

St. Johns Riverkeeper, Inc. v. United States Army Corps of Engineers, No 3:17-cv-398-J-34MCR, 2020 WL 2735208 (D. Fla. May 26, 2020)

Middle District of Florida Holds That Army Corps of Engineers Met Its Burden Under the National Environmental Policy Act to Identify Dredging Project's Environmental Impacts

The Jacksonville Harbor (“the Harbor”) has undergone several large improvements to widen and deepen the Harbor. This includes deepening projects occurring in 1999 to 2003, 2006 to 2010, and now an upcoming project that is the subject of the Court’s opinion. In 2007, the United States Army Corps of Engineers (“the Corps”) began the process of planning an additional deepening project. This process, which included studies, workshops, and public comment, took the Corps seven years to complete. After this process was completed, the Corps determined that the Harbor would need to be deepened and widened. The Corps stated in its 2014 report that this improvement was necessary in order to reduce “transportation costs for larger ships forecast[ed]” to conduct business in the Harbor.

St. Johns Riverkeeper, Inc., (“the Organization”) is a non-profit group that seeks to preserve and protect the St. Johns River and surrounding environment. The Organization claims to have over 1,000 members who utilize the river for different purposes. The focus of the Organization is to monitor the river’s health and educate locals on the importance of the river. In response to the Corps’ plan to begin dredging part of the Harbor in the St. Johns River, the Organization filed suit based on the National Environmental Policy Act (“NEPA”). NEPA requires that federal agencies “document the potential environmental impacts of significant decisions before they are made.” However, NEPA does not require that the agency reach any particular outcome based off of the information—only that the agency, and in turn the public, are aware of the environmental affects a project will have.

The Organization’s complaint stated that the Corps’ actions were arbitrary and capricious due to (1) failing to complete a proper cumulative analysis by excluding present effects based on past dredging projects, (2) failing to update the mitigation plan for salinity impacts, and (3) failure to supplement the studies relied upon with a supplemental environmental impact statement that includes the effects of Hurricane Irma.

First, the Court explained the Corps’ cumulative impact analysis found that the wetlands were showing signs of stress from heightened salinity levels, but that the new project would have only a minor, or even nonexistent, effect on the surrounding wetlands. The Court then ruled that the Organization failed to show that the Corps’ cumulative impact analysis did not meet NEPA’s requirements. In ruling against the Organization, the Court highlighted several aspects of the Corps’ process and analysis, including the fact that the Corps analyzed the past projects, acknowledged the effect past deepening projects may have caused, and that the Corps had substantial discretion in deciding how far back its inquiry went into past actions affecting the river.

Second, the Court addressed whether the Corps' mitigation plan for salinity impacts to wetlands was sufficient enough to meet NEPA's standards. The Organization argued that the Corps failed to account for past projects' impacts in the mitigation plan. However, this claim was reliant on the cumulative impact analysis, discussed above, being labeled as arbitrary and capricious. If the cumulative impact analysis had been deemed insufficient, then the Organization argued that the Corps was required to update the mitigation plan as well. Since the Court disagreed with this argument, it quickly disposed of this second claim as well.

Lastly, the Court addressed whether the Corps should have created a supplemental environmental impact statement ("SEIS") to address the effects of Hurricane Irma. In order to meet NEPA's requirements, the Corps must have taken a "hard look" at the new information and explained the choice to not issue a SEIS based on the new facts. The Corps was not required to issue a SEIS—just merely explain its decisions when deciding to not issue the SEIS. The Court acknowledged that Hurricane Irma had serious real-world effects, but reasoned that the hurricane did not present any new circumstances that the Corps' model was not prepared to address. Because the effects of the hurricane were foreseeable based on the Corps' models, the requirements under NEPA were met.

In summary, the Court held that the Corps met the procedural requirements under NEPA. A court is not allowed to analyze the facts and make its own judgment on those facts, but rather must make sure that the Corps met standards set forth by NEPA. The Court held that the Corps met this burden and denied the Organization's motion for summary judgment.