

9-1-2001

Pac. Coast Fed'n of Fisherman's Ass'ns v. United States Bureau of Reclamation, 138 F. Supp. 2d 1228 (N.D. Cal. 2001)

James Siegesmund

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

Custom Citation

James Siegesmund, Court Report, Pac. Coast Fed'n of Fisherman's Ass'ns v. United States Bureau of Reclamation, 138 F. Supp. 2d 1228 (N.D. Cal. 2001), 5 U. Denv. Water L. Rev. 257 (2001).

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.

Pac. Coast Fed'n of Fisherman's Ass'ns v. United States Bureau of Reclamation, 138 F. Supp. 2d 1228 (N.D. Cal. 2001) (holding the Bureau of Reclamation failed to follow the procedural guidelines of the Endangered Species Act when it implemented its 2000 operations plan for the Klamath Project, and enjoining the Bureau from continuing with that plan until it complied with such guidelines).

The Klamath Project ("Project") is actually a series of water diversion projects, including a number of dams, located in Oregon and California within the Upper Klamath and Lost River Basins. The Bureau of Reclamation ("Bureau") manages water usage, including flow rates, throughout the Project. The Iron Gate Dam in California is the furthest downstream dam in the Project. The stretch of the Klamath River below Iron Gate Dam is a critical habitat for Coho salmon, a species listed as "threatened" under the Endangered Species Act ("ESA").

Under the terms of the ESA, the Bureau must prepare a biological assessment if it learns a threatened species is present in an area where it proposes an action. The purpose of this assessment is to determine the effect of the proposed action on the threatened species. Should the Bureau find the threatened species would not be affected, the Secretary of the Interior ("Secretary") must concur with this finding. Should the Bureau find the proposed action would affect the threatened species, it must request formal consultation from the Secretary, who must then prepare a biological opinion, stating whether, in its opinion, the proposed action is likely to jeopardize the threatened species. With respect to Coho salmon, the Secretary's authority has been delegated to the National Marine Fisheries Service ("NMFS").

On April 26, 2000, the Bureau implemented its operations plan for the Project for the year 2000. Although it was engaged in discussions with the NMFS, the Pacific Coast Federation of Fisherman's Associations ("Pacific Coast") filed a motion for relief based on the Bureau's alleged violations of the ESA. Pacific Coast charged the Bureau had not followed the above procedure in implementing its operations plan, and, thus, had taken irrevocable action resulting in harm to Coho salmon. Pacific Coast, the Bureau, and an interpleading party then each filed a motion for summary judgment. The court granted Pacific Coast's motion, and granted in part and denied in part the (nearly identical) motions of the Bureau and the interpleader. As such, the court enjoined the Bureau from sending certain deliveries of irrigation water down the Klamath.

No material facts were disputed in the case. The Bureau knew the Coho salmon was a threatened species, and it knew its regulation of flow rates from the Iron Gate Dam would affect those species. Therefore, under the ESA, it was required to request formal consultation from the NMFS on any plan that affected those flow rates. Yet, the Bureau never prepared a biological assessment, let alone

requested formal consultation. Although it was engaged in discussions with the NMFS on April 26, 2000, these discussions were about the future flow rates on the Klamath River in general; they did not afford the NMFS the opportunity to approve or evaluate the operations plan for the year 2000. The court held these actions were clearly in violation of the ESA, and granted Pacific Coast's motion for summary judgment. The judge granted the Bureau's and the interpleader's motions as to Pacific Coast's second charge maintaining the Bureau had taken irrevocable action before completing the formal consultation. The court held the issue not yet reviewable since the formal consultation had not begun.

In light of these judgments, the court enjoined the Bureau from making water deliveries when the flow rates below Iron Gate Dam were below scientific estimates of levels needed for restoration and maintenance of Coho salmon habitats on the Klamath River.

James Siegesmund

Caprio v. Upjohn Co., 148 F. Supp. 2d 168 (D. Conn. 2001) (holding under the Connecticut Clean Water Act ("CCWA"), which states that "pollution of the waters of the state is inimical to the public health, safety and welfare of the inhabitants of the state" and that "no persons or municipality shall cause pollution of any of the waters of the state or maintain a discharge of any treated or untreated wastes," residents who have suffered injury due to pollution or hazardous waste discharged into the waters of Connecticut may bring a negligence per se action against the polluters).

The plaintiff ("Caprio") brought this action against the Upjohn Company ("Upjohn") claiming that Upjohn had exposed him to hazardous chemical substances contained in toxic sludge, which led to his developing bladder cancer. Upjohn filed a motion to dismiss Caprio's second cause of action, which alleged that Upjohn violated the Connecticut Clean Water Act ("CCWA").

Upjohn's manufacturing of chemicals generated industrial toxic waste in the form of sludge. Upjohn transported the toxic sludge by truck and railroad car to open ponds to release the waste into the environment. Caprio alleged in his second cause of action that he suffered injury as a result of Upjohn releasing these hazardous chemical substances. Caprio further alleged that Upjohn was negligent, in that releasing the harmful sludge caused the cancer.

Upjohn filed a motion to dismiss the second and third counts for failing to state a claim and further argued that the statute of limitations had run on Caprio's negligence claim. The trial court dismissed the second count based on the fact that the Comprehensive Environmental Response Compensation Liability Act ("CERCLA")