

9-1-2001

United States v. Commonwealth of Puerto Rico, 144 F. Supp. 46 (D.P.R. 2001)

Katherine J. Ellison

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



Part of the [Law Commons](#)

Custom Citation

Katherine J. Ellison, Court Report, United States v. Commonwealth of Puerto Rico, 144 F. Supp. 46 (D.P.R. 2001), 5 U. Denv. Water L. Rev. 266 (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.

United States v. Commonwealth of Puerto Rico, 144 F. Supp. 46 (D.P.R. 2001)

and, thus, the Bureau could not feasibly complete an EIS before critical deadlines for the delivery of irrigation water had passed. Therefore, to impose impossible duties on the Bureau made “no sense.”

Lastly, the court challenged Kandra’s notion that, because the Fish and Wildlife Service (“FWS”) provided the Bureau with contestable expert opinions, implementing the 2001 plan violated the ESA and APA. The ESA prevents the Bureau from engaging in any action likely to jeopardize the continued existence of endangered or threatened species. It also requires certain due diligence procedures in forming water plans, such as including reasonable and prudent alternatives (“RPAs”) in those plans. The Bureau relied on experts in the FWS who formulated RPAs. While Kandra claimed the Bureau’s experts failed to use or correctly interpret the best information available, the court found this insufficient to prove the Bureau acted arbitrarily and capriciously in violation of the APA.

The court further held the Bureau’s ability to choose and rely on expert opinions allowed for reasonable discretion, not omniscience. The ESA simply requires expert opinions not ignore biological information. Kandra had merely argued certain experts disagreed on the significance of biological information used by the FWS. Thus, the court held Kandra’s ESA claim sought to impose a standard inconsistent with the standard actually imposed by law.

Considering all of these factors, the court concluded Kandra’s claim failed to show a likelihood of success on the merits or an entitlement to the relief sought. Accordingly, the court denied Kandra’s motion for a preliminary injunction.

Dan Wennogle

United States v. Commonwealth of Puerto Rico, 144 F. Supp. 2d 46 (D.P.R. 2001) (holding that the Commonwealth of Puerto Rico lacked jurisdiction over the United States Navy to compel adherence to local regulations, due to the sovereign immunity of the United States).

The United States moved for a declaratory judgment that the Commonwealth of Puerto Rico (“Commonwealth”) and its Secretary of the Department of Natural and Environmental Resources could not compel the United States’ participation in local administrative proceedings regarding the adjudication of stream water for use on a Naval base. The Commonwealth relied on the McCarran Amendment (“Amendment”) of 1952, which waived the United States’ sovereign immunity for administrative proceedings regarding stream adjudication. The United States obtained permits granting the adjudication of stream waters for use on a Navy base in 1942 and 1944, and thus contended that the permits are not subject to the Amendment. The court granted declaratory relief.

Congress’ purpose in ratifying the Amendment was “allowing states

to adjudicate collectively all of the conflicting water rights claims on a source of water, without being hindered by the United States' invocation of its sovereign immunity." The Commonwealth asserted that the Amendment of 1952 applied retroactively to proceedings surrounding the 1942 and 1944 permits. The Amendment "allow[ed] the United States to be joined as a defendant in any proceeding for the adjudication or administration of water rights 'where it appears that the United States is the owner of or is in the process of acquiring water rights.'" The United States asserted the court could not apply the Amendment retroactively, nor had Congress intended to apply it in such a way.

The court relied on *Landgraf v. USI Film Products* and *E. Enters. v. Apfel* to determine whether the court could apply a statute or amendment retroactively. The general rule called for strict interpretation and application according to the precise terms of such legislation. "The natural extension of this maxim of interpretation was that statutory waivers of sovereign immunity are not to be applied retroactively." The specific rule of *Landgraf* required a court to determine whether a piece of legislation "attaches new legal consequences" to prior events. The court found that in the instant case, application of the Amendment would impair the rights of the Navy allowed by the 1944 permit and would impose additional duties upon the Navy. As the retroactive application would have an effect on the 1944 permit, the court resolved not to retroactively apply the Amendment in this case.

Since the Commonwealth could not prove clear congressional intent favoring the retroactive application of the Amendment, the court held that the Amendment did not apply to the Navy's permits held before 1952. The court granted declaratory relief, allowing the United States to use its sovereign immunity to avoid local administrative proceedings regarding the 1944 permit.

Katharine J. Ellison

Martin Marietta Materials Southwest, Ltd. v. St. Paul Guardian Ins. Co., 145 F. Supp. 2d 794 (N.D. Tex. 2001) (holding a decrease in downstream water was the natural and foreseeable result of diverting a creek that could conceivably harm downstream users, and neither a duty to defend nor indemnify existed on behalf of the insurer).

Martin Marietta Materials Southwest, Ltd. ("Marock") owned a facility near Big Sandy Creek ("Creek"). St. Paul Guardian Ins. Co. ("St. Paul") provided Marock with primary general liability coverage. Trinity Materials, Inc. ("Trinity"), located downstream of Marock and holding senior water rights to the creek, alleged Marock diverted the creek for construction purposes without a valid water permit and, therefore, deprived Trinity of the water it needed to operate. Trinity