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Raymond Proffitt Found. v. United States Army Corps of Eng'rs, 343 F.3d 199 (3d Cir. 2003)

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COURT REPORTS

FEDERAL COURTS

UNITED STATES CIRCUIT COURTS

THIRD CIRCUIT

Raymond Proffitt Found. v. United States Army Corps of Eng'rs, 343 F.3d 199 (3d Cir. 2003) (holding that Congress granted the U.S. Army Corps of Engineers broad discretion for implementing the Water Resources Development Act's environmental protection mission at specific water projects).

The Raymond Proffitt Foundation and the Lehigh River Stocking Association (collectively the "Foundation") sued the United States Army Corps of Engineers ("Corps") in the United States District Court for Eastern District of Pennsylvania, claiming the Corps violated the Water Resources Development Act of 1990 ("WRDA"). The Foundation alleged the WRDA required the Corps to release additional flows from the Walter Dam in order to improve the aquatic environment downstream. The Corps asserted the WRDA's subject provisions were discretionary, committed to the agency by law, and unreviewable under the Administrative Procedures Act ("APA"). The district court concluded there was no "law to apply" to the facts and, therefore, the Corps' actions were not subject to judicial review under the APA. The Court of Appeals for the Third Circuit disagreed and held the WRDA contained specific obligatory provisions and the Corps' actions were subject to judicial review. Nevertheless, the court of appeals affirmed the district court's grant of summary judgment, stating the Corps' actions were not arbitrary, capricious, or in violation of the law.

The Foundation consisted of members who recreated (including fishing, hunting, boating and rafting) on the Lehigh River downstream of the Walter Dam in Northeastern Pennsylvania. The Corps operated the Walter Dam by replicating the natural hydrograph—flows that would naturally occur if the dam was not present—of the river. In order for the anglers, canoeists, and rafters to have better recreating opportunities, the Foundation wanted the Corps to augment the low summer flows by releasing additional water and asserted the WRDA required the Corps to do so.

The court of appeals first evaluated whether the Foundation's allegations were subject to judicial review. The Foundation's first claim—that the Corps failed to take action to include environmental protections as one of their “missions” at the dam—was subject to judicial review because the WRDA imposed an affirmative obligation on the Corps to include these protections as a “primary mission.” Specifically, the statute stated the Corps' objectives “*shall* include environmental protections.” Due to this mandatory language, the court of appeals disagreed with the district court and held that there was specific law to apply to the facts, thus the claim was subject to judicial review.

The second claim—that the Corps was not fulfilling its mission of environmental protection at the dam—was also subject to judicial review because no clear and convincing evidence existed that the Foundation's interpretation of the WRDA was contrary to legislative intent. The Foundation construed the WRDA as prohibiting the Corps from implementing any policies causing harm to aquatic life. The court determined this colorable interpretation was not clearly contrary to legislative intent, hence the claim was also reviewable.

After concluding the Foundation's claims were reviewable, the court analyzed the validity of each claim. It was undisputed that the WRDA required the inclusion of environmental protections as a “primary mission” of the Corps; however, the court stated it was within the Corps' discretion to determine the appropriate level of environmental protections for each specific water project. Applying these principles, the court found that the Corps had in fact included environmental protections as one of their missions, both at the overall Corps level and specifically at Walter Dam. In 1996, the Corps revised its environmental restoration and protection policies in response to the WRDA. In 1994, the Corps' Walter Reservoir Water Control Manual described environmental protections for the Walter Dam. The court concluded that even though the primary objective of the Walter Dam remained flood control, the Corps' 1996 and 1994 actions were evidence of the Corps' intent to include environmental protection as a primary mission. The court of appeals held that these measures satisfied the minimum action required of the agency under the APA.

Lastly, the court concluded that the Corps did not violate the WRDA by refusing to operate the dam in the manner requested by the Foundation. Under the APA, a reviewing court can set aside an agency action as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law unless the agency action is committed to agency discretion by law. The WRDA vested broad discretion with the Corps; therefore, the court held that the agency's decision to reproduce the natural hydrograph did not violate the APA.

Overall, the appellate court concluded the WRDA included specific laws for the judiciary to apply, the Corps complied with those laws by taking actions to facilitate the implementation of environmental protections, and lastly, the Corps had broad discretion for determining the type of environmental protection at each water

project. The Third Circuit affirmed the district court's grant of summary judgment for reasons different than those offered by the district court.

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FOURTH CIRCUIT

Am. Canoe Ass'n, Inc. v. Murphy Farms, Inc., 326 F.3d 505 (4th Cir. 2003) (holding that plaintiffs bringing a citizen suit under the Clean Water Act satisfied the injury in fact and traceability requirements for Article III standing by showing (1) concerns regarding water quality affecting their recreational, aesthetic, and economic interests; (2) testimony that a defendant discharged pollutants within the specific geographic area of concern; and (3) evidence the pollutant was capable of causing kind the of injuries plaintiffs alleged).

The Fourth Circuit Court of Appeals decision addressed whether the American Canoe Association, Professional Paddlesports Association, and Conservation Council of North Carolina ("Environmental Groups") had standing to sue two jointly operating North Carolina hog farms in the United States District Court for the Eastern District of North Carolina under the Clean Water Act's ("CWA") citizen suit provision. Specifically, the Environmental Groups claimed that D.M. Farms of Rose Hill LLC and Murphy Farms Inc. ("Hog Farmers") violated the CWA by discharging swine waste into Six Runs Creek without a National Pollution Discharge Elimination System ("NPDES") permit. Prior to this suit, the Hog Farmers operated under a North Carolina Department of Environment and Natural Resources Animal Waste Management Plan ("State Plan") that prohibited animal waste discharges to surface waters. As a result, the Hog Farmers had not applied for an NPDES permit. However, on two occasions while operating under the State Plan, the Hog Farmers discharged animal waste into waters of the United States without an NPDES permit.

The Environmental Groups sued the Hog Farmers for failing to obtain an NPDES permit and for discharging waste without an NPDES permit. The district court granted the Environmental Groups' motion for preliminary injunction, thereby requiring the Hog Farmers to apply for an NPDES permit. The district court also granted partial summary judgment to the Environmental Groups on the claims that the discharges violated the CWA. The Hog Farmers appealed. The United States Court of Appeals for the Fourth Circuit remanded the preliminary injunction issue to the district court for a mootness inquiry and declined to review the partial summary judgment ruling.

On remand, both parties entered into a consent decree, contingent on the Environmental Groups prevailing over the Hog