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United States Pub. Interest Research Group v. Heritage Salmon, Inc., No. 00-150-B-C, 2001 U.S. Dist. LEXIS 13283 (D. Me. Aug. 28, 2001)

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court held that an injunction would not serve the public interest. As a result, the court denied the Motion for Preliminary Injunction.

Merc Pittinos

United States Pub. Interest Research Group v. Heritage Salmon, Inc., No. 00-150-B-C, 2001 U.S. Dist. LEXIS 13283 (D. Me. Aug. 28, 2001) (holding associations asserting rights on behalf of members may establish standing where the individual members meet basic elements of standing).

In 2000, United States Public Interest Group (“USPIRG”) filed a citizen’s suit accusing Heritage Salmon, Inc. (“Heritage”), a salmon farm located in the vicinity of Cobscook Bay (“Bay”), Maine, of violating the Clean Water Act (“CWA”), and failing to obtain an NPDES permit. USPIRG sought a declaratory judgment that Heritage was in violation of an effluent standard or limitation under Chapter 26, Title 33 U.S.C. In addition, they sought civil penalties and an order enjoining Heritage from continuing to violate the applicable standard or limitation. In response to USPIRG’s accusations, Heritage filed a motion to dismiss under the theory that USPIRG had failed to establish standing.

When the plaintiff is an association asserting rights on behalf of its members: (1) some members must have standing to sue in their own right; (2) the members’ interest in the suit must be germane to the organization’s purpose; and (3) the claim asserted and the relief requested must not require the individual participation of those members in the suit. Heritage conceded that USPIRG satisfied the second and third requirements, but argued USPIRG was unable to satisfy the first requirement. USPIRG claimed standing based on the experiences of three members who stated they were adversely affected by Heritage’s pollution of the Bay and its tributaries. The members each claimed they reduced or eliminated the amount of fish they consumed from the Bay or its tributaries because they were fearful of the effects of the pollution on the fish. Two of the members stated they stopped fishing in the area because of the pollutants in the water from Heritage, and feared the further depletion of wild salmon, which were already suffering from Heritage’s pollution.

The United States District Court for the District of Maine held USPIRG had established standing because the members had suffered injuries in fact traceable to the defendant’s activities, which were redressable through court action. Injury in fact was established, *inter alia*, because the members were not taking advantage of a “local food source that they would otherwise enjoy due, in large measure, to Heritage’s discharges.” The court also emphasized that environmental plaintiffs adequately allege injury in fact “when they aver that they use the affected area and are persons for whom the aesthetic and

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