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Madison v. Graham, 126 F. Supp. 2d 1320 (D. Mont. 2001)

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Mouillee; (2) whether the Corps required a new indemnification agreement for the project; and (3) whether immediate action was required.

On the first issue, the Corps argued the deposition of Conner Creek sediment was a new use of Pointe Mouillee because it constituted environmental dredging, while the Corps used Pointe Mouillee for navigational dredging. Since the original project did not contemplate environmental dredging, the Corps argued that EPA must complete a new Environmental Assessment (“EA”) for Pointe Mouillee. The court stated that the River and Harbor Act of 1970 (“Act”) and the 1974 agreement creating Point Mouillee governed its use. The court concluded neither the Act’s language nor the 1974 agreement precluded Pointe Mouillee’s use for non-navigational dredging. Accordingly, the court found disposal of Conner Creek material did not constitute a new use of Point Mouillee.

The second issue addressed whether the project required a new indemnification agreement. The Corps argued Michigan must sign a new indemnification agreement before the Corps could accept the material. The original agreement contained a “hold harmless” clause, which protected the federal government from damages caused by construction, operation, and facility maintenance. The court ruled the “hold harmless” clause sufficiently protected the United States government from any liability connected with the site’s operation, and no further assurances were necessary.

The third issue was whether the Corps must act immediately. The Corps argued no need existed for immediate action since dredging was not scheduled to begin until 2002. DWSD argued it must have the issue concerning the disposal site finalized by November 22, 2000, in order to qualify for the State Revolving Fund. DWSD argued that, in the absence of this funding, its ratepayers would incur an additional \$40,000,000 in additional interest charges. For this reason, DWSD asserted the Corps must act immediately. The court agreed and ruled the monetary deadline required immediate action.

The court ruled in favor of DWSD and MDEQ on all issues and ordered the Corps to act immediately and accept Conner Creek dredged material.

Brian L. Martin

Madison v. Graham, 126 F. Supp. 2d 1320 (D. Mont. 2001) (holding: (1) Madison’s Fourteenth Amendment substantive due process claim was improperly raised and failed under substantive due process review; (2) Madison failed to show the Montana Stream Access statute was irrational and arbitrary and had no conceivable public purpose relating to public welfare; and (3) both statute of limitations and res judicata violations ultimately barred all of Madison’s claims).

Harvey and Doris Madison, among others, (collectively “Madison”)

brought this claim in federal district court to enjoin permanently Defendants, Montana Department of Fish, Wildlife, & Parks, among others, (collectively "FWP") from enforcing the Montana Stream Access Law. The Montana Stream Access Law allows public use of all surface waters capable of recreational use up to the high-water mark of privately owned streambeds, regardless of ownership of the underlying land. The law allowed for public use of the Stillwater and Ruby Rivers and O'Dell Creek—waters adjacent to Madison's land. Madison challenged the law, asserting it violated his substantive due process rights under the Fourteenth Amendment and, alternatively, under federal law. Madison's second claim asserted the statute violated his due process rights because it was void for vagueness, and, therefore, illegal. FWP filed eight motions to dismiss challenging Madison's claims.

The United States District Court for the District of Montana analyzed the Montana Stream Access Law pursuant to the Montana Constitution, the Public Trust Doctrine, and relevant case law. The court cited Montana Supreme Court precedent that affirmed the public's right to use state-owned water for recreation as a narrowly confined public easement over the bed and banks of privately owned streams. The court also cited Montana Supreme Court precedent to affirm the constitutionality of the statute. The court then analyzed FWP's eight motions to dismiss and sustained each one.

The first motion to dismiss concerned whether the Taking Clause of the Fifth Amendment, and not the Fourteenth Amendment as argued by Madison, was the basis of Madison's complaint. The court agreed with FWP that the complaint was founded in the Taking Clause and cited Ninth Circuit authority to apply the Taking Clause test instead.

FWP's second motion to dismiss concerned whether, under the Taking Clause test, the stream access laws were rationally related to a legitimate state interest and were, therefore, a valid exercise of police power. The court distinguished two taking cases raised by Madison. The court stated the cases Madison raised involved the taking of private property rights and not an interest in publicly owned surface waters that cross a streambed. The court concluded Madison failed to meet the Taking Clause criteria and failed to state properly such a claim.

FWP's third motion to dismiss asserted Madison failed to show the absence of public purpose within the Stream Access Law as required under a Fourteenth Amendment substantive due process claim. Under this test, Madison had to prove both that the legislature had no rational reason to enact the law and no intent to advance a public purpose. The court determined Madison had failed to show the statute had no public purpose. The court found FWP raised several rational reasons to support the law.

FWP's fourth motion to dismiss concerned (1) whether the Montana Stream Access Law's failure either to permit or to proscribe portage around natural barriers violated the vagueness doctrine; and

(2) whether the law's definition of "high-water mark" was vague. First, the court stated Madison's claim intended to challenge the legislature's failure to enact a law, not to challenge vagueness. Second, the court held Madison failed to show the definition of high-water mark was so vague that men of common intelligence had to guess at its meaning. Accordingly, the court affirmed FWP's fourth motion to dismiss.

FWP's fifth motion to dismiss concerned whether the claim violated the statute of limitations. The court found Madison missed the three-year general tort statute of limitations deadline by approximately twelve years. The court rejected Madison's claim that a continuing violation exception applied. Thus, the statute of limitations barred Madison's claim.

FWP's sixth motion to dismiss asserted *res judicata* barred Madison's claims. Because one of the Madison's co-parties was previously involved in a suit challenging the same law under the Fifth and Fourteenth Amendments, the court decided *res judicata* barred Madison from raising the same claim on the same grounds.

FWP's motion to dismiss argued the Full Faith and Credit Clause required that the court honor a previous adjudication of the constitutionality of Montana's Stream Access Law, therefore, barring Madison's claims. The court found that two of the Madison co-parties received virtual representation under the Full Faith and Credit Clause through participation in an earlier adjudication. Thus, the court held *res judicata* barred Madison's claim based on the Full Faith and Credit Clause.

FWP's final motion to dismiss concerned whether the Rooker-Feldman Doctrine ("Doctrine") barred federal district court review of Montana Supreme Court cases. Under the Doctrine, a federal district court lacks subject matter jurisdiction to review final state supreme court decisions or constitutional claims intertwined with state court decisions. The court held the Doctrine barred Madison from seeking federal appellate review in this federal district court and granted the motion to dismiss.

The court sustained all of FWP's motions to dismiss and dismissed Madison's complaint with prejudice.

Christine Ellison

D'Agnillo v. U.S. Dep't of Housing & Urban Dev., No. 89 Civ. 5609 (CSH), 2000 U.S. Dist. LEXIS 17290 (S.D.N.Y. Nov. 29, 2000)

(holding alleged deficiencies in the City of Yonkers' environmental assessments for a housing development were not sufficient to: (1) grant an injunction to withhold United States Department of Housing and Urban Development funds for the development; (2) grant an injunction to stop construction by the City of Yonkers; (3) declare the environmental assessments invalid; or (4) declare the City of Yonkers must conduct another area-wide environmental assessment).