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Catskill Mtns. Chapter of Trout Unlimited v. City of New York, 273 F.3d 481 (2nd Cir. 2001)

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protection of public health.” Thus, the objective of the SDWA is safe drinking water; filtration is merely one way to achieve that goal. So long as a district court’s judgment meets that SDWA goal of providing safe drinking water, that judgment is properly within the scope of the SDWA. The court was also satisfied with the district court’s judgment because the district court agreed to oversee the MWRA’s compliance with the filtration avoidance-criteria, thus ensuring that the MWRA’s water supply will remain safe according to the EPA’s standards.

Despite the district court’s finding that the SDWA contains a “presumption expressed by Congress ... that filtration will almost always be the preferred remedy for an SWTR violation,” the court was satisfied with the district court’s decision not to issue an injunction. The court reached this holding because the district court properly exercised the flexibility Congress it in the statute, and assumed the responsibility of monitoring the MWRA’s compliance in the event that future violations require a reexamination of the decision not to order filtration. In sum, the court affirmed because the district court acted within the scope of its authority under the SDWA and used its equitable discretion to further the substantive purposes of the SDWA.

Kevin R. Rohnstock

SECOND CIRCUIT

Catskill Mtns. Chapter of Trout Unlimited v. City of New York, 273 F.3d 481 (2nd Cir. 2001) (holding artificial transfers of water from one watershed to another could constitute an actionable violation of the Clean Water Act).

The Catskill Mountains Chapter of Trout Unlimited and other recreational users of Esopus Creek (collectively “Catskill”) filed suit against the City of New York (“City”) for alleged violations of the Clean Water Act (“CWA”). Catskill claimed the City’s release of water from Schoharie Reservoir (“Reservoir”) introduced “suspended solids,” “turbidity” and “thermal discharges,” into the naturally clearer and cooler waters of the creek, all of which constituted “addition” of pollutants under the CWA.

The Reservoir supplied drinking water to the citizens of the City by discharging water through the Shandaken Tunnel (“the Tunnel”) into the creek, where it subsequently entered the Hudson River and flowed south to the City. Without the Tunnel, water leaving the Reservoir would naturally flow into the Mohawk River and would never flow into the Creek.

The circuit court focused on the question of whether artificial transfers of water from one watershed to another could constitute an “addition” of pollutants actionable under the CWA. The CWA

requires polluters to obtain a National Pollutant Discharge Elimination System ("NPDES") permit. Catskill claimed the City's transfer system constituted a violation of the CWA since the City had no NPDES permit to discharge water from the Reservoir via the Tunnel. The City countered first, by citing authority from other federal circuits, which, relying on EPA policy statements, stated that NPDES permit requirements did not apply to discharges from dams, and second, by arguing its discharges did not amount to "additions" of pollutants.

The Second Circuit admitted such statements could be persuasive and deserved qualified deference from the court. However, it found they in no way bound it to follow the holdings of other Circuits. Furthermore, the court distinguished the two cited cases because they involved the recirculation of water within a given system, whereas Catskill's claim involved an artificial "inter-basin transfer" of water made possible by a tunnel.

As to whether such a transfer could be considered an "addition" of pollutants, the court appealed to logic and policy. Though the CWA does not define "addition," the court held, "[n]o one can reasonably argue that the water in the Reservoir and the Esopus [Creek] are in any sense the same, such that the 'addition' of one to the other is a logical impossibility." Moreover, the court felt the CWA's "uncompromising policy of 'restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters'," should guide its interpretation of the debated term. Therefore, since the water from the Reservoir might have been more polluted than the water in the Creek, and because that would upset the Creek's environmental integrity, the court held such a transfer could constitute an "addition." A different finding, the court opined, could lead to a potentially hazardous precedent allowing transfers from extremely polluted watersheds into clean ones. Accordingly, the court reversed the lower court's ruling.

Daniel C. Wennogle

Natural Res. Def. Council, Inc. v. Muszynski, 268 F.3d 91 (2d Cir. 2001) (holding that the Environmental Protection Agency did not violate the Administrative Procedure Act by approving the State of New York's total maximum daily load standards for phosphorus in eight drinking water supply reservoirs because: (1) the Clean Water Act did not require that all TMDLs be expressed in daily terms; (2) formulating the TMDLs based on an aesthetic water quality standard was sufficient for drinking water supply purposes; and (3) given the limited data and methodology available, EPA used its best professional judgment in determining the margin of safety for the TMDLs).

In recent years, nineteen reservoirs located in upstate New York, which supply New York City with its drinking water, have suffered