

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
DAKOTA, WESTERN DIVISION

**Preserve French Creek, Inc. v. Corbin Herman, Unknown Officials of
City of Custer, South Dakota, City of Custer, South Dakota, Hunter
Roberts, Unknown Officials of Department of Agriculture and
Natural Resources, South Dakota Department of Agriculture and
Natural Resources, Dewild, Grant, Reckert and Associates Company**

5:25-CV-05045-RAL · No. 5:25-CV-05045-RAL · Decided March 9, 2026

SUMMARY

The United States District Court for the District of South Dakota considers motions to dismiss claims brought by Preserve French Creek, Inc. concerning a wastewater discharge permit authorizing the City of Custer to discharge effluent into French Creek. The claims include procedural due process under 42 U.S.C. § 1983, violations of the Clean Water Act, and violations of South Dakota law. The opinion addresses subject-matter jurisdiction issues including standing, Eleventh Amendment immunity, ripeness, and the Rooker-Feldman doctrine, and is captioned as an opinion and order granting the motions to dismiss.

CASE DETAILS

COURT	United States District Court for the District of South Dakota, Western Division
WRITING FOR THE COURT	Camela C. Theeler
JURISDICTION	United States District Court for the District of South Dakota, Western Division
DECIDED	March 9, 2026
DOCKET	5:25-CV-05045-RAL
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed an amended federal complaint seeking injunctive and declaratory relief and civil penalties based on alleged procedural due process, Clean Water Act, and South Dakota law violations. All defendants moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6); DGR Engineering alternatively moved for summary judgment.

STANDARD OF REVIEW

On a facial Rule 12(b)(1) challenge, the court accepts the plaintiff's factual allegations and applies protections similar to Rule 12(b)(6); on a factual Rule 12(b)(1) challenge, the court may weigh evidence outside the pleadings. On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, draws reasonable inferences for the plaintiff, disregards legal conclusions, and asks whether the complaint plausibly states a claim. The court also considered ripeness and the statute of limitations as jurisdictional or pleading issues where applicable.

PRECEDENTIAL VALUE

unpublished district court opinion

TOPICS

motions to dismiss

subject matter jurisdiction

civil procedure

clean water act

PRACTICE AREAS

civil procedure

environmental law

administrative law

civil rights

municipal law

remedies

QUESTIONS PRESENTED

1. Whether PFC and its members had Article III and associational standing to assert a procedural due process claim.
2. Whether the Eleventh Amendment barred the procedural due process claim against the South Dakota Department of Agriculture and Natural Resources and its officials.
3. Whether the Rooker-Feldman doctrine barred the procedural due process claim because of the prior South Dakota litigation.
4. Whether the procedural due process claim was ripe before any discharge into French Creek occurred.
5. Whether the procedural due process claim was barred by South Dakota's three-year statute of limitations.
6. Whether PFC's Clean Water Act citizen-suit claim was ripe and plausibly alleged a discharge of a pollutant without a permit or in violation of a permit.
7. Whether the court should exercise supplemental jurisdiction over PFC's remaining state-law claims.

HOLDINGS

1. PFC adequately alleged associational standing because its members alleged concrete and particularized injuries from inadequate notice, the injury was fairly traceable to the permitting process, prospective relief could redress it, the claim was germane to PFC's purpose, and individual-member participation was not required for the requested declaratory and injunctive relief.
2. The Eleventh Amendment barred the procedural due process claim against DANR, but the Ex parte Young exception permitted the claim to proceed at the pleading stage against Secretary Roberts and

unknown DANR officials in their official capacities because PFC alleged an ongoing federal due process violation and sought prospective injunctive relief.

3. The Rooker-Feldman doctrine did not bar PFC's procedural due process claim.
4. PFC's procedural due process claim was ripe because the alleged deprivation was the issuance of the permit without adequate predeprivation process, not the later discharge of effluent.
5. PFC's Clean Water Act claim was not ripe because no discharge into French Creek had occurred and any future violation depended on contingent events.
6. PFC's procedural due process claim was barred by South Dakota's three-year statute of limitations because the alleged deprivation and inadequate process had occurred no later than the permit's issuance on January 13, 2021.
7. PFC failed to state a Clean Water Act claim because it did not allege that the City had discharged a pollutant, and it could not allege a permit violation before any discharge occurred.
8. The court declined to exercise supplemental jurisdiction over PFC's remaining South Dakota law claims after dismissing all claims within the court's original jurisdiction.

KEY QUOTATIONS

“A permit issued in violation of due process remains unlawful as long as it is in force and effect.” (at 17)

“If the City remains compliant with the Permit, the City is deemed compliant with the CWA for purposes of the “Citizen Suit Provision.”” (at 22)

FACTUAL BACKGROUND

The City of Custer obtained a South Dakota surface-water-discharge permit authorizing discharge from its wastewater facility into Flynn Creek and, after facility upgrades, French Creek. Preserve French Creek alleged that state officials failed to provide adequate public notice and failed to analyze French Creek's attainable recreational uses before issuing the permit. PFC members own or use property adjoining French Creek, maintain nearby wells, and use the creek for recreation, livestock, and household purposes, but no discharge into French Creek had occurred when the federal action was filed.

PROCEDURAL HISTORY

Preserve French Creek, Inc. previously sought mandamus in South Dakota circuit court to compel enforcement of a county ordinance opposing discharge into French Creek. The South Dakota Supreme Court affirmed denial of relief, holding the ordinance preempted by state law and declining to consider the notice issue. PFC then filed this federal action, and the district court granted all defendants' motions, dismissing the entire complaint without prejudice.

DISPOSITION

other

CASES CITED

- United States v. Sioux Nation of Indians, 448 U.S. 371, 374-77, 377-84 (1980)
- Moss v. United States, 895 F.3d 1091, 1097 (8th Cir. 2018)
- Osborn v. United States, 918 F.2d 724, 729 n.6, 730 (8th Cir. 1990)
- VS Ltd. Partnership v. Department of Housing & Urban Development, 235 F.3d 1109, 1112 (8th Cir. 2000)
- Jones v. United States, 727 F.3d 844, 846 (8th Cir. 2013)
- Stalley v. Catholic Health Initiatives, 509 F.3d 517, 521 (8th Cir. 2007)
- Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)
- District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556-57, 570 (2007)
- Dittmer Properties, L.P. v. FDIC, 708 F.3d 1011, 1021 (8th Cir. 2013)
- United States v. Afremov, 611 F.3d 970, 975 (8th Cir. 2010)
- Raines v. Byrd, 521 U.S. 811, 818 (1997)
- Flast v. Cohen, 392 U.S. 83, 99-100 (1968)
- Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 180-81 (2000)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
- FDA v. Alliance for Hippocratic Medicine, 602 U.S. 367, 381 (2024)
- Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014)
- Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 343 (1977)
- Carney v. Adams, 592 U.S. 53, 59 (2020)
- TransUnion LLC v. Ramirez, 594 U.S. 413, 431 (2021)
- Hirth v. Iowa Utilities Commission, 771 F. Supp. 3d 1058, 1080 (N.D. Iowa 2025)
- Hughes v. City of Cedar Rapids, 840 F.3d 987, 993-94 (8th Cir. 2016)
- Heartland Academy Community Church v. Waddle, 427 F.3d 525, 533 (8th Cir. 2005)
- Pharmaceutical Research & Manufacturers of America v. Williams, 64 F.4th 932, 948 (8th Cir. 2023)
- Wolk v. City of Brooklyn Center, 107 F.4th 854, 858 (8th Cir. 2024)
- Monroe v. Arkansas State University, 495 F.3d 591, 594 (8th Cir. 2007)
- Filyaw v. Corsi, 150 F.4th 936, 941 (8th Cir. 2025)
- Preserve French Creek, Inc. v. County of Custer, 10 N.W.3d 233, 235-39 (S.D. 2024)
- Friends of Lake View School District 25 v. Beebe, 578 F.3d 753, 758 (8th Cir. 2009)
- Christ's Household of Faith v. Ramsey County, 618 F. Supp. 2d 1040, 1044 (D. Minn. 2009)
- Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005)
- Dakota, Minnesota & Eastern Railroad Corp. v. South Dakota, 362 F.3d 512, 520 (8th Cir. 2004)
- National Park Hospitality Association v. Department of the Interior, 538 U.S. 803, 807-08 (2003)
- Parrish v. Dayton, 761 F.3d 873, 875-76 (8th Cir. 2014)
- Texas v. United States, 523 U.S. 296, 300 (1998)

- Patsy v. Board of Regents of Florida, 457 U.S. 496, 516 (1982)
- Hopkins v. City of Bloomington, 774 F.3d 490, 492 (8th Cir. 2014)
- Wax 'n Works v. City of St. Paul, 213 F.3d 1016, 1019 (8th Cir. 2000)
- Humphrey v. Eureka Gardens Public Facility Board, 891 F.3d 1079, 1081 (8th Cir. 2018)
- Illig v. Union Electric Co., 652 F.3d 971, 976 (8th Cir. 2011)
- Wallace v. Kato, 549 U.S. 384, 387-88 (2007)
- Duerre v. Hepler, 892 N.W.2d 209, 222-23 (S.D. 2017)
- City and County of San Francisco v. EPA, 604 U.S. 334, 341 (2025)
- Zutz v. Nelson, 601 F.3d 842, 850 (8th Cir. 2010)
- Crest Construction II, Inc. v. Doe, 660 F.3d 346, 359 (8th Cir. 2011)
- Magee v. Trustees of Hamline University, 957 F. Supp. 2d 1047, 1060 (D. Minn. 2013)
- Mountain Home Flight Service, Inc. v. Baxter County, 758 F.3d 1038, 1045 (8th Cir. 2014)

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