

Attachment B-5

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 13-4411

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**
Mar 16, 2015
DEBORAH S. HUNT, Clerk

PETER CARL BORMUTH,

Petitioner,

v.

ENVIRONMENTAL APPEALS BOARD; TINKA
G. HYDE, Director, Region 5 Water Division;
ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

)
)
)
)
) ON PETITION FOR REVIEW
) FROM THE UNITED STATES
) ENVIRONMENTAL APPEALS
) BOARD
)
)
)ORDER

Before: COLE, Chief Judge; MOORE and WHITE, Circuit Judges.

Peter Carl Bormuth, a pro se Michigan resident, seeks judicial review of an order by the Environmental Appeals Board (“the Board”) that dismissed his administrative appeal. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In 2011, the West Bay Exploration Company applied for an underground injection control (“UIC”) permit under the Safe Drinking Water Act (“SDWA”).¹ See 42 U.S.C. §§ 300f-300j. The permit would have allowed the construction and operation of an injection well for the disposal of brine. In December 2012, a regional office of the Environmental

¹“The SDWA was enacted to protect the nation’s drinking water by regulating public water supply systems to ensure they meet minimum national standards to protect public health. Part C of the SDWA created the UIC program, which is overseen by the EPA and may be implemented in part by the states, who can create their own UIC program subject to EPA approval. The UIC program protects potential and actual underground sources of drinking water from contamination by underground injection wells.” *United States v. Jolly*, No. 99-5700, 2000 WL 1785533, at *3 (6th Cir. 2000) (unpublished table decision) (citations omitted).

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Protection Agency (“Region 5”) issued a permit for the proposed well, which was designated “West Bay #22.” In January 2013, Bormuth filed a petition for administrative review with the Board in which he argued that the permit should be revoked. In February 2013, Sandra Yerman filed a separate petition for review also seeking to revoke the permit.

In April 2013, before the Board had ruled on either petition, Region 5 advised Bormuth that it had decided to withdraw the permit for West Bay #22. *See* 40 C.F.R. § 124.19(j). On April 16, 2013, the Board dismissed both petitions as moot because Region 5 had withdrawn the permit. The petitioners’ motions for reconsideration were denied, and Bormuth now seeks judicial review of the Board’s decision to dismiss his petition.

“[T]hose who seek to invoke the power of federal courts must allege an actual case or controversy.” *O’Shea v. Littleton*, 414 U.S. 488, 493 (1974); *see* U.S. Const. art. III, § 2. Standing is an “essential and unchanging part of the case-or-controversy requirement of Article III.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

[T]o satisfy Article III’s standing requirements, *a plaintiff must show (1) it has suffered an “injury in fact” that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and 3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.*

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2000) (emphasis added) (citing *Lujan*, 504 U.S. at 560-61).

“It is a basic principle of Article III that a justiciable case or controversy must remain extant at all stages of review, not merely at the time the complaint is filed.” *Decker v. Nw. Envtl. Def. Ctr.*, 133 S. Ct. 1326, 1335 (2013) (internal quotation marks omitted). Therefore, Bormuth has the burden of establishing this court’s jurisdiction, including the elements of standing. *See Lujan*, 504 U.S. at 561. That burden includes a showing that he suffered a cognizable injury. *See Levine v. U.S. E.P.A.*, 59 F. App’x 665, 667 (6th Cir. 2003).

Bormuth now argues that he has standing because he gets drinking water from an artesian well that is located in a park within two miles of West Bay #22 and other proposed wells. He also asserts that he canoes on a nearby river and enjoys seeing the Indiana bat in a habitat that

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would be endangered by the wells. At best, these arguments suggest that Bormuth might be injured if the West Bay #22 well had been permitted or if another well is permitted in the future.

These speculative arguments are unpersuasive because the West Bay #22 permit was the sole focus of his administrative appeal and that permit was withdrawn before he filed his current petition for judicial review. Bormuth has not shown that he was actually injured by the decision to withdraw the permit or by the Board's subsequent decision to dismiss his petition as moot. Moreover, no actual injury is traceable to the respondent's actions, and there is no injury that may be redressed by a favorable decision from this court. Hence, Bormuth has not met his burden of establishing standing for judicial review. *See Lujan*, 504 U.S. at 560-61; *Levine*, 59 F. App'x at 667.

Bormuth has raised several other arguments in which he challenges the timing of the decision to withdraw the West Bay #22 permit and the Board's failure to address the scientific merits of his petition. We will not reach those arguments because he has not established standing.

Accordingly, the petition for judicial review is dismissed.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Mr. Jon Michael Lipshultz
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 7611
Washington, DC 20044

Re: Case No. 13-4411, *Peter Bormuth v. Environmental Appeals Board, et al*
Originating Case No. : 13-01 &13-02

Dear Sir or Madam,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Jill Colyer
Case Manager
Direct Dial No. 513-564-7024

Enclosure

Mandate to issue