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Grand Lake Estates Homeowners Ass'n v. Veneman, 340 F. Supp. 2d 1162 (D. Colo. 2004)

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ted the EPA to use wildlife protection as a surrogate standard for achieving recreational and aesthetic uses of the river because Congress did not state a specific process for TMDL calculation. The EPA reasonably assumed their level of reduction would meet all standards. In addition, the WQSs for the District of Columbia were subjective, requiring only that the waters be free from "objectionable odor, color, taste, or turbidity." The court would not accept objective facts to contradict the EPA's assertion because there was no frame of reference to compare the evidence. The EPA also indicated their willingness to revise the standard set for total suspended solids if there was a future showing the seasonal average violated the subjective criteria.

The court finally addressed the EPA's assignment of wasteload allocation, or the allocation of the receiving water's capacity to existing or future sources of pollution. The EPA assigned waste loads by a single permit to a treatment plant and a single permit to the District of Columbia's municipal separate storm sewer system. The court found this allocation was a reasonable interpretation because allocation into categories of sources did not deviate from the CWA or regulations.

For the reasons articulated above, the court granted summary judgment for the EPA.

Heather Heinlein

Grand Lake Estates Homeowners Ass'n v. Veneman, 340 F. Supp. 2d 1162 (D. Colo. 2004) (holding the United States Forest Service could require special use permits that affected the use of private land adjacent to the boundaries of a national forest, but the Forest Service did not have the authority to impound private property to compel holders of special use permits to comply with the terms contained therein).

Grand Lake Estates Homeowners Association ("GLEHA") filed suit in United States District Court for the District of Colorado against the Secretary of Agriculture asserting claims for declaratory judgment and injunctive relief against the United States Forest Service ("Forest Service"), relating to GLEHA's use of facilities on Shadow Mountain Reservoir. GLEHA owned a marina and docks built in the early 1960s on a small body of water located within the Grand Lake Estates subdivision, where a small man-made channel provided boat access from the marina to Shadow Mountain Reservoir. In 1978 Congress created the Arapahoe National Recreation Area ("ANRA"), which encompassed Shadow Mountain Reservoir, and delegated management of the ANRA to the Forest Service.

In 1985 the Forest Service notified GLEHA that it required a special use permit for GLEHA's marina. Thereafter, GLEHA applied for, and the Forest Service approved, special use permits for GLEHA's marina and boat docks. Pursuant to the special use permits, the Forest Service assessed GLEHA an annual fee, which GLEHA refused to pay

between 1996 and 2000. In 2000 the Forest Service provided GLEHA with notice that it might enforce the permit requirements, including denying water access to Shadow Mountain Reservoir, impounding GLEHA's boat docks, and impounding its members' personal boats. The Forest Service then erected a fence across the channel, closing access from the marina to Shadow Mountain Reservoir. In 2001 GLEHA brought this action to enjoin the Forest Service from impounding GLEHA's private property and to obtain a judicial determination of the Forest Service's power to require special use permits.

The court first addressed whether the Forest Service had the power to require or issue special use permits that affected the use of private land adjacent to the boundaries of a national forest. Interpreting the Property Clause of the United States Constitution, the court stated the United States had the power regulate conduct on non-federal land when reasonably necessary to protect adjacent federal property or navigable waters. According to the court, GLEHA's activities, if unregulated, may adversely affect federal land, due to the short distance between the border of the ANRA and GLEHA's water and the possibility of direct affects from the marina on the water quality of Shadow Mountain Reservoir. Thus, the Forest Service was justified in requiring the special use permits for GLEHA's boat docks and marina.

Next, the court addressed whether the Forest Service had the authority to impound GLEHA's private property, including its marina, boat docks and its members' boats. The Forest Service asserted it did have such authority and cited a regulation providing for the impoundment of vehicles, or other inanimate personal property on National Forest System lands, which owners do not remove from the forestland within a prescribed time. However, the court refused to extend the regulation to adjoining private land, and therefore held the Forest Service did not have the authority to physically impound and sell, as it threatened to do, the personal property located outside the boundaries of the ANRA. The court ruled the Forest Service's action of erecting a fence blocking access from the marina to Shadow Mountain Reservoir was a reasonable method for the Forest Service to enforce its special use permits, because such action was within the ancillary authority of the Forest Service to protect the ANRA.

In conclusion, the court denied GLEHA's request for declaratory judgment insofar as it requested the court declare the Forest Service did not have the authority to require the special use permits. However, the court granted GLEHA's request for declaratory judgment with respect to the Forest Service's authority to impound GLEHA's private property. Lastly, the court dismissed GLEHA's request for an injunction against the Forest Service to preclude it from impounding GLEHA's private property as moot.

Donald E. Frick