# Scenic Rivers Designation Maintained

In *County of Del Norte v. United States*[1] the 9th Circuit Court of Appeals ruled that a technical violation of federal regulations would not necessarily require an administrative decision to be overturned. The plaintiffs, which included several California counties and entities that represented timber and water interests, challenged the designation of five rivers in northern California as part of the scenic river system. The Secretary of the Interior during the Carter Administration, Cecil Andrus, promulgated this designation under the Wild and Scenic Rivers Act.[2]

The context in which this case arose is important in understanding the court's actions. Last minute political maneuvering enabled the Secretary of the Interior to designate the rivers prior to the end of the Carter Administration. Plaintiffs, by contrast, wanted to postpone the designation until the Reagan administration took office as the new policy makers appeared more sympathetic to their perspective. The district court found that the designation was defective because of procedural irregularities and issued summary judgment for the plaintiffs. Upon appeal by the federal government, the court analyzed the procedural regulations and the policy behind the designation. Under the National Environmental Policy Act (NEPA)[3] a designation must follow completion of an environmental impact statement (EIS). The plaintiffs complained that the irregularities incident to the completion of the EIS rendered the designation a nullity.

As the government initiated the designation process, it violated two timing requirements included in the federal regulations. First, an official of the Heritage Conservation and Recreation Service (HCRS), a division of the Interior Department which processed the EIS, signed a form on December 12, 1980, supplied by the Environmental Protection Agency (EPA), confirming that the EIS was available for public inspection and had been circulated to all of the interested agencies. However, as of December 12, the statement had only achieved limited circulation; it was not until December 17 that the EIS was completely circulated. This discrepancy between the claimed date of completion and actual date violated the federal

1. 732 F.2d 1462 (9th Cir. 1984), *cert. denied*, 105 S. Ct. 958 (1985).
2. 16 U.S.C. §§ 1271-1287 (1982).
3. 42 U.S.C. §§ 4321-4347 (1982).

regulations, which state, "[Environmental impact] statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public."[4]

The second violation of the federal timing regulations concerned notice of the final EIS. The HRCS made copies available to commenting agencies and to the general public on the same day as the Federal Register published notice that the EIS had been filed with the EPA. The federal regulations read: "(a) The Environmental Protection Agency shall publish a notice in the FEDERAL REGISTER each week of the environmental impact statements filed during the preceeding week . . . (b) No decision on the proposed action shall be made or recorded . . . until . . . (2) Thirty (30) days after publication of the notice . . . for a final environmental impact statement."[5] As such, the government failed to wait until the week following the publication to distribute copies of the EIS.

The sequence of events leading up to this was rather complex. On July 18, 1980, the Governor of California proposed that the five rivers be included in the wild and scenic river system. On September 16, a draft EIS was filed with the EPA. The November 5th elections signified the end of the Carter administration and its replacement with the Reagan administration. On November 14, the plaintiff obtained a temporary restraining order, extending the comment period on the draft EIS. Seventeen days later, on December 1, the temporary restraining order was dissolved for lack of jurisdiction. The comment period closed for the EIS on December 5 and thereafter the government filed the final EIS and an official signed the form verifying the completion of the distribution of the statement. On December 15, the distribution was completed by mail and notice that the final EIS had been filed was published in the December 17 *Federal Register*. Finally on January 19, 1981, the Secretary of the Interior officially made the designation.

In its analysis, the court pointed out that the Interior Department followed the sequential requirements for the preparation of the EIS; in fact, the comment period lasted longer than the 45 days required by the regulations.[6] In addition, the December 17 *Federal Register* announced the filing of the EIS with the EPA, as well as its availability to the public and commenting agencies. This accurately reflected the fact that the EIS had achieved complete circulation. Moreover, Andrus waited longer than the thirty days required

4. 40 C.F.R. § 1506.9 (1984).
5. 40 C.F.R. § 1506.10 (1984).
6. 40 C.F.R. § 1506.10(c) (1984).

before officially designating the rivers, thus allowing an extra few days for the decision making process to be completed. Finally, the court explained that the actions of the plaintiffs in obtaining the temporary restraining order delayed approval of the draft EIS for seventeen days and led to the early publication in the Federal Register. As such, the court concludes, the violations had no effect on the plaintiffs' opportunity to review the EIS.

Even though the violations had no effect on the decision-making process, it is unclear whether the court would have reversed the summary judgment without some statutory basis. In reversing the district court's decision, the appellate court relied on a provision in the regulations which states that "trivial violation of these regulations [should] not give rise to any independent causes of action."[7] The purpose of the regulations is to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken."[8] The opinion of the court warned, "Several comments had reflected concern that litigation over 'trivial departures from the requirements established by the Council's regulations' could result in judicial invalidation of agency actions. . . . The regulations themselves thus contain an implicit admonition not to use claims of technical violations as tactics for delaying agency actions."[9]

Though this was a case of first impression, the court relied on precedent to show that insubstantial and non-prejudicial errors in an administrative proceeding do not require the bureaucratic decisions to be overturned. Since the court found no evidence to suggest that bad faith motivated the HCRS official's false declaration, and since all concerned parties had plenty of time to comment even with the violations, the errors in this case were determined to be trivial.

In reversing the decision of the district court, the appellate court stated, "The integrity of the decision making process within the government and the public's opportunity to comment in accordance with all legal requirements were not compromised in any way."[10] It appears, however, that the court believed allowing political motivations to produce legal delays would violate the integrity of both the legal and the political institutions. By upholding the validity of the designation of the rivers as part of the wild and scenic river system,

7. 40 C.F.R. § 1500.3 (1984).
8. 40 C.F.R. § 1500.1(b) (1984).
9. 732 F.2d at 1466, *cert. denied*, 105 S. Ct. 958 (1985).
10. *Id.* at 1466-67.

the court refused to permit the plaintiffs to play off of the sympathies of the new administration.

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