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Le-Ax Water Dist. v. City of Athens, 174 F. Supp. 2d 696 (S.D. Ohio 2001)

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recreational values of the area will be lessened by the challenged activity."

For an injury to be "fairly traceable" to the defendant, the court analyzed whether Heritage's pollutants caused or contributed to the kinds of injuries alleged by USPIRG. The court asserted Heritage could not defeat the plaintiffs' claims of standing "simply by arguing other causative agents may be operating to bring about the decline of wild salmon stocks."

Finally, the court stated that to satisfy the redressability requirement, the plaintiffs' attestations must reveal a "substantial likelihood" the requested relief will remedy the alleged injury. The court decided that an order enjoining unlicensed discharges from Heritage's operations and/or penalizing Heritage for ongoing violation of the CWA would provide a meaningful remedy for the injuries. Therefore, the District Court decided USPIRG had standing to bring a citizen's suit against Heritage for violations of the CWA.

Sarah A. Hubbard

Le-Ax Water Dist. v. City of Athens, 174 F. Supp. 2d 696 (S.D. Ohio 2001) (granting Le-Ax Water District's motions for summary judgment and declaratory judgment, and holding that City of Athens' agreement to provide water service to proposed development violated Le-Ax's protection under 7 U.S.C. § 1926(b)).

Le-Ax Water District ("Le-Ax") sued the City of Athens ("City") for arranging to supply water to a new development by University Estates, Inc. ("UE"), asserting such an arrangement violated 7 U.S.C. § 1926(b), which serves to protect the rights of rural water districts in an effort to promote rural expansion. The City claimed, since the new development did not fall within Le-Ax's current boundaries as defined by the state, Le-Ax could not assert a right to service the development. The parties filed cross-motions for summary judgment.

Le-Ax developed as a regional, rural water district with the help of loans from the Rural Economic and Community Development Service ("RECDS"). Le-Ax pledged all its water service revenues to secure the debt. According to a surveyor hired by the City, Le-Ax's boundaries fell approximately 1400 feet short of the proposed UE development site, a point the City emphasized at trial. Nonetheless, Le-Ax's water lines ran close to the site, while the City would have had to create additional water access in order to serve UE. These facts allowed both parties to make arguments that § 1926(b) spoke in their favor.

The portion of § 1926(b) upon which Le-Ax relied stated, "the service provided or made available" by a regional water district shall not be limited by any "municipal corporation or other public body" within which the regional district lies. The court allowed protection under § 1926(b) upon the satisfaction of three elements: (1) the

organization in question is a rural water association; (2) that association is indebted to the RECDS; and (3) the association "provides or makes service available" to the area in question. Since Le-Ax satisfied the first two elements, the court focused its examination on the third qualification.

The court used the "pipes in the ground" test from a Tenth Circuit decision holding, wherein an association "makes service available" if it has "proximate and adequate" pipes in the ground to provide service within a reasonable time. Because of the relative proximity of Le-Ax's current pipes to the UE site, the court held that Le-Ax would be able to provide or make service available.

The City claimed that Congress never intended for § 1926(b) to "grant water districts an exclusive right to service a site that: (a) is outside of the district's state-law defined area; (b) is wholly unrelated to any federal indebtedness the water district has incurred; (c) the water district has no legal obligation to serve; and (d) has never been served by the water district before." The court noted, as a regional water district, Le-Ax had a legal right to provide water service to any unincorporated areas "within *and without* the district," regardless of prior service to the area or any direct relationship to its federal indebtedness.

Finally, the City argued construing § 1926(b) so broadly violated Ohio's Tenth Amendment rights by infringing on powers reserved for the state. Because Ohio voluntarily subjected itself to § 1926(b), and because "Ohio retains the general authority to control water service within the state," the court held the statutory provision "[did] not improperly interfere with state or municipal sovereignty because the limits it impose[d] [were] restricted in scope."

Thus, the court granted Le-Ax's motion for summary judgment, enjoined the City from providing water service to UE, and granted a declaratory judgment asserting that the City's arrangement violated 7 U.S.C. § 1926(b).

Katharine J. Ellison

STATE COURTS

ALABAMA

Water Works & Sewer Bd. v. Randolph, No. 1002182, 2002 Ala. LEXIS 34 (Ala. Feb. 1, 2002) (finding that a public corporation organized under section 11-50-310 of the Alabama Code is not subject to the reporting requirements of the Sunshine Law).

Members of the Water Works & Sewer Board of the City of Selma ("Board") held a private meeting, excluding Samuel Randolph, a member of the Board. During the private meeting, the mayor of