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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)

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(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).

In the fall of 1999, the City of Yonkers ("City") had three site-specific environmental assessments ("Site-Specific EAs") and one area-wide environmental assessment ("Area-Wide EA") prepared for its new housing development sites. The United States Department of Housing and Urban Development ("HUD") required such Environmental Assessments ("EAs") in order for the City to receive federal funding. All four EAs resulted in findings of no significant impact ("FONSIs"). The City published the results in March 2000, along with notices of the City's request for HUD funds.

John D'Agnillo objected to the four EAs and their FONSIs. The City responded to his objections in June 2000, finding them nonmeritorious. D'Agnillo filed a motion with the United States District Court for the Southern District of New York, asking the court to: (1) enjoin HUD from dispersing funds for the three sites; (2) enjoin the City from beginning construction on those sites; (3) declare that the EAs and FONSIs violated the National Environmental Policy Act ("NEPA") and HUD regulations; and (4) declare the City must conduct another Area-Wide EA before beginning construction. To support these requests, D'Agnillo alleged that: (1) the City failed to make the EAs publicly available; (2) the Area-Wide EA was incomplete because, given its date relative to the three Site-Specific EAs, the Area-Wide EA did not incorporate their findings; (3) the Area-Wide EA was incomplete because it failed to mention the location of parkland donated to the City; and (4) the Area-Wide EA did not properly evaluate the cumulative effects of a site containing wetlands.

First, the court found the EAs were publicly available to D'Agnillo. Although D'Agnillo was allegedly unable to obtain copies of some of the EAs at the local library, the City mailed copies to him at his request. The court felt that by mailing the EAs to D'Agnillo, the City had attempted in good faith to comply with NEPA's public availability requirements. Moreover, the court found that even if the City had failed to comply with these requirements, such failure did not warrant the injunctive and declaratory relief D'Agnillo requested.

Second, the court found the Area-Wide EA was complete because its publication date pre-dated those of the three Site-Specific EAs. Although the Area-Wide EA, which included the findings of the three Site-Specific EAs, pre-dated them, the court felt this conflict did not have the meaning ascribed by D'Agnillo. In particular, the court found the three Site-Specific EAs were available in draft form when the Area-Wide EA was being prepared. In addition, all four EAs went through simultaneous revisions until they were finalized. The court concluded these findings indicated the Area-Wide EA took the results of the three Site-Specific EAs into account. Moreover, D'Agnillo had not alleged any specific shortcomings in the Area-Wide EA to indicate it was incomplete and, therefore, the court should invalidate it.

Third, the court found the Area-Wide EA was not incomplete for failing to mention the location of parkland donated to the City. According to the court, the purpose of the Area-Wide EA was to discover what detrimental effects the housing project would have on

the environment. The court reasoned that adding parkland to the area would have only a benign effect on the environment and, therefore, a failure to specify its location could not undercut the conclusion of the Area-Wide EA. Moreover, D'Agnillo failed to explain why the location of the parkland had to be included in the Area-Wide EA.

Fourth, the court found that even though the original Area-Wide EA failed to evaluate impacts on wetlands located in one of its site areas, such failure did not warrant another area-wide EA. The court found the City did not issue a FONSI for this site because of the presence of wetlands. Instead, the City had commissioned a more comprehensive environmental impact statement ("EIS") to evaluate any impacts to the wetlands. Although the Area-Wide EA contained a statement indicating no wetlands would be affected by the development project, this factual inaccuracy was due to prior court orders on the scope of the Area-Wide EA. In order to correct this inaccuracy, the court indicated the Area-Wide EA would have to be updated. However, the court felt that because the wetlands area was a self-contained environmental matter, failing to discuss it in the Area-Wide EA was not grounds for its invalidation, a new area-wide EA, or an injunction to prevent construction by the City.

Fifth, the court found D'Agnillo had no basis to seek to enjoin HUD from dispersing funds to the City. According to the court, HUD could withhold funds only if it rejected a potential recipient's environmental findings on limited procedural grounds spelled out in its regulations. The court found the deficiencies alleged by D'Agnillo in the EAs did not fall within these HUD regulations.

For the reasons stated, the district court denied D'Agnillo's motion.

Matthew J. Costinett

N.W. Env'tl. Def. Ctr. v. Blue Heron Paper Co., No. 00-1201-KI, 2000 U.S. Dist. LEXIS 17848 (D. Or. Nov. 30, 2000) (holding: (1) environmental group's activities created sufficient constitutional standing to bring suit against a paper mill under the Clean Water Act based on allegations that the mill harmed fish populations in the Willamette River; and (2) Oregon Revised Statute section 468.025(1)(b) regulating discharge of wastes into state waters created no private cause of action to enforce the statute, but damages could be sought by pleading the claim as a common-law tort).

Blue Heron Paper Co. ("BHPC") operated a recycling mill that discharged high-temperature wastewater into the Willamette River. Northwestern Environmental Defense Center ("NEDC") sued BHPC under both the Clean Water Act ("CWA") and Oregon statutes. NEDC alleged high-temperature water release adversely affected fish in the river and the rights of NEDC members who fished those waters.