

9-1-2000

## Nat'l Wildlife Fed'n v. United States Army Corps of Eng'rs, 92 F. Supp. 2d 1072 (D. Or. 2000)

Jason Wells

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



Part of the [Law Commons](#)

---

### Custom Citation

Jason Wells, Court Report, Nat'l Wildlife Fed'n v. United States Army Corps of Eng'rs, 92 F. Supp. 2d 1072 (D. Or. 2000), 4 U. Denv. Water L. Rev. 207 (2000).

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](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

Nat'l Wildlife Fed'n v. United States Army Corps of Eng'rs, 92 F. Supp. 2d 1072 (D. Or. 2000)

the case back to state court.

*Rebekah King*

**Nat'l Wildlife Fed'n v. United States Army Corps of Eng'rs, 92 F. Supp. 2d 1072 (D. Or. 2000)** (holding (1) plaintiffs' prior action under a federal statute did not bar a subsequent federal complaint under a different statute; (2) judicial review under the Administrative Procedure Act ("APA") was proper; (3) Army Corps of Engineers' "Records of Decisions" represented final agency actions for the purpose of APA review; and (4) plaintiffs' alleged injury was sufficient to defeat defendant's lack of standing claim).

Defendant, Army Corps of Engineers ("Corps"), owned and operated four dams located on the lower Snake River that comprised part of the Federal Columbia River Power System. The National Wildlife Federation and a number of other concerned groups (collectively, "NWF") initiated an action against the Corps alleging violations of both the Clean Water Act ("CWA") and the Administrative Procedure Act ("APA").

The Corps and the National Marine Fisheries Service ("NMFS") drafted numerous reports in an effort to mitigate the adverse effects of the dams on the salmon stocks in the Lower Snake and Columbia Rivers. A Biological Opinion ("BiOp"), issued by NMFS, noted that the dams' creation of reduced flow rates through the reservoirs contributed to the decline of all three Snake River salmon species. As a result, in 1995 the Corps issued a Record of Decision ("ROD"), which adopted the "Reasonable and Prudent Alternative" measures advanced in the BiOp. One such measure included the adjustment of spill water over the dams in order to increase fish passage and improve water quality. In 1998, the Corps issued a ROD indicating its intention to take advisement from a NMFS Technical Management Team ("TMT"), as recommended by the BiOp. A month later, the TMT prepared a Water Management Plan ("Plan") for the Federal Columbia River Power System. The Plan referenced the CWA and Washington's water quality standards promulgated under that Act. It recommended that "every effort be made to meet the state . . . water quality standards in the mainstem."

Washington's regulations indicated what levels should be considered as unacceptable for water temperature and dissolved gas percentages. Adhering to its own policy to "comply with water quality standards to the extent practicable," the Corps instituted a monitoring program in which data was compiled. Such data illustrated that variations in optimum temperature levels increased salmon populations' susceptibility to both predation and disease. Furthermore, high dissolved gas levels in the water were shown to have negative physiological effects on the fish. Although this data was

collected in furtherance of spill level adjustments, thereby reducing water temperatures and gas levels, in the years leading up to this action both temperature and dissolved gas levels regularly exceeded the State's water quality standards.

Alluding to these violations, NWF argued that the Corps' operation of the four dams violated the State's water quality standards, as well as the CWA, in that temperatures and dissolved gas levels continually exceeded the established standards. In support of their APA claim, NWF asserted the Corps had abused its discretion in taking actions that were not in accordance with the law. In support of this assertion, NWF pointed to the 1998 ROD. The 1998 ROD referenced proposed spills at the dams that would violate the State's water quality standards. NWF maintained that judicial review under the APA was proper because the 1995 and 1998 RODs constituted final agency decisions.

In its summary judgment motion, the Corps countered that (1) because many of the same plaintiffs filed an action in 1996 challenging the 1995 BiOp and ROD under the Endangered Species Act, the doctrines of issue and claim preclusion barred the newer claims; (2) the CWA did not authorize NWF to bring actions against federal agencies in order to compel such agencies to comply with the State's standards promulgated under the CWA; (3) the 1995 and 1998 RODs did not represent final agency actions subject to review under the APA; and (4) the Plaintiffs lacked standing to sue because they failed to provide evidence depicting an injury.

In denying the Corps' motion, the court found (1) the 1995 Endangered Species Act claim did not preclude the later claim because the two are "distinct statutory schemes" and "compliance with one statute does not equal compliance with the other;" (2) the APA permits judicial review of the requirement that all federal agencies must comply with state water quality standards; (3) the Corps' RODs sufficiently represented final agency actions reviewable under the APA; and (4) NWF's interests in both the rivers' recreational and aesthetic values and the adverse effects of the dams on those interests were sufficient to fulfill the APA's injury requirement.

*Jason Wells*

## STATE COURTS

### ALABAMA

**Ex Parte Cove Props., Inc., No. 1981893, 2000 Ala. LEXIS 320 (Ala. July 28, 2000)** (holding, with respect to waterfront properties located on generally straight or convex shorelines, one waterfront property owner may not build in front of the riparian lands of an adjacent waterfront property owner).