

9-1-2002

Cal. Sportfishing Prot. Alliance v. Diablo Grande, Inc., 209 F. Supp. 2d 1059 (E.D. Cal. 2002)

Michael Sheehan

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>

Custom Citation

Michael Sheehan, Court Report, Cal. Sportfishing Prot. Alliance v. Diablo Grande, Inc., 209 F. Supp. 2d 1059 (E.D. Cal. 2002), 6 U. Denv. Water L. Rev. 177 (2002).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

denial of intervention. Thirdly, the Corps could not adequately represent the purchaser's economic interests, and lastly, the motion to intervene was timely.

Lisa M. Thompson

UNITED STATES DISTRICT COURTS

Cal. Sportfishing Prot. Alliance v. Diablo Grande, Inc., 209 F. Supp. 2d 1059 (E.D. Cal. 2002) (holding that plaintiff satisfied standing and subject matter jurisdiction requirements of the Clean Water Act, and classifying general construction activity as a point source).

California Sportfishing Protection Alliance ("CSPA") was a California nonprofit public benefit corporation with an estimated membership of 10,000. Diablo Grande, Inc. ("Diablo") was a limited partnership building a golf resort on 29,500 acres of land west of Patterson, California. CSPA filed suit against Diablo for violating the conditions of their General Permit for Storm Water Discharges Associated with Construction Activity ("General Permit") in the United States District Court for the Eastern District of California. CSPA claimed this violation introduced pollutants to Salado Creek. CSPA sought an injunction ordering Diablo to: (1) operate its construction in compliance with their state permit; (2) provide CSPA with proof of its compliance with the Clean Water Act ("CWA") for a one year period; (3) contribute payments to a court-approved environmental remediation fund; (4) pay civil penalties on a per day of violation basis; and (5) pay CSPA's attorneys' fees. Both sides filed motions for summary judgment pertaining to: standing; subject matter jurisdiction; the definition of "navigable water of the United States"; and defining what material facts were required of a party asserting a violation of the CWA.

CSPA asserted the following three arguments: (1) its members had standing to sue in their own right; (2) the interests at issue were germane to the organization's purpose; and (3) neither the claim nor the relief requested required individual member participation. CSPA brought its complaint on behalf of associate members. Since Diablo could not show that at least one of CSPA's members would not have standing in this suit, the court found that CSPA had standing to sue. It also held that CSPA's state purpose did not need include a certain activity in order for that activity to be germane to CSPA's purpose. It followed that enforcement of the CWA was sufficiently germane to CSPA's purpose to justify standing. Diablo alternately argued that CSPA lacked standing because there was no evidence of any fish in Salado Creek. However, CSPA offered evidence establishing the presence of both bluegill and bullhead fish in the creek and

ultimately, that the creek fed into the San Joaquin River, which indisputably contained sport fish. Thus, Diablo's standing arguments failed.

Diablo argued that CSPA failed to comply with the CWA's notice requirement, and therefore lacked subject matter jurisdiction. However, the court found that CSPA's notice letter met the CWA notice requirements because it: (a) was sent more than sixty days before filing to sue; (b) identified Diablo as the responsible party; (c) provided CSPA's full name, address, and telephone number; (d) identified the locations and dates of the violations. As a result, Diablo's summary judgment motion on the issue of subject matter jurisdiction failed. Further, CSPA's expert witness showed impermissible turbidity levels in Salado Creek were present at the time notice was given, and that this trend would likely continue in correlation with Diablo's construction.

Diablo next argued that Salado Creek was not a navigable water of the United States and therefore was not covered under the CWA. The court held under certain circumstances, where a tributary flowed into navigable water, that tributary was capable of spreading environmental damage and should also be considered a navigable water of the United States for purposes of the CWA. Diablo argued that Salado Creek should be classified as non-navigable groundwater because it flowed through an underground pipeline on its way to the San Joaquin River. The court rejected this argument and held that Salado Creek was a tributary of the San Joaquin River, despite the fact that, in certain areas, it flowed through an underground pipe. Therefore, Diablo's motion for summary judgment failed on the issue of whether Salado Creek was to be classified as navigable water of the United States.

Finally, Diablo argued that CSPA provided no evidence showing their discharge fit into the classification required and defined by the CWA. They based this on CSPA's inability to name a point source discharge of any pollutants. The court clarified that courts have previously recognized construction as a point source activity. As a result, CSPA sufficiently defined a point source as required under the CWA. The court also held that CSPA did not need to prove that Diablo's discharge violated the Act at the summary judgment stage of litigation. Instead, they need only show that there was a genuine issue of material fact for dispute at trial. Therefore, the court rejected Diablo's final motion for summary judgment because CSPA defined a point source as required by the CWA, and CSPA was not required to prove that the discharge was a violation of the CWA at this stage of litigation.

Michael Sheehan