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Johnson v. Calpine Corp., No. 02-2242, 2002 U.S. Dist. LEX S 22580 (E.D. La. Nov. 20, 2002)

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the corps. The court dismissed this claim because claim preclusion barred common law claims against the County regarding the access road. The County also moved to dismiss Bailey's taking without just compensation claim. The court reached the same conclusion as the MPCA takings claim and decided the claim was not ripe for adjudication.

Julie S. Hanson

Johnson v. Calpine Corp., No. 02-2242, 2002 U.S. Dist. LEXIS 22580 (E.D. La. Nov. 20, 2002) (holding federal courts have original jurisdiction over the Clean Water Act).

Jewel Junior Johnson and Ina Mae Carter Johnson ("Johnsons") brought an action against the Calpine Corporation ("Calpine") under the Federal Water Pollution Act, as amended by the Clean Water Act of 1977 ("CWA"), in Louisiana state court. Calpine removed the matter to the United States District Court for the Eastern District of Louisiana based on federal question jurisdiction and diversity jurisdiction. The Johnsons moved to remand the case back to state court. The district court held that federal jurisdiction was proper and denied the Johnsons' motion to remand.

The Johnsons objected to the removal on several grounds. First, they stated removal was improper because the mere grant of jurisdiction to a federal court does not preclude a state court from concurrent jurisdiction. Also, the Johnsons contended that for removal to be proper a federal court must have exclusive jurisdiction. In addition, they argued that a section of the CWA mandates claims to be held in state court. Further, the Johnsons asserted that there was no factual basis for federal question jurisdiction over their pond to establish subject matter jurisdiction. Lastly, they claimed that their state claims predominated.

The district court determined that Calpine could remove a civil action filed in state court if the federal court has original jurisdiction. Further, the district court found that the CWA expressly provides for federal jurisdiction. While the Johnsons contended that a section of the CWA mandated that such claims be held in state court, the district court held that this section only preserves rights and remedies under other available laws, but does not restrict federal court jurisdiction. The district court did not express any opinion as to the Johnsons' subject matter jurisdiction claim, and did not find sufficient support for the Johnsons' claim that their state claims predominated. Thus, the district court held that its federal jurisdiction was proper and denied the Johnsons' motion to remand.

Natalie Lucas