

OCT 13 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RESURRECTION BAY
CONSERVATION ALLIANCE;
ALASKA COMMUNITY ACTION ON
TOXICS, Alaska nonprofit corporations,

Plaintiffs - Appellants,

v.

CITY OF SEWARD, ALASKA,

Defendant - Appellee.

No. 08-35401

D.C. No. 3:06-cv-00224-RRB

MEMORANDUM*

RESURRECTION BAY
CONSERVATION ALLIANCE;
ALASKA COMMUNITY ACTION ON
TOXICS, Alaska nonprofit corporations,

Plaintiffs - Appellees,

v.

CITY OF SEWARD, ALASKA,

Defendant - Appellant.

No. 08-35440

D.C. No. 3:06-cv-00224-RRB

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, District Judge, Presiding

Argued and Submitted August 6, 2009
Anchorage, Alaska

Before: FARRIS, THOMPSON and RAWLINSON, Circuit Judges.

Plaintiffs Resurrection Bay Conservation Alliance and Alaska Community Action on Toxics appeal the district court's denial of an award of attorney fees, to which they assert they are statutorily entitled under the citizen-suit provisions of the Clean Water Act, 33 U.S.C. § 1365(d). Defendant City of Seward filed a cross-appeal seeking a partial reversal of the district court's summary judgment ruling.

1. In light of this Court's recent ruling in *Saint John's Organic Farm v. Gem County Mosquito Abatement Dist.*, — F.3d —, 2009 WL 2357866, No. 07-35797, at **3-9 (9th Cir. August 3, 2009), *as amended*, we remand the district court's judgement so that the district court may determine whether Plaintiffs were the prevailing parties, *see id.* at **3-6, and if so, whether an award of fees is "appropriate," applying the standards articulated. *See id.* at **7-9.

2. We grant the City of Seward's unopposed motion to dismiss its cross-appeal in Case No. 08-35440. We remand for the district court to determine whether to vacate its summary judgment ruling with respect to the permit requirement for the Small Boat Harbor.

JUDGMENT REMANDED; CROSS-APPEAL DISMISSED.