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Mo. Soybean Ass'n v. EPA, 289 F.3d 509 (8th Cir. 2002)

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Because the lands could be identified, the court held that Hamilton owned the submerged lands below the low water mark at the time the lake was conveyed into public trust in 1913. The court of appeals then remanded this issue to the district court to determine the level of the low water mark in 1913.

Holly Shook

EIGHTH CIRCUIT

Mo. Soybean Ass'n v. EPA, 289 F.3d 509 (8th Cir. 2002) (dismissing Missouri Soybean Association's claims of potential harm to its members resulting from the Environmental Protection Agency's stricter controls of the use of challenged waters in Missouri because the claims were too remote and speculative).

Plaintiff, Missouri Soybean Association ("MSA") sued the United States Environmental Protection Agency ("EPA") under the Clean Water Act ("CWA") and the Administrative Procedures Act ("APA") in the United States District Court for the Western District of Missouri. MSA claimed the EPA should have disapproved Missouri's list of pollution-impaired waters because some of the waters included lacked documentation of pollution. MSA's complaint focused on potential harm to its members resulting from stricter controls of the use of the challenged waters. The court consolidated MSA's suit with the Sierra Club, Ozark Chapter's and the American Canoe Association, Inc.'s ("environmental plaintiffs") earlier lawsuit also challenging the EPA's approval of Missouri's 1998 list claiming such list was under inclusive. The EPA and the environmental plaintiffs settled their dispute through a consent decree approved by the district court.

MSA moved for partial summary judgment on the merits of the challenged water classification dispute. The EPA filed a motion to dismiss, claiming MSA lacked standing and ripeness, and, in the alternative, moving for summary judgment on the merits of the challenged water classification dispute. The court assumed MSA had standing, but found MSA's suit was not ripe for adjudication. Thus, it denied MSA's motion for partial summary judgment and granted partial summary judgment in favor of the EPA, dismissing MSA's suit with prejudice. MSA's appealed to the Eighth Circuit Court of Appeals.

States compile lists of impaired by, first, pursuant to the CWA, identifying and prioritizing those waters within its boundaries that do not meet the its water quality standards. Next, states submit the list of impaired waters, known as the section 303(d) list, to the EPA for approval. Finally, once the EPA approves the list, the impaired waters undergo scientific study to establish the total maximum daily load

("TMDL") of specifically identified pollutants that may be released without violating state water quality standards.

In preparing its 1998 list, Missouri divided its waters into three categories: (1) category one waters were impaired and scheduled for full TMDL development; (2) category two waters were scheduled for further monitoring because the water quality data was outdated and less reliable; and (3) category three waters were declared as impaired but with no practical remedy available because the pollution resulted from minerals, nutrients, or sediment naturally occurring in the water. Post classification, Missouri excluded the Missouri and the Mississippi rivers ("big rivers") from its list, finding no water quality contaminant violations. Subsequently, the EPA added several waters to Missouri's list and declared the waters in all three categories impaired, requiring TMDL development. Consequently, the Missouri Clean Water Commission added the big rivers to Missouri's section 303(d) list, claiming the pollutant was "habitat loss" due to "channelization." The EPA approved Missouri's revised list.

MSA claimed the EPA should have disapproved Missouri's section 303(d) list because the category two waters and the big rivers lacked the required documentation of pollution to be listed as impaired. MSA also asserted that the premature listing of the challenged waters injured its members through: (1) potential changes in land management practices; (2) limitations on crop growth and rotation; (3) limitations on sale and use of fertilizers, pesticides and herbicides; (4) decreases in property values; (5) increases in farming costs; and (5) the inability to plan for and rely on the use of certain waters and land caused by CWA's requirements.

On appeal, MSA first contended the district court erred when it concluded that MSA's challenge was not ripe because it did not show that EPA's approval of Missouri's 1998 list affected MSA's members in any concrete way. The Eighth Circuit considered the suit's ripeness for adjudication, stating the ripeness doctrine flows both from the Article III cases and controversies limitation. The court further noted that the ripeness doctrine also flows from prudential considerations for refusing to exercise jurisdiction. Moreover, the ripeness doctrine seeks "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." Thus, for a case to be ripe for decision, it must be fit for judicial resolution, and the parties must experience hardship in the event the court withholds consideration of the case's merits.

The court concluded that MSA's claims were speculative and not ripe for judicial resolution, for although MSA's complaint focused on potential harm to its members resulting from stricter controls of the use of the challenged waters, the more stringent controls on water use would not occur until after TMDLs were developed and implemented.

Even then, the court noted, it would remain uncertain whether TMDL development or regulatory implementation would adversely impact the members. Thus, it was clear the EPA's approval of Missouri's 1998 list failed to affect MSA's members in any concrete way.

The court next considered MSA's contention that because the EPA challenged jurisdiction in a motion to dismiss and not a motion for summary judgment, the court should hold MSA to a relatively modest standard of asserting jurisdiction in its pleadings. MSA argued that under the liberal pleading standard; its assertion of potential decreases in property values stated a current harm sufficient to present a ripe claim. Although the court agreed that it should hold MSA to a modest standard of asserting jurisdiction in its pleadings, it found that MSA's complaint did not support this contention. The court noted the complaint described a "potential . . . decrease in property values and/or property rights as a result of Clean Water Act requirements." Considering this language in context, the court found that the "as a result of Clean Water Act requirements" clause was consistent with MSA's other claims of harm that could occur *after* the implementation of TMDLs. Further, the court found that MSA's argument that even if harm had not yet occurred, but was certainly impending also failed, stating the "potential" diminution of property values was not a sufficiently immediate or sizeable threatened harm to warrant judicial intervention.

The Eighth Circuit affirmed the district court's decision finding that MSA's claims of harm were too remote to be anything other than speculative and not ripe for judicial resolution, however it dismissed the suit without prejudice for lack of jurisdiction.

Gloria Maria Soto

NINTH CIRCUIT

San Francisco BayKeeper v. Whitman, 287 F.3d 764 (9th Cir. 2002) (affirming that the United States Environmental Protection Agency did not have a non-discretionary duty to establish water pollution standards for the State of California since the constructive submission doctrine, which triggers the Environmental Protection Agency's non-discretionary duty to act, did not apply when California submitted some total maximum daily loads).

Environmental group San Francisco BayKeeper ("BayKeeper") appealed a summary judgment decision by the United States District Court for the Northern District of California dismissing BayKeeper's claim that the State of California ("California") failed to both implement an adequate water pollution control program and establish total maximum daily loads ("TMDLs"). BayKeeper argued California