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United States v. Alisal Water Corp., 114 F. Supp. 2d 927 (N.D. Cal. 2000)

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the 1987 amendment would be a "first step" or would "begin" the process of addressing nonpoint-source pollution unconvincing in light of the comprehensive approach adopted by the 1972 CWA.

Additionally, the court found that under the CWA, California must incorporate TMDLs into its planning. However, the court also stated California is free to select whatever, if any, land-management practices it feels will achieve the load reductions called for by TMDLs. Furthermore, California is free to moderate or modify the TMDL reductions, or even refuse to implement them, pursuant to countervailing state interests. Although such steps might provoke EPA to withhold federal environmental grant money, California is free to take that risk.

Finally, the court stated landowners possess avenues of redress. Under the APA, landowners can challenge an EPA TMDL determination for a given river reach or a specific Section 303(d) listing as "arbitrary or capricious," "unsupported by substantial evidence," or as an "abuse of discretion." Moreover, landowners may show EPA's engineering is manifestly wrong. The farmers made no such claim in this case. Therefore, the court entered judgment for EPA.

Kris A. Zumalt

United States v. Alisal Water Corp., 114 F. Supp. 2d 927 (N.D. Cal. 2000) (holding the Government had standing to bring an action under the Safe Drinking Water Act ("SDWA"); the Government was not estopped from asserting that the public water system failed to comply with total coliform rule; and officers, directors, and majority shareholders of corporations that owned systems could be held personally liable for violations of the SDWA).

The Safe Drinking Water Act ("SDWA") requires the Administrator of the Environmental Protection Agency ("EPA") to establish and enforce national standards regulating contaminants in drinking water provided by public water systems. The EPA Administrator ("Administrator") may grant primary enforcement of public water systems to a state as long as state regulations are as strict as federal regulations. The Administrator may bring a civil action for any violation of the standards if requested by the state agency with jurisdiction over water regulations compliance.

In California, the State Department of Health Services ("DHS") had primary enforcement responsibility over public water systems. DHS investigated Alisal Water Corporation ("Alisal") and other owners of public water systems in December 1992 and found Alisal did not comply with testing requirements for microbiological contaminants. On August 15, 1996, DHS sent a letter to EPA requesting that EPA bring a civil and/or criminal action for Alisal's violation of the SDWA.

On January 30, 1997, the Government filed three motions for partial summary judgment in United States District Court for the Northern District of California asserting ten causes of action. The first motion pertained to the first eight causes of action alleging Alisal violated national primary drinking water regulations regarding microbiological contaminants. The second motion pertained to the ninth cause of action alleging Alisal violated regulations regarding lead and copper content. The third motion sought to hold Robert and Patricia Adcock (“Adcocks”), owners of Alisal, individually liable for violations.

Alisal raised six defenses to the first motion: (1) the Government lacked standing to bring suit; (2) some of the Government’s documentary evidence was inadmissible; (3) the alleged violations relied on an incorrect assumption that the positive coliform samples were routine samples; (4) Alisal collected samples according to a site plan as required by regulations; (5) United States was estopped from asserting the violations; and (6) the Government selectively enforced the law. The court discounted all of Alisal’s defenses and held that Alisal violated regulations pertaining to microbiological contaminants in the public water supply.

First, the Government had standing under SDWA, which states that the Administrator may bring a civil action in the appropriate United States district court if requested by the state agency with jurisdiction over public water systems. The court concluded the DHS letter constituted a request by the appropriate state agency for EPA action and, as such, the Government had standing to bring this action. Second, the court ruled the documents in question were admissible as business records. Third, the court concluded the Government proved at trial that since none of the samples relied on were marked “special,” the samples relied on were routine. Fourth, regulations implementing the SDWA required public water systems to collect coliform samples throughout an area according to a written site plan. Because Alisal only used a map, the court ruled Alisal’s sampling was not in accordance with a plan. Fifth, in claiming estoppel, Alisal had the burden of proving that the Government engaged in affirmative misconduct upon which Alisal relied to its detriment. Alisal claimed it was unaware of its obligations because it relied on confusing statements issued by state agencies. The court found that confusing statements did not qualify as affirmative misconduct. Therefore, the Government was not estopped from claiming Alisal’s liability. Sixth, the court rejected Alisal’s claim that the Government had selectively prosecuted Alisal because Alisal failed to prove it was prosecuted based on race, religion, or the exercise of constitutional rights.

The Government’s second summary judgment motion claimed Alisal violated regulations pertaining to lead and copper content in the public drinking water. Alisal raised three defenses: (1) the Government lacked standing to bring suit; (2) the Government selectively enforced the SDWA against Alisal; and (3) the Government

was estopped from enforcing the SDWA against Alisal. The court rejected Alisal's claims and held Alisal violated the regulations regarding lead and copper content.

First, the Government had standing based on the DHS letter. Alisal argued that since the letter did not address lead and copper violations, the Government lacked standing. The court found that once the action began, the Government was obligated to assert all known violations. Second, Alisal failed to address how the Government selectively enforced the regulation based on race, religion, or the exercise of constitutional rights. Third, Alisal claimed estoppel because Monterey County Health Department ("MCHD") failed to notify them of their obligation to conduct lead and copper testing until 1998. The court rejected this argument because MCHD did not affirmatively excuse Alisal from lead and copper testing.

The Government's third motion sought the individual liability of the Adcocks. The Government asked the court to hold the Adcocks personally liable for violations of SDWA. SDWA defines a "supplier of water" as "any person who owns or operates a public water system." The court found that as officers, directors, and majority shareholders of the corporations that owned the public water systems, the Adcocks were "operators" under SDWA. Thus, the court held the Adcocks individually liable for violations of the SDWA.

The court granted all three of the Government's partial summary judgment motions.

Kevin Rohnstock

Woodward v. Goodwin, No. C 99-1103 MJJ, 2000 U.S. Dist. LEXIS 7642, (N.D. Cal. May 12, 2000) (holding a discharger's speculative National Pollutant Discharge Elimination System permit violations are not sufficient to meet the *prima facie* Clean Water Act's "ongoing violation" requirement).

The Woodward family ("Woodwards") rented a dairy ranch owned by William and Bonnie Thomsen ("Thomsens"), from 1996 to 1998. The Woodwards alleged approximately five million gallons of raw human waste entered the ranch from several private and municipal sources during that period. The Woodwards also alleged the resulting contamination caused damage to their dairy business and health problems for their family. The Woodwards filed suit against the Thomsens, the Loleta Community Services District ("District"), and several neighbors, including the Goodwin family, on a variety of federal and state claims in the United States District Court for the Northern District of California.

The Woodwards attempted to invoke federal subject matter jurisdiction by filing five claims against the District and one claim against the Thomsens under the federal Clean Water Act ("CWA") on