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Woodward v. Goodwin, No. C 99-1103 MJJ, 2000 U.S. Dist. LEXIS 7642, (N.D. Cal. May 12, 2000)

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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

March 10, 1999. The claims against the District alleged CWA violations due to the negligent operation of and design defects in the District's sewage removal system. Specifically, the Woodwards maintained that the system allowed infiltration of raw sewage into storm water culverts at peak flows through both a design defect and an uncapped Y connector. The Woodwards did not allege that the design defect created an ongoing pollution problem. In addition, the Woodwards conceded the Y connector had been repaired in 1998, but maintained an ongoing violation of the CWA due to the Y connector vandalism potential. Also, the Woodwards alleged the District failed to timely repair a broken sewage line. The Woodwards claimed this CWA violation was ongoing because the District had failed to remediate the discharged untreated sewage. Finally, the Woodwards contended the District allowed individual waste water dischargers to bypass the municipal waste water treatment plant in violation of the CWA.

The Woodwards' only CWA claim against the Thomsens alleged the ranch owners illegally stored manure in a large pit on the property. The manure was removed prior to 1999. The Woodwards declared that the pollutants from all of the above sources percolated into a pond located on the ranch property that is hydrologically connected to a wetland, known as Hawk's slough, and ultimately entered the Pacific Ocean.

The District and Thomsens ("Defendants") moved for summary judgment based upon the court's lack of subject matter jurisdiction. Defendants maintained that the Woodwards failed to establish a *prima facie* CWA claim in their Complaint. The CWA was the only federal statute the Woodwards suggested Defendants violated. The court held that the Woodwards were required to present specific facts to support their CWA claim, otherwise Defendants' motion would be granted.

A *prima facie* CWA claim must establish (1) an ongoing addition of (2) a pollutant (3) to the navigable waters of the United States (4) from a point source (5) without, or in violation of a National Pollutant Discharge Elimination System ("NPDES") permit. The CWA includes raw sewage and sludge in the definition of "pollutant." In addition, the court concluded Hawk's slough is a wetland within the CWA definition of "navigable waters of the United States." The CWA defines a point source as a discernable, confined, and discrete conveyance from which a pollutant is or may be discharged. The court held that a pond and a Y connector are each point sources. The court also held the discharge of raw sewage violated of the District's NPDES permit.

However, the court also held the Woodwards did not present sufficient evidence that exhibited an ongoing violation from any of the alleged pollution sources. The court required that the Woodwards provide specific and significantly probative facts that would demonstrate to a fact finder the pollution was ongoing or was likely to occur in the future on the date the suit was originally filed. The court

held the repair of the Y connector, the repair of the sewage lines, and the removal of the manure pit prior to March 10, 1999, made the possibility of an ongoing violation on the filing date of the suit too remote and speculative. Therefore, the court held that the Woodwards did not meet the required burden of establishing a *prima facie* CWA claim.

Subsequently, the court granted Defendants' summary judgment motion pertaining to the federal CWA claims. In addition, the court discretionally decided not to grant supplemental jurisdiction to the Woodwards' state law property and tort claims because all of the Woodwards' federal based claims were dismissed.

Kirk Waible

Am. Wildlands v. Browner, 94 F. Supp. 2d 1150 (D. Colo. 2000)
(denying environmental organization's claims for relief on five grounds concerning Montana state regulations).

Plaintiffs, several environmental organizations (collectively "American Wildlands"), requested injunctive and declaratory relief. The defendants were various administrators in the Environmental Protection Agency ("EPA"). American Wildlands identified five grounds for relief. All grounds for relief pertained to Montana standards and involved claims that EPA engaged in arbitrary and capricious decision-making, abused its discretion, or violated the Clean Water Act ("CWA") or the Administrative Procedure Act ("APA").

From 1989 to 1998, Montana promulgated several revisions to its water quality standards. In March 1998, American Wildlands filed a notice of violation pursuant to the CWA, which alleged EPA had failed to review Montana's proposed standards. In December 1998, American Wildlands sent a letter to EPA urging them to disapprove Montana's proposed standards since Montana had not clarified issues about which EPA had inquired. In December 1998 and January 1999, EPA reviewed some of Montana's proposed standards. Accordingly, American Wildlands amended its complaint to address five issues.

The court noted that in order to comply with the CWA a state must promulgate standards for non-point and point-source pollution control. If a state wants to revise or adopt a new standard, the state must seek EPA approval. If EPA determines the standard meets CWA requirements, then the standard becomes applicable to the state's waters.

First, American Wildlands asserted EPA acted arbitrarily and capriciously, abused its discretion, or violated the CWA when it approved Montana's standard exempting non-point source pollution from state antidegradation rules. EPA may only approve state standards that are consistent with the CWA. Further, EPA's regulations require state standards to include antidegradation policies