

Mission Sustainability - Related Articles



05 November 2010



Navy AICUZ/RAICUZ
Center of Excellence



Dear Reader:

The enclosed articles are mission sustainment-related issues from the United States and abroad. They represent the good, the bad and the ugly aspects of the military/community interface on issues of mission sustainability.

While we will attempt to cover the whole spectrum of issues, we will no doubt miss some items of interest. If you see any articles that you think may be of interest to others concerning encroachment, please forward them to us. We will be sending out an updated compilation weekly.

Please let us know if you would like to be dropped from the distribution list.

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CALIFORNIA

Paso Robles Press (CA)

Joint Land Use Study with Camp Roberts forges ahead

By Josh Petray

October 12, 2010

...It's called a Joint Land Use Study [JLUS], and in late September the city of Paso Robles forged ahead with its cooperation in participating in the plan with both the county and Camp Roberts when the city council voted unanimously to support adoption of a resolution supporting the study and appoint a council member to sit on a JLUS Committee...

The full text of the article is available on the Paso Robles Press website found here:

http://www.pasoroblespress.com/v2_news_articles.php?heading=0&page=72&story_id=5096

LOS ANGELES TIMES

Closure Of Shooting Range Provokes An Unusual Clash

Tony Perry

01 NOV 10

For decades, shotgun enthusiasts visited the 29-acre range at the Miramar military base. Its closure because of concern about lead contamination sparks disagreement between the Marines Corps and possibly its biggest booster in Congress.

Reporting from San Diego - For five decades, shotgun enthusiasts were able to visit the Miramar military base for target practice and skeet shooting.

In 2008, 95,000 rounds were fired by members and guests of the San Diego Shotgun Sports Assn., which ran a 29-acre range on the base.

Now the military has closed the facility out of concern for the toxic contamination caused by years of lead shotgun pellets landing in a 13-acre "overshot" area next to the range.

The issue has provoked an unusual clash between the Marine Corps and possibly its biggest supporter in Congress, Rep. Duncan D. Hunter (R-Alpine).

Hunter was a Marine officer in Iraq and Afghanistan. Before that, he would frequent the Miramar shotgun range while a student at San Diego State.

Hunter hopes to persuade — or force — the Marine Corps to reverse a decision announced last month to permanently close the range and begin removing hazardous waste.

He believes the Marine Corps and its parent service, the Navy, have rushed to environmental judgment.

He calculates that if National Rifle Assn.-friendly Republicans take control of Congress in the Nov. 2 election, his chances of saving the range will greatly improve. He was annoyed that the Marines recently showed the property to reporters without inviting either him or the shotgun association.

"The Marines have mishandled the situation from the beginning," said Hunter's spokesman, Joe Kasper.

The Marine Corps, which inherited the Miramar base (and the shotgun association lease) from the Navy when it took control of the air station in the 1990s, believes it is stuck between strict environmental laws and a well-meaning civilian group that includes many ex-military members.

"I'm a hunter, I'm a shotgun shooter," said Col. Frank Richie, the base commander. "[But] I'm bound to follow the law."

Hunter hopes to change that law, possibly by inserting an amendment into the defense appropriations bill.

Meanwhile, the shotgun sports association said the military has made the cleanup — estimated to cost more than \$20 million — needlessly complex and expensive. The group, which once had 750

members, has offered its own cleanup at a fraction of that cost.

"It seems to have fallen on deaf ears," said association president Robert Keefe, a Navy veteran.

The shotgun association moved onto the base in 1957 and located its range on the current site in 1975, when the base was Miramar Naval Air Station.

The range is tucked in a corner of the 24,000-acre base. The overshoot area is down a steep hill, in a brushy ravine where deer and coyotes roam and a stream rushes through during the rainy season.

Nearby is a landing pad where helicopter pilots learn how to land on the confined space of an aircraft carrier. Building a fence or a net — it might have to be as high as 200 feet — to keep shot from flying off the range property would increase the hazards for pilots using the pad, Richie said.

In 2008, the Marine Corps began removing some concrete blocks left by the Navy in the overshoot area. Workers noticed an enormous number of small blue pellets on the ground, as well as plastic "wads" used to keep powder and shot in place in a shotgun cartridge.

The range was ordered closed in October 2008, but shotgun association members felt it would be only a temporary cease-fire.

Hoping that it would speed reopening of the range, Hunter added an amendment to that year's defense bill ordering an environmental review by the end of this year. Just the opposite happened.

An analysis found significant levels of arsenic, copper, lead, zinc and other substances. The analysis declared the acreage to be important to the endangered fairy shrimp and that the creek bed, dry most of the year, qualified as a "regulated waterway."

The findings were reviewed and endorsed by the California Regional Water Quality Control Board.

Armed with those facts, then-Marine Commandant Gen. James Conway recommended that the range remain closed permanently and the process of removing the toxic material begin.

Conway's recommendation was accepted by Navy Secretary Ray Mabus and announced Oct. 14. The Marine Corps also announced that finding a new place on base for the range "would cost millions of dollars and commit scarce land to non-military purposes."

To the Marine Corps, the cost of the cleanup should be paid by the association, another point of contention.

Richie, an F/A-18 aviator assigned as the Marine Corps Air Station Miramar commander earlier this year, conceded there is some discomfort in having a dispute with a group the military has long considered part of its extended family.

"I admire all those in the shotgun club, and the retired military who shot at the facility, but if they were in my shoes, they'd do the same thing," Richie said.

HAWAII

'Armor Balls' deployed, make pilots safer

By Senior Airman Gustavo Gonzalez

15th Wing Public Affairs

Posted 11/2/2010 Updated 11/3/2010

11/2/2010 - JOINT BASE PEARL HARBOR-HICKAM, Hawaii -- Hickam pilots can now fly safer thanks to a project six years in the making.

The Bird Hazard Working Group initiated the bird hazard abatement as part of the Bird/Wildlife Aircraft Strike Hazard, also known as the BASH program, when members of 647th Services Squadron, 647th Contracting Squadron, 15th Wing safety office and Mamala Bay Golf Course workers released "Armor Balls" into a reservoir at the Mamala Bay Golf Course Oct. 26.

"We are trying to prevent some of our endangered species from using this area as a watering hole or nesting habitat area," said Darrin Phelps, U.S. Department of Agriculture assistant district supervisor for wildlife services.

The black softball sized "Armor Ball's" float on the surface of the reservoir causing the birds to over look the water, minimizing the chances of birds landing there. This in turn minimizes birds as a hazard striking aircraft in mid-air. The balls rise and fall with changing water levels and can easily maneuver around objects such as floating pumps. They have a life span of more than 10 years.

"The worst case scenario is (the birds) can take out all the engines which would lead to an aircraft crashing," said Capt. Russell Foxworth, 15th Wing chief of flight safety. "They had an (Airborne Warning and Control System) aircraft that went down in (Elmendorf Air Force Base, Alaska) in 1995 due to 31 Canadian geese that struck the plane. It was a real wake up call for a lot of people."

The 23,560 square foot reservoir is geographically located on the edge of the Mamala Bay Golf Course which is a few hundred yards away from active runways belonging to Joint Base Pearl Harbor-Hickam and the Honolulu International Airport, putting pilots at risk for accidents involving birds.

"As an operator now and commanding an operational flying squadron, it's great to see our base come together to support the safety of the flying operation because it helps people like me get more peace of mind when we send folks out to conduct flying operations," said Lt. Col. Brian Hill, 96th Air Refueling Squadron commander.

Since fiscal year 2007, 15th Wing aircraft have sustained more than \$261,740 in damages due to bird strikes. In October 2009, one bird strike at Barber's Point caused more than \$194,078 in damage.

"It's great to see a project that is (six) years in the making really come through, representing not just military effort, but great partnership with our folks here on base." Colonel Hill said. "It's easy for folks to talk safety and preach safety, but when you actually see that resources and that commitment behind it, it really goes a long way toward solidifying the commitment."

BASH is an Air Force wide program responsible for developing research programs to reduce bird strike potential around airfields and during low-level flight operations. The "Armor Ball's" project is expected to be completed at the end of November after a total of more than 236,000 balls are released.

NEW MEXICO

CNJ Online

Base commander: Communication key in low-altitude training issue

Liliana Castillo

Saturday, Oct 30 2010, 6:39 pm

Cannon Air Force Base Commander Col. Stephen Clark said communication is going to be the key to the Air Force creating a low-altitude tactical navigation area over northern New Mexico and southern Colorado....

...So far, the Taos, Santa Fe and Rio Arriba county commissions, along with the city councils of Las Vegas and Taos, have passed resolutions opposing the plan...

The full text of the article is available on the CNJ Online website found here

<http://www.cnjonline.com/news/cannon-40650-training-area.html>

SOUTH DAKOTA

Billings Gazette

Air Force finishes hearings on expanded bomber training area

Zach Benoit

Posted: Tuesday, October 26, 2010 9:28 pm

A public hearing in Billings on U.S. Air Force plans to expand a bomber training area out of Ellsworth Air Force Base in South Dakota drew passionate support and opposition on Tuesday night...

...Opponents of the plans expressed concern over noise levels and its effects on pilots, commercial flights and livestock and asking why, if the bases using the airspace are in the Dakotas, they want to further expand into Montana and Wyoming...

The full text of the article is available on the Billings Gazette website found here:

http://billingsgazette.com/news/local/article_d7870d2e-e17a-11df-ae54-001cc4c03286.html

AUSTRALIA

Port Stephens Examiner

Defence 'sitting on' RAAF noise maps

BY NICK HANSEN

03 Nov, 2010 01:00 AM

PATERSON MP Bob Baldwin has attacked the Department of Defence over delays in the release of new aircraft noise maps around Williamtown RAAF base.

He said the new maps were likely "sitting on someone's desk" while Port families sweated on their detail...

The full text of the article is available on the Port Stephens Examiner website found here:

<http://www.portstephensexaminer.com.au/news/local/news/general/defence-sitting-on-raaf-noise-maps/1986807.aspx>

GUAM

Stars and Stripes

Navy holds open house over firing ranges on Guam's ancestral land

By Travis J. Tritten

Published: November 4, 2010

DEDEDO, Guam – Groups opposed to U.S. military plans to build firing ranges on ancestral lands in Guam peppered the Navy with questions during a three-hour public meeting Thursday.

At the open house, held at a local high school, Navy officials said the live-fire ranges could be built with minimal damage to the land that has archaeological importance with its ancient graves and medicinal plants used by the indigenous Chamorro people.

The fate of that land is tied up in negotiations between the Guam historic preservation office and the U.S. Defense Department. They are trying to work out an agreement on how to deal with such historic sites during a U.S. military buildup on the island. The controversy over the ancestral land known as Pagat has become a main friction point in the U.S. military's plan to relocate 8,600 Marines from Okinawa and transform Guam into the base for Marine Corps operations in the Pacific.

Local civic groups, such as We Are Guahan and the Boonie Stompers, are against any military use of the land, saying the ranges will damage island history and culture.

But Donald Schregardus, deputy assistant secretary of the Navy for environment, said Thursday that the firing ranges planned at Pagat will be relatively small with large surrounding safety zones that could be preserved and used by the public. The U.S. is looking to acquire 2,100 to 3,400 acres of land — some of which is on sacred ground — for the three firing ranges.

“Those safety zones do not represent an impact” to the environment, said Schregardus, who was on Guam for the open house. Guamanians could get access to the land at times when there is no training, he said.

But the U.S. plan would still severely limit the public's ability to visit Pagat, which would spoil a spiritual center and symbol of resiliency for Chamorros, said Hope Cristobal, a member of the Boonie Stompers, a group that leads nature hikes and advocates for the environment.

“The U.S. is the richest country in the world and has the mightiest military in the world, so why pick on our poor indigenous lands?” Cristobal said. “We will feel so defeated if they take Pagat.”

The process of moving Marines to the island has been held up for months because to the controversy over Pagat. Lynda Aguon, historic preservation officer for Guam, has pressed the DOD for more public hearings for the local civic groups. The public input at the high school could clear the way for an agreement on using historic sites – if the Navy heeds the concerns of groups such as the Boonie Stompers, she said. “It depends on if they take the public comments and use them and not just go through the motions,” Aguon said.

Pacific Sunday News

Guam Gov. Candidates Debate Military Buildup

Brett Kelman

November 1, 2010

Whoever takes office as Guam's governor in January will inherit the military buildup and all it will bring to the territory.

On Tuesday, voters will choose either local Sen. Eddie Calvo or former Gov. Carl Gutierrez to be governor, and both candidates have spelled out their objectives for the buildup in policy plans released recently.

Both campaign platforms set aside a specific chapter for the military buildup, and although many of their campaigns' goals are the same, a different stance on what the buildup could bring to Guam is evident on the first page.

In the Democrats' policy plan — A Prosperous and Sustainable Guam — Gutierrez, and his running mate, local Sen. Frank Aguon Jr., talk about how the buildup must be “balanced” to ensure quality of life is improved “outside the fence.”

The Gutierrez-Aguon buildup plan focuses on helping local people and local business grab a large share of the buildup's direct economic benefits, like jobs and federal contracts.

“[An] economically viable Guam is a secure Guam; a secure Guam is a secure America,” the Gutierrez-Aguon plan states. “We will seek a working partnership with the U.S. military to advocate federal relief from unnecessary economic restrictions imposed in Guam.”

In the Republican plan — Blueprint 2020 — Calvo and his running mate, local Sen. Ray Tenorio, view the buildup as a bargaining chip that can be used to push the federal government on issues that are only indirectly connected to the buildup.

The Calvo-Tenorio buildup plan talks about issues like war reparations, compact-impact funding, self-determination and a visa waiver program — all of which have ties to the federal government but not to the military buildup specifically.

“Our country needs Guam for the strategic security interests of the United States and our allies,” the Calvo-Tenorio plan states. “Japan needs Guam for several geopolitical reasons. Guam happens to be in dire need of certain improvements. ... Guam is leveraging its strategic value to get what is best for our people.”

Simply, the goals of both campaigns overlap, but their buildup plans center in different places.

The Calvo-Tenorio platform also talks about the importance of local workers and business being prioritized for jobs and contracts, but not with the same focus as the Democrats.

Instead, Blueprint 2020 discusses outstanding federal issues first, and in more length, than the Gutierrez-Aguon approach.

In contrast, the Gutierrez-Aguon platform promises to address many of the same outstanding federal issues as the Republican's do, but it doesn't link these issues to the buildup in any way.

Rather, the Gutierrez-Aguon platform addresses matters like war reparations, compact-impact funding and a visa waiver program in a completely different chapter, which details “federal and international relations.”

Both parties are seeking the same benefits from the federal government, but only Calvo-Tenorio’s platform talks about using buildup leverage to get them. Gutierrez and Aguon have presented a different plan to reach out to Washington.

During campaign forums and debates over the last month, Gutierrez has said that, if he is elected, he will become “Guam’s face” in Washington so he can work directly with federal politicians to pursue the island’s interests.

Aguon has said, while Gutierrez works for the island in Washington, he would run the day-to-day operations of GovGuam.

Two of the most controversial components of the buildup are the construction of a firing range off Route 15, near the ancient village site of Pagat, and the dredging of Apra Harbor, which will destroy coral to pave a path for aircraft carriers.

The Defense Department has delayed its final decision on both projects and each gubernatorial platform addresses one.

Gutierrez and Aguon promise to protect Pagat and “request the Department of Defense stay within their footprint” and states that it is opposed to any plans for a carrier wharf if it will destroy reef in Apra Harbor.

Calvo and Tenorio state that the military must minimize destruction in coral reefs and “use the existing channel to maneuver aircraft carriers ... into Apra Harbor.” Blueprint 2020 does not mention Pagat specifically, but it does express a resistance to the military expanding its land use.

JAPAN

Stars and Stripes

Building New Base for Marines Not an Option, Okinawa Governor Candidates Say

Chiyomi Sumida

November 2, 2010

During a televised debate Monday, the top candidates in the Okinawa governor's race said they would not support a new Marine air facility on the island.

Gov. Hirokazu Nakaima and his main opponent Yoichi Iha discussed many subjects during the debate, but the relocation of Marine Corps Air Station Futenma took center stage.

The overall goal of a 4-year-old agreement between the U.S. and Japan involves relocating 8,600 U.S. Marines to Guam, a decrease of nearly one-third of the U.S. troops currently on Okinawa. However, that shuffling requires construction of a new U.S. Marine base and runway on Camp Schwab and a landfill in Oura Bay near Henoko.

"Moving [the Marine operations] within Okinawa is not an option," said Nakaima, who supported such a move until a month ago.

In the past, Nakaima, 71, said he supported the 2006 bilateral agreement, with a condition to move the runway farther off the shore.

But "Nago chose [in January] a new mayor, who is against the move, and in April a mass protest rally was held," Nakaima said Monday, explaining that the voices of the Okinawan people made him rethink his stance.

For Iha, 57, the issue is even more clear-cut.

"If I become governor, I will put an end to the problem," said the anti-military former mayor of Ginowan, where Futenma is located.

Iha is calling for an immediate closure of the air station and moving the operations to Guam.

"I will never approve a landfill in Henoko waters," he said.

The Nov. 28 election has garnered international attention because the Okinawa governor can block construction of a 1.1-mile runway planned on reclaimed land in the bay. Under Japan's Public Water Body Reclamation Law, reclaiming publicly owned water areas requires the approval of the prefectural governor.

If the Okinawa governor nixes the runway project, the Tokyo government would have to amend the reclamation law if it wants to pursue the plan, according to Tetsumi Takara, professor of constitutional law at the University of the Ryukyus Law School.

"The government can submit a bill to the Diet to amend the law," Takara said. "Under the current diplomatic and security circumstances surrounding Japan, it is highly likely that such a bill would

pass the Diet.”

But the passage of the bill would not guarantee execution of the plan, because such a forcible approach would only ignite more protests, according to Tsuneo Watanabe, an expert in security policies and U.S.-Japan relations.

Calls for moving the Futenma air operations out of Okinawa have increased since the summer of 2009.

Yukio Hatoyama of the Democratic Party of Japan became prime minister after promising such a move. But Hatoyama stepped down in May after yielding to pressure from the United States to keep the operations on Okinawa.

Kyodo News

Tokyo Urges U.S. to Keep Late Flights at Futenma Base to Minimum Level

November 3, 2010

The Japanese government said Tuesday it has asked the United States anew to keep late flights at a U.S. military base in Okinawa Prefecture to a requisite minimum level as stipulated in a 1996 Japan-U.S. noise agreement and obtained a response of compliance from U.S. authorities.

The Foreign Ministry said Tokyo urged the United States to comply with the Japan-U.S. agreement on the use of the U.S. Marine Corps' Futenma Air Station in Ginowan in the prefecture which stipulates that activities on the ground and in flight during 10 p.m. to 6 a.m. there be restricted to those only essential for operations.

The U.S. authorities told Tokyo the United States regards the 1996 deal as still effective and it intends to comply with the agreement, the ministry said in a statement.

The ministry made the request after a Fukuoka High Court ruling in July on a damages suit over noise caused by flights at the base said that flights until 11 p.m. are seen regularly at the base and noise control measures taken under the agreement have become a mere facade.

The Japanese government also urged U.S. authorities to keep flights not only at the Futenma base but also at the Kadena Air Base in Okinawa after 10 p.m. to a minimum necessary level, the ministry added.

The high court ordered the Japanese government to pay a total of 369 million yen in compensation to plaintiffs over noise caused by flights at the Futenma base which is located in a densely populated area.

BOMBING RANGE

East Oregonian

Bombing range unveils big plans Advanced maneuvers

By ERIN MILLS

Posted: Friday, October 29, 2010 12:49 pm

Navy details proposed bombing range changes to allow a wider scope of training exercises

A troop of Navy and Oregon National Guard representatives laid out detailed plans this week for an upgraded Boardman bombing range. The group, made of environmental specialists, public relations officers and friendly unit commanders, presented a striking contrast to the Navy's usual imperious silence in regards to the 12-mile by 6-mile rectangle, often the subject of controversy, in the heart of Morrow County...

The full text of the article is available on the East Oregonian website found here

http://www.eastoregonian.com/news/article_4045afd8-e396-11df-9982-001cc4c002e0.html

FIRING RANGE

The Salt Lake Tribune

New Camp Williams precautions aimed at fire prevention

By Katie Drake

Published Nov 3, 2010 09:34PM

Updated 8 hours ago

Soldiers at Camp Williams will resume live-fire training exercises Thursday, but with new safety precautions in place. Surrounding communities support the new measures.

Firing-range operations had been suspended after the Machine Gun Fire near Herriman, which began Sept. 19 when a spark from a machine-gun round ignited a hillside, destroying three homes and scorching 4,300 acres...

...The cities are currently petitioning the Department of Defense for a grant to conduct a joint land-use study, which would look at planning and zoning in each city and recommend areas that could be preserved as buffer zones against fire.

The buffer land could still be used, but would contain parks and agricultural areas rather than homes...

The full text of the article is available on the Salt Lake Tribune website found here

<http://www.sltrib.com/sltrib/home/50602113-76/fire-camp-training-williams.html.csp>

JOINT STRIKE FIGHTER

Northwest Florida Daily News

LETTER: The noisiest choice

ROBERT WEBB

November 04, 2010 9:23 AM

Valparaiso

In his Nov. 1 letter, “F-35 overflights,” the commander of the 96th Air Base Wing related that preferred F-35 SEIS Alternative 1A would minimize flights over Valparaiso and Niceville. What he didn’t relate is that Alternative 1A happens to be the noisiest for Valparaiso and Niceville of all the seriously studied alternatives...

The full text of the article and a link to the Eglin AICUZ 2006 report are available on the Northwest Florida Daily News website found here <http://www.nwfdailynews.com/opinion/letter-34561-nov-choice.html>

Northwest Florida Daily News

Counties to study reducing F-35 noise (VIDEO, PHOTOS, DOCUMENT)

Mona Moore

Daily News

November 4, 2010, 4:53 PM

FORT WALTON BEACH — Officials from Santa Rosa, Okaloosa and Walton counties have taken the first step to muffle the roar of the Joint Strike Fighter.

As part of a new partnership, the they agreed Thursday to find a consultant to conduct a noise reduction study of all homes, businesses and public buildings within areas that will be exposed to noise levels of 65 decibels or more after all 59 F-35s arrive at Eglin Air Force Base...

The full text of the article, a photo log, and a video are available on the Northwest Florida Daily News website found here: <http://www.nwfdailynews.com/news/fort-34581-walton-noise.html>

MARINE MAMMALS

New York Times

Debate Continues Over Impact of Supreme Court's Whale Ruling on Enviros' Bids to Halt Projects

Lawrence Hurley

November 1, 2010

Almost two years ago, the Supreme Court ruled that the Navy could continue maneuvers off the coast of California despite concerns that the use of sonar could harm whales.

Most of the commentary in the immediate aftermath of the 7-2 decision (pdf) in *Winter v. Natural Resources Defense Council* focused on national security trumping environmental concerns. End of story.

But the opinion, written by Chief Justice John Roberts, also had broader implications on the ability of environmentalists to persuade judges to grant preliminary injunctions, which have the effect of putting a stop to potential environmental damage before, from activists' perspective, it is too late.

The impact would be felt especially in the nine Western states within the jurisdiction of the San Francisco-based 9th U.S. Circuit Court of Appeals, which was the court that had ruled in favor of NRDC in the whale case and hears a large number of environmental cases.

The 9th Circuit is still wrestling with how to interpret the Supreme Court opinion. The Obama administration is currently seeking a rehearing of one 9th Circuit ruling from the summer that Justice Department lawyers consider to be out of line with what the justices said. Other federal courts of appeal are not always so eager to uphold preliminary injunctions.

The whale case came to the Supreme Court because the NRDC had persuaded a federal judge in the Central District of California to impose restrictions on Navy activity because of the potential harm to whales and other marine mammals. On appeal, the 9th Circuit agreed to keep the preliminary injunction in place, a decision the Supreme Court reversed.

At the time of the November 2008 ruling, experts said the case would make it harder for environmental groups to get preliminary injunctions because the Supreme Court stated that there needs to be "the likelihood of irreparable harm." Previously, in the 9th Circuit, litigants only had to show the "possibility" of irreparable harm.

"The Supreme Court thinks the 9th Circuit is an outlier in these sorts of cases," said Jonathan Adler, a professor at Case Western University School of Law.

In its ruling, the Supreme Court had sent the message that, although environmental groups can still get preliminary injunctions, they need to convince judges that there is a serious problem that merits immediate action, said Robin Conrad, executive vice president of the U.S. Chamber of Commerce's National Chamber Litigation Center. "You need to have a good case," she said.

Environmentalists, meanwhile, downplay the case's significance.

"The decision, while important, doesn't reshape the judicial landscape," said Susan Jane Brown, a staff attorney at the Eugene, Ore.-based Western Environmental Law Center.

Often characterized as the most left-leaning of federal appeals courts, the 9th Circuit is frequently on the wrong side of Supreme Court decisions, including in environmental cases. Sometimes the court's ideological differences with the high court continue even after the justices have spoken on a particular issue.

That would appear to be the case with Winter.

9th Circuit's 'sliding scale'

In its August ruling (pdf), a unanimous three-judge panel said the Supreme Court ruling has not substantially changed the way they should approach preliminary injunctions.

The court ruled in favor of environmental groups that wanted a preliminary injunction to prevent a timber salvage sale proposed by the Forest Service from going ahead in the Beaverhead-Deerlodge National Forest in Montana. The proposed logging would take place on 1,652 acres of the forest.

The appeals court reversed U.S. District Judge Donald Molloy of the District of Montana, who had denied the request for a preliminary injunction made by several environmental groups, including the Alliance for the Wild Rockies.

Molloy said he was following the guidance laid out by the Supreme Court in Winter and concluded that the plaintiffs had not shown a likelihood of success on the merits or that "irreparable injury is likely."

Writing for the appeals court panel, Judge William Fletcher said Winter did not definitely resolve the issue in the government's favor. That is because the Supreme Court ruling only touched upon "one aspect" of the 9th Circuit's approach to preliminary injunctions, he said.

The 9th Circuit has what is known as a "sliding scale" test that is used to determine whether a preliminary injunction is warranted based on the facts in the case. This gives judges the discretion to balance various competing arguments and decide whether a stronger argument on one issue offsets a weak argument on another issue. In other words, plaintiffs might have a strong case that they will win on the merits but not a good argument that there will be irreparable harm.

In stating that the sliding-scale test was left intact in the wake of the Winter ruling, Fletcher cited Justice Ruth Bader Ginsburg, who touched upon the issue in her dissenting opinion in the case.

In the government's petition (pdf) for rehearing, Assistant Attorney General Ignacia Moreno, who heads DOJ's Environment and Natural Resources Division, argued that as a result of Winter, "courts are not free to apply a different test in evaluating requests for preliminary injunctions."

She also noted that the Richmond, Va.-based 4th U.S. Circuit Court of Appeals has ruled that its "sliding scale" test did not survive the Supreme Court ruling.

The Western Environmental Law Center's Brown, who represents the environmental groups in the Montana case, stressed that it has always been difficult for environmental groups to get preliminary injunctions.

"Judges can't willy-nilly grant or deny a motion for preliminary injunction," she said. Instead, they must carefully follow the process for weighing each side's arguments.

The Supreme Court focused on the "likelihood of irreparable harm," but whether that standard is

met is "in the eye of the beholder," Brown said.

She did concede that DOJ views Winter as a "monumental shift." Brown also admitted that, based on the 9th Circuit's response to the Supreme Court's ruling and the split between federal courts of appeal, the justices may want to take another look at the issue at some point.

Paul Weiland, a partner at California law firm Nossaman who specializes in environmental litigation, said the 9th Circuit panel was "trying to preserve a semblance" of its prior test "while begrudgingly acknowledging the Supreme Court decision."

In that sense, the judges are "trying to give themselves a little more flexibility," he said.

Whether the Supreme Court wants lower courts to retain that flexibility remains to be seen.

Case Western's Adler said it remains a possibility that the Supreme Court's ruling in Winter was itself an outlier because of the focus on national security. But, he added, the justices might still want to take up the 9th Circuit's handling of preliminary injunctions again if DOJ seeks review.

"The court is sensitive to taking cases that feature a certain pattern," Adler said. "That includes environmental cases from the 9th Circuit."

NOISE

NTNEWS.com.au

Report warns of noisy neighbours jetting in

EXCLUSIVE by Meagan Dillon

October 31st, 2010

RESIDENTIAL suburbs around the RAAF base in Darwin should expect a substantial increase in noise with the arrival of new jets.

The F-35 Joint Strike Fighters - expected within four years - have stirred up fear among residents and small business owners.

Small businesses - especially those at the Winnellie shopping complex - may be forced to close because the Defence Department is moving 395 families out of housing in the anticipation of the noisy jets...

The full text of the article is available on the NTNEWS (Australia) website found here:

http://www.ntnews.com.au/article/2010/10/31/190841_ntnews.html

Chicago Sun-Times

Schools near O'Hare to get noise barrier cash

BY MARY WISNIEWSKI

Transportation Reporter

November 5, 2010

The jet noise at Ridgewood High School in Norridge gets so bad that teachers have to stop mid-sentence to wait for planes from nearby O'Hare Airport to pass by....

On Thursday, the Federal Aviation Administration approved Ridgewood and Elk Grove High School in Elk Grove Village as eligible to receive \$20 million to \$30 million to insulate their buildings from airplane noise...

The full text of the article is available on the Chicago Sun Times website found here:

<http://www.suntimes.com/news/transportation/2867042,CST-NWS-sound05.article>