Water Law Review

Volume 7 | Issue 2 Article 24

1-1-2004

In re Needham, 354 F.3d 340 (5th Cir. 2003)

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Custom Citation
Dave M. Shohet, Court Report, In re Needham, 354 F.3d 340 (5th Cir. 2003), 7 U. Denv. Water L. Rev. 441 (2004).

delegate to the Corps under the Commerce Clause, the Court held the Corps did have jurisdiction over waters with a sufficient hydrological connection to navigable waters.

Thus, the Corps' jurisdiction could therefore reach any branch of a tributary system that eventually flowed into a navigable body of water or a water of the United States, and any wetland adjacent thereto. Since the Newdunn wetlands were adjacent to the nonnavigable ditch that drained into the navigable waters of Stony Run, the last question was whether the ditch constituted a tributary of Stony Run. Noting that rerouting the ditch did not meaningfully alter the wetlands' longstanding connection to Stony Run, and that the Corps' definition of "tributary" included roadside ditches, the court rejected Newdunn's asserted distinction between natural and man-made watercourses for purposes of defining "tributary."

Therefore, the Newdunn wetland was adjacent to a tributary of a navigable water, and was subject to the Corps' jurisdiction for the purpose of CWA permitting requirements.

Owen Walker

FIFTH CIRCUIT

In re Needham, 354 F.3d 340 (5th Cir. 2003) (holding that Oil Pollution Act did not permit federal government to impose regulations over tributaries that were neither themselves navigable nor truly adjacent to navigable waters; bayou containing residue from oil spill flowed directly into company canal that was navigable-in-fact and was plainly adjacent to navigable waters, thus triggering federal regulatory jurisdiction pursuant to Oil Protection Act).

The United States Environmental Protection Agency ("EPA") and Coast Guard (collectively "United States") filed suit against James and Janell Needham ("Needhams") for reimbursement of cleanup costs associated with an oil spill. The United States Bankruptcy Court ("bankruptcy court") for the Western District of Louisiana found that the Needhams were not liable to the United States for the cleanup costs because the waters in question were not navigable, and were therefore beyond the reach of the Oil and Pollution Act ("OPA"). After the United States District Court for the Western District of Louisiana affirmed, the United States appealed the decision to the United States Court of Appeals for the Fifth Circuit which reversed and remanded the lower court decisions.

On January 25, 1995, an employee of Needham Resources, Inc. ("NRI"), owned by the Needhams, pumped oil into a drainage ditch. Initially, NRI hired a private contractor to clean the spill, but lacked the financial resources to complete the effort. The United States finished the cleanup effort, expending $207,000. On February 8, 1998, the Needhams filed for bankruptcy in the bankruptcy court. The Needhams objected to EPA's proof of claim arguing they were not responsible for the costs since the spill did not implicate any navigable waters subject to federal jurisdiction, and therefore was not subject to OPA regulation. The United States claimed that the incident was subject to OPA regulation because the oil spilled into waters adjacent to an open body of navigable water. Both parties agreed that the oil, originally discharged into the drainage ditch, spilled into Bayou Cutoff, and then into Bayou Folse. Bayou Folse flows directly into the Company Canal, an industrial waterway that eventually flows into the Gulf of Mexico. The bankruptcy court found neither the drainage ditch nor Bayou Cutoff navigable-in-fact, nor were they sufficiently adjacent to the navigable waters to support OPA jurisdiction, and thus concluded the spill was not subject to federal regulation. The district court affirmed, finding no basis to disturb the bankruptcy court's conclusions. The United States then appealed the district court decision.

On appeal, the Fifth Circuit reviewed the lower courts' findings that the waterways were not navigable-in-fact for clear error. The court first analyzed the language of the OPA. The OPA imposes strict liability upon parties that discharge oil into navigable waters, a term defined in the statute to mean the waters of the United States. Under the OPA, each party responsible for a facility from which oil is discharged into navigable waters or upon adjoining shorelines is liable for the removal costs and damages resulting from such incident. The OPA permits recovery of cleanup costs if oil spills into navigable-in-fact waters or into non-navigable waters that are truly adjacent to an open body of navigable water. The United States argued that "navigable waters" covers all waters having any hydrological connection with navigable water. The court held the OPA was not so broad as to permit the federal government to impose regulations over "tributaries" that are neither themselves navigable nor truly adjacent to navigable waters. The court further stated a body of water is subject to regulation if the body of water is actually navigable or adjacent to an open body of navigable water.

Applying this interpretation of the OPA, the Fifth Circuit held the lower courts' findings constituted clear error. Specifically, the court held it was clear error to disregard the effects of the spill on Bayou Folse and the Company Canal—the proper inquiry was whether Bayou Folse, the site of the farthest traverse of the spill, was navigable-in-fact or adjacent to an open body of navigable water. The court then concluded that Bayou Folse was adjacent to Company Canal, an open body of navigable water.

Next, the court examined whether Bayou Folse was adjacent to the Company Canal. The court stated that the term "adjacent" implicates a "significant nexus" between the water in question and the navigable-in-fact waterway. Applying this standard, the court held Bayou Folse was plainly adjacent to the Company Canal, as Bayou Folse flowed directly into the canal. On this basis, the court held the oil spill implicated navigable waters and triggered federal regulatory jurisdiction pursuant to the OPA. Thus, the court overruled the lower courts' findings and remanded for consideration of the Needham's remaining defenses.

Dave M. Shohet

SIXTH CIRCUIT

Le-Ax Water Dist. v. City of Athens, 346 F.3d 701 (6th Cir. 2003) (holding rural water district could not use federal law—intended to protect rural water associations from local governments taking away customers—to require new customers outside of district's state-established geographic boundaries to use the district's services).

A judicial order created the Le-Ax Water District ("Le-Ax") as a rural water district in 1980 after Le-Ax filed of a petition in the Athens County Court of Common Pleas. The order specifically defined Le-Ax's geographical territory. University Estates owned 825 acres located in close proximity to, but not within the geographic boundaries of, Le-Ax and the City of Athens, Ohio ("Athens"). For nearly twenty years, Le-Ax maintained an eight-inch water main adjacent to the University Estates property. After deciding to develop the property into a golf course community, University Estates contracted with Athens instead of Le-Ax for water service. Le-Ax then filed suit against Athens in the United States District Court for the Southern District of Ohio seeking to prevent Athens from supplying water to University Estates. Le-Ax argued the agreement for Athens to supply water to University Estates violated 7 U.S.C. § 1926(b). After both parties moved for summary judgment, the district court denied Athens's motion and granted summary judgment in favor of Le-Ax. Athens appealed the summary judgment rulings to the United States Court of Appeals for the Sixth Circuit.

On appeal, the Sixth Circuit first concluded that Congress enacted section 1926(b) ("statute") as part of the Consolidated Farm and Rural Development Act to protect certain federal loans made to water service associations by preventing competition with the recipients of the loans. The statute prohibits local governments from expanding their water service into a rural water district's territory. To use the statute to prevent Athens from providing water services to University Estates, Le-Ax had to prove it: (1) constituted an association as provided by the statute, (2) carried the federal loans defined in the statute, and (3) provided or made services available to the area in dispute. The court held undisputed evidence showed Le-Ax qualified as an association with the proper federal loans under the statute. Additionally, the court determined Le-Ax provided or made service available to the area in dispute after Le-Ax showed it had the physical ability to provide the