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Knaust v. City of Kingston, 193 F. Supp 2d. 536 (N.D.N.Y. 2002)

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or further downstream. The Ozark Society frequently enjoyed the waters downstream from the proposed dam site. Essentially, the procedural requirements ensured that people in Ozark Society's position were considered when dam construction was proposed. By alleging the procedures were not followed, the Ozark Society alleged an injury in fact—the Corps' failure to consider the impact of the dam upon Ozark Society when it was approved. Furthermore, the court found this injury redressable, noting that under the APA, courts have the ability to set aside agency actions, findings, or conclusions. Thus, the court held that the Ozark Society had standing to bring this suit.

The Corps also argued that the Ozark Society's claims were not yet ripe, again because the dam might never be built. However, the court pointed out that the cause of the Ozark Society's injuries was the Corps' failure to follow proper procedure, not the (speculative) construction of the dam itself. These injuries had already occurred, thus suits based on these injuries were ripe for review.

The Corps had taken a final agency action. The Ozark Society had standing to bring a suit for injuries arising from that action, and any such claims were ripe for review. Accordingly, the court denied the Corps' motion to dismiss for lack of subject matter jurisdiction.

James Siegesmund

Knaust v. City of Kingston, 193 F. Supp 2d. 536 (N.D.N.Y. 2002)

(holding that lack of ownership rights to water in subterranean caves without proof of actual or imminent injury to reasonable use rights is insufficient to establish standing).

Mark and Barbara Knaust ("Knausts") sought injunctive relief and compensatory damages against the City of Kingston ("City") in the United States District Court for the Northern District of New York, alleging Fifth and Fourteenth Amendment takings, as well as state law causes of action, including New York State Environmental Quality Review Act violations and common law nuisance. The Knausts claimed that storm water originating on the adjacent City of Kingston-funded Business Park contaminated water in subterranean caves beneath their property, interfered with their reasonable use, and constituted a taking. In an earlier decision, the New York State Supreme Court, Ulster County held that the Knausts owned the caves and rights to use the water, but not the water itself. The district court initially denied the Knausts' motion for a preliminary injunction to prevent the Business Park's construction, because absent evidence that their property suffered a physical invasion, they could not demonstrate injury in fact sufficient to support standing. The United States Second Circuit Court of Appeals dismissed the Knausts' appeal on this issue, and on remand, the City contended that the Knausts failed to establish standing, and that even if they could, the City nevertheless deserved summary judgment. The Knausts' failure to show the Business Park

management system's imminent threat to their reasonable use was insufficient to establish standing, and the court dismissed their takings claims for lack of subject matter jurisdiction. Based on this dismissal, the court similarly dismissed the Knausts' state law claims without prejudice, declining to exercise supplemental jurisdiction.

The Knausts' regulatory takings claim resulted from the Business Park's alleged interference with their plans to construct a commercial mushroom farm. The Business Park's two-level storm water management system discharged only benign, contaminant-free, treated storm water not subject to EPA regulation. The district court noted that the Knausts failed to produce any evidence of contamination. In fact, the Knausts admitted that they neither collected runoff samples for laboratory analysis, nor did they detect contamination in any water samples from the subterranean lakes. Further, the Knausts did not offer proof that the water management system failed to remove the contaminants it was designed to eliminate.

Despite lacking subject matter jurisdiction because collateral estoppel precluded claims regarding the Knausts' ownership interest in the subterranean caves and the waters therein, the court addressed the merits of the takings claim. The court granted the City summary judgment because the Knausts could not support a takings claim against water they did not own, and because they produced no evidence that the Business Park's alleged contamination sufficiently threatened their reasonable use, causing "actual or imminent injury." Ripeness problems mandated the takings claim dismissal, because the Knausts never applied to the City for a zoning change permitting the development. Until that occurrence, the court was unable to determine the zoning law's economic impact on the Knausts, and its interference "with reasonable investment-backed expectations"—crucial elements in takings analysis.

Robert Lykos

FD&P Enters., Inc. v. United States Army Corps of Eng'rs, No. 99-3500, 2003 U.S. Dist. LEXIS 497 (D.N.J. Jan. 15, 2003) (holding the appropriate test for jurisdiction under the Clean Water Act was whether there is a substantial nexus, beyond a mere hydrological connection, between the property and a navigable body of water; and jurisdiction over the filling of wetlands in order to build a commercial facility to further interstate freight transportation was not violative of the Commerce Clause of the United States Constitution because it was an activity that would "substantially affect" interstate commerce).

FD&P Enterprises ("FD&P") provided freight transportation to the New York-New Jersey metropolitan area. FD&P owned 100 acres of wetlands in Jersey City, New Jersey, the western perimeter bordering Penhorn Creek, a non-navigable tributary of the Hackensack River, a