ENV 5011 Discussion 4.2: CWA Legal Case

Prompt: Discuss one or more cases, either federal or state, that have arisen out of the statute you are reviewing, or are currently pending. If the case has already been decided, how does the Court's interpretation of the law change its implementation? If the case is pending, what are the potential implications of various outcomes?

Hawai'i Wildlife Fund v. County of Maui, 24 F. Supp. 3d 980 (D. Haw. 2014).

On June 8, 2011, pursuant to section 505(b)(1)(A) of the Federal Water Pollution Control Act, aka the Clean Water Act (CWA), 33 U.S.C. §1365(b)(1)(A), the Hawai'i Wildlife Fund, Surfrider Foundation Maui Chapter, Sierra Club-Maui Group, and the West Maui Preservation Association (collectively, the "Community Groups") filed a notice of intent to bring civil suit to the County of Maui for violations of the CWA 33 U.S.C. §§ 1251-1387. On April 16, 2012, the community groups filed a complaint against the County in the U.S. District Court of Hawai'i that alleged the defendant had been "continuously discharging wastewater from its injection wells into the nearshore ocean waters via groundwater that is hydrologically connected to the navigable waters of the Lahaina coast." The county operated Lahaina Wastewater Reclamation Facility's (LWRF) use of the injection wells, to dispose of treated effluent, since 1982 constituted a point source discharge and as such, required a National Pollution Discharge Elimination System Permit (NPDES) under 33 U.S.C § 1342(b)(1)-(2), which the defendant did not have. The plaintiffs alleged in their 2012 complaint, (which was later scientifically proven in Glenn et al. (2013), Bishop et al. (2017), and Swarenski, et al., (2017)), that:

Wastewater and additional pollutants from the LWRF - including but not limited to, nitrogen, phosphorous, suspended solids, bacteria, pharmaceuticals, musk fragrances, and industrial chemicals - are continuously discharged into some or all of the four injection wells at the LWRF and continuously flow out into the ocean through the hydrologically connected groundwater. The LWRF injects wastewater into the wells at an average of 3-5 million gallons per day.

On May 30, 2014, the US District Court ruled in favor of the plaintiffs. However, due to crossmotions, the case went before the courts again, and on January 23, 2015, the District Court again ruled in favor of the plaintiffs. A <u>settlement</u> was reached between the parties on September 24, 2015, and the County was ordered to make good faith efforts to obtain an NPDES permit as well as fund one or more projects, (totalling \$2.5 million), to divert treated wastewater for reuse and pay a \$100,000 penalty to the US Treasury.

The County <u>appealed</u> the ruling in the 9th US Circuit Court of Appeals on March 21, 2016 based on their belief that the district court erred "in holding that an NPDES permit [was] required for the Lahaina wells because groundwater containing wastewater eventually reaches navigable water [and] in holding the County had fair notice that an NPDES permit [was] required" (Hawai'i Wildlife Fund v. County of Maui, 2018). On May 31, 2016, an *amicus curiae* was released that affirmed the district court's judgment and on February 1, 2018, the 9th Circuit Court of Appeals <u>upheld the summary judgments</u> of the district courts. The County is now evaluating its legal options, which include an appeal to the US Supreme Court. The injection wells were determined, by the courts, to be "point sources" from which the County discharged pollutants in the form of treated wastewater effluent into the groundwater. The holdings, in this case, are significant in that they legally support NPDES permitting for pollutants that are indirectly discharged into navigable waters through groundwater. Judge D.W. Nelson wrote the affirming opinion for the Court of Appeals and stated in his conclusion, "At bottom, this case is about preventing the County from doing indirectly that which it cannot do directly. The County could not under the CWA build an ocean outfall to dispose of pollutants directly into the Pacific Ocean without an NPDES permit. It cannot do so indirectly either to avoid CWA liability. To hold otherwise would make a mockery of the CWA's prohibitions" (Hawai'i Wildlife Fund v. County of Maui, 2018).

References

- Bishop, J. M., Glenn, C. R., Amato, D. W., & Dulai, H. (2017). Effect of land use and groundwater flow path on submarine groundwater discharge nutrient flux. *Journal of Hydrology: Regional Studies*, 11, 194–218. <u>https://doi.org/10.1016/j.ejrh.2015.10.008</u>
- Glenn, C., Whittier, R., Dailer, M., Dulaiova, H., El-Kadi, A., Fackrell, J., Kelly, J., Waters, C., Sevadjian, J. (June 2013). Lahaina Groundwater Tracer Study. Department of Geology and Geophysics. Prepared for State of Hawaii Department of Health, US Environmental Protection Agency, and US Army Engineer Research and Development Center. University of Hawaii: Honolulu, Hawaii. Retrieved at <u>https://earthjustice.org/sites/ default/files/Lahaina-Tracer-Dye-Study.pdf</u>

Hawai'i Wildlife Fund v. County of Maui, 24 F. Supp. 3d 980 (D. Haw., 2014).

Hawai'i Wildlife Fund v. County of Maui, No. 15-17447 (9th Cir., 2018).

Swarzenski, P. W., Dulai, H., Kroeger, K. D., Smith, C. G., Dimova, N., Storlazzi, C. D., ... Glenn, C. R. (2017). Observations of nearshore groundwater discharge: Kahekili Beach Park submarine springs, Maui, Hawaii. Journal of Hydrology: Regional Studies, 11, 147– 165. <u>https://doi.org/10.1016/j.ejrh.2015.12.056</u>