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The court found that the hearing officer took extensive evidence regarding K&W's proposed odor control measures and held two hearings exclusively on the odor issue before concluding that the proposed odor control measures met the local public interest standard when balanced with other factors. The hearing officer recognized that this determination was subjective and considered the effect of the dairy on the economy of the area, recreation, fish and wildlife resources, and compliance with applicable air, water and hazardous substance standards, and complied with planning and zoning ordinances of local and state jurisdictions in addition to odor. The court also stated that when parties present conflicting evidence, the agency's findings are binding on the court if they are supported by substantial and competent evidence, regardless of whether the court might have reached a different conclusion.

The court also found that the property owners misunderstood the "contours of the local public interest standard." The court found that Halper's interpretation of the narrow issue of odor and its related negative effects, as the local public interest was too narrow a definition, stating that, "the local public interest has many elements and the determination of which local public interests are impacted and balancing those impacts is left to the sound discretion of IDWR." Similarly, the court found Chisholm's argument that there was no evidence in the record that the dairy will not add to the existing problem, to be too strict a standard. The court stated that, "there must only be evidence that the odors emitted will be reasonable and at such a level as to satisfy the local public interest when balanced with other factors." The court found that the hearing officer did consider other factors, and rejected the property owners' request for the court to reweigh the evidence. The court concluded that its standard of review was limited to asking whether the hearing officer's findings and conclusions were supported by substantial and competent evidence. The court affirmed the IDWR's Final Order, finding that it was supported by substantial and competent evidence, and that the hearing officer properly considered the local public interest.

Keely Downs

LOUISIANA

Schoeffler v. Drake Hunting Club, 919 So.2d 822 (La. Ct. App. 2006) (holding that a plaintiff's petition must be specific enough to establish a cause of action and a right of action against riparian landowners or the state, before the plaintiff may bring suit requesting the fix of boundaries at the high water mark along privately owned lands).

Harold Schoeffler and four other individuals ("Schoeffler") used the waters of the Atchafalaya Basin for commercial and recreational purposes. Schoeffler sought a declaratory judgment and boundary action against private landowners and lessees in the Atchafalaya Basin including private individuals, estates, corporations, hunting clubs, and crawfishing associations. Schoeffler also requested a mandamus action that would compel the State of Louisiana ("State") to fix the landowners' and lessees' boundaries within the Atchafalaya Basin. Additionally, Schoeffler sought a declaratory judgment that would declare the waters of the Atchafalaya Basin navigable and subject to public use, and a declaration that entitled Schoeffler to fishing access and other uses below the ordinary high water line of Lake Chetimaches.

The District Court for St. Martin Parish, Louisiana granted the landowners' and lessees' exceptions of no cause of action and no right of action to survey and fix boundaries at the high water mark along the privately owned lands. The trial court also granted the State's exceptions of no cause of action and no right of action for the mandamus action, and dismissed the State from all of Schoeffler's demands. However, the trial court permitted Schoeffler to amend the petition requesting a mandamus action. Schoeffler appealed the trial court's decision.

The Louisiana Court of Appeals first conducted a *de novo* review of whether Schoeffler had a right of action to fix boundaries between the inundated lands in the Atchafalaya Basin and the State's navigable waters. In determining whether a cause of action existed, the court focused on whether the law provided for a remedy against the landowners, lessees, or the State. In determining whether a right of action existed, the court focused on whether Schoeffler had the right to bring the case.

Schoeffler argued they used the present and former bed of Lake Chetimaches for commercial and recreational purposes, and that the landowners and lessees prohibited the use of the water by erecting barrier gates and threatening prosecution for trespass. The landowners and lessees asserted that public use servitudes on the banks of navigable rivers were only for navigational purposes, and did not include the right to hunt or fish without the riparian owner's permission. The State asserted that Atchafalaya Basin had never been legally defined as one large body of water, and that various rivers, uplands, swamps, bayous, streams, and lakes now occupied Lake Chetimaches due to geomorphologic changes. Since the high water marks constantly change in Atchafalaya Basin, the State, landowners, and lessees asserted that a fixed boundary line such as the one Schoeffler requested was impossible to create. In addition, the State argued that since Schoeffler did not have a possessory or proprietary right to access the private lands, Schoeffler could not have a real and actual interest in an action to fix boundary lines in Atchafalaya Basin.

The court found that Schoeffler did not state a cause of action in the petition submitted to the court. The court held that a cause of action did not exist since the boundary Schoeffler sought to fix was not a traditional boundary between contiguous lands. The court also held that Schoeffler did not have a right of action to fix the boundary lines because Schoeffler was not an owner, lessor, lessee, legal or conventional usufructuaries, or adverse possessors of the properties at issue.

Second, the court considered whether Schoeffler had a cause and right of action to bring a writ of mandamus against the State, which would compel the State to fix boundaries between its navigable waters, and the owners' and lessees' inundated lands in the Atchafalaya Basin. The State asserted that Schoeffler did not have a cause or right of action to survey a high water boundary throughout the Atchafalaya Basin because no true boundaries existed. The State noted that the Atchafalaya Basin's high water line constantly changed, and that it would be extraordinarily expensive to administer the boundaries. Additionally, the State argued that a ministerial duty that required the State to sue its own citizens in an action that was not clearly provided for under law did not exist. Absent a ministerial duty, the State noted that it had no interest in bringing a boundary action against the landowners or lessees. The State asserted that it did not restrict or abridge Schoeffler's rights to use state lands and navigate over state water bottoms and thus, the State had no duty to act.

The court noted that a mandamus is an extraordinary remedy that courts use sparingly to compel something that is clearly provided for by law, and only where it is the sole remedy available, or where delay in using another remedy would cause injustice. Further, the court stated that mandamus lies only to compel purely ministerial duties, and that mandamus is not appropriate when there is an element of discretion left to a public officer. The court found no ministerial duty, law, or ordinance required the State to fix numerous high water boundaries against the owners and lessees of the inundated lands in the Atchafalaya Basin. Thus, the court held Schoeffler's petition did not provide for a cause of action. The court also found no right of action. For a right of action to exist, Schoeffler must have stated a justiciable controversy. Since Schoeffler did not possess any real rights of ownership or possession in Atchafalaya Basin lands, no right of action could lie against the State to fix such boundaries.

Finally, the court considered whether Schoeffler had an action for declaratory judgment against the State, which would declare the waters of the Atchafalaya Basin navigable and subject to public use, and entitle Schoeffler to fishing access and other uses below the ordinary high water mark in the beds of Lake Chetimaches. The State argued Schoeffler's action against the State was speculative and theoretical, and that no justiciable controversy existed involving the State. The State noted that Schoeffler's petition for declaratory judgment would

involve over 400,000 acres in the Atchafalaya Basin. The State asserted that numerous trials would be necessary to determine which bodies of water were navigable lakes with banks and bank servitudes, and which bodies of water were non-navigable.

The court found that Schoeffler did not state a cause of action against the State, and did not have standing to compel the State to make such broad declarations. The court noted that a justiciable controversy must involve the legal relations of the parties having adverse interests, which can be determined in a conclusive manner at that stage of the proceedings. The court held that the request for declaratory judgment asked the State to declare rights not yet adjudicated, and since Schoeffler did not have standing to compel such broad declarations, the action against the State must fail.

The court affirmed the trial court's decision that granted the landowners' and lessees' exceptions of no right of action to fix numerous boundaries in the Atchafalaya Basin, granted the State's exceptions to the mandamus action, and dismissed the State from all related demands.

James E. Downing

Lake Bistineau Pres. Soc'y, Inc. v. Seales, 922 So.2d 768 (La. Ct. App. 2006) (affirming the denial of a preliminary injunction to prevent the drawdown and aquatic herbicide spraying of Lake Bistineau because the spraying had already occurred while the appeal was pending).

The Lake Bistineau Preservation Society, Inc. ("Society") and H. F. Anderson brought an action against the Department of Wildlife and Fisheries of the State of Louisiana and three of its officials ("DWF") seeking a preliminary injunction to prevent the second round of herbicide spraying of DWF's Habitat Management Plan ("Plan") for Lake Bistineau. Finding that the herbicide spraying activities, which were the subject of the requested preliminary injunction, already ended, the Court of Appeals of Louisiana for the Second Circuit dismissed the action as moot.

DWF's Plan originally called for three annual drawdowns and herbicide sprayings to kill the excessive aquatic vegetation that had choked Lake Bistineau. The first spraying occurred in 2004. That same year, the court denied the Society's action for a preliminary injunction. In that suit, the Society argued that the drawdown was too economically burdensome on the lake's users.

The present litigation followed in 2005. The Society again asked for a preliminary injunction, this time alleging that the DWF's plan for Lake Bistineau violated the Louisiana Environment Quality Act ("LEQA") and the Louisiana Water Control Laws ("LWCL"). The Society argued that the herbicides the DWF was spraying into the lake,