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Adams County Reg'l Water Dist. v. Vill. of Manchester, 226 F.3d 513 (6th Cir. 2000)

Brian L. Martin

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excavated material into those wetlands involved the discharge of a pollutant in violation of the CWA. The district court then vacated this determination based upon a subsequent decision and granted summary judgment for the Deatons. The government appealed. The Deatons cross-appealed the district court's original rulings.

The narrow issue in this case involved whether sidecasting, the deposit of dredged or excavated material from a wetland back into that same wetland, constituted the discharge of a pollutant under the CWA. The Fourth Circuit first assumed that the Deatons' property contained CWA protected wetlands. The court then resorted to the provisions of the CWA itself. The CWA prohibits the discharge, without a permit, of any pollutant into navigable waters, which includes wetlands. "Discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source." The CWA further defines "pollutant" to include "dredged spoil" that has been "discharged into water." The court found the piles of dirt dredged up by the Deatons' contractor were clearly "pollutants" within this definition.

The contested issue involved the meaning of "discharge of a pollutant." The Deatons argued the word "addition" in the phrase "addition of any pollutant" required the introduction of new material into the area. Thus, they argued they did not discharge a pollutant because sidecasting only deposited material that was already present in the wetland. The court rejected this contention and explained that once the Deatons removed the nonpollutant material by sidecasting it became dredged spoil, a statutory pollutant. Most importantly, the court stated the redeposit of the material excavated from the wetland into that same wetland added a pollutant where none had been before. The underlying rationale for defining dredged spoil as a pollutant as determined by Congress and the decisions of other jurisdictions supported the conclusion of the court. The court also determined it did not have jurisdiction to consider the issues raised by the Deatons in their cross-appeal because its disposition on the government's issue restored the case to the district court's original order, which was nonfinal and nonappealable. Therefore, the court held the CWA's definition of the discharge of a pollutant encompassed sidecasting in a wetland and remanded the case.

Vanessa L. Condra

SIXTH CIRCUIT

Adams County Reg'l Water Dist. v. Vill. of Manchester, 226 F.3d 513 (6th Cir. 2000) (holding one village's contract to sell water to another village violated the Farmers Home Administration's protection of rural water associations).

Adams County Regional Water District (“Adams County”) brought this appeal to the United States Court of Appeals for the Sixth Circuit after the United States District Court for the Southern District of Ohio at Cincinnati denied their motion for preliminary and permanent injunctive relief.

The Consolidated Farm and Rural Development Act (“Act”) protects rural water associations indebted to the Farmers Home Administration (“FHA”) from competition resulting from municipal encroachment. The Act prohibits curtailment of a water association’s service resulting from either annexation of an association’s service area within municipal boundaries or granting private franchise for similar service within the association’s service area.

The Village of West Union (“West Union”) and Adams County entered into a contract in 1971 for West Union to purchase water from Adams County. That contract specified minimum and maximum amounts Adams County was required to supply to West Union. In July 1995, Adams County began experiencing supply problems. Adams County sent several notices to West Union informing West Union they were exceeding their supply as specified in the contract. Adams County requested West Union not accept new service tap requests. Adams County did not interrupt West Union’s supply of water. Subsequent to the notices, West Union contracted with the Village of Manchester (“Manchester”) to purchase additional water. At issue in this case was whether West Union’s contract to purchase water from Manchester violated Adams County’s protected status under the Act.

The district court denied Adams County’s motion for preliminary and permanent injunctive relief, ruling West Union’s contract with Manchester did not violate the Act for two reasons. First, Manchester did not annex West Union within its boundaries. Second, the contract was between two public entities, and therefore did not grant private franchise. The Sixth Circuit reversed the order, ruling the Act protected rural water associations from competition from expanding municipal systems.

The Act allows the FHA to make or secure loans to rural water associations for water development. Water development and use resulting from FHA loans shall not be curtailed by inclusion of an association’s service area within a municipal corporation or other public body. To determine whether an association’s supply has been curtailed, the Act must be liberally construed to protect rural associations indebted to FHA from competition from expanding municipal systems.

Based on these principles, the court ruled that Manchester need not actually annex West Union to violate the Act. The Act protected Adams County by prohibiting Manchester from encroaching upon the service provided by Adams County, including encroachment in the form of new or additional permit requirements. Because the contract between Manchester and West Union was for an additional permit to

supply water to West Union it violated the Act by creating competition with Adams County.

Finally, the court was sensitive to West Union's concern for ensuring an adequate supply of water. The court stated that if Adams County had been unable to supply West Union with adequate water, resulting in an interruption in service, its ruling would not prevent West Union from filing a claim under breach of contract.

Brian L. Martin

Jones v. City of Lakeland, 224 F.3d 518 (6th Cir. 2000) (holding landowners were not precluded from bringing a private action under the Clean Water Act because their interests were not adequately represented under the state regulatory scheme).

Rudolph Jones ("Jones") and other landowners owned property along Oliver Creek in the City of Lakeland ("City"). Jones sued the City for discharging human, toxic, and other hazardous wastes and pollutants into Oliver Creek in excess of its National Pollutant Discharge Elimination System Permit ("NPDES permit"), violating the Clean Water Act ("CWA"), and the Tennessee Water Quality Control Act ("TWQCA"). The City asserted the CWA prevented private citizen suits in federal court if the Environmental Protection Agency ("Administrator") or a state had "already commenced and was diligently prosecuting an action to require compliance with a standard, limitation, or order of the Agency or state." The United States District Court for the Western District of Tennessee held the Tennessee Department of Environment and Conservation ("TDEC") was diligently prosecuting the City. Therefore, the district court dismissed Jones' claim for lack of subject matter jurisdiction and failure to state a claim upon which relief could be granted.

On appeal, the Sixth Circuit, found the CWA precludes citizen suits only if the Administrator or state is "diligently pursuing an enforcement action" against the accused in federal or state court. Because neither the Tennessee's Water Quality Control Board, nor TDEC, were federal or state courts, the CWA did not preclude Jones' suit. Furthermore, the court found that since TDEC's administrative enforcement failed to adequately address Jones' concerns, the enforcement did meet the CWA's "diligent prosecution" standard. Thus, the court held the trial court committed reversible error when it elevated the TDEC administrative enforcement action to court status as required by the CWA to preclude citizen suits.

The court next determined the CWA did not preclude Jones' suit because TWQCA, which authorized the TDEC enforcement action, was somewhat comparable to the CWA. Because of the similarities, the court analyzed the state regulatory scheme to determine if it afforded affected citizens a meaningful opportunity to participate in the administrative process. The court found TDEC denied affected