

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

United States v. Riverside Bayview Homes, Inc.

729 F.2d 391 (6th Cir. 1984) · Decided March 7, 1984

SUMMARY

The Sixth Circuit reviewed an enforcement action concerning whether property in Michigan qualified as regulated wetlands under the Federal Water Pollution Control Act and Corps of Engineers regulations. The court held that the property did not meet the amended wetlands definition because the evidence did not show sufficiently frequent flooding causing the aquatic vegetation, and it vacated the injunction. The court also vacated as moot a declaratory judgment concerning the Corps' permit-processing regulation.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	Merritt
JURISDICTION	Federal
DECIDED	March 7, 1984
DISPOSITION	other
PROCEDURAL POSTURE	Cross-appeals from the district court's proceedings on remand in a Federal Water Pollution Control Act enforcement action. The district court continued a permanent injunction prohibiting filling on part of Riverside's property and had previously entered a declaratory judgment holding a Corps regulation unconstitutional.
STANDARD OF REVIEW	Interpretation of an agency regulation and its application to undisputed or previously found facts were reviewed de novo; factual findings from the prior evidentiary proceeding were applied without being found clearly erroneous. Mootness was reviewed as a legal question.
PRECEDENTIAL VALUE	published and precedential at the time of issuance; subsequently reversed by the United States Supreme Court
PARTIES	Riverside Bayview Homes, Inc., Allied Aggregate Transportation Company v. United States

TOPICS

- wetlands
- clean water act
- statutory interpretation
- takings clause
- judicial review of agency action

PRACTICE AREAS

environmental law

administrative law

real estate

constitutional law

QUESTIONS PRESENTED

1. Whether the Riverside property satisfied the Corps of Engineers' revised regulatory definition of wetlands under the Federal Water Pollution Control Act.
2. Whether the revised wetlands definition required present inundation or saturation sufficiently frequent and prolonged to support aquatic vegetation, with the vegetation caused by that inundation or saturation.
3. Whether the district court's permanent injunction prohibiting filling on the property could continue under the revised regulation.
4. Whether the declaratory judgment challenging the Corps regulation postponing permit processing became moot after the court determined that the Corps had no jurisdiction over Riverside's property and the regulation was amended.

HOLDINGS

1. Under the revised wetlands definition, both sufficiently frequent and prolonged present inundation or saturation and aquatic vegetation supported by that inundation or saturation are required. The Riverside property did not qualify because the record did not establish that it was presently flooded with sufficient frequency and duration or that flooding caused its wetland-type vegetation.
2. The permanent injunction prohibiting Riverside from placing fill on the property was not justified under the revised wetlands regulation and was vacated.
3. The challenge to the Corps regulation postponing permit processing was moot because the court's wetlands ruling eliminated any present adverse effect on Riverside and the regulation had been amended. The district court's declaratory judgment was vacated and the claim was dismissed.
4. The revised wetlands definition was construed narrowly to cover lands such as marshes, swamps, and bogs frequently flooded by waters subject to Corps jurisdiction, but not inland low-lying property that only sometimes becomes saturated.

KEY QUOTATIONS

"Both must be present, and the latter must be caused by the former." (396)

"In the absence of evidence that the property as it exists now is frequently flooded and that the flooding causes aquatic vegetation to grow there, the government's case is insufficient to justify a classification of this property as a wetland subject to the jurisdiction of the Corps of Engineers." (397)

"The declaratory judgment of the District Court is therefore vacated and the claim dismissed." (399)

FACTUAL BACKGROUND

Riverside owned approximately eighty acres in Harrison Township, Michigan, about a mile west of Lake St. Clair, and intended to develop the property for housing. After high water levels in the Great Lakes prompted

construction of a dike and other drainage changes, Riverside contracted with Allied to place fill on the land. Riverside submitted an incomplete permit application but began filling before the Corps acted, continued after receiving a cease-and-desist order, and was subjected to an enforcement action. The prior district court findings showed flooding only four to six times in eighty years and attributed the property's wetland-type vegetation primarily to soil conditions rather than flooding.

PROCEDURAL HISTORY

The United States sued Riverside Bayview Homes, Inc. and Allied Aggregate Transportation Company for placing fill on Riverside's property without a Corps of Engineers permit. The district court entered a permanent injunction, ordered removal of fill, held defendants in contempt, and issued a declaratory judgment concerning the constitutionality of a Corps permit-processing regulation. On an earlier appeal, the Sixth Circuit remanded for proceedings in light of a revised wetlands regulation. On remand, the district court again treated the property as wetlands and continued the injunction. The Sixth Circuit vacated the injunction and vacated and dismissed the declaratory judgment as moot.

DISPOSITION

other

CASES CITED

- United States v. Riverside Bayview Homes, Inc., 615 F.2d 1363 (6th Cir. 1980)
- San Diego Gas & Electric Co. v. San Diego, 450 U.S. 621, 652 (1981) (Brennan, J., dissenting)
- Kaiser Aetna v. United States, 444 U.S. 164, 172, 177-180 (1979)
- Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922)
- Moore v. Ogilvie, 394 U.S. 814, 816 (1969)
- International Longshoremen's & Warehousemen's Union v. Boyd, 347 U.S. 222 (1954)
- Avoyelles Sportsmen's League, Inc. v. Marsh, 715 F.2d 897 (5th Cir. 1983)