Public Land and Resources Law Review

Volume 0 *Case Summaries 2017-2018*

United States Citrus Science Council v. United States Department of Agriculture

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United States Citrus Science Council v. United States Department of Agriculture, 2017 WL 4844376 (E.D. Cal. 2017)

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As our world becomes increasingly more dependent on global trade, issues have arisen with respect to the harm caused to domestic producers. In *U.S. Citrus Science Council v. USDA*, the United States District Court for the Eastern District of California clarified domestic lemon producers' standing to challenge agency decisions that result in the importation of foreign crops. This decision could create similar pathways for future challenges to the importation of other commodities into the United States.

I. INTRODUCTION

In May 2016, the Animal and Plant Health Inspection Service ("APHIS") promulgated a rule to lift a ban on the importation of lemons from Argentina for the first time since 1947.[1] The rule was challenged by individual citrus growers, citrus packinghouses, and the U.S. Citrus Council ("Council") (collectively, "Plaintiffs").[2] APHIS and the United States Department of Agriculture ("USDA") (collectively, "Defendants") contested the Plaintiffs' standing to challenge the regulation.[3] The district court found that the Plaintiffs established standing through competition and the risk of environmental harm to domestic producers from pests.[4]

II. FACTUAL AND PROCEDURAL BACKGROUND

California and Arizona are the primary lemon growing regions in the United States.[5] Since 1947, regulations have barred the importation of lemons and other citrus fruits from Argentina.[6] The Plant Protection Act ("PPA") and its predecessor statutes authorized these regulations, which allows the Secretary of the USDA "to issue regulations 'to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.'"[7] This authority has been delegated to APHIS, which has issued a number of regulations on fruits and vegetables being imported into the United States.[8]

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1. *United States Citrus Science Council v. United States Department of Agriculture,* 2017 WL 4844376, at *2 (E.D. Cal. 2017).
2. *Id.* Growers and packinghouses included Santa Paula Creek Ranch; CPR Farms; Green Lear Farms, Inc.; Bravante Produce; and Richard Bagdasarian, Inc.
3. *Id.* at *1.
4. *Id.* at *7, *8.
5. *Id*. at *2.
6. *Id*. at *1.
7. *Id.* (citing 7 U.S.C. § 7711(a)).
8. *Id.*

In May 2016, APHIS proposed a new rule that would permit lemons to be imported to the United States from northwest Argentina ("Proposed Rule").[9] The Proposed Rule acknowledged that the Argentine citrus crops were affected by pests, but suggested that the risk of pests entering the United States via lemon importation could be effectively mitigated using a preventative "systems approach".[10] An initial analysis accompanied the Proposed Rule showing how the rule would negatively impact small businesses, as required by the Regulatory Flexibility Act ("RFA"). The analysis estimated that between 15,000 and 20,000 metric tons of fresh lemons would be imported from Argentina annually, causing a decline in the price of lemons of 2% to 4%.[11] This equated to a $10.9 million and $22 million loss to California and Arizona each year respectively, which the analysis concluded was not a significant effect.[12] Following a notice and comment period, APHIS published its Final Rule ("Rule") governing the importation of lemons from Argentina, scheduled to go into effect on May 26, 2017.[13] On May 1, 2017, the USDA issued an amendment to the Final Rule ("Amendment"), without providing public comment, which stated "for 2017 and 2018, Argentine lemons would be imported only into the northeastern United States." [14]

The Plaintiffs brought suit against the Defendants on May 17, 2017, challenging the Final Rule and the Amendment under the PPA, APA, National Environmental Policy Act ("NEPA"), and RFA.[15] The Plaintiffs amended their complaint to include six counts against the Defendants, including: failure to disclose data and notes from a 2015 harvest site visit for public comment under the PPA and APA ("Count I"); failure to make proper considerations in the pest mitigating "systems approach" ("Count II"); failure to use notice and comment procedures to amend the Final Rule and reasoning for the Amendment under the PPA and APA ("Count III"); failure to provide reasoning for decisions made under the APA ("Count IV"); failure to comply with NEPA ("Count V"); and failure to comply with the RFA ("Count VI").[16] The Defendants moved to dismiss the action on the ground that the Plaintiffs lacked standing.[17]

III. ANALYSIS

The court analyzed whether the Plaintiffs met their burden of proving standing to bring these claims.[18] To satisfy the Constitution's

9. *Id.*
10. *Id.* at *2.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* at *1, *2.
16. *Id.* at *2.
17. *Id.* at *1.
18. *Id.* at *3.

standing requirement, the Plaintiffs were required to show (1) they had suffered an 'injury in fact' that was (a) concrete and particularized and (b) actual or imminent; (2) the injury was fairly traceable to the challenged action of the Defendants; and (3) it was likely, not merely speculative, that their injury would be redressed by a favorable decision.[19]

A. The Plaintiffs Had Competitive Standing to Challenge the Final Rule.

In order to invoke competitive standing, the court found that a party must "first allege that the challenged regulatory action has caused him injury in fact, economic or otherwise."[20] A plaintiff must show a direct injury and that the injury is likely to be redressed by a favorable court decision.[21] The Plaintiffs argued APHIS's own finding that domestic lemon growers would lose between $10.9 and $22 million as a result of a decline in price caused by Argentine lemon importation established an economic injury sufficient for standing.[22] The Plaintiffs relied on case law stating, "'economic actors suffer an injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition against them'" and that a reversal of the regulation would remedy the economic injury.[23]

The Defendants argued that the importation of Argentine lemons would not cause the Plaintiffs concrete economic injury for four reasons: First, because they would be imported primarily during off-season months for U.S. lemon production; second, the Argentine lemons would be primarily sold in the northeastern U.S; third, the Argentine lemons are a different variety than U.S. lemons; and fourth, because of the uncertainty of lemon prices.[24]

The court concluded the Plaintiffs could show concrete economic injury. Some lemons would be imported during months of U.S. lemon production, creating competition with U.S. lemons.[25] Lemons could also be stored and sold during the off-season for production, which would increase the amount of time Plaintiffs would compete with imported Argentine lemons.[26] The court also found the Defendants' argument that the lemons would only be imported to the northeastern U.S. unavailing because an overall influx in supply of lemons would drive prices down across the nation.[27] Additionally, just because the lemons would be imported to the northeast does not mean they could not be sold across the

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19. *Id*.
20. *Id.* (quoting Ass'n of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150 (1970)).
21. *Id.*
22. *Id*. at *5.
23. *Id*. (quoting Int'l Bhd. of Teamsters, 861 F.3d at 950).
24. *Id*.
25. *Id*. at *6.
26. *Id.*
27. *Id.*

country, and the Plaintiffs sold lemons to the northeastern U.S., so economic competition would exist.[28] Moreover, the court found immaterial the fact that Argentine lemons were a different variety than U.S. lemons, as an overall increase in the supply of lemons would lead to a drop in prices, as shown by APHIS's own predictions.[29] Finally, although lemon prices fluctuated, the basic principles of supply and demand indicated that an overall increase in supply would drive down prices.[30] The court concluded that the causal chain between the importation of Argentine lemons and the harm to the Plaintiffs was obvious; therefore, the Plaintiffs had competitive standing to pursue Counts I, II, IV, and VI.[31]

B. The Plaintiffs Had Environmental Standing to Challenge the Final Rule.

The Plaintiffs maintained they had environmental standing to bring their claims based on the risk that the imported Argentine lemons could contain certain diseases that would spread to domestic lemons.[32] The Defendants contended that the spread of disease was highly speculative.[33]

The court acknowledged Ninth Circuit precedent that "an increased risk of future environmental injury constitutes an injury-in-fact for purposes of standing" and that "'there is no requirement that the risk of future injury satisfy any particular threshold of significance.'"[34] Therefore, if the harm a plaintiff faces is credible, real and immediate, he has met the injury-in-fact requirement for standing.[35]

The court found that the environmental harm to the Plaintiffs was credible, real and immediate, and combined with APHIS's own findings, adequately established a significant risk of harm from pests due to Argentine lemon importation.[36] Accordingly, the Plaintiffs were not required to "map out exactly how the disease would spread in excruciating detail" to show a significant risk.[37] Second, according to APHIS's Proposed Rule, APHIS identified nine pests of quarantine significance, several of which posed "[medium or] high risk" for their potential

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28. *Id.*
29. *Id*.
30. *Id.*
31. *Id*. at *7
32. *Id.* (citing Krottner v. Starbucks Corp., 628 F.3d 1139, 1143 (9th Cir. 2010)).
33. *Id.*
34. *Id.* (citing Ocean Advocates v. U.S. Army Corps of Eng'rs, 402 F.3d 846, 860 (9th Cir. 2005); Ecological Rights Found. v. Pac. Lumber Co., 230 F.3d 1141, 1151-52 (9th Cir. 2000); Cent. Delta Water Agency v. United State, 306 F.3d 938, 947-48 (9th Cir. 2002)) (quoting San Luis & Delta–Mendota Water Auth. v. U.S. Dep't of the Interior, 905 F. Supp. 2d 1158, 1170–71 (E.D. Cal. 2012)).
35. *Id.*
36. *Id.* at *8.
37. *Id.*

likelihood of introduction into the continental U.S.[38] Third, Plaintiffs showed that pests carried on lemons imported only in the northeastern U.S. could spread to California crops and cause damage by national distribution.[39] Therefore, Plaintiffs established environmental standing to pursue Counts I, II, IV, V, and VI by showing the Final Rule would cause a significant risk of environmental injury.[40]

C. The U.S. Citrus Science Council Had Organizational Standing to Challenge the Final Rule.

Defendants argued that the Council lacked standing to bring any claims because the organization itself did not suffer a concrete injury.[41] The court found that the Council had associational standing to bring suit on behalf of its members.[42]

An organization has associational standing to bring suit on behalf of its members "when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members."[43] The court found that the Ninth Circuit does not require each member of an organization to be identified if the injury is readily apparent, and the organization need only know that at least one of its members is injured.[44]

The Council is made up of citrus packinghouses, several of which are made up of individual growers.[45] The individual grower members of the packinghouses had been determined to have standing in their own right, so the packinghouses had standing to sue on behalf of their growers and the Council had standing to sue on behalf of its member packinghouses.[46]

D. Plaintiffs Did Not Have Standing to Challenge the Amendment to the Final Rule as Alleged in Count III.

Plaintiffs' Count III alleged that APHIS violated its duty to use notice-and-comment procedures to amend its regulation restricting the importation of Argentine lemons to the northeastern U.S.[47] Defendants

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38. *Id*.
39. *Id.*
40. *Id.*
41. *Id*. at *9 (citing Nat'l Council of La Raza v. Cegavske, 800 F.3d 1032, 1041 (9th Cir. 2015); Fleck & Assocs., Inc. v. Phoenix, City of, an Arizona Mun. Corp., 471 F.3d 1100, 1105 (9th Cir. 2006)).
42. *Id*.
43. *Id.* (quoting Friends of the Earth, Inc. v. Laidlaw Environmental Serv., 528 U.S. 167, 181 (2000)).
44. *Id.* (citing Nat'l Council of La Raza v. Cegavske, 800 F.3d 1032, 1041 (9th Cir. 2015)).
45. *Id.*
46. *Id*.
47. *Id.* at *10.

argued that Count III should be dismissed because it could not be redressed by a favorable decision.[48]

The court did not dismiss Count III on redressability grounds, but on procedural grounds. As established by the Ninth Circuit, "one who challenges the violation of a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for traceability and redressability."[49] To establish procedural standing, the Plaintiffs had to demonstrate that the opportunity to exercise their procedural rights through notice and comment on the Amendment would have made a difference to their concrete interests.[50] However, the Plaintiffs did not allege they were injured by the Amendment, and their concrete interests did not pertain to the Amendment.[51] Therefore, the Plaintiffs adequately alleged a procedural violation, but not a procedural injury, so they lacked standing to pursue Count III.[52]

E. Plaintiffs Had Standing under the RFA to Challenge the Final Rule.

The Defendants argued that the Plaintiffs' did not have standing to bring Count IV, which challenged the USDA's compliance with the RFA, because Plaintiffs failed to allege they were small entities eligible for judicial review under the RFA.[53] However, the Plaintiffs did allege that at least one of their members qualified as a small entity under the RFA. Thus, the court concluded this was sufficient to establish the Plaintiffs' standing to bring Count IV, even though not all of the Plaintiffs were small entities.[54]

IV. CONCLUSION

The U.S. District Court for the Eastern District of California found that the USDA regulation allowing for the importation of lemons from Argentina could be challenged by lemon growers, packinghouses, and the Council due to overall increased competition and the risk of environmental harm to domestic lemon production. This decision is notable because it clarifies the pathway for domestic growers to protect their production against foreign imports and provides them with a more reliable domestic market. However, this trade restriction could negatively impact consumers by eliminating competition. Restricting imports could also negatively impact the export of U.S. crops to other countries, causing a less reliable export market.

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48. *Id.*
49. *Id.* (quoting Nat. Res. Def. Council v. Jewell, 749 F.3d 776, 782-83 (9th Cir. 2014)).
50. *Id.*
51. *Id.* at *11.
52. *Id.*
53. *Id.*
54. *Id*.