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Lands Council v. Vaught, 198 F. Supp. 2d 1211 (E.D. Wash. 2002)

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the wetlands on Newdunn's property were not adjacent to navigable waters, the court found the Corps had no jurisdiction over the property.

Lastly, the court found sections 61.1-44.5 and 62.1-44.15:15 of the Virginia Code were coextensive with the CWA because they based their state jurisdiction on that of the CWA and likewise defined "wetlands." Also, the VDEQ's actions indicate it consistently based its jurisdiction over Newdunn's property on the Corps' jurisdiction over the property. Therefore, since the Virginia statute and the CWA were coextensive, and because VDEQ relied on the Corps' jurisdiction for its own jurisdiction—given the court's finding the Corps had no jurisdiction over Newdunn's property—the court held VDEQ also had no jurisdiction over Newdunn's property. As such, the court entered judgment for Newdunn.

Kate Osborn

Lands Council v. Vaught, 198 F. Supp. 2d 1211 (E.D. Wash. 2002)

(holding that absent a finding that injunctive relief would cause irreparable harm, a permanent injunction is the proper remedy for violation of the National Environmental Protection Act's procedural requirements).

In late 1998 and early 1999, the United States Forest Service ("Forest Service") prepared an Environmental Impact Statement to address a Douglas fir bark beetle outbreak and various ecosystem imbalances in the Colville National Forest ("CNF") and Idaho Panhandle National Forest ("IPNF"). The Forest Service released the Final Environmental Impact Statement ("FEIS") on June 14, 1999, and adopted some of its proposals. The resulting Douglas Fir Bark Beetle Project ("Project") would impact 19,000 acres of forested land in the IPNF and 4,300 acres in the CNF. The Project called for logging 145 million board-feet of trees.

The Lands Council administratively appealed a Forest Service's decision to implement the Project, however, the Appeal Deciding Officer denied it in September 1999. The Lands Council then brought suit against the Forest Service in the United States District Court for the Eastern District of Washington, alleging violations of the Administrative Procedures Act ("APA"), National Environmental Protection Act ("NEPA"), National Forest Management Act ("NFMA") and the Clean Water Act ("CWA"). The district court denied their two motions for preliminary injunction, but the Ninth Circuit Court of Appeals issued a temporary injunction pending appeal. The Lands Council then amended its original complaint, which is the subject in the instant case. The district court considered this amended complaint, ruling on cross motions for summary judgment brought by the Lands Council and the Forest Service Chief. The Lands Council

renewed its petition for injunctive relief.

The court granted summary judgment to Lands Council on five issues and to the Forest Service on four. The court held that the Forest Service's decision to move forward with the Project violated NFMA, because the agency failed to demonstrate consistency with CNF and IPNF old-growth standards. Additionally, it found the Forest Service also violated NEPA in three instances, and the court implicated the agency's FEIS in each case. First, the court criticized the FEIS for lacking necessary predictions and analyses with respect to water quality. Next, the court held that the FEIS failed to consider past timber harvests and those occurring on adjacent lands in its projections for the CNF portion of the Project, which constituted an arbitrary and capricious NEPA violation. In a parallel holding, the court stated that the FEIS lacked data on private logging and on the cumulative impacts on habitat or wildlife within the Coeur d'Alene Ranger District portion of the Project, and was likewise arbitrary and capricious. The court entered a similar holding with respect to the Priest Lake Ranger District Project segment.

The Forest Service prevailed on other NFMA and NEPA allegations by persuading the court that its old-growth forest data were adequate, and that habitat monitoring could suffice in lieu of the customary population monitoring. With respect to water quality, the court held that the Forest Service did not violate CWA or NFMA, and was not arbitrary and capricious. Likewise, the agency did not violate NFMA with respect to fisheries, because the Project was consistent with the appropriate CNF and IPNF standards. Finally, the court held that the Forest Service's Cumulative Impact Analysis did not violate NEPA, because the Forest Service did not use flawed data. Moreover, its FEIS considered matters such as grazing and off-road vehicles to an extent that satisfied the court.

Turning to the issue of permanent injunction, the court held that violating NEPA's procedural requirements called for that remedy whenever injunctive relief itself would not cause irreparable harm. The Forest Service urged the court to enter declaratory judgment but deny injunctive relief, reasoning that such a holding would benefit the public while notifying the agency of matters needing correction in future projects. The court declined to proceed in that manner, holding that it would render its decision an advisory opinion.

The Forest Service was unable to cite a single case in which the Ninth Circuit refused to enjoin a violation of NEPA's procedural requirements. Consequently, the court permanently enjoined the Project at least until such time as the Forest Service complied with all applicable laws.

Curtis Graves