Without the operation of S-9, the western portion of the county would flood in a matter of days, causing damage to, and displacement of, a significant number of people. Therefore, the court vacated the judgment awarding an injunction but ordered the Water District to obtain an NPDES permit within a reasonable amount of time.

Lisa M. Thompson

Sierra Club v. Meiburg, 296 F.3d 1021 (11th Cir. 2002) (holding that appellate courts have jurisdiction to review modifications of consent decrees, and that such modification is improper when there has been no change in law or fact subsequent to the party’s agreement to the consent decree).

This case arose when the Sierra Club, along with various other environmental organizations (“Sierra Club”), sued the Environmental Protection Agency (“EPA”) and several of the EPA’s directors, including Mr. Meiburg. Sierra Club asked that the court order the EPA to implement total maximum daily loads (“TMDLs”), which the EPA was required to establish under a previously established consent decree. The Sierra Club originally brought the case in the United States District Court for the Northern District of Georgia, which found for Sierra Club. The EPA appealed, alleging the district court’s holding improperly modified the consent decree. The Court of Appeals for the Eleventh Circuit agreed, and remanded the case to the district court.

The Clean Water Act (“CWA”) established a statutory and regulatory scheme for lowering pollution levels in waters of the United States. The CWA addresses both point source pollution, which comes from a discernable point where pollutants are discharged, and non-point source pollution. When both point source and non-point source pollutants affect waterways, the CWA requires states to list each affected waterway in the state, and to set water quality standards for each. If a waterway does not meet those standards, the CWA requires states to determine TMDLs for the waterway, specifying the maximum daily amount of each pollutant that can pass through the waterway without violating the water quality standards. The CWA gives the EPA approval authority over both the list of polluted waterways and the corresponding TMDLs. If the EPA disapproves, the CWA requires it to issue its own list or its own TMDLs. The EPA has, for the most part, delegated authority for implementing TMDLs to the states.

In 1994, the Sierra Club sued the EPA. The Sierra Club asserted that Georgia had established TMDLs for only two of approximately 340 polluted waterways, and that these two were insufficient to meet the requirements of the CWA. The Sierra Club wanted to force the EPA to take responsibility for establishing and implementing TMDLs in Georgia. In *Sierra Club v. Hackinson*, the district court granted the Sierra Club summary judgment, and entered an injunction requiring the EPA to establish and implement TMDLs in Georgia. The EPA appealed this ruling. While the appeal was pending, the parties agreed to a consent decree, which required the Sierra Club to establish (but not implement) TMDLs in Georgia on a fixed schedule. At the time of this suit, the EPA was on schedule for establishing TMDLs in Georgia. However, Georgia had not implemented the TMDLs, nor had they otherwise incorporated them into their pollution management plans.

Seeking to improve water quality in Georgia, the Sierra Club attempted to re-open the consent decree and to force the EPA to implement the TMDLs. While the case progressed, Georgia implemented the TMDLs, and the EPA moved to have the case dismissed as moot. The Sierra Club argued that Georgia's implementation plans were again insufficient to meet the requirements of the CWA. The district court denied the motion, and ruled that the EPA was obligated under the consent decree to assure the adequacy of Georgia's implementation plans. The EPA's appeal resulted in this case.

As a threshold issue, the court noted it only had jurisdiction if the district court's order modified the consent decree. Modification occurs, irrespective of the title given to the order by the district court, when the order changes the legal relationship between the parties. The court looks to the plain terms of the consent decree to determine the legal relationship of the parties prior to the order. Here, before the district court order, the EPA had a duty only to establish TMDLs. After the order, the EPA had both a duty to establish TMDLs and a duty to assure the TMDLs were adequately implemented. This added duty changed the legal relationship between the parties. Thus, the court ruled it had jurisdiction to review the merits of the district court order.

Modification of a consent decree is only appropriate when: (1) a significant change in factual conditions or in law has occurred; and (2) the proposed modification is suitably tailored to the changed circumstance. The court noted there had been no change in the law since the consent decree, nor had there been a change in factual circumstances. The relevant regulations of the Act were unchanged since the consent decree was formalized, and the lethargy of Georgia's implementation was likewise unchanged. Neither condition necessary for modification of the consent decree was present, yet the district court order imposed new duties on the EPA. Accordingly, the court held the district court had improperly modified the consent decree.

The decree only required that the EPA establish TMDLs. Because the EPA had established TMDLs, the district court should have sustained EPA's motion to dismiss the case as moot. The Eleventh Circuit reversed and remanded the case to the district court.

James Siegesmund

Fishermen Against the Destruction of the Env't, Inc. v. Closter Farms, Inc., 300 F.3d 1294 (11th Cir. 2002) (holding the Clean Water Act did not require that farm obtain a permit to discharge water from its water management system into lake).

Fishermen Against the Destruction of the Environment, Inc. ("FADE") brought a Clean Water Act ("CWA") suit against Closter Farms, Inc. ("Closter Farms") alleging that Closter Farms discharged pollutants into Lake Okeechobee without a National Pollutant Discharge Elimination System ("NPDES") permit. After trial, the United States District Court for the Southern District of Florida found the pollutants either fell within agricultural exemptions not requiring a permit under the CWA or were covered by other permits, and entered judgment for Closter Farms. FADE appealed to the Eleventh Circuit Court of Appeals.

Closter Farms operated a sugar cane farm adjacent to Lake Okeechobee. Closter Farms leased its land from the State of Florida, and the lease required Closter Farms to operate a water management system. The water management system provided drainage for Closter Farms' lands, as well as for an airport, a wastewater treatment plant, a county park, a vacant lot previously occupied by a tractor sales operation, and a county road, all adjacent to Closter Farms. The water management system took excess water from Closter Farms' irrigation canals and pumped it into Lake Okeechobee.

Closter Farms argued it was not required to obtain a permit for two reasons. First, the CWA exempted discharge from agricultural operations from the NPDES permit requirement. Second, the adjacent properties that share the water management system all had NPDES permits for their lands. The district court found FADE failed to establish discharge of a non-exempt pollutant and entered judgment for Closter Farms.

Reviewing the district court's decision de novo, the appellate court identified two implicit findings in the district court's ruling. First, any pollutants that originated on Closter Farms' property fell within the agricultural exemptions of the CWA. Second, either an existing NPDES permit or exemptions to the permitting requirements covered pollutants that originated elsewhere.

Agricultural storm water discharges and return flows from irrigation agriculture are exempted from the CWA permitting requirements. FADE alleged Closter Farms' discharges were neither.