Blogs
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Ninth Circuit Holds Terms of Management Agency Agreement Governing Non-Point Source Pollution on Federal Lands Supersedes Other State Law Requirements

Forest Service livestock grazing permits do not run afoul of state water quality permitting requirements because the Management Agency Agreement (MAA) between the agency and the State Water Resources Control Board, which governs non-point source pollution control measures for the area, controls and expressly waives such requirements. *Central Sierra Environmental Resource Center v. Stanislaus National Forest*, 30 F.4th 929 (9th Cir. 2022).

As part of its authority to manage federal lands, the U.S. Forest Service may issue permits for livestock grazing. The Forest Service issued three such permits in Stanislaus National Forest subject to an MAA with the State Board to limit pollution from livestock grazing activities. In 2017, after years of water quality testing, plaintiffs filed suit alleging fecal matter runoff from the three grazing allotments polluted local streams in excess of allowable thresholds. Specifically, plaintiffs alleged the Forest Service violated the Porter-Cologne Water Quality Control Act—the principal law governing water quality in California, which applies to federal lands via Section 313 of the Clean Water Act—by authorizing discharges: (1) without proper permits or waivers and (2) in excess of water quality objectives set forth in the regional water quality board's basin plan.

First, on the issue of proper permits or waivers, the court held that compliance with an operative MAA supersedes standard Porter-Cologne permitting requirements. MAAs are a recognized tool under which the State Board designates another agency to take the lead on pollution control, with the goal of more efficiently regulating pollution from non-point sources. In 1981, the Forest Service and the State Water Board entered into an MAA for the area in question that expressly waived state law requirements for permits or waivers so long as the Forest Service complied with agreed-upon best management practices. Because the MAA remained operative, it controlled. If the State Board became dissatisfied with the terms of the MAA, it was required affirmatively to exercise its authority to abandon or amend the agreement. Until then, the terms applied, and the Forest Service remained in compliance.

Second, levels of pollution in excess of local water quality objectives—without a specific regulatory violation—do not run afoul of Porter-Cologne. Although levels of fecal matter exceeded established water quality objectives set forth in the regional water board's basin plan, the court held that these objectives "do not directly apply, of their own force, to individual dischargers." Instead, the objectives reflect general standards that

regulators must take into account in establishing requirements that *do* apply to individual dischargers (such as permits, waivers or basin plan prohibitions), but they cannot be enforced in isolation. Once the regional water board translates the water quality objectives into specific prohibitions, they may be enforced. Because the Forest Service was not in violation of the MAA or any specific prohibition, it remained in compliance with Porter-Cologne.

Authors