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Sokol v. Kennedy, 210 F.3d 876 (8th Cir. 2000)

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penalty. On remand, Krilich filed a Rule 60(b)(4) motion to vacate the judgment as void because the district court lacked subject matter jurisdiction over EPA's complaint. The district court denied the motion and Krilich appealed.

On appeal, Krilich argued that the district court lacked subject matter jurisdiction because the wetland he allegedly filled was an "isolated intrastate wetland" and was not part of the "waters of the United States" within the meaning of the CWA. Krilich argued that the "isolated intrastate wetland" was beyond the federal government's commerce power to regulate, and therefore the district court lacked subject matter jurisdiction over EPA's complaint. In addition, Krilich contended the district court lacked subject matter jurisdiction despite the fact he had agreed in the consent decree that the wetland he filled was part of the "waters of the United States."

The court held that the district court had subject matter jurisdiction over EPA's case against Krilich because EPA civilly charged him with violating a federal statute, which was within the federal courts' federal question jurisdiction. In reaching its holding, the court stated Krilich confused the meaning of the term "jurisdiction." The court stated the interstate commerce power to regulate "waters of the United States" did not affect the subject matter jurisdiction of the district court to hear the case. Rather, the issue of whether the wetland Krilich filled was within Congress's interstate commerce power to regulate was an element of the offense itself. Krilich's violation of the CWA triggered the district court's jurisdiction. Therefore, the court affirmed the district court's denial of Krilich's 60(b)(4) motion to bar enforcement of the penalty.

Julie E. Hultgren

EIGHTH CIRCUIT

Sokol v. Kennedy, 210 F.3d 876 (8th Cir. 2000) (holding the National Park Service's identification and application of the "significant and important" values criteria rather than the "outstandingly remarkable" values criteria to determine and set boundaries for protected river area violated the Wild and Scenic Rivers Act, and that the Wild and Scenic Rivers Act does not require physical demarcation of protected river boundaries).

The Wild and Scenic Rivers Act ("Act") protects portions of certain rivers determined to possess, along with their immediate surrounding environments, "outstandingly remarkable" values. Pursuant to a 1991 amendment to the Act, Congress directed the Secretary of the Interior to select boundaries along Nebraska's Niobrara River ("River") for protection under the terms of the Act. The Secretary of the Interior

subsequently delegated the responsibility of selecting such boundaries to the National Park Service (“NPS”).

NPS began a four-year boundary determination process in 1992. NPS formed a planning team to research and analyze River information gathered from private and public resources, personal observations, and field studies. NPS used this information to create “resource maps” and develop boundary alternatives. Additionally, NPS formed an Advisory Commission consisting of local residents, environmental experts, business persons, and state officials, to participate in the review process and to receive and consider public comment and concern regarding boundary selection.

In considering areas for inclusion within the protected boundaries, the planning team analyzed the River in terms of its “significant and important” values. The planning team claimed it utilized the “significant and important” criteria rather than the “outstandingly remarkable” criteria set forth in the Act because the team was more familiar with the breadth of the former criteria due to its use in other regulatory schemes. The planning team argued that the “outstandingly remarkable” criteria was relevant only to the selection of new rivers requiring protection under the Act and was not relevant to the establishment of boundaries for selected rivers. When NPS received a complaint from David Sokol (“Sokol”), plaintiff and landowner, that NPS’s use of the “significant and important” criteria violated the language of the Act, NPS purported to utilize the “outstandingly remarkable” criteria. NPS stated this criteria was synonymous with the “significant and important” criteria. NPS revised its draft and final boundary alternatives and its final Record of Decision to reflect its use of the “outstandingly remarkable” criteria in boundary determinations.

Sokol filed suit in the United States District Court for the District of Nebraska claiming NPS violated the Act. He claimed NPS failed to utilize the required “outstandingly remarkable” standard and failed to physically mark the finally determined River area boundaries. NPS responded that it had complete discretion to determine the final River area boundaries to protect and that the Act failed to provide an absolute standard for setting boundaries. NPS further responded that the “outstandingly remarkable” criteria did not apply and, even if such criteria did apply, the “significant and important” criteria utilized by the planning team was synonymous with such criteria. Finally, NPS argued the Act did not require physical demarcation of river boundaries. The district court granted NPS’s motion for summary judgment.

Applying the arbitrary and capricious standard of the Administrative Procedure Act to NPS’s action, the United States Court of Appeals for the Eighth Circuit reversed and remanded the district court’s decision. The court noted the Act provides that each river protected under the Act must be administered to protect and enhance

the values, which caused the initial protection of the river. Additionally, the court stated that the “outstandingly remarkable” values of a river and its surroundings require consideration to determine whether to protect a river under the Act.

First, the court acknowledged the Act gives NPS broad discretion in determining which areas to include as protected areas, but rejected NPS’s argument that the Act failed to provide an absolute standard for setting boundaries of protected River areas. The court held that the Act mandated the use of the “outstandingly remarkable” criteria in determining the River area boundaries.

Second, the court rejected NPS’s argument that it did utilize the “outstandingly remarkable” standard because it considered such standard synonymous with the “significant and important” criteria. The court determined the terms “significant and important” were much broader and included more qualities than the terms “outstandingly remarkable.” NPS argued that any reference to the “significant and important” standard was corrected in the final boundary decision and corresponding report. The court rejected the re-definitions as insufficient because NPS’s entire analysis and decision still rested upon the “significant and important” standard, not the “outstandingly remarkable” standard required by the Act.

Finally, the court affirmed that NPS was not required to physically mark the final boundaries of the protected River area. It noted that the Act simply requires NPS to make available to the public information regarding such boundaries on maps located in the offices of the administering agency.

The court reversed and remanded the case with instructions. The trial court must remand to NPS and NPS must determine River area boundaries utilizing the “outstandingly remarkable” values standard.

Megan Becher-Harris

NINTH CIRCUIT

Carson Harbor Vill., Ltd. v. Unocal Corp., 227 F.3d 1196 (9th Cir. 2000) (holding pursuant to the Comprehensive Environmental Response Compensation and Liability Act: (1) necessary response costs are found in the nature of the threat presented by the contamination and whether the response action addressed the threat, lack of agency action is not dispositive of whether contamination presents environmental risk worthy of response, and evidence of ulterior motive is insignificant; (2) the statutory term “disposal” includes passive migration of hazardous materials; and (3) the strict liability statute does not require a causal nexus correlating the costs incurred and an individual generator’s waste).